

Dated

2021

- (1) **WALSALL METROPOLITAN BOROUGH COUNCIL**
- (2) **DUDLEY METROPOLITAN BOROUGH COUNCIL**
- (3) **BOROUGH OF SANDWELL COUNCIL**
- (4) **WOLVERHAMPTON CITY COUNCIL**

COLLABORATION AGREEMENT
BLACK COUNTRY TRANSPORT HUB

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THE SCHEDULES

Schedule 1A - The Transportation Programme

Schedule 1B - The Joint Commissioning Programme

Schedule 2 - Funding and Resources

Schedule 3 - Governance

Collaboration Agreement sets out the parties' agreement in respect of these arrangements.

IT IS HEREBY AGREED as follows:

1 DEFINITIONS

Interpretation

1.1.1 In this Agreement the following words and expressions have the following meanings:

BC AUTHORITIES means the four Black Country Authorities who are signatories to this Agreement namely; Dudley Metropolitan Borough Council, Borough of Sandwell Council, Walsall Metropolitan Borough Council and Wolverhampton City Council

Accountable Body means the funding body responsible for the enforcement of the terms of grant funding and monitoring of a grant recipient's performance of their obligations under a Funding Agreement;

Allocated Staff has the meaning given in clause 4.2.2;

Allocation Period means the period for which the Allocated Staff have been allocated to the Black Country Transport Team pursuant to clause 4.2.2;

Authority means one of the four Authority signatories to this Agreement;

Agreement means this Collaboration Agreement and the Schedules thereto;

Ancillary Services means the ongoing legal, financial and management costs of the Lead Authority in administering the grant and each and all of the services relating to the on boarding of New Staff and for the avoidance of doubt the onboarding costs shall include:

a) human resources;

b) information technology including telephony;

c) legal advisory;

- d) accommodation;
- e) pension management advisory;
- f) finance and accountancy; and
- g) employee benefits scheme

Annual Cost	means the annual cost of the management and implementation of the Transportation Programme that is intended to be met out of external funding under Funding Agreements and/or the Joint Commissioning Budget in the case of the Joint Commissioning Programme but failing any external funding shall be shared equally by the Authorities;
BCLEP	means the Black Country Local Enterprise Partnership
Black Country Transport Priorities Document	means the list of “pipeline” transport projects that the Black Country Transport Team has identified as potential Projects for the Transportation Programme;
Black Country Transport Team	means the team of transport officers as set out in Schedule 3, who shall work together on the delivery of the Transportation Programme;
Black Country Transport Officers’ Group	means the reporting group with oversight for transport related matters across the Authorities as further described in Schedule 3;
Business Case	means the business case which sets out a project proposal in accordance with the guidelines issued by the Funding Body from time to time and which is ultimately approved for submission by the BC Authorities to enable commencement of a Project;
Commencement Date	means with effect from 30 March 2021;

Confidential Information	has the meaning given in clause 10.1;
Contribution	means each Authority's annual capital contribution of £40,000 or such other sum as may be set by the Heads of Regeneration Working Group for each Financial Year in accordance with clause 5.3 (pro-rated for any part of a Financial Year) towards the Joint Commissioning Budget as set out in Schedule 2 to be paid in cash to the Lead Authority in each Financial Year in accordance with clause 5.2;
Data Controller	has the meaning given in the Data Protection Legislation;
Data Protection Legislation	means all applicable data protection and privacy legislation in force from time to time in the UK including the General Data Protection Regulation ((EU) 2016/679); the Data Protection Act 2018; the Privacy and Electronic Communications Directive 2002/58/EC (as updated by Directive 2009/136/EC) and the Privacy and Electronic Communications Regulations 2003 (SI 2003/2426) as amended;
Development Authority	means the Authority nominated by the Heads of Regeneration Working Group as having responsibility for the development of a Project and its presentation to BC Authorities (and which, in the case of a Project included in the Joint Commissioning Programme, shall be the Lead Authority);
Employer Authority	means the relevant Authority providing Allocated Staff to the Transportation Programme as defined in clause 4.2.2 to the Black Country Transport Team from time to time;
Employment Costs	means the costs incurred by an Employer Authority in respect of basic pay, national insurance, superannuation / employer pension contribution in respect of permanent employees, parental / maternity / paternity / adoption / shared parental leave, training and professional development, expenses, redundancy costs, periods of sickness and injury, quantifiable employer benefit schemes, reasonable adjustments pursuant to the Equalities Act 2010, professional subscriptions and professional

indemnity insurance (where applicable) and travel costs where necessary and appropriate;

Financial Year means a period of twelve calendar months commencing on and including 1 April in each year provided that the first Financial Year shall be the period from the Commencement Date to 31 March 2022 inclusive;

Force Majeure means any circumstances beyond the reasonable control of any Authority (including, without limitation, any strike, lock-out or other form of industrial action);

Funding Agreement means and grant (or similar) funding arrangement in respect of the Transportation Programme (or any part of it) and/or a Project;

Funding Body means any party providing funding under a Funding Agreement (and shall include Walsall in its capacity as the Single Accountable Body for BCLEP funding);

Intellectual Property Rights means all patents, trademarks, copyright, moral rights, rights to prevent passing off, rights in designs, knowhow and all other intellectual or industrial property rights, in each case whether registered or unregistered and including applications or rights to apply for them and together with all extensions and renewals of them, and in each and every case all rights or forms of protection having equivalent or similar effect anywhere in the world;

Joint Commissioning Budget means the capital budget comprising the Contribution and any other available funding to be used for the Joint Commissioning Programme; to be allocated as set out in the column headed "Joint Commissioning Budget £160k)" in Schedule 1B and as otherwise agreed by the Heads of Regeneration from time to time;

Joint Commissioning Programme means the rolling programme of collaborative projects to be jointly commissioned by the Authorities (and reviewed annually by the Heads of Regeneration Working Group) for the benefit of the Black Country region as a whole which as at the Commencement Date is set out in Schedule 1B;

Independent Person	has the meaning given in clause 17.2;
Lead Authority	means the Authority agreed by the Heads of Regeneration Working Group from time to time as having responsibility for the functions set out in clause 6.1 of this Agreement; and at the date of this Agreement the Lead Authority is Wolverhampton;
BCLEP Assurance Framework	means the Black Country Local Enterprise Partnership Framework which guides local decision making to support accountability, transparency and value for money. The framework is compliant with the Government's National Assurance Framework guidelines, practices and standards. Decisions made by BCLEP follow the decision-making process within this framework;
Management Issues	All those matters under the Employment Contract requiring action, investigation and/or decisions by the Employer Authority including in particular (by way of illustration only and without limitation) appraisals and performance issues; any complaint about the Allocated Staff and any complaint or grievance raised by the Allocated Staff;
Material Change	has the meaning given in clause 2.6;
Material Change in Circumstances	means a change that is or is likely to significantly affect or impact upon delivery of a Project or any schemes under it which necessitates a change or review of any decision made by BC Authorities in connection with the Project or, if such change in circumstances were known at the time of a decision by BC Authorities in connection with the Project, would have potentially influenced BC Authorities to make a different decision than the one that was made originally;

Monitoring Procedures		means the monitoring procedures, audits and any other reporting, monitoring or audit processes required in relation to the Transportation Programme;
New Staff		has the meaning given in clause 4.2.1;
Objectives		means the objectives of the Transportation Programme set out in Schedule 1A together with such other objectives and outputs as are adopted by the Authorities from time to time in accordance with this Agreement;
Pension Deficit Costs		means any increase in additional superannuation / employer pension contribution costs arising in respect of an employee after the date that the employee is allocated to the Transportation Programme as a result of the value of assets in a local authority pension fund being materially less than the anticipated liabilities of the fund at any time;
Personal Data		has the meaning given in the Data Protection Legislation;
Premises		means the Civic Centre, St. Peter's Square, Wolverhampton WV1 1SH;
Programme Director		means the Black Country Director of Transportation appointed by the Authorities from time to time in connection with the Transportation Programme and the Joint Commissioning Programme;
Project		means an individual project or initiative identified through the Transportation Programme;
Heads of Regeneration Working Group	of	means the group comprised of the Black Country Directors of Regeneration (or similar position) as further described in Schedule 3;
Request for Information	for	has the meaning given in clause 21.2;
Shared Costs		means a cost/s incurred by one or more Authorities in connection with the Transportation Programme and/or Joint Commissioning

Programme in any Financial Year that shall be met in accordance with clause 5.5;

Technical Leads means the transport manager (or equivalent) of each of the Authorities (Dudley Principal Engineer, Walsall Transportation Major Projects and Strategy Manager, Wolverhampton Service Manager Transport Strategy and Sandwell Strategic Transport and Planning Manager);

TfWM Transport for West Midlands (part of the West Midlands Combined Authority);

Transportation Programme means as defined in Recital A;

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

1.2 In this Agreement:

1.2.1 the clause headings do not affect its interpretation,

1.2.2 words in the singular shall include the plural and vice versa,

1.2.3 unless otherwise indicated, references to clauses and Schedules are to clauses of and Schedules to this Agreement and references in a Schedule to a paragraph are to a paragraph of that Schedule,

1.2.4 references to any statute or statutory provision include references to:

1.2.4.1 all Acts of Parliament and all other legislation having legal effect in the United Kingdom,

1.2.4.2 any subsequent statutes directly or indirectly amending, consolidating, extending, replacing or re-enacting that statute and include any orders, regulations, instruments or other subordinate legislation made under that statute,

1.2.4.3 a person includes a natural person, corporate or unincorporated body or organisation and their successors and permitted assigns,

1.2.4.4 including means including, without limitation,

1.2.4.5 if any provision is held to be illegal, invalid or unenforceable that provision shall be struck out and the legality, validity and enforceability of the remainder of the Agreement is to be unaffected.

2 COLLABORATION

2.1 The Authorities agree to work in a spirit of mutual trust and co-operation to fulfil their agreed roles and responsibilities as identified by this Agreement, to achieve the key Objectives of the Transportation Programme, and commit to contribute resources as agreed to the Transportation Programme in accordance with the timescale and to the value set out in this Agreement.

