



department for
**culture, media
and sport**

DATED 29 JUNE 2012

(1) THE SECRETARY OF STATE FOR CULTURE, OLYMPICS, MEDIA AND SPORT

AND

(2) [NAME OF FRAMEWORK SUPPLIER]

**FRAMEWORK AGREEMENT RELATING TO THE
BROADBAND DELIVERY FRAMEWORK**

VERSION CONTROL

VERSION	DATE	COMMENT
1.0	29 June 2012	Executed version
2.0	07 June 2013	Uplifted as part of Framework Agreement re-baseline. Unchanged as against version 1.0

CONTENTS

PRELIMINARY	1
1 DEFINITIONS AND INTERPRETATION	1
2 ORDER OF PRECEDENCE	2
FRAMEWORK ARRANGEMENTS AND CALL OFF PROCEDURE	3
3 APPOINTMENT OF SUPPLIER	3
4 TERM OF THIS FRAMEWORK AGREEMENT	3
5 SCOPE OF THIS FRAMEWORK AGREEMENT	3
6 NON EXCLUSIVITY	5
7 RELATIONSHIP WITH OTHER FRAMEWORK AGREEMENTS	5
8 GENERAL FRAMEWORK OBLIGATIONS	5
9 CALL OFF PROCEDURE	7
10 USE OF THE TEMPLATE CALL OFF CONTRACT	8
FRAMEWORK GOVERNANCE AND MANAGEMENT	8
11 REPRESENTATIVES	8
12 FRAMEWORK GOVERNANCE	8
13 REPORTS AND RECORDS	8
14 AUDIT	9
15 CHANGE CONTROL	10
16 DISPUTE RESOLUTION	11
17 FINANCIAL DISTRESS	11
INTELLECTUAL PROPERTY	12
18 INTELLECTUAL PROPERTY RIGHTS	12
19 LICENCE GRANTED BY THE SUPPLIER	12
20 LICENCE GRANTED BY THE AUTHORITY	13
21 THIRD PARTY INTELLECTUAL PROPERTY RIGHTS	13
22 HANDLING OF INDEMNIFIED CLAIMS	13
GENERAL FRAMEWORK OBLIGATIONS	14
23 WARRANTIES	14
24 AUTHORITY DATA	15

25	PROTECTION OF PERSONAL DATA	15
26	FREEDOM OF INFORMATION	16
27	CONFIDENTIALITY	17
28	PROHIBITED ACTS AND PREVENTION OF BRIBERY	19
29	CONFLICTS OF INTEREST	19
30	CHANGE OF CONTROL	19
	LIABILITY	20
31	LIMITATIONS ON LIABILITY	20
	TERMINATION AND SUSPENSION	21
32	TERMINATION	21
33	SUSPENSION FROM THE BROADBAND DELIVERY FRAMEWORK	22
34	CONSEQUENCES OF TERMINATION OR EXPIRY	23
	GENERAL PROVISIONS	23
35	ASSIGNMENT AND NOVATION	23
36	FORCE MAJEURE	24
37	WAIVER AND CUMULATIVE REMEDIES	24
38	RELATIONSHIP OF THE PARTIES	25
39	PUBLICITY AND BRANDING	25
40	SEVERANCE	25
41	FURTHER ASSURANCES	25
42	ENTIRE AGREEMENT	25
43	THIRD PARTY RIGHTS	26
44	NOTICES	26
45	GOVERNING LAW AND JURISDICTION	27

SCHEDULES TO THIS FRAMEWORK AGREEMENT

1. DEFINITIONS
2. BASELINE SERVICE REQUIREMENTS
3. REFERENCE SUPPLIER SOLUTION
4. REFERENCE FINANCIAL MODEL
5. GOVERNANCE
6. CHANGE CONTROL PROCEDURE
7. DISPUTE RESOLUTION PROCEDURE
8. REPORTS
9. CALL OFF PROCEDURE
10. CALL OFF AWARD CRITERIA
11. TEMPLATE CALL OFF CONTRACT
12. COMMERCIALLY SENSITIVE INFORMATION

THIS FRAMEWORK AGREEMENT is made on 29 June 2012

BETWEEN:

- (1) **THE SECRETARY OF STATE FOR CULTURE, OLYMPICS, MEDIA AND SPORT** ("**Authority**"); and
- (2) **[NAME OF FRAMEWORK SUPPLIER]** a company registered with number [•] whose registered office is at [•] ("**Supplier**").