2.2 Each Authority shall:

2.2.1 carry out the tasks and contribute sufficient resources and facilities in broadly equivalent measure and as set out in this Agreement to ensure that the Objectives are achieved and commitments under this Agreement are satisfied;

2.2.2 co-operate with each other and do such acts, matters and things as may be necessary or desirable to implement the decisions of the Authorities and in order to complete the Transportation Programme;

2.2.3 keep the other Authorities fully informed of the progress of and of any matters relevant to the Transportation Programme and make available to the other Authorities all relevant information, data, reports and opinions in relation to the Transportation Programme; and

2.2.4 immediately notify the other Authorities in writing if it becomes aware that there is an unexpected problem which is likely to cause a material delay to achievement of any of the Objectives or any particular stage of the Transportation Programme or any material increase in the costs of the Transportation Programme or if it becomes aware of the action of any other Authority or third party which threatens to affect adversely the progress of the Transportation Programme or the reasonable expectations of the Authorities hereunder.

2.3 The strategic direction of the Transportation Programme shall be decided by the Heads of Regeneration Working Group.

- 2.4 The planning, and overall management of the Transportation Programme and any individual Project including initial appraisal of Project proposals shall be vested in the Heads of Regeneration Working Group. The terms of reference, composition, roles and responsibilities of the Heads of Regeneration Working Group are set out in Schedule 3. Without prejudice to the generality of the foregoing, the matters set out in Schedule 3 shall only be agreed by the Heads of Regeneration Working Group.
- 2.5 The final approval of full business cases of Projects prior to submission to the Funding Body, including any Material Changes to approved Projects, shall be vested in BC Authorities to whom potential Projects shall be proposed and presented by the relevant Development Authority, following the approval of the Heads of Regeneration Working Group.
- 2.6 A Material Change to a Project is a variation that is or is likely to change the nature, the outcome or the objectives of a Project, including but not limited to:
- 2.6.1 a Material Change in Circumstances;
 - 2.6.2 a change that means that the Project objectives and outputs as approved by the BC Authorities will not or are unlikely to be achieved;
 - 2.6.3 an increase in the budget or expenditure of 10% (ten percent) or more on a Project; and
 - 2.6.4 a change in the timescale for delivery of a Project that will adversely affect the Project and/ or its objectives.
- 2.7 Where a Development Authority becomes aware that a Material Change has occurred or is likely to occur after a Project has been approved by BC Authorities, the Development Authority must advise Heads of Regeneration Working Group and then BC Authorities of that Material Change as soon as practicable after it becomes aware of it. Where an Authority other than the Development Authority for a Project becomes aware of a Material Change in connection with the Project, it must advise the Development Authority as soon as practicable after becoming aware of it.

3 PROJECT AND REPORT APPROVAL

- 3.1 Once identified by the BC Transport Team, Project proposals shall be initially worked up by the Black Country Transport Team. The Black Country Transport Team shall report such proposals to the Heads of Regeneration Working Group for approval. If approved by the Heads of Regeneration Working Group, the Heads of Regeneration

Working Group shall recommend a Project proposal for approval by the BC Authorities.

- 3.2 The process for Project proposals shall be:
 - 3.2.1 Presentation of a Project's initial proposal to the Heads of Regeneration Working Group by the Black Country Transport Team for approval and seeking the agreement of the Heads of Regeneration Working Group for a Business Case to be prepared for the proposed Project. This will be in line with the LEP Transport Assurance Framework.
 - 3.2.2 If the Heads of Regeneration Working Group considers any proposal presented to it warrants further consideration then it shall instruct the Black Country Transport Team to prepare a Business Case and present the Business Case for the Project to the Heads of Regeneration Working Group for approval and for submission to BC Authorities for decision.
 - 3.2.3 At the same time as it instructs the Black Country Transport Team pursuant to clause 3.2.2, the Heads of Regeneration Working Group shall designate a Development Authority. For the avoidance of doubt the final approval of the designated Development Authority in respect of any Project is the Lead Authority at the point that it approves a Project.
 - 3.2.4 The Development Authority shall prepare and submit the Business Case for the Project to the Heads of Regeneration Working Group for approval following which it will be submitted to the BC Authorities in accordance with clause 3.2.5.
 - 3.2.5 The Development Authority shall present the Business Case for the Project to the BC Authorities for approval supported by a report in the format as agreed by the BC Authorities.
- 3.3 The above stages can involve comment, clarification and requests for amendment and resubmission of a Project proposal or Business Case for the Project following consideration by any persons from whom permission or approvals are sought at any stage during the process leading up to final Project approval by BC Authorities.
- 3.4 The initial Joint Commissioning Programme as at the Commencement Date shall be as set out in Schedule 1B. The Heads of Regeneration Working Group shall review the Joint Commissioning Programme and the Joint Commissioning Budget on a

rolling basis but always so there is an agreed Joint Commissioning Programme and Joint Commissioning Budget for the forthcoming Financial Year including any variation to the Contribution required from each Authority.

3.5 The approval process for an individual Project shall be without prejudice to the internal approval process required by each Authority and it is acknowledged by each of the Authorities that the Cabinets of each Authority involved in a Project will be required to approve that Project.

3.6 In exceptional circumstances, where an Authority wishes to be the Development Authority for a project in its administrative area, it will make application/s to and consult with the Lead Authority and the Lead Authority in its sole discretion shall determine such applications on a case by case basis. Further, where such an application is determined favourably, the Lead Authority will enter into all necessary legal agreements with the specific Development Authority.

4 BLACK COUNTRY TRANSPORT TEAM

4.1 The Authorities anticipate that in the development of the Black Country Transport Team the Programme Director shall in his sole discretion consult with the four Technical Leads for the BC Authorities and the development of the said team will occur on a phased basis, in accordance with the milestones and objectives set out at Schedule 1A.

4.2 The Black Country Transport Team shall comprise:

4.2.1 six additional employees to be appointed by the Lead Authority to the following posts:

4.2.1.1 3 x corridor programme managers;

4.2.1.2 2 x graduates;

4.2.1.3 1 x apprentice;

("the **New Staff**") and

4.2.2 a number of existing employees of the Authorities who shall be allocated to the Black Country Transport Team in accordance with this clause ("**Allocated Staff**") on an exclusive basis unless otherwise agreed between the Programme Director and the relevant Employer Authority that

they will be allocated on a part-time basis only in which event the Allocated Staff member will work exclusively for the Black Country Transport Team for such period as he/she is allocated (“**Allocation Period**”).

- 4.3 The appointment of New Staff to the Black Country Transportation Team by the Lead Authority shall be subject to the prior approval of the Heads of Regeneration Working Group and the Programme Director.
- 4.4 The proposed and any subsequent allocation of employees to the Black Country Transportation Team will subject to the prior approval of the Heads of Regeneration Working Group and the Programme Director and shall be monitored by the Lead Authority.
- 4.5 Each Employer Authority shall ensure that at all material times it acts in accordance with its respective employees' terms and conditions of employment, with particular regard to the allocation of its staff to the Black Country Transportation Team and the management of its staff thereafter.

New Staff

- 4.6 The New Staff will be appointed by the Lead Authority in accordance with its recruitment and job allocation procedure and this process will be managed by the Programme Director with support from the Lead Authority's human resources team where appropriate and the other Authorities shall not challenge the procedure conducted by the Lead Authority in accordance with this clause.
- 4.7 New Staff will be required to comply with the Lead Authority's policies, procedures and values ("PRIDE"). The Lead Authority will also be responsible for the day to day management of the New Staff, with the assistance of the Programme Director and the New Staff will report directly to the Programme Director.
 - 4.7.1 Further in the event of any New Staff being seconded to assist one or more of the BC Authorities on a local project, the New Staff shall always be under the day to day management of the Lead Authority and shall continue to comply with its policies, procedures and values.
- 4.8 The Lead Authority shall be responsible for the payment of Employment Costs in respect of the New Staff and these Employment Costs (including without limitation Pension Deficit Costs) are intended by the Authorities to be funded and paid from

the TfWM funding or such other external funding as may be available in each Financial Year.

- 4.9 In the event that there is a reduction in external funding or external funding becomes unavailable in respect of the Transportation Programme the Employment Costs (including without limitation Pension Deficit Costs) shall be treated as a Shared Costs and the BC Authorities agree to use reasonable endeavours to minimise Shared Costs.
- 4.10 The Lead Authority may terminate the employment of any of the New Staff in accordance with its own procedures and any associated costs shall be treated as Shared Costs in the absence of funding from TfWM or other external funding and the Programme Director shall keep BC Authorities informed accordingly.

Allocated Staff

- 4.11 Each Employer Authority shall be responsible for the payment of any Employment Costs in respect of its Allocated Staff.
- 4.12 At all material times the Allocated Staff shall remain the employee(s) of the relevant Employer Authority. The relevant Employer Authority if appropriate shall make all the necessary changes to the terms of the Employment Contract/s of any Allocated Staff so that the Allocated Staff can provide the services in accordance with the terms of this Agreement. The Black Country Transport Team shall not require, the Allocated Staff to do anything that shall, breach the Allocated Staff's Employment Contract(s) and shall have no authority to vary the terms of the Allocated Staff's Employment Contract/s or make any representations to the Allocated Staff in relation to the terms of their Employment Contract(s). Any change in the Allocated Staff's Employment Contract(s) by the relevant Employer Authority shall be undertaken in a timely manner, to prevent delays to the progress of the Black Country Transportation Team or affect their ability to discharge their duties and the Programme Director shall be notified of such change.
- 4.13 The Programme Director shall have day-to-day control of the Allocated Staffs' activities but as soon as reasonably practicable shall refer any Management Issues to the relevant Employer Authority who shall remain solely responsible for the its Allocated Staff, including, but not limited to, all Employment Costs, any Management Issue, the management of absences, flexible working arrangements, holidays, grievances, training and professional development, redundancies and required reasonable adjustments pursuant to the Equality Act 2010. The Programme Director

shall provide the relevant Employer Authority with reasonable assistance and feedback in respect of its Allocated Staff to ensure that such employees are managed fairly and effectively. Where a Management issue (including an issue of conduct or competence of the relevant employee) is raised by the Programme Director it shall be referred back to the relevant Employer Authority to deal with under their relevant policies and the relevant Employer Authority shall keep the Programme Director updated as regards progress including the outcome of any investigation. If and to the extent this is not dealt with or is resolved by the Employer Authority within a reasonable period (of not less than 30 days from the date the issue was raised by the Programme Director) and the problem persists, the Employer Authority must:

4.13.1 within 5 days provide the Lead Authority with written reasons for the continuing delay together with proposals for immediate resolution AND the Programme Director shall retain sole discretion to accept or reject such reasons and proposals;

4.13.2 should the Employer Authority fail to manage the situation in a reasonable and timely manner that promotes early resolution, the Programme Director may exercise discretion to escalate the matter to the Heads of Regeneration Working Group who may require the relevant Employer Authority to remove the relevant Allocated Staff member from the Black Country Transport Team and;

4.13.3 the Heads of Regeneration Working Group shall undertake to act in a timely and reasonable manner to avoid any potential adverse impact on the Transportation Programme, Joint Commission Programme or Project.

4.14 For the avoidance of doubt, none of the parties intend for the Transfer of Undertakings (Protection of Employment) Regulations 2006 ("**TUPE**") to apply in respect of the allocation of staff to the Black Country Transport Team. In the event that TUPE is deemed to apply during the term of this Agreement, any Authority deemed to be the transferee will be compensated for all and any Employment Costs incurred as a consequence of the application of TUPE from the Transferor. Such Employment Costs may then be treated as a Shared Cost at the discretion of the Programme Director. Further, the Employer Authority shall indemnify and keep the prevailing Lead Authority indemnified fully at all times against any claim or demand by the Allocated Staff member arising out of their employment or termination of their employment during the Allocation Period.

Allocated Staff Extended Absence

4.15 Each Employer Authority shall use reasonable endeavours to notify the Programme Director in advance, where possible, or as soon as practicable where an Allocated Staff member of the Black Country Transport Team is due to go on extended absence for a period due to sickness, injury parental / maternity / paternity / adoption or shared parental leave . The Programme Director shall agree with the relevant Authority and the Heads of Regeneration Working Group whether, and if so how, the relevant post should be filled in that Allocated Staff member's absence provided that:

4.15.1 in the case of Allocated Staff, the cost of parental / maternity / paternity / adoption / shared parental leave and periods of sickness or injury of more than one week shall not be a Shared Cost but shall be borne by the relevant Employer Authority; and

4.15.2 in the case of New Staff, the cost of parental / maternity / paternity / adoption / shared parental leave and any periods of sickness or injury related absence shall be dealt with on the same basis as other Employment Costs in accordance with clauses 4.8 and 4.9.

4.15.3 Notwithstanding clause 4.15 above, if an Allocated Staff member is going to be absent for any reason for more than 7 days the Employer Authority shall, use reasonable endeavours to notify the Programme Director within a reasonable period and subject to the Programme Director's prior consent, provide a substitute if necessary and resources permit.

Employment Claims and Grievances

4.16 Where a claim or grievance is raised by a member of the Black Country Transportation Team, that claim or grievance shall be managed by the relevant Employer Authority (which shall be the Lead Authority in the case of the New Staff) in accordance with that Employer Authority's employment policies and the terms and conditions of employment of the relevant employee.

4.17 Each Authority shall notify the Programme Director of any claim or grievance affecting a member of the Black Country Transportation Team including any claim or grievance against a member of the Black Country Transportation Team particularly if such claim or grievance may result in disciplinary action against the relevant employee.

- 4.18 Subject to clause 4.19, where an Authority incurs costs in respect of an employment claim or grievance (including without limitation claims in connection with redundancy and unfair dismissal) raised by a member of the Black Country Transport Team, the only circumstances in which the costs associated with the claim or grievance shall be treated as a Shared Cost are:
- 4.18.1 in the case of Allocated Staff where the claim arises as a direct result of the employee's activities as part of the Black Country Transport Team and where such claim would not otherwise have arisen; and
- 4.18.2 where the claim or grievance does not arise as a result of a negligent or wilful breach by an Employer Authority of the employee's terms and conditions of employment, provided that the Programme Director shall have discretion, acting reasonably, to allow such costs to be Shared Costs where such costs should reasonably be regarded as costs of the Transportation Programme and the BC Authorities agree to use reasonable endeavours to minimise Shared Costs.
- 4.19 Where a claim or grievance is raised by a member of the Black Country Transportation Team in respect of the actions of another member of the team or any other employee of any BC Authority and the claim or grievance is successfully upheld following a thorough investigation and/or an Employment Tribunal hearing, then the costs incurred by the Employer Authority of the employee who raises the claim shall be entitled to recover its costs from the Employer Authority of the relevant member of the Black Country Transport Team or other employee whose actions gave rise to the claim or grievance and such costs shall not be regarded as a Shared Cost and the BC Authorities agree to use reasonable endeavours to minimise Shared Costs.

Variation of Terms and Conditions of Employment

- 4.20 An Employer Authority of New Staff and an Employer Authority of Allocated Staff shall notify the Programme Director in advance and as soon as it becomes aware of any proposal to vary the terms and conditions of employment of their employee members of the Black Country Transport Team, providing such information as the Programme Director shall reasonably require in order to determine the impact of the proposed variation upon the operation and cost of the Transportation Programme.
- 4.21 The Employer Authority shall consult with the Programme Director in relation to any proposed variations as referred to in clause 4.20 and shall take account of the Programme Director's views.

4.22 Where the Programme Director determines in his absolute discretion that the proposed variation will impact negatively upon the operation and cost of the Transportation Programme, he shall be entitled to require the removal of the employee in question from the Black Country Transport Team.

Ancillary Services

4.23 The Authorities acknowledge and agree that the Black Country Transport Team will require access to and / or will be served by Ancillary Services and the Authorities anticipate that such Ancillary Services will be provided by the Lead Authority and the costs of such Ancillary Services shall be treated as Shared Costs and invoiced annually in the absence of funding from TfWM or other external funding and the BC Authorities shall use reasonable endeavours to minimise Shared Costs

4.24 The Authorities shall put in place a service level agreement in respect of the Ancillary Services provided by the Lead Authority, as the need arises, setting out:

4.24.1 the extent to which the Black Country Transport Team shall be entitled to access and / or shall be served by the Ancillary Services; and

4.24.2 the rate or basis on which the Ancillary Services shall be charged in respect of members of the Black Country Transport Team.

4.25 The total cost of provision of the Ancillary Services by the Lead Authority in accordance with such service level agreements in each Financial Year shall be a Shared Cost (and the BC Authorities agree to use reasonable endeavours to minimise costs) unless otherwise agreed by the Authorities under the terms of the relevant service level agreement.

4.26 In the absence of a service level agreement in respect of any one or more Ancillary Services, the Lead Authority shall be entitled to identify an appropriate allocation of costs in respect of the provision of Ancillary Services to the Black Country Transport Team and to include such allocated costs in the report that it prepares in accordance with clause 5.6 and such costs shall be a Shared Cost in each Financial Year and the BC Authorities agree to use reasonable endeavours to minimise Shared Costs

5 FUNDING AND CONTRIBUTIONS

5.1 The Authorities intend to secure external funding to meet the costs of the Transportation Programme, the Joint Commissioning Programme, the Projects and the activities of the Black Country Transportation Team and further agree that no

development related costs should be incurred unless and to the extent that funding is available to meet them (including in the case of the Joint Commissioning Programme the funds to be contributed to the Joint Commissioning Budget in accordance with clause 5.3).

- 5.2 The BC Authorities shall work collaboratively in mutual trust and confidence to secure external funding for the Transportation Programme, the Joint Commissioning Programme, individual Projects and the activities of the Black Country Transportation Team for the duration of this Agreement.
- 5.3 Each Authority shall be liable for the duration of the Transportation Programme to make a contribution to the Joint Commissioning Budget of £40,000 (forty thousand pounds) in cash per annum. Such sum shall be reviewed annually and varied by agreement by the Heads of Regeneration Working Group and such sum shall be payable by each Authority to the Lead Authority no later than the Commencement Date and the anniversary of the Commencement Date in each Financial Year.
- 5.4 The Joint Commissioning Budget shall be held by the Lead Authority on behalf of the other Authorities and shall be applied as appropriate to the costs of the Joint Commissioning Programme. In the event that any portion of the Joint Commissioning Budget is unused at the end of a Financial Year the unused portion shall be rolled forward into the next Financial Year and shall not be off-set against the Authorities' next Contribution unless the Heads of Regeneration Working Group otherwise agrees.
- 5.5 It is the Authorities' intention that the costs of the Transportation Programme (except to the extent the costs of the Joint Commissioning Programme are met out of the Joint Commissioning Budget) shall be funded through external funding (e.g. grants and other Funding Agreements) to the extent such costs can be capitalised. Any costs that cannot be capitalised shall be treated as revenue costs and shared equally by the Authorities and paid within 5 Working Days of the date of demand by the Lead Authority.
- 5.6 No later than 14 fourteen Working Days before the end of each Financial Year, each Authority shall submit a report to the Lead Authority in a format that the Lead Authority shall provide, setting out:
 - 5.6.1 its application of resources to the Transportation Programme and to each Project;

- 5.6.2 the number and profile of its staff working on the Transportation Programme and each Project;
 - 5.6.3 any relevant Employment Cost that are Shared Costs in accordance with the provisions of clause 4;
 - 5.6.4 its income and expenditure in connection with the Transportation Programme, the Joint Commissioning Programme and each Project; and
 - 5.6.5 any sums which it proposes be reimbursed by the Lead Authority from the monies held by the Lead Authority on behalf of all Authorities,

so as to enable the Lead Authority to identify to what extent the Authorities have dedicated resources and contributed to the Transportation Programme and the Projects.
- 5.7 The Lead Authority shall add to this information, its own report setting out:
- 5.7.1 its application of resources to the Transportation Programme and to each Project;
 - 5.7.2 the number and profile of its staff working on the Transportation Programme;
 - 5.7.3 any relevant Employment Cost that are Shared Costs in accordance with the provisions of clause 4;
 - 5.7.4 its income and expenditure in connection with the Transportation Programme and each Project;
 - 5.7.5 any sums which it proposes be reimbursed from the monies held by the Lead Authority on behalf of all Authorities; and
 - 5.7.6 the cost of provision of Ancillary Services to the Black Country Transport Team pursuant to clause 4.25.
- 5.8 The Lead Authority shall report back to the Authorities at the end of each Financial Year and to the Heads of Regeneration Working Group, summarising the information that it has received from the Authorities and compiled, identifying any payments that are required to be made from the monies held by the Lead Authority in order to ensure that the Authorities are sharing the burden of the Transportation Programme, the Joint Commissioning Programme and the Projects in equal measure.