WHEREAS:

- (A) On 29 June 2011 the Authority published the OJEU Notice in relation to the establishment of the Broadband Delivery Framework.
- (B) On 1 July 2011 the Authority made available the PQQ to parties responding to the OJEU Notice.
- (C) On 12 September 2011, following evaluation of the responses to the PQQ, the Authority issued to certain long listed bidders (including the Supplier) the ITPD, and following phase 1 of dialogue, the ISDS on 17 October 2011.
- (D) On 21 November 2011 the Supplier submitted its response to the ISDS.
- (E) On 15 December 2011, following evaluation of the responses to the ISDS, the Authority selected certain short listed bidders (including the Supplier) to proceed to phase 2 of dialogue.
- (F) Following the conclusion of phase 2 of dialogue, the Authority issued the draft ITSFT on 26 January 2012 and the ITSFT on 10 February 2012.
- (G) On 26 March 2012 following evaluation of the responses to the ITSFT, the Authority selected certain bidders (including the Supplier) as its preferred bidders and engaged in a process of contract finalisation.
- (H) Following conclusion of contract finalisation with the Supplier and on the basis of the Supplier's responses to the ITSFT, the Authority appoints the Supplier to the Broadband Delivery Framework on the terms set out in this Framework Agreement.

IT IS AGREED as follows:

PRELIMINARY

1. DEFINITIONS AND INTERPRETATION

- 1.1 In this Framework Agreement the definitions set out in Schedule 1 (Definitions) shall apply.
- 1.2 In this Framework Agreement:
 - 1.2.1 the singular includes the plural and vice versa;
 - 1.2.2 reference to a gender includes the other gender and the neuter;

- 1.2.3 any phrase introduced by the words "including", "includes", "in particular", "for example" or similar, shall be construed as illustrative and without limitation to the generality of the related general words;
- 1.2.4 references to any person shall include natural persons and partnerships, firms and other incorporated bodies and all other legal persons of whatever kind and however constituted and their successors and permitted assigns or transferees;
- 1.2.5 references to any statute, enactment, order, regulation, instrument, code, standard or other similar instrument shall be construed as a reference to the statute, enactment, order, regulation, instrument (including any EU instrument), code, standard, or other similar instrument as amended, replaced, consolidated or re-enacted;
- 1.2.6 headings are included in this Framework Agreement for ease of reference only and shall not affect the interpretation or construction of this Framework Agreement;
- 1.2.7 unless otherwise provided, references to Clauses, paragraphs, Schedules and Appendices are references to the clauses and paragraphs of, and the schedules and appendices to, this Framework Agreement;
- 1.2.8 the words "day", "month" and "year" mean calendar day, calendar month and calendar year unless otherwise stated;
- 1.2.9 a reference to GBP or £ shall mean pounds sterling.
- 1.3 The Supplier shall remain responsible for all acts and omissions of the Subcontractors and the Supplier Personnel as if they were its own and shall not be entitled to any relief from the performance of its obligations or liability under this Framework Agreement due to any act or omission of any Subcontractor and/or any Supplier Personnel unless expressly provided otherwise in this Framework Agreement. Without prejudice to the foregoing, an obligation on the Supplier to do, or to refrain from doing, any act or thing shall (where applicable) include an obligation upon the Supplier to use reasonable endeavours to procure that each Subcontractor and the Supplier Personnel also do, or refrain from doing, such act or thing.
- 2. **ORDER OF PRECEDENCE**
 - 2.1 In the event of any discrepancy, inconsistency or divergence arising between the provisions of this Framework Agreement, then (save as expressly provided in this Framework Agreement) the order of precedence shall be as follows:
 - 2.1.1 Clauses and Schedule 1 (Definitions);
 - 2.1.2 any other Schedule to this Framework Agreement and its Appendices.
 - 2.2 Unless expressly provided otherwise, if there is any inconsistency between any diagram and text, the text shall take precedence.

FRAMEWORK ARRANGEMENTS AND CALL OFF PROCEDURE

3. APPOINTMENT OF SUPPLIER

The Supplier is appointed to the Broadband Delivery Framework as a potential supplier of certain network deployment and broadband related services under Call Off Contracts. In consideration of the performance of its obligations under this Framework Agreement, during the Term the Supplier shall be eligible to participate in the Call Off Procedure set out in Schedule 9 (Call Off Procedure) for the award of Call Off Contracts.

4. TERM OF THIS FRAMEWORK AGREEMENT

4.1 This Framework Agreement shall commence on the Effective Date and, unless terminated at an earlier date by operation of Law or in accordance with Clause 32, shall terminate at:

4.1.1 the expiry of the Initial Term; or

4.1.2 if the Authority elects to extend the term of this Framework Agreement in accordance with Clause 4.2, the expiry of the extension period.

4.2 The Authority may extend the term of this Framework Agreement by a period of 12 months by providing the Supplier with not less than one month's notice in writing prior to the expiry of the Initial Term. Subject to Clause 4.3, the Authority may extend the term of this Framework Agreement by a further period of 12 months by providing the Supplier with not less than one month's notice in writing prior to the expiry of the first extension period.

4.3 In the event that the Supplier does not wish to remain part of the Broadband Delivery Framework following receipt of any notice provided by the Authority pursuant to Clause 4.2, the Supplier may provide notice of this fact to the Authority at any time prior to the expiry of the Authority's notice. In such circumstances this Framework Agreement shall terminate with effect from the expiry of the existing Term and the provisions set out in Clause 34 shall apply.

5. SCOPE OF THIS FRAMEWORK AGREEMENT

5.1 General

5.1.1 This Framework Agreement governs the relationship between the Authority and the Supplier in respect of the operation of the Broadband Delivery Framework and Call Off Contracts.

5.1.2 Save where a Local Body has specifically contracted with the Supplier under a Call Off Contract using the Call Off Procedure, neither the Authority nor any Local Body:

(a) shall be under any obligation to conduct any Call Off Procedure or to award any Call Off Contract to the Supplier; or

(b) gives any commitment or undertaking as to the volume or value of any services that may be called off under this Framework Agreement and/or any Call Off Contract.

5.1.3 The Supplier acknowledges and agrees that:

- (a) it has not entered into this Framework Agreement on the basis of any undertaking, statement, promise or representation made by the Authority; and
- (b) except where and only to the extent that the Authority has agreed to procure a specified conduct or act by a Local Body to the extent expressly specified under this Framework Agreement, each Local Body is independently responsible for the conduct of the relevant Call Off Procedure and the award of relevant Call Off Contracts and that the Authority is not responsible or accountable for and shall have no liability for any claim, damage, cost, expense or loss (of any kind) in relation to:
 - (i) the conduct, acts or omissions of Local Bodies in relation to this Framework Agreement;
 - (ii) the operation of the Call Off Procedure and the award of any Call Off Contract; and/or
 - (iii) the performance or non-performance of any Call Off Contract entered into pursuant to this Framework Agreement.

5.2 Public Satellite Projects

5.2.1 The Supplier acknowledges that:

- (a) at the Effective Date the Authority is considering whether there are opportunities to achieve better value for money through a Public Satellite Project when compared with the procurement of the same by Framework Suppliers using their own supply chains;
- (b) in respect of any proposed Call Off Contract prior to award, a Local Body may elect to adjust the applicable Coverage Area for that proposed Call Off Contract where the Supplier's use of satellite within its proposal does not offer a choice of wholesale products, pricing and/or Retail Service Providers comparable with that achievable elsewhere within the UK marketplace; and
- (c) in respect of any Call Off Contract already awarded, the use of a Public Satellite Project (to the extent this would impact the committed Supplier Solution for that Call Off Contract) would be a matter of agreement by the Supplier with the Local Body concerned, pursuant to the change procedure under the applicable Call Off Contract.

5.3 Solution Components

5.3.1 For the duration of the Term the Supplier shall support the UK's policy objectives by maintaining a set of sustainable Solution Components within the Reference Supplier Solution that are:

- (a) currently capable of deployment in a Local Body geographic area;
- (b) capable of providing affordable Superfast Broadband (but targeting Access Line Speeds over 30Mbps) for at least 90% of premises in a Local Body geographic area;
- (c) capable of providing affordable Basic Broadband considerably greater than 2Mbps (i.e. targeting Access Line Speeds in the 10-

24Mbps range) for close to 100% of premises in a Local Body geographic area;

- (d) capable of providing affordable broadband (of a minimum Access Line Speed of 2Mbps download and 0.5Mbps upload) for 100% of premises in a Local Body's geographic area with no more than two per cent (2%) of premises in a Local Body geographic area being provided with satellite only services; and
- (e) capable of delivering community solutions for identified communities in a Local Body geographic area.

5.3.2 For the avoidance of doubt, whilst the Supplier shall support the objectives set out in Clause 5.3.1 in the manner described above, the Supplier shall not be required to deliver Deployed Services outside of the relevant Coverage Area under any Call Off Contract.

5.4 **Budget Planning Data**

As soon as reasonably practicable following a request by any Local Body at any time prior to the issue by the Local Body of an ITT pursuant to the Call Off Procedure or where such Local Body is considering whether or not to use the Broadband Delivery Framework, the Supplier shall (subject to an appropriate confidentiality agreement being entered into) provide the Budget Planning Data to the Local Body.

6. **NON EXCLUSIVITY**

- 6.1 Subject to Clause 6.2, the Supplier agrees that its relationship with the Authority is non exclusive and that the Authority shall be entitled to enter into contracts with other suppliers which are the same as or similar to all or any aspect of this Framework Agreement.
- 6.2 If a Local Body elects to use the Call Off Procedure, subject to Clause 33 the Authority shall procure that such Local Body shall only invite the Supplier and the other Framework Suppliers to participate in the Call Off Procedure.