- 5.9 The Programme Director (or such other officer as he may delegate to) shall engage with Cabinet members for transport on a quarterly basis so that they are kept updated on progress of the Transportation Programme.
- 5.10 In the event that the cost of the Transportation Programme, the Joint Commissioning Programme and/or any individual Project is determined by the Programme Director to be likely to exceed the available funding for it, no further work shall be commissioned unless the Authorities otherwise agree and agreement is reached on the further funding required.
- 5.11 In the event that the cost of work already commissioned under the Transportation Programme is determined by the Programme Director to be likely to exceed the available funding, the Black Country Transport Team shall present options to the Head of Regeneration Working Groups for approval of the additional spend and claim the arrears once the work has been invoiced.
- 5.12 The Authorities acknowledge and agree that:
- 5.12.1 notwithstanding any other provision of this Agreement, the Lead Authority shall not be obliged to make payment in respect of any costs or to incur any liabilities on behalf of the other Authorities pursuant to the terms of this Agreement unless it has received funding or a commitment to such funding for the full value of such costs and liabilities;
 - 5.12.2 the Contributions due to have been paid by the Commencement Date in accordance with clause 5.3 have been paid to the Lead Authority; and
 - 5.12.3 without prejudice to clause 5.12.1, where the Lead Authority makes a payment in respect of costs or incurs liabilities on behalf of the other Authorities in circumstances where it has not received funding in advance to the full value of such costs or liabilities, the other Authorities shall reimburse the Lead Authority in equal shares on demand (such payment by an Authority (including the Lead Authority's share that is not reimbursed) shall not be deemed to be payments on account of that Authority's Contribution except to the extent the payment relates to the Joint Commissioning Programme).
- 5.13 The costs of any Project that involve only one Authority shall be borne by that Authority alone except and to the extent they are not covered by external funding arrangements and no costs relating to that Project shall be Shared Costs.

- 5.14 The costs of any Project that involves more than one Authority but not all the Authorities shall be borne by the Authorities involved in that Project in equal proportions except and to the extent they are not covered by external funding arrangements.
- 5.15 To the extent any Authority incurs any costs or expenses in relation to a Project that it is not involved in (including the Lead Authority in its capacity as such) it shall be entitled to be repaid on demand in accordance with clauses 5.13 and 5.14.
- 5.16 If any Authority fails to make a payment under this Agreement by the due date then, without limiting any other Authority's rights in respect of such failure, the Authority in default shall pay interest on the overdue sum from the due date until payment is made in full, whether before or after judgment. Interest under this clause will accrue each day at 8% a year above the Bank of England's base rate from time to time unless otherwise agreed. Interest paid on the late payment of any Contribution shall be added to the Joint Commissioning Budget.

6 GOVERNANCE

- 6.1 Wolverhampton City Council as Lead Authority for the Transportation Programme shall be responsible for the performance of the following functions:
- 6.1.1 co-ordination of allocation of employees employed by each of the Authorities of the Black Country Transport Team to ensure the appropriate number and profile of staff are working on the Transportation Programme at any time;
- 6.1.2 co-ordination of the provision of all ICT requirements at the Premises, human resources, administrative, legal and financial support to the Black Country Transport Team;
- 6.1.3 the commissioning and procurement of any appropriate external services to support the work of the Black Country Transport Team as and when required;
- 6.1.4 collection and safeguarding of the Joint Commissioning Budget and of any additional payments by the Authorities to the Lead Authority in connection with the Transportation Programme, the Joint Commissioning Programme and/or any Project;

- 6.1.5 applying for, receiving, holding and administration of grant funding provided by any Funding Body for development of the Transportation Programme, the Joint Commission Programme, Projects or such other development as agreed by BC Authorities and additional funding as may be required for the Black Country Transport Team including monitoring of the application of funds and reporting to the relevant Funding Body;
 - 6.1.6 monitoring of the Annual Cost of the Transportation Programme and the Joint Commissioning Programme based on information provided by the Authorities and identification of any imbalance in the liabilities of any particular Authority in connection with the Transportation Programme and/or the Joint Commissioning Programme and/or any Project(s) in any Financial Year which may require correction;
 - 6.1.7 obtaining the approval of the Authorities for the payment of any balancing sums to one or more Authorities in respect of any imbalances in contributions to the Transportation Programme and/or the Joint Commissioning Programme and/or any Projects from time to time among the Authorities.
- 6.2 Notwithstanding anything contained within this Agreement and the Schedules, the role of the Heads of Regeneration Working Group is overall operational responsibility for the implementation of the Transportation Programme, the Joint Commissioning Programme and the Projects and all of their elements.
- 6.3 BC Authorities will oversee the development of the Transportation Programme, the Joint Commissioning Programme and the Projects and will receive reports prepared by the Heads of Regeneration Working Group regarding the progress of the Transportation Programme, the Joint Commissioning Programme and all ongoing Projects. It will also receive any other reports that the Heads of Regeneration Working Group chooses to submit.
- 6.4 Subject at all times to compliance with all applicable laws, orders, enactments and regulations pertaining to the public procurement of goods and services (including EU procurement law for as long as and to the extent it applies to the UK during the transition period following the UK's withdrawal from the European Union), all procurement of goods, works and or services needed for or in the delivery of the Transportation Programme or any Project shall be procured:

- 6.4.1 in the case of any Projects that are comprised in the Joint Commissioning Programme or any development work on a Project led by the Lead Authority, in accordance with the Lead Authority's constitution and, in particular, its contract and procurement rules; and
 - 6.4.2 in the case of any other Projects after completion of the development work, in accordance with or the relevant Development Authority's constitution and, in particular, its contract and procurement rules.
- 6.5 The Authorities' roles and responsibilities in relation to the governance arrangements for the Transportation Programme and Joint Commissioning Programme as set out in this Agreement shall be carried out by personnel of the Authorities. No charge or demand shall be made by any Authority to the Lead Authority or to any other Authority in respect of such costs except for where such costs shall be Shared Costs or it has been agreed by the Heads of Regeneration Working Group that such costs may be claimed by that Authority from another Authority or, to the extent such costs relate to the Joint Commissioning Programme and may be met from the Joint Commissioning Budget held by the Lead Authority.
- 6.6 The Programme Director will be responsible for attending meetings and contributing to the agendas of the Heads of Regeneration Working Group. He will also be responsible for maintaining the Black Country Transport Priorities Document and providing written updates to the Heads of Regeneration Working Group and the BC Authorities on the general progress of the Transportation Programme and the Joint Commissioning Programme and on specific Projects as appropriate.
- 6.7 The meetings of the Heads of Regeneration Working Group, the BC Authorities and the Black Country Transport Officers' Group shall be minuted and copies of the minutes circulated to all relevant participants.
- 6.8 The Authorities shall ensure that the appropriate officers attend the Heads of Regeneration Working Group meetings arranged by Walsall Council. the purpose of which is to develop the Transportation Programme's priorities, initial Project proposals, Project updates and generally as necessary to enable the Programme Director to manage the Transportation Programme effectively.
- 6.9 The Black Country Transport Officers' Group shall be established for the purpose described in Schedule 3. The group will meet monthly and a summary of the meeting will then be provided to the Heads of Regeneration Working Group meeting for

information only. Any key issues will be raised at the Heads of Regeneration Working Group and if required taken to the BC Authorities for formal approval.

- 6.10 The Lead Authority is not responsible for delivery of Projects. Responsibility for delivery of Projects rests with the relevant Authorities.

7 PROJECT AUDIT AND CLAW-BACK

- 7.1 Each Authority shall ensure that it maintains proper and accurate records of all transactions entered into, including without limitation income received and expenditure incurred by the Authority, its contractors, sub-contractors, servants and agents, in connection with the Transportation Programme, the Joint Commissioning Programme and the Projects and it shall be liable to the Lead Authority on behalf of the other Authorities in respect of any loss or damage suffered by the Authorities as a result of any irregularities or errors in connection with the underlying transactions and in the manner of accounting and recording of such transactions.
- 7.2 Subject to the provisions of this clause 7, each Authority shall be responsible to the other Authorities for ensuring compliance with all terms and conditions imposed by any statutory authority or other funding body in respect of any Project for which it is the Development Authority.
- 7.3 At all times each Authority will be responsible for ensuring that adequate audit arrangements are in place for any element of the Transportation Programme and the Joint Commissioning Programme for which they are responsible and for any Project for which they are the Development Authority including providing free and unfettered access of the Lead Authority and the Heads of Regeneration Working Group to all information and documentation in relation to the Project.
- 7.4 Each Authority agrees to give the Lead Authority and the Heads of Regeneration Working Group unrestricted and unfettered access to all information and documentation in relation to any element of the Transportation Programme and/or the Joint Commissioning Programme for which it is responsible and in relation to any Project for which it is the Development Authority, unless otherwise agreed, including providing copies of any such information and or documentation free of charge.
- 7.5 The Authorities agree that in the event that any grant monies are clawed back by a Funding Body in respect of any Project in accordance with the terms of the relevant grant agreement:

- 7.5.1 where practicable, all of the Authorities will take reasonable steps within their powers to mitigate the amount of monies clawed back by the relevant Funding Body provided that no Authority shall be required to incur significant expenditure in meeting that obligation to mitigate; and
 - 7.5.2 subject to clauses 7.6 and 7.9, the Authorities shall meet any liability in respect of the repayment of grant monies and any other costs of dealing with the clawback and taking steps to mitigate as Shared Costs.
- 7.6 Where clawback of grant monies arises in respect of the Transportation Programme, the Joint Commissioning Programme and /or any Project as a result of negligence, breach or default on the part of any Authority, that Authority shall be responsible for the repayment of the grant monies and shall reimburse the other Authorities on demand in respect of any liabilities that they incur in relation to such clawback, including without limitation any costs and liabilities incurred:
 - 7.6.1.1 by any other Authorities in respect of any steps taken to mitigate the extent of the clawback;
 - 7.6.1.2 by the Lead Authority (or other relevant Authority if not the Lead Authority) in respect of the repayment of the grant monies to the relevant Funding Body where the Lead Authority (or other Authority) is liable to that Funding Body in respect of such clawback; and
 - 7.6.1.3 by the Lead Authority (or other relevant Authority if not the Lead Authority) in respect of any steps taken by the relevant Funding Body to recover grant monies or reimbursement of other liabilities that it has incurred in connection with the clawback.
- 7.7 Without prejudice to clause 7.6, in advance of submission of a grant application for a Project, the Development Authority for the Project shall in order to reach agreement as to how liabilities for clawback of grant monies will be allocated between the Authorities in circumstances where clawback of the grant monies arises as a result of circumstances beyond the reasonable control of that Development Authority. That the Lead Authority shall be responsible for ensuring that the Authorities reach agreement in respect of such arrangements and that such agreement is properly documented in advance of the submission of the grant application.
- 7.8 Where any Development Authority fails to secure the written agreement of the other Authorities in respect of such arrangements pursuant to clause 7.7 and clawback of

grant monies arises in the circumstances described in clause 7.7, that Development Authority shall be responsible for any costs and liabilities incurred by the other Authorities pursuant to clause 7.6 as if the clawback had arisen as a result of the negligence or default of that Development Authority.

- 7.9 Where clawback of grant monies arises in respect of any Project that involves only one Authority or a number but not all of the Authorities, that Authority or those Authorities as the case may be shall be responsible for the repayment of the grant monies and shall reimburse the other Authorities who are not involved in such Project on demand in respect of any liabilities that they incur in relation to such clawback (such liability to be shared equally between all Authorities involved in such Project unless they agree any other proportions).
- 7.10 For the avoidance of doubt, the Authorities for the purpose of any clawback or reimbursement of costs shall be the four Authorities (or such number as may be involved in any relevant Project) and Wolverhampton shall not bear any additional share of such cost or liability due to its dual role as a party to this Agreement in its own right and in its role as the Lead Authority.

8 GENERAL OBLIGATIONS

- 8.1 Each Authority agrees that it shall be required to comply directly with the terms of any Funding Agreement if it is the recipient of any funding derived from that Funding Agreement.
- 8.2 Each Authority agrees to assist, co-operate and comply with the Monitoring Procedures and that it will work together with the other Authorities to resolve or rectify any errors or irregularities identified during the Monitoring Procedures or otherwise.
- 8.3 Each Authority shall be solely liable for any cost implications or irregularities or errors attributable primarily to it and identified during any Monitoring Procedures.
- 8.4 Each Authority shall indemnify the other Authorities (including in the case of the Lead Authority any claims, liabilities, costs, expenses, damages or losses it suffers or incurs in its capacity as Lead Authority) against all claims, liabilities, costs, expenses, damages or losses suffered by the others arising out of the negligence, default or breach by such Authority, its employees, servants and agents in connection with the performance of its obligations pursuant to this Agreement, including for the avoidance of doubt in respect of health and safety and security arrangements that apply at the Premises.

8.5 Each Authority shall at its own cost effect and maintain with a reputable insurance company a policy or policies of insurance providing as a minimum the following levels of cover:

8.5.1 public liability insurance with a limit of indemnity of not less than £5,000,000 (five million pounds) in relation to any one claim or series of claims;

8.5.2 employer's liability insurance in accordance with any legal requirement for the time being in force in relation to any one claim or series of claims;

8.5.3 professional indemnity insurance with a limit of indemnity of not less than £10,000,000 (ten million pounds) in relation to any one claim or series of claims and shall ensure that all professional consultants involved in the provision of the Services hold and maintain appropriate cover; and

8.5.4 any other insurances as agreed to be maintained by each Authority in respect of its liabilities under this Agreement.

8.6 Each Authority shall at all times take all reasonable steps to minimise and mitigate any loss for which the relevant Authority is entitled to bring a claim against another Authority or Authorities pursuant to this Agreement.

9 DOCUMENTATION

The Heads of Regeneration Working Group shall produce the initial drafts of standard documentation for the Transportation Programme and for Projects for approval by BC Authorities.

10 CONFIDENTIALITY

10.1 Each Authority shall use reasonable endeavours to keep in strict confidence, and shall bind all its employees, servants and agents to keep in strict confidence, all commercial and technical information in whatever form acquired by it (whether directly or indirectly) concerning another Authority in connection with this Agreement (hereinafter called Confidential Information). No Authority shall, save as hereinafter provided, use or disclose any such Confidential Information other than for the purposes of the Transportation Programme or as expressly permitted by this Agreement. The foregoing restriction shall not apply to:

10.1.1 information which at the time of disclosure is generally available to the public;

- 10.1.2 information which the Authorities are obliged to release under the provisions of the Freedom of Information Act 2000;
 - 10.1.3 information which after disclosure becomes generally available to the public through no fault of the receiving Authority;
 - 10.1.4 information which the receiving Authority can show was in its possession prior to the disclosure and which was not acquired directly or indirectly from the other Authority; and
 - 10.1.5 information which the receiving Authority can show was received by it after the time of disclosure from any Authority without any obligation of confidentiality and which was not acquired directly or indirectly from the other Authority.
- 10.2 The confidentiality obligations set out in this clause shall survive for a period of five (5) years after the termination of the Transportation Programme.
- 10.3 Each Authority shall impose the same confidentiality obligations set out in this clause 10 upon its affiliates, consultants and other third parties who are in association with it and may have access to Confidential Information during the term of this Agreement.

11 INTELLECTUAL PROPERTY

- 11.1 The Authorities agree that all Intellectual Property Rights existing at the Commencement Date shall remain the property of the relevant Authority.
- 11.2 All Intellectual Property Rights created by the Authorities after the Commencement Date during the period of the Transportation Programme and developed specifically for application in connection with the Transportation Programme shall, unless otherwise agreed in writing, belong to the Authorities jointly, and the Authorities shall use all reasonable endeavours to ensure that each Authority receives appropriate rights to any Intellectual Property Rights created during and relating to the Transportation Programme or the Joint Commissioning Programme.

12 WARRANTIES

- 12.1 Each Authority warrants to the other Authorities that:
- 12.1.1 it has the necessary right and authority to enter into this Agreement; and

12.1.2 the signatories hereto for and on behalf of that Authority are authorised and fully empowered to execute this Agreement on that Authority's behalf.

13 FORCE MAJEURE

13.1 If any Authority is affected by Force Majeure it shall forthwith notify the other Authorities of the nature and extent thereof.

13.2 No Authority shall be deemed to be in breach of this Agreement, or otherwise be liable to the other, by reason of any delay or failure in performance or non-performance, of any of its obligations hereunder, to the extent that such delay or failure or non-performance is due to any Force Majeure which it has notified in a timely manner to the other Authorities, and the time for performance of that obligation shall be extended accordingly.

13.3 If the Force Majeure in question prevails for a continuous period in excess of three months, the Authorities shall enter into bona fide discussions with a view to alleviating its effects, or to agreeing upon such alternative arrangements as may be fair and reasonable.

14 DURATION AND TERMINATION

14.1 The provisions of this Agreement shall come into force on the Commencement Date.

14.2 The Authorities shall review the terms of this Agreement on an annual basis and this Agreement shall be deemed to renew automatically on the same terms for a further period of 12 (twelve) calendar months from 1 April in each year unless the Authorities otherwise agree in which event this Agreement shall terminate at close of business on the 31 March.

14.3 One or more Authorities may give not less than 3 months' notice in writing to the Lead Authority and other Authorities at any time to withdraw from this Agreement. In these circumstances, the BC Authorities shall meet within one month of the date of service of any such notice of withdrawal for the purposes of preparing an implementation plan:

14.3.1 for the withdrawal of the relevant Authority from the Agreement; or

14.3.2 in circumstances where the remaining Authorities do not wish to continue with the Agreement for any reason or where the continuation of the Agreement is not viable, for the termination of the Agreement.

- 14.4 The Authorities shall each act reasonably in co-operating with each other to facilitate the withdrawal of an Authority from the Agreement or the termination of the Agreement and the Authority giving notice of withdrawal (or if there is more than one such Authority then each of them in equal shares) shall bear all costs arising out of or in connection with such withdrawal or termination pursuant to clause 14.3 and shall indemnify the remaining Authorities against all costs and expenses incurred or to be incurred by them arising out of or in connection with that withdrawal or termination. The remaining Authorities shall determine (acting reasonably and in good faith) if any variations are required to this Agreement in consequence of the withdrawal of that Authority.
- 14.5 No relaxation, forbearance, delay or indulgence by any Authority in enforcing any of the terms of this Agreement or the granting of time by any Authority to any other shall prejudice, affect or restrict the rights and powers of that Authority in relation to the other, nor shall any waiver by any Authority of a breach of this Agreement be considered as a waiver of any subsequent breach of the same or any other provision.
- 14.6 The right to withdraw from this Agreement given by this clause 14 shall not prejudice any other right or remedy of any Authority in respect of any breach of this Agreement by another Authority, whether or not such breach was the cause of the Authority's withdrawal from the Agreement.

15 VARIATION

- 15.1 The BC Authorities shall from time to time review the operation of this Agreement, implementation of the Transportation Programme and achievement of the Objectives.
- 15.2 Such reviews shall be undertaken on an annual basis or at such other intervals as appear to the Lead Authority to be appropriate and Lead authority shall make proposals to the Authorities for any changes which seem to the Lead Authority to be reasonable and appropriate in the circumstances.
- 15.3 Any changes or variation to this Agreement shall be agreed by the BC Authorities and supported by a deed of variation.

16 PUBLICITY AND PUBLIC RELATIONS

- 16.1 The Authorities shall co-operate and consult with each other in respect of any matter involving public relations in so far as reasonably practicable having regard to the nature and urgency of the issue involved.
- 16.2 The Lead Authority may agree protocols for the handling of public relations from time to time.

17 DISPUTES

- 17.1 If any dispute arises between the Authorities arising in connection with the provisions of this Agreement the Authorities shall endeavour to resolve the dispute by agreement as quickly as possible but if the dispute has not been resolved within ten (10) Working Days then either Authority may request the others to participate in a meeting of their Chief Executives. The Authorities in dispute shall exchange statements at least three (3) clear Working Days prior to the date of the meeting, setting out their respective views of the disputed issues. If the Chief Executives do agree a strategy for the resolution of the dispute the Authorities shall then liaise in good faith to arrange to implement the strategy for resolution within ten (10) Working Days of the meeting.
- 17.2 If notwithstanding any steps taken by the Authorities pursuant to clause 17.1, the dispute between the Authorities remains unresolved then at the request of any Authority the dispute shall be referred (in the absence of any express provision to the contrary) to a suitably qualified independent person appointed jointly by the Authorities (the "**Independent Person**").
- 17.3 The Independent Person is to have at least 10 years post qualification experience relevant to the dispute and his/her identity shall be agreed between the Authorities.
- 17.4 If the Authorities cannot agree on the Independent Person's identity the Independent Person is to be appointed at the request of any of the Authorities by the president or chairman for the time being of whichever of the following bodies is most appropriate having regard to the nature of the dispute:
- 17.4.1 The Royal Institution of Chartered Surveyors;
- 17.4.2 The Institute of Chartered Accountants in England & Wales; or
- 17.4.3 The Law Society of England and Wales.