7. **RELATIONSHIP WITH OTHER FRAMEWORK AGREEMENTS**

- 7.1 The Parties acknowledge that:
 - 7.1.1 this Framework Agreement is part of a suite of individual framework agreements entered into between the Authority and each Framework Supplier; and
 - 7.1.2 the Broadband Delivery Framework is a multi-supplier framework concluded with more than one economic operator for the purpose of Regulation 19 of the Regulations.

8. **GENERAL FRAMEWORK OBLIGATIONS**

- 8.1 The Supplier shall at all times during the Term:
 - 8.1.1 perform its obligations under this Framework Agreement in accordance with applicable industry codes, applicable Law and Good Industry Practice;
 - 8.1.2 subject to Clauses 8.2 and 20, be responsible for obtaining all licences, authorisations, consents or permits required in relation to the performance of this Framework Agreement, provided that where it is not possible for the Supplier to obtain such licence, authorisation, consent or permit without the assistance of the Authority, the Authority shall provide such reasonable

assistance as may be necessary to assist the Supplier in obtaining such licence, authorisation, consent or permit.

8.2 In relation to State aid, the Parties acknowledge that (as at the Effective Date) the Authority has not obtained the Commission Decision. As a consequence, the Parties have agreed that:

8.2.1 The Authority shall provide a copy of the:

- (a) Commission Decision; or
- (b) decision to refer for formal investigation pursuant to paragraph 4, Article 4 of Council Regulation 659/99/EC) ("**Investigation Referral**"),

to the Supplier within five (5) Working Days of receipt by the Authority.

8.2.2 The Supplier shall confirm in writing to the Authority within one (1) month of receipt by the Supplier of the Commission Decision or Investigation Referral (such one (1) month period being the "Commission Outcome Review Period") whether:

- (a) the conditions of the Commission Decision are in an acceptable form or not to the Supplier; or
- (b) whether or not the Supplier wishes to remain party to the Framework Agreement pending the outcome of the Investigation Referral.

8.2.3 If within the Commission Outcome Review Period the Supplier has confirmed in writing to the Authority that:

- (a) the conditions of the Commission Decision are not in an acceptable form to the Supplier; or
- (b) the Supplier does not wish to remain party to the Framework Agreement pending the outcome of the Investigation Referral,

the Supplier shall be entitled to terminate this Framework Agreement without penalty by written notice to the Authority in accordance with Clause 32.3.

8.2.4 If within the Commission Outcome Review Period the Supplier has confirmed in writing to the Authority that the conditions of the Commission Decision are in an acceptable form to the Supplier in accordance with Clause 8.2.2(a):

- (a) In the event that any changes to the Framework Agreement are required as a consequence of the Commission Decision the Parties shall, acting reasonably, use the Change Control Procedure to deal with such changes (provided that each Party shall be responsible for their own costs and expenses incurred in compliance with the Change Control Procedure in respect of such changes and paragraph 4.2 of Schedule 6 (Change Control Procedure) shall not apply).
- (b) Where the Supplier is participating in any Call Off Procedure during the Commission Outcome Review Period, the Supplier acknowledges that the Supplier and the relevant Local Body may need to impact any applicable changes to Framework Agreement made pursuant to Clause 8.2.4(a) on the relevant ITT

documentation (with the Supplier and the relevant Local Body being responsible for their own costs and expenses incurred in connection with the processing and impact of such changes).

- 8.2.5 If within the Commission Outcome Review Period the Supplier confirms that it wishes to remain a party to the Framework Agreement pending the outcome of the Investigation Referral in accordance with Clause 8.2.2(b), then should a Commission Decision subsequently be issued, the provisions of this Clause 8.2 shall re-apply in respect of such Commission Decision.
- 8.2.6 For the period between signature of this Framework Agreement and the date upon which the Supplier has confirmed in writing to the Authority that the conditions of the Commission Decision are in an acceptable form to the Supplier in accordance with Clause 8.2.2(a), the Authority shall not permit more than five (5) Local Bodies (or such higher number as may be agreed by the Parties) to formally initiate their mini-competition for a Call Off Contract in accordance with the Call Off Procedure.
- 8.2.7 No draft Call Off Contract shall be executed by the Supplier and the relevant Local Body before the Authority has obtained a Commission Decision.