17.5 The Independent Person is to act as arbitrator in accordance with the Arbitration Act 1996 and the costs of the arbitration shall be payable by the Authorities in the proportions determined by the Independent Person and unless agreed otherwise the default position being as determined under the Arbitration Act 1996.

17.6 Where costs of the Independent Person remain unpaid by the Authority liable to pay them pursuant to this clause, the other Authorities or any of them may discharge those costs and recover the sum so paid from the defaulting Authority as a debt on written demand.

18 COMPLAINTS

In the event of a complaint about a Project being received, the Development Authority for that Project will manage the complaint and shall report to the Lead Authority and the Heads of Regeneration Working Group within four weeks or such other period as agreed with the Lead Authority upon the complaint and in any event at the conclusion of the complaint.

19 LOCAL AUTHORITY POWERS

Nothing in this Agreement shall prejudice or affect any of the statutory rights, powers, obligations and duties for the time being vested in the Authorities.

20 NOTICES AND SERVICE

20.1 Any notice or other information required or authorised by this Agreement to be given by any Authority to the other Authorities shall be given by:

20.1.1 delivering the same by hand; or

20.1.2 sending the same by pre-paid registered post;

to the other Authority or Authorities at the address given at the beginning of this Agreement or such other address as has been notified to the Authorities in writing.

20.2 Any notice or information sent by post in the manner provided by clause 20.1 which is not returned to the sender as undelivered shall be deemed to have been given on the second day after the envelope containing it was so posted, and proof that the envelope containing any such notice or information was properly addressed, pre-paid, registered and posted, and that it has not been returned to the sender, shall be sufficient evidence that the notice or information has been duly given.

21 FREEDOM OF INFORMATION

- 21.1 Each Authority acknowledges that it is subject to the requirements of the code of practice on access to government information, the Freedom of Information Act 2000 ("FOIA") and the Environmental Information Regulations ("EIR") and shall assist and co-operate with each other to enable each to comply with its information disclosure obligations.
- 21.2 Each Authority shall provide all necessary assistance as reasonably requested by the other Authorities to enable the other Authorities to respond to any requests for information that falls under the FOIA or EIR and is related to the Transportation Programme ("Request for Information") within the time for compliance set out in section 10 of the FOIA or regulation 5 of the EIR.
- 21.3 The Authority who receives the initial Request for Information shall be responsible for responding to the initial request and determining in its absolute discretion and notwithstanding any other provision in this Agreement or any other agreement whether any information is exempt from disclosure in accordance with the provisions of the code of practice on access to government information, the FOIA or the EIR.
- 21.4 Each Authority shall ensure that all information produced in the course of this Agreement is retained for disclosure and shall permit the other Authorities to inspect such records as requested from time to time. The costs incurred by the Lead Authority in responding to requests for information under the FOIA and the EIR in relation to a Project, the Transportation Programme and or the Joint Commissioning Programme shall be Shared Costs provided that any such costs incurred in respect of a Project that does not involve all the Authorities shall not be Shared Costs but shall be shared between (and reimbursed on demand by) those Authorities who are involved in that Project (and if just one Authority is involved then the costs shall be borne solely by that Authority).
- 21.5 The Programme Director shall consider any request from other Authorities to treat any costs incurred in responding to a request for information under the FOIA and the EIR in connection with the Transportation Programme and/or the Joint Commissioning Programme as a Shared Cost and shall determine such request in his absolute discretion.

22 DATA PROTECTION

With respect to the Authorities' rights and obligations under this Agreement, each Authority agrees to comply with the obligations imposed on it by the Data Protection Legislation as a Data Controller and to ensure that Personal Data is processed only in accordance with its own policies on data protection, information security and retention of personal data to comply with its obligations under the Data Protection Legislation.

23 EQUALITY ACT 2010

Each Authority agrees to comply with the obligations imposed on it by the Equality Act 2010.

24 GENERAL

- 24.1 This Agreement is personal to each of the Authorities and no Authority may assign, mortgage, charge or (except as otherwise provided in this Agreement) license any of its rights hereunder, or sub-contract or otherwise delegate any of its obligations hereunder, except with the written consent of all the other Authorities.
- 24.2 Nothing in this Agreement shall create, or be deemed to create, a partnership, or the relationship of principal and agent, between the Authorities.
- 24.3 The Authorities will act in good faith towards each other in relation to the Transportation Programme and in achieving the Objectives and outputs of the Transportation Programme and in complying with this Agreement and any Funding Agreements.
- 24.4 If any provision of this Agreement is held by any competent authority to be invalid or unenforceable in whole or in part, this Agreement shall continue to be valid as to the other provisions thereof and the remainder of the affected provision.
- 24.5 This Agreement and the Schedules constitute the entire agreement and understanding of the Authorities and supersedes any previous agreement between the Authorities relating to the subject matter of this Agreement.
- 24.6 Each of the Authorities acknowledges and agrees that in entering into this Agreement it does not rely on, and shall have no remedy in respect of, any statement, representation, warranty or understanding (whether negligently or innocently made) of any person (whether a party to this Agreement or not) other than as expressly set

out in this Agreement. Nothing in this clause shall, however, operate to limit or exclude any liability for fraud.

- 24.7 All payments by an Authority pursuant to this Agreement are exclusive of any applicable value added tax except where expressed to the contrary, and if any such value added tax is payable, the Authority in question shall be additionally liable for such tax, which shall accordingly be shown on the relevant VAT invoice.
- 24.8 No variation to this Agreement shall be valid unless it is in writing and signed by and on behalf of all the Authorities.
- 24.9 Every Authority shall from time to time do all such acts and execute all such documents as may be reasonably necessary in order to give effect to the provisions of this Agreement.
- 24.10 The Authorities shall bear their own costs of and incidental to the preparation, execution and implementation of this Agreement.
- 24.11 The Authorities do not intend that any provision of this Agreement should be enforceable pursuant to the Contracts (Rights of Third Parties) Act 1999 by any person who is not a party to this Agreement.
- 24.12 This Agreement shall be governed by and construed in accordance with the laws of England and Wales.

SCHEDULE 1 A

The Transportation Programme

 BLACK COUNTRY TRANSPORT	
Black Country Transport Programme Funding	
Highway - Major Roads Network	Lead Authority
A454 Phase 1+2 (Willenhall Road)	Wolverhampton
A4123	Dudley, Sandwell, Wolverhampton
A454 Phase 3 (Neachells Lane)	Wolverhampton
A449	Wolverhampton
A41 Moxeley Gyratory	Walsall
A461	Walsall, Sandwell, Dudley
Birchwell Island (oversight)	Sandwell
M6 J10 (oversight)	Walsall
Highway - Local Large Majors	Lead Authority
M5 J1	Sandwell
Rail (Oversight)	Lead Authority
Wolverhampton Interchange	Wolverhampton
Dudley Interchange	Dudley
Willenhall and Darlaston Train Stations	Walsall
Dudley Port Station	Sandwell
Metro (Oversight)	Lead Authority
Wednesbury to Walsall	Walsall, Sandwell
Brierley Hill to Stourbridge	Dudley
Wednesbury to Brierley Hill	Dudley, Sandwell
Other (Oversight)	Lead Authority
A34 Sprint Scheme	Walsall, Sandwell (+Birmingham)
West Midlands Cycle Hire	Wolverhampton, Sandwell, Walsall, Dudley
GRAND TOTAL (£m)	

Appendix B

Initial Investment Programme Funding Estimate							Secured Funding							Unsecured Funding							
LA ITB £m	BC LEP £m	Highways England £m	WMCA £m	DfT £m	Total £m		LA ITB £m	BC LEP £m	Highways England £m	WMCA £m	TFWM £m	DfT £m	Total £m		LA ITB £m	BC LEP £m	Highways England £m	WMCA £m	DfT £m	Total £m	
3.0	-	-	-	27.0	30.0		-	-	-	-	-	-	-		-	-	-	-	-	-	-
4.3	-	-	-	44.3	48.6		-	-	-	-	-	-	-		-	-	-	-	-	-	-
2.2	-	-	-	20.0	22.2		-	-	-	-	-	-	-		-	-	-	-	-	-	-
0.8	-	-	-	7.5	8.3		-	-	-	-	-	-	-		-	-	-	-	-	-	-
-	-	-	-	0.1	-		-	-	-	-	-	-	-		-	-	-	-	-	-	-
-	-	-	-	-	50.0		-	-	-	-	-	-	-		-	-	-	-	-	-	50.0
3.4	1.5	-	1.0	24	30.3		3.4	1.5	-	1.0	-	24	30.3		-	-	-	-	-	-	-
1.3	7.5	39.0	-	30.0	77.8		-	-	-	-	-	-	-		1.3	7.5	39.0	-	30.0	-	77.8
-	-	-	-	-	65.0		-	-	-	-	-	-	-		-	-	-	-	-	-	-
-	-	-	-	-	125.0		-	-	-	-	-	-	-		-	-	-	-	-	-	-
-	-	-	-	-	18.0		-	-	-	-	-	-	-		-	-	-	-	-	-	-
5.4	-	-	44.6	-	50.0		-	-	-	12.6	-	-	12.6		5.4	-	-	32.0	-	-	37
-	-	-	-	-	50.0		-	-	-	-	-	-	-		-	-	-	-	-	-	-
-	-	-	-	-	150.0		-	-	-	-	-	-	150.0		-	-	-	-	-	-	-
-	-	-	-	-	150.0		-	-	-	-	-	-	150.0		-	-	-	-	-	-	-
-	-	-	-	-	450.0		-	-	-	-	-	-	-		-	-	-	343.0	-	-	343.0
-	-	-	33.0	-	33.0		-	-	-	-	-	-	-		-	-	-	33.0	-	-	33.0
-	-	-	-	-	-		-	-	-	-	-	-	-		-	-	-	-	-	-	-
20.4	9.0	39.0	78.6	153.2	1,358.2		3	2	-	14	-	24	342.9		6.7	7.5	39.0	408.0	30.0	-	541.2

	Cost				Total Cost
	2021/22	2022/23	2023/24	2024/25	
Black Country Transport Graduate	74,320	76,544	78,850	81,215	310,929
Black Country Transport Programme Manager	221,487	228,129	234,973	242,022	926,611
Black Country Transport Apprentice Support	20,954	21,583	22,230	22,897	87,664
Strategy Budget	160,000	160,000	160,000	160,000	640,000



A4123 (Birmingham New Road) Project Costs

Project Costs

Project Management	£ -	£ 45,000.00	£ 46,350.00	£ 47,740.00	£ 49,173.00	£ 50,648.00	£ 238,911.00
Design	£ -	£ 50,000.00	£ 750,000.00				£ 3,100,000.00
Traffic Modelling	£ -		£ 62,500.00	£ 62,500.00		£ -	£ 1,000,000.00
Land Purchase and Compulsory Purchase Order	£ -	£ -	£ -	£ 1,000,000.00		£ -	£ 2,000,000.00
Utility Diversions			£ 500,000.00	£ 1,500,000.00			£ 4,000,000.00
Construction			£ 4,750,000.00	£ 4,750,000.00	£ 13,850,000.00	£ 21,486,089.00	£ 74,400,000.00
Total Costs	£ -	£ 95,000.00	£ 6,108,850.00	£ 7,360,240.00	£ 13,899,173.00	£ 21,536,737.00	£ 49,000,000.00

Funders	RAG Rating
LA ITB	
BC LEP	
WMCA	
DfT	

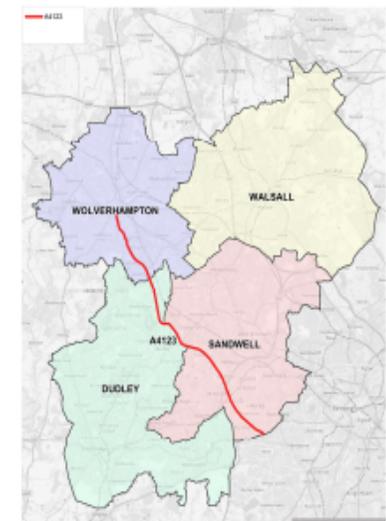
*Note: All Prices are inclusive of risk and inflation

Role	2021/22	2022/23	2023/24	2024/25	2025/26	26+
Programme Manager	£ 73,829.00	£ 76,043.00	£ 78,324.00	£ 80,673.00	£ 83,093.00	
Graduate	£ 37,160.00	£ 38,275.00	£ 39,423.00	£ 40,606.00	£ 41,824.00	

Key Risk	Scenario	Mitigation

Initial Investment Funding Estimate	Latest Costs to Completion							Total
Initial Project Estimate	Business Case Estimate	2021/22	22/23	23/24	24/25	25/26	26+	
£ -	£ -	£ 95,000.00	£ 6,108,850.00	£ 7,360,240.00	£ 13,899,173.00	£ 21,536,737.00		£ 49,000,000.00

Current Approved Funding Ceiling			Current Year Financial Performance		
Latest Approved	Total Expenditure to Date	Variance	Original Forecast	Latest Forecast	Variance
-	-	-	-	-	45,000
-	-	-	-	-	-
-	-	-	-	-	-
-	-	-	-	-	45,000
-	-	-	-	-	-
-	-	-	-	-	-





A454 Phase 3 (Willenhall Road, Neachells Lane Junction) Project Costs

Project Costs	
Project Management	£ 22,000,000.00
Design	
Traffic Modelling	£ -
Land Purchase and Compulsory Purchase Order	£ -
Utility Diversions	
Construction	
Total Costs	£ 22,000,000.00

Funders	RAG Rating
LA ITB	
BCLEP	
WMCA	
DFT	

*Note: All Prices are inclusive of risk and inflation

Programme Summary

Initial Investment Funding Estimate		Latest Costs to Completion						
Initial Project Estimate	Business Case Estimate	2021/22	22/23	23/24	24/25	25/26	26+	Total

£ 22,000,000.00	£ 22,000,000.00	£ 110,989.00	£ 114,318.00	£ 117,747.00	£ 121,279.00	£ 124,917.00		£ 589,250.00
				£ 450,000.00	£ 250,000.00			
£ -						£ -		
£ -	£ -	£ -	£ -	£ -	£ 7,015,000.00	£ -		
				£ 1,000,000.00	£ 1,000,000.00			
				£ 3,000,000.00	£ 6,500,000.00	£ 3,000,000.00		
£ 22,000,000.00	£ 22,000,000.00	£ 110,989.00	£ 114,318.00	£ 4,567,747.00	£ 14,886,279.00	£ 3,124,917.00		£ 22,215,000.00

£ -	£ -	£ -	£ -	£ -		£ -		£ -

Current Approved Funding Ceiling			Current Year Financial Performance		
Latest Approved	Total Expenditure to Date	Variance	Original Forecast	Latest Forecast	Variance

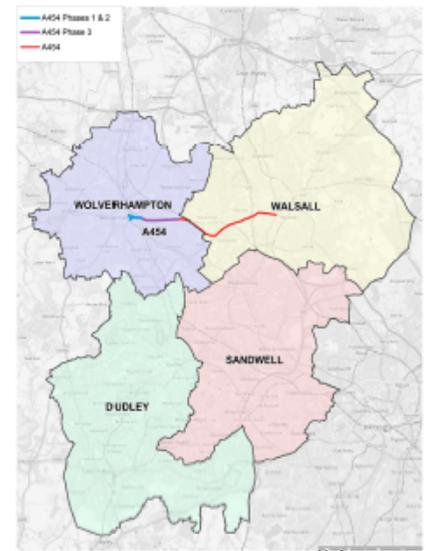
-	-	-			110,989
-	-	-	-	-	-
-	-	-	-	-	-
-	-	-	-	-	110,989

-	-	-	-	-	-

Role	2021/22	2022/23	2023/24	2024/25	2025/26	26+
Programme Manager	£ 73,829.00	£ 76,043.00	£ 78,324.00	£ 80,673.00	£ 83,093.00	
Graduate	£ 37,160.00	£ 38,275.00	£ 39,423.00	£ 40,606.00	£ 41,824.00	

Key Risk	Scenario	Mitigation

Programme Update



Schedule 1B

The Joint Commissioning Programme

bct Black Country Transport		Work Plan										Status Updates			
Programme	Column Ref	Objectives								Output(s) / Deliverable(s)	Q1 (Apr - Jun 2020)	Q2 (Jul - Sep 2020)	Q3 (Oct - Dec 2020)	Q4 (Jan - Mar 2021)	
		Black Country Plan	Black Country Transport	Task Owner/s	Resource	Funding to be sourced in 2021	Funded via Other Sources	MRN Budget (TWMM) 21/22	MRN Budget (TWMM) 22/23						Joint Commissioning Budget (£160k)
Black Country Transport Strategy	1	Economic Growth	Policy	Stuart Everton	Kester Sleeman					£ 80,000.00	Deliver an ABCA approved strategy document which clearly articulates the BC approach to transport infrastructure and services of the Black Country - complements the West Midlands Movement for Growth Transport Plan, Black Country Plan, Birmingham Transport Plan				
Black Country ULEV Strategy		Environment	Capital Programme	Stuart Everton	Kester Sleeman					£ 60,000.00	Finalising the business case, working with TWMM on a single procurement mechanism and site identification across the 4 LAs.				
Funding bid for future KRN / MRN transport schemes	2	Connectivity	Future Majors (Pipeline)	Eleanor Cooper	Graduate 1					£ 10,000.00	Funding bids to TWMM for TCF KRN funding; and Midlands Connect for MRN funding				
A41 Corridor	3	Connectivity	Future Majors (Pipeline)	Matt Crowton Andy Miller	Graduate 2						Cross boundary scheme featuring development of key junctions including Moxley Gytratory, including option selection and initial consultation				
A461 Corridor	4	Connectivity	Future Majors (Pipeline)	Matt Crowton Neil Lissimore Andy Miller	Graduate 2						Cross boundary scheme feature development of key junctions including Rushall, including option selection and initial consultation				
Aldridge Station	5	Connectivity	Town Centre & Public Transport	Matt Crowton	Eleanor Cooper						New station delivered by WMRE, with support from WMBC on supporting highways measures				
Watnall Town Centre Masterplan - Watnall Station	6	Communities	Town Centre & Public Transport	Matt Crowton	Eleanor Cooper					£ 10,000.00	Station redevelopment to be supported by public realm and transportation projects				
A34 Corridor	7	Connectivity	Strategic Highways	Matt Crowton Andy Miller	Kester Sleeman						Development and delivery of elements of SPRINT phases 1 & 2, as well development of a segregated cycle path on the corridor				
City East Gateway (A454 Corridor)	8	Connectivity	Future Majors (Pipeline)	Marianne Page Matt Crowton	Programme Manager 1 & Graduate 1			£ 274,000	£ 70,000		Development of Phases 1 and 2 including commencing CPO and stats diversions				
A4123 Corridor	9	Connectivity	Future Majors (Pipeline)	Marianne Page Neil Lissimore Matt Crowton	Programme Manager 2 & Graduate 2			£ 200,000	£ 225,000		Development of key junctions and end-to-end segregated cycle path, building on existing business case				
City North Gateway (A449 Corridor)	10	Connectivity	Strategic Highways	Marianne Page	Programme Manager 3 & Graduate 2			£ 141,000	£ 399,000						
Willenhall Rail Station	11	Connectivity	Town Centre & Public Transport	Matt Crowton	Eleanor Cooper						New station delivered by WMRE, with support from WMBC on supporting highways measures				
Darlaston Rail Station	12	Connectivity	Town Centre & Public Transport	Matt Crowton	Eleanor Cooper						New station delivered by WMRE, with support from WMBC on supporting highways measures				
M6 J10 - Project Delivery	13	Connectivity	M6 Junction 10	Matt Crowton	Steven Edwards						Continued delivery of major motorway junction improvement project				
Wednesbury to Brierley Hill Metro Extension	14	Connectivity	Town Centre & Public Transport	Neil Lissimore Andy Miller	Graduate 1						Development of a package of supporting measures to support the metro extension including improving access to all stops by active modes				
M5 J1	15	Connectivity	Future Majors (Pipeline)	Andy Miller	Programme Manager 3 & Graduate 2						Further development of existing options including modelling and business case				
Annual Total								£ 615,000.00	£ 694,000.00	£ 160,000.00					
Combined Total								£ 1,300,000.00		£ 160,000.00					

SCHEDULE 2**Funding and Resource**

Capital Funding will be contributed as follows:

Authority	Contribution
Walsall	£40,000
Dudley	£40,000
Sandwell	£40,000
Wolverhampton	£40,000
Total	£160,000

Resources will be as set out in the column headed "Resource" in Schedule 1B.