9. CALL OFF PROCEDURE

- 9.1 Subject to approval by the Authority in writing, at any time during the Term any Local Body may initiate a mini-competition for a Call Off Contract in accordance with Schedule 9 (Call Off Procedure).
- 9.2 As part of each Call Off Procedure:
- 9.2.1 the Supplier is under no obligation to respond to any mini-competition, but in the event that the Supplier wishes to do so, then the Supplier shall use:
- (a) the Reference Supplier Solution set out in Schedule 3 (Reference Supplier Solution) to develop the Call Off Supplier Solution, in accordance with that Schedule;
 - (b) the Reference Financial Model set out in Schedule 4 (Reference Financial Model) to develop the Call Off Bid Financial Model, in accordance with that Schedule.
- 9.2.2 the Authority shall use reasonable endeavours to procure that the relevant Local Body shall use in accordance with paragraph 4 of Schedule 9 (Call Off Procedure):
- (a) the Call Off Award Criteria set out in Schedule 10 (Call Off Award Criteria) to develop the Local Body Call Off Award Criteria;
 - (b) the Baseline Service Requirements set out in Schedule 2 (Baseline Service Requirements) to develop the Local Body Service Requirements; and
 - (c) subject to Clause 10, the Template Call Off Contract set out in Schedule 11 (Template Call Off Contract) to develop the Call Off Contract,
- subject to any amendments to the relevant documentation and/or the Call Off Procedure reasonably required by the relevant Local Body for the purposes of its local requirement.

10. USE OF THE TEMPLATE CALL OFF CONTRACT

10.1 The Parties acknowledge the importance and significance of the overall alignment between the Template Call Off Contract and each Call Off Contract and the requirements of Procurement Legislation in this respect. Accordingly, the Parties shall use their respective reasonable endeavours (and the Authority shall use reasonable endeavours to procure that any Local Body using the Template Call Off Contract under the Call Off Procedure shall use reasonable endeavours) to ensure that processes and procedures are implemented to ensure that the terms of each Call Off Contract are the same in all material respects as the terms of the Template Call Off Contract, subject to:

10.1.1 any variations indicated as permitted in the Template Call Off Contract itself; and

10.1.2 any variations due to the particular circumstances or requirements of the Local Body to the extent agreed by the relevant Local Body and the Supplier either during the Call Off Procedure or under the change control procedure set out in the Call Off Contract.

FRAMEWORK GOVERNANCE AND MANAGEMENT

11. REPRESENTATIVES

11.1 The Authority shall appoint an Authority Representative and the Supplier shall appoint a Supplier Representative who shall have the authority to act on behalf of their respective Party on the matters set out in, and in connection with, this Framework Agreement. Either Party may, by prior written notice to the other Party, revoke or amend the authority of its Representative or appoint a new or an alternate Representative.

11.2 The respective Representatives shall be sufficiently senior within the organisation of the appointing Party, and granted sufficient authority by that Party, to ensure full cooperation in relation to the operation and the management of this Framework Agreement.

12. FRAMEWORK GOVERNANCE

12.1 The Parties shall comply with their respective obligations set out in Schedule 5 (Governance) relating to the governance of the Broadband Delivery Framework.

12.2 Each Party shall ensure that staff of appropriate authority, skill, experience, seniority and security clearance are made available to support the governance arrangements set out in Schedule 5 (Governance).

13. REPORTS AND RECORDS

13.1 The Supplier shall produce and provide to the Authority the reports set out in Schedule 8 (Reports) and such other reasonable ad hoc reports concerning the operation of this Framework Agreement and the Call Off Contracts as the Authority may reasonably require from time to time. Where the preparation of any ad hoc report requested by the Authority pursuant to this Clause 13.1 shall impose a material burden on the Supplier's resources, the Supplier shall notify the Authority and the Parties shall (prior to the Supplier actioning the request) promptly discuss the issue and agree in writing a reasonable resolution (including using the Change Control Procedure where applicable).

- 13.2 The Supplier shall keep and maintain:
- 13.2.1 for the duration of the Term; and
- 13.2.2 for seven (7) years or such longer period if required by Law after the termination or expiry of this Framework Agreement (taking into account the Supplier's own information retention policies in respect of such seven (7) year or longer period),
- such reasonable and complete records concerning the operation of this Framework Agreement as may reasonably be necessary to keep and maintain in accordance with Good Industry Practice. The Supplier shall provide a copy of such records (i) to the Authority upon reasonable request pursuant to Clause 13.4; and (ii) as required pursuant to Clause 14.
- 13.3 Subject to Clause 27, the Authority may share the reports and records provided or made available to it pursuant to this Clause 13 with any Crown Body or Local Body.
- 13.4 The Supplier acknowledges that the Authority may from time to time undertake reviews of the application of public subsidy pursuant to this Framework Agreement and/or any Call Off Contract. The Supplier shall provide such reasonable assistance and additional information as the Authority may reasonably request in connection with such reviews, provided that if any such request shall impose a material burden on the Supplier's resources the Supplier shall notify the Authority and the Parties shall (prior to the Supplier actioning the request) promptly discuss the issue and agree in writing a reasonable resolution (including using the Change Control Procedure where applicable).
- 13.5 The Commission Decision will be subject to certain express conditions (set out in the documentation comprising that Commission Decision) concerning the publishing of information on the Authority's website. The Supplier shall work with the Authority (including providing applicable information for publication as reasonably required by the Authority and consistent with those publishing conditions) to help enable such publishing requirements to be satisfied. The specifics of the information to be published will be the subject of further discussion between the Authority and the Supplier at the relevant time(s), while noting the need for State aid purposes to meet those conditions under the Commission Decision.
14. **AUDIT**
- 14.1 If an audit is imposed on the Authority and/or this Framework Agreement by any Regulatory Body at any time during the Term and the 12 month period following the Term the provisions set out in this Clause 14 shall apply.
- 14.2 The relevant Regulatory Body (and/or its agents or representatives) may perform any such audit in accordance with this Clause 14.
- 14.3 There shall be no restriction on the frequency of such audits and the Authority shall use reasonable endeavours to procure that the relevant Regulatory Body (or its agents or representatives) shall endeavour, but shall not be obliged, to provide at least 15 Working Days notice of the intention to conduct such audit.
- 14.4 The Authority shall use reasonable endeavours to procure that the conduct of any such audit does not unreasonably disrupt the Supplier or delay the performance of this Framework Agreement.
- 14.5 Subject to Clauses 14.6 and 27, the Supplier shall provide the relevant Regulatory Body (and/or its agents or representatives) with all such reasonable co-operation and assistance as is reasonably necessary in relation to any such audit, including provision of:

- 14.5.1 such relevant information requested by the relevant Regulatory Body (and/or its agents or representatives) within the scope of the audit imposed by the Regulatory Body (provided that the Authority shall use reasonable endeavours to procure that the Regulatory Body shall limit the scope of any audit to the information provided or maintained pursuant to Clause 13 and the verification of such information, with the Supplier acknowledging that the relevant powers of the Regulatory Body cannot be fettered and that the Regulatory Body may request additional information pursuant to this Clause 14.5.1); and
 - 14.5.2 reasonable access to any site controlled by the Supplier and/or reasonable access to Supplier Personnel, in each case where the scope of the relevant audit cannot be satisfied by the provision of the information provided pursuant to Clause 14.5.1.
- 14.6 The Parties agree that:
 - 14.6.1 the provision of information by electronic means shall be used to satisfy an audit pursuant to this Clause 14 unless in the relevant Regulatory Body's (or its agent's or representative's) reasonable opinion this will not satisfy the audit requirement; and
 - 14.6.2 where the inspection at any site controlled by the Supplier is required, such inspection shall be subject to the Supplier's then current standard security policies to the extent notified to the relevant Regulatory Body (or where applicable its agent's or representative's) in advance of the relevant inspection.
- 14.7 The Supplier shall bear its own costs and expenses incurred in respect of compliance with this Clause 14.
- 14.8 The Authority shall procure that the relevant Regulatory Body shall bear its own costs and expenses incurred in respect of compliance with this Clause 14.
- 14.9 Where as a consequence of any audit carried out pursuant to this Clause 14 the relevant Regulatory Body (or its agents or representatives) reasonably considers that a re-audit is required, then such re-audit may be carried out in accordance with this Clause 14.
- 15. **CHANGE CONTROL**
 - 15.1 Subject to Clause 15.2, no amendment to this Framework Agreement shall be effective unless made in accordance with the Change Control Procedure set out in Schedule 6 (Change Control Procedure).
 - 15.2 Subject to Clause 15.3, if and to the extent that the Wholesale Access Products and Services incorporate (expressly in this Contract or by reference) any regulated published list prices, regulated terms and/or other regulated items then such prices, terms and/or other items shall be maintained by the Supplier in accordance with the Supplier's normal business practice and not in accordance with the Change Control Procedure, provided that:
 - 15.2.1 the Supplier shall promptly identify to the Authority in writing any relevant and material change to such prices, terms and/or other items; and
 - 15.2.2 to the extent that such prices, terms and/or other items are expressly included in this Contract, the Parties shall document a variation to the relevant term of this Contract in writing.

- 15.3 Where any change to the regulated published list prices, regulated terms and/or other regulated items referred to in Clause 15.2 affects any relevant compliance statement set out in the Compliance Matrix or any other provision in this Framework Agreement, the Supplier shall promptly notify the Authority and the Parties shall use their respective reasonable endeavours to address the matter using the Change Control Procedure.

16. DISPUTE RESOLUTION

- 16.1 Subject to Clause 16.2, all Disputes shall be resolved in accordance with the Dispute Resolution Procedure set out in Schedule 7 (Dispute Resolution Procedure).

- 16.2 Any dispute between the Supplier and a Local Body arising pursuant to a Call Off Contract shall be resolved in accordance with the dispute resolution procedure set out in the relevant Call Off Contract.

17. FINANCIAL DISTRESS

- 17.1 During the Term the Supplier shall regularly monitor its credit ratings or (where used as proxies for credit ratings) its Dun & Bradstreet rating, which at the Effective Date are as follows:

17.1.1 [•];

17.1.2 [•].

- 17.2 The Supplier shall notify the Authority in writing as soon as practicable following the occurrence of a Financial Distress Event (and in any event ensure that such notification is made within ten (10) Working Days of the date on which the Supplier first becomes aware of the Financial Distress Event).

- 17.3 In the event that the Authority reasonably believes that the Financial Distress Event could adversely impact the performance of this Framework Agreement the Supplier shall at the request of the Authority:

17.3.1 meet with the Authority as soon as practicable to review the effect of the Financial Distress Event on the continued performance of this Framework Agreement;

17.3.2 as soon as practicable and in any event within ten (10) Working Days (taking into account the discussions and any representations made pursuant to Clause 17.3.1), provide a draft Financial Distress Event Remedial Plan for approval by the Authority explaining how the Supplier will remedy the potential adverse impact of the Financial Distress Event on the performance of this Framework Agreement; and

17.3.3 provide such financial information as the Authority may reasonably require to support Clause 17.3.1.

- 17.4 The Supplier shall incorporate any reasonable comments provided by the Authority on the draft Financial Distress Event Remedial Plan and provide such number of revised drafts as may reasonably be required until the Authority has approved the Financial Distress Event Remedial Plan (which approval shall not be unreasonably withheld or delayed).

- 17.5 Following approval of any Financial Distress Event Remedial Plan pursuant to Clause 17.4, the Supplier shall implement the plan in accordance with its terms and review the plan on a regular basis and assess whether it remains adequate and up to date so as to ensure the continued performance of this Framework Agreement.

- 17.6 The Authority's rights set out in this Clause 17 shall be without prejudice to the Authority's termination rights set out in Clause 32.1.

INTELLECTUAL PROPERTY

18. INTELLECTUAL PROPERTY RIGHTS

- 18.1 Save as expressly set out in Clauses 19, 20 and 22, a Party shall not by virtue of this Framework Agreement acquire any right, title or interest in or to the IPR of the other Party or that other Party's licensors.
- 18.2 Where either Party (and in the case of the Supplier, its Subcontractors, Affiliates and/or Supplier Personnel) acquires, by operation of Law, title to IPR that is inconsistent with Clause 18.1, that Party shall, as soon as reasonably practicable, assign (or procure that as soon as reasonably practicable its relevant Affiliate, Subcontractor or relevant Supplier Personnel, assigns) in writing such IPR as that Party has acquired to the other Party (or, at the direction of the other Party, to such other person as the other Party may nominate from time to time) and execute and deliver all such other documents as may be necessary to perfect such title and enable the relevant Party to enjoy the full benefits of ownership of the relevant IPR.

19. LICENCE GRANTED BY THE SUPPLIER

- 19.1 Subject to Clause 27, the Supplier grants to the Authority a royalty-free, non-exclusive, non-transferable licence to copy or otherwise use (and for the Authority to distribute to and permit its agents, consultants, professional advisers, other Crown Bodies and each Local Body to copy or otherwise use to the extent permitted under Clause 27) the Supplier IPR contained in any information, document, specification, drawing, plan or other material supplied or otherwise made available to the Authority by the Supplier or any Subcontractor (or their respective Affiliates), to the extent necessary for the purpose of:
- 19.1.1 receiving and benefiting from the Authority's rights and the Supplier's obligations provided under this Framework Agreement;
 - 19.1.2 the Authority performing its responsibilities under this Framework Agreement;
 - 19.1.3 the Authority managing the Broadband Delivery Framework (including the Call Off Procedure);
 - 19.1.4 the Authority continuing to have an overarching governance role in respect of any Call Off Contract following the termination or expiry of this Framework Agreement;
 - 19.1.5 the Authority performing its role as national competence centre in respect of the national broadband scheme for the UK; and/or
 - 19.1.6 the exercise of the Authority's business or function in relation to this Framework Agreement and/or the Broadband Delivery Framework.
- 19.2 Upon the later of (i) the termination or expiry of this Framework Agreement; and (ii) the termination or expiry of all Call Off Contracts entered into pursuant to this Framework Agreement where the Authority continues to have an overarching governance role in respect of any such Call Off Contract following the termination or expiry of this

Framework Agreement, the licence referred to in Clause 19.1 shall terminate automatically and the Authority shall comply with Clause 34.2.

20. LICENCE GRANTED BY THE AUTHORITY

- 20.1 Subject to Clause 27, the Authority grants to the Supplier a royalty-free, non-exclusive, non-transferable licence to copy, distribute or otherwise use (and for the Supplier to permit its Subcontractors to copy, distribute or otherwise use) (i) the Authority IPR contained in any information, document, specification, drawing, plan or other material supplied or made available by the Authority to the Supplier; and (ii) the Authority Data, solely to the extent necessary for the performance of the Supplier's obligations under this Framework Agreement or any Call Off Contract.
- 20.2 Upon the termination or expiry of this Framework Agreement, the licence referred to in Clause 20.1 shall terminate automatically and the Supplier shall deliver to the Authority all Authority IPR and Authority Data in accordance with Clause 34.1. If upon the expiry of this Framework Agreement the Supplier reasonably considers that it requires an ongoing licence to use any Authority IPR and/or Authority Data then the grant of any such ongoing licence shall be at the sole discretion of the Authority and shall be subject to the Authority's written agreement to commercially acceptable ongoing licence terms.