SCHEDULE 3

Governance

(1) Heads of Regeneration Working Group

The Black Country Heads of Regeneration Working Group comprises the four Local Authority Heads of Regeneration or their nominated representatives (voting members), BCC Ltd.'s Chief Executive, the Black Country Director of Transportation and a private sector BC LEP Board Member (non-voting members).

The overall role of the Heads of Regeneration Working Group is, with support from the Transportation Programme and the Joint Committee Programme Manager and the Single Accountable Body Team, to devise, oversee, manage and monitor the Transportation Programme, review and evaluate on a regular basis an ongoing individual Project's progression and delivery against the Business Case for that Project (including any key milestones, financial spend and compliance with any central Government grant terms or other Funding Agreements) and report and make recommendations and provide updates to BC Authorities as appropriate.

(2) Black Country Transport Officers' Group

A reporting group which provides oversight in respect of all transport related matters. Reports are provided to key individuals across the four Authorities and TfWM. The meetings are held monthly and clerked by TfWM. The group will have oversight of the following:

- Transport Innovation
- Regional Transport Co-Ordination centre and Key Route Network
- Sustainable Transport
- Major Projects including those being developed by Black Country Transport and TfWM strategic transport officers' group papers

(3) Black Country Transport Team

The Black Country Transport Team is responsible for driving the Transportation Programme and delivering the outcomes and benefits in line with the approach agreed by the Heads of Regeneration and the BC Authorities. Members of the group are collectively and individually accountable to the Programme Director for their areas of

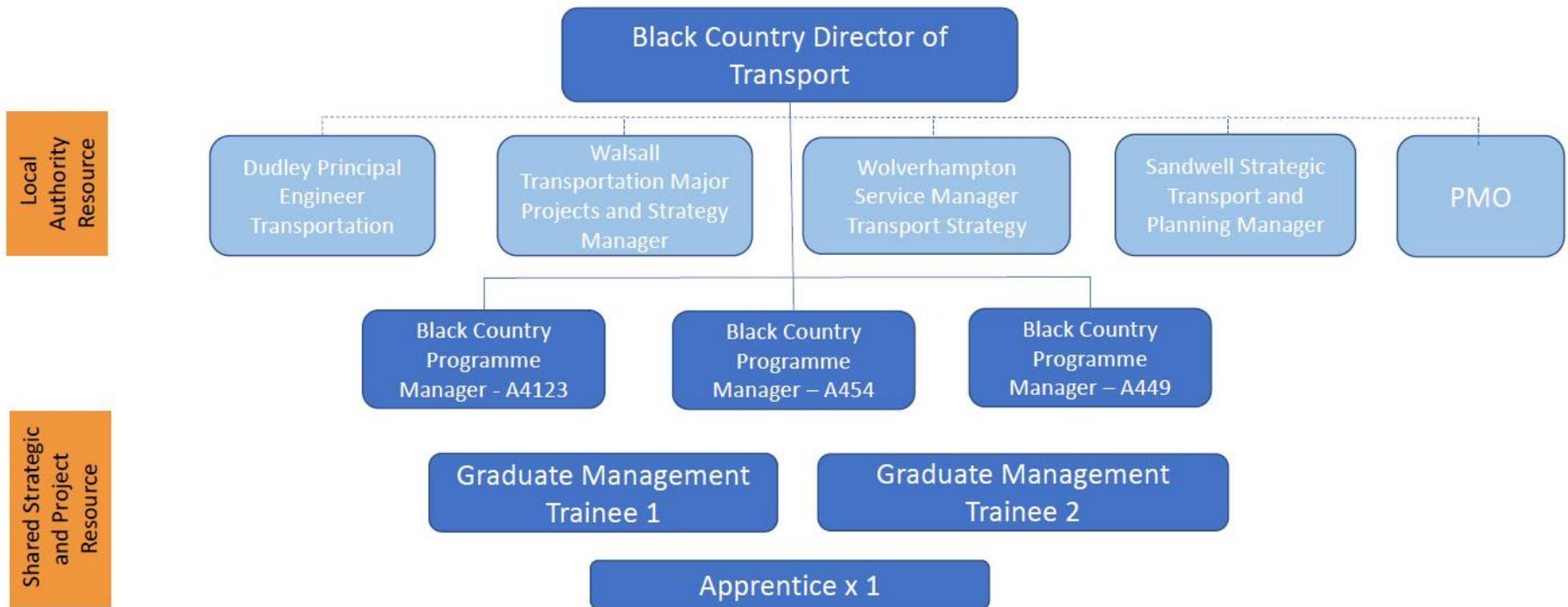
responsibility and delivery within the key tasks. The group and team will include the key people identified in the organogram set out below in this Schedule and will also include other key stakeholders as appropriate.

The Black Country Transport Team will work closely with the existing Authorities' transport teams. The co-ordination of activities between both the Black Country Transport Team and the local authority transport team will be the respective Technical Lead. The Technical Leads will have oversight of all work being undertaken at both a local and Black Country level and will be able to identify areas where there is potential overlap and there are more efficient ways of pooling projects or agendas together.

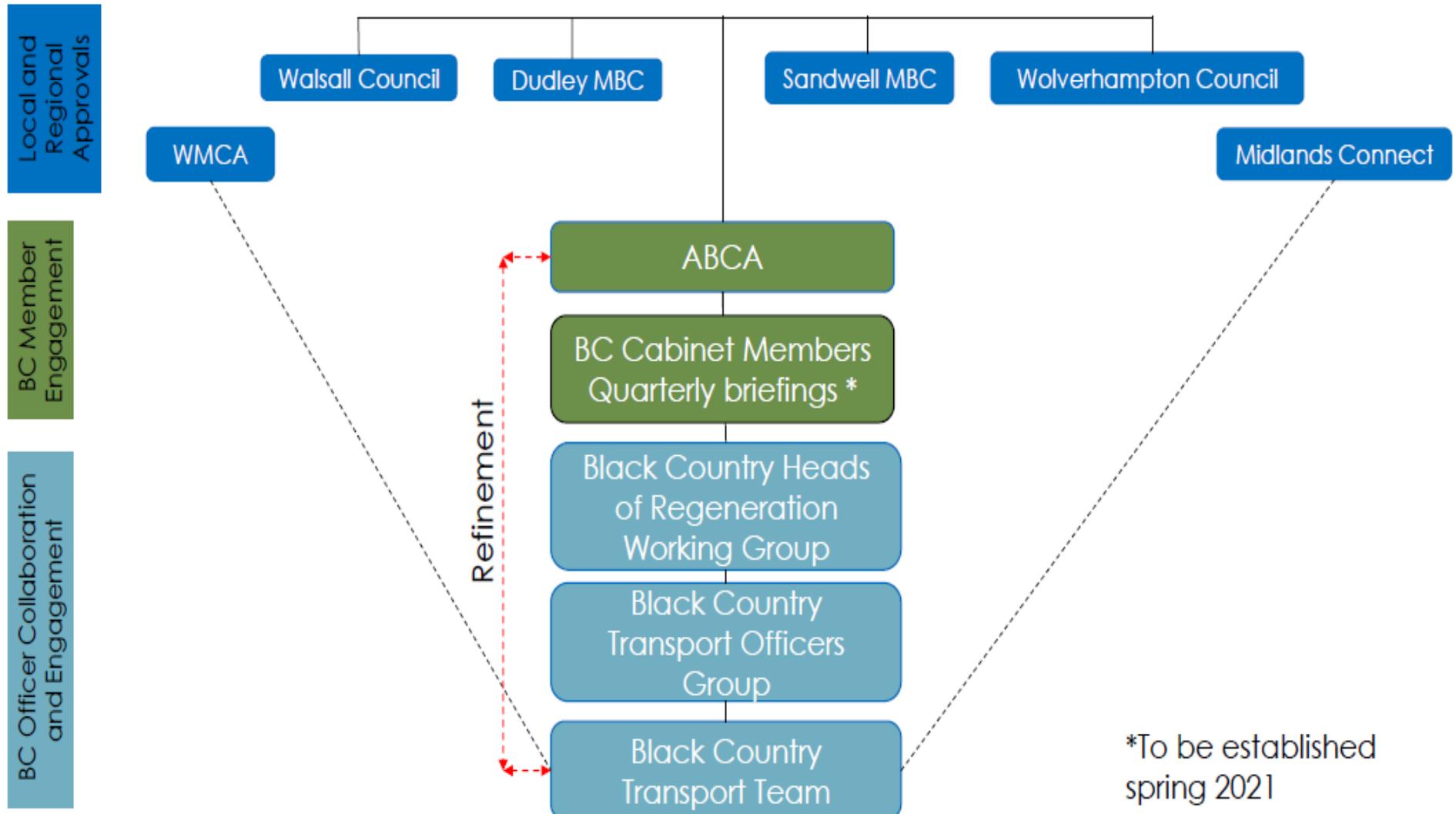
The Black Country Transport Team will lead on the development of Projects and Business Cases that have a value of £2,000,000 (two million pounds) or more and/or which require external funding. Projects and Business Cases below this amount will be dealt with by individual local authorities. The Black Country Transport Team may lead on the development of local Projects for one or more (but not all) Authorities if requested with reimbursement of costs and would seek to utilise the existing staff within the relevant Authority as appropriate but it is intended that this would be agreed on a Project by Project basis.

It is not intended that the Black Country Transport Team would deliver any Project after a Business Case is completed and approved and the construction phase would therefore move across to the relevant Authority to act as Development Authority and its team for delivery.

Black Country Transport Team



BCT Governance – January 2021



EXECUTED (but not delivered until the date hereof) as a **DEED**

by affixing of the **COMMON SEAL** of

WALSALL METROPOLITAN BOROUGH COUNCIL in the presence of:

Authorised Signatory

PRINT NAME

EXECUTED (but not delivered until the date hereof) as a **DEED**

by affixing of the **COMMON SEAL** of

DUDLEY METROPOLITAN BOROUGH COUNCIL in the presence of:

Authorised Signatory

PRINT NAME

EXECUTED (but not delivered until the date hereof) as a **DEED**

by affixing of the **COMMON SEAL** of

BOROUGH COUNCIL OF SANDWELL in the presence of:

Authorised Signatory

PRINT NAME

EXECUTED (but not delivered until the date hereof) as a **DEED**

by affixing of the **COMMON SEAL** of

WOLVERHAMPTON CITY COUNCIL in the presence of:

Authorised Signatory

PRINT NAME