21. THIRD PARTY INTELLECTUAL PROPERTY RIGHTS

- 21.1 Each Party shall procure that the performance of its responsibilities under this Framework Agreement shall not infringe or cause the infringement of any IPR of any third party.
- 21.2 The Supplier shall indemnify the Authority against all third party claims, demands, actions, costs (including legal fees and royalties), expenses, losses or damages arising from or incurred by reason of any infringement or alleged infringement (including the defence of such alleged infringement) arising due to the use of Supplier IPR in accordance with the provisions of this Framework Agreement.
- 21.3 The Authority shall indemnify the Supplier against all third party claims, demands, actions, costs (including legal fees and royalties), expenses, losses or damages arising from or incurred by reason of any infringement or alleged infringement (including the defence of such alleged infringement) arising due to the use of Authority IPR in accordance with the provisions of this Framework Agreement.

22. HANDLING OF INDEMNIFIED CLAIMS

- 22.1 Each Party shall promptly notify the other in writing of any Indemnified Claim of which it becomes aware.
- 22.2 In respect of each Indemnified Claim, subject to Clause 22.3 the Indemnifying Party shall be entitled to defend the Indemnified Claim (acting diligently, using competent counsel and in such a way as not to bring the reputation of the Indemnified Party into disrepute) provided that (i) the Indemnifying Party consults with the Indemnified Party and keeps the Indemnified Party fully informed with respect to the Indemnified Claim; (ii) the Indemnifying Party shall not settle, admit fault or compromise the Indemnified Claim without the Indemnified Party's prior written consent (such consent not to be unreasonably withheld or delayed); and (iii) the Indemnified Party shall (at the Indemnifying Party's cost) provide such reasonable assistance as required by the Indemnifying Party.
- 22.3 Where the Supplier is the Indemnifying Party, the Authority may elect (following reasonable consultation with the Supplier) to defend the Indemnified Claim itself (acting diligently and using competent counsel) with the Supplier (at the Supplier's own cost) providing such reasonable assistance as required by the Authority if the

Authority considers that sole control of the Indemnified Claim by the Supplier may place at risk or adversely affect (i) national security or the threat of criminal activity; and/or (ii) the operations, reputation or good standing of the Authority.

- 22.4 The Indemnified Party shall not settle, admit fault or compromise any Indemnified Claim without the Indemnifying Party's prior written consent (such consent not to be unreasonably withheld or delayed).
- 22.5 If an Indemnified Claim is made or the Indemnifying Party anticipates that an Indemnified Claim might be made, the Indemnifying Party may, at its own expense and reasonable discretion, procure the necessary rights or otherwise replace or modify the items or activities concerned to enable the Indemnified Party the right to continue using the relevant item or to otherwise properly permit the continuance of the activity which is the subject of the Indemnified Claim, provided that in each instance:
- 22.5.1 the performance and/or quality of the replacement item or activity concerned shall be at least equivalent to the performance and/or quality of the original item or activity;
- 22.5.2 any such action by the Indemnifying Party does not have an adverse effect on the performance of this Framework Agreement or the Indemnified Party;
- 22.5.3 there is no additional cost to the Indemnified Party; and
- 22.5.4 the terms of this Framework Agreement shall continue to apply to the items and activities concerned.

GENERAL FRAMEWORK OBLIGATIONS

23. WARRANTIES

- 23.1 The Supplier warrants, represents and undertakes to the Authority that:
- 23.1.1 it has full capacity and authority to enter into and to perform this Framework Agreement;
- 23.1.2 this Framework Agreement is executed by a duly authorised representative of the Supplier;
- 23.1.3 once duly executed this Framework Agreement will constitute its legal, valid and binding obligations;
- 23.1.4 it shall discharge its obligations under this Framework Agreement with all due skill, care and diligence including in accordance with Good Industry Practice;
- 23.1.5 as at the Effective Date no claim is being asserted and no litigation, arbitration or administrative proceeding is presently in progress or, to the best of its knowledge and belief, pending or threatened against it or any of its assets which will or might affect its ability to perform its obligations under this Framework Agreement;
- 23.1.6 as at the Effective Date all statements and representations (subject to any relevant caveats and assumptions provided by the Supplier in writing at the time) in the Supplier's response to the PQQ and the ITSFT are to the best of its knowledge, information and belief, true and accurate and that it shall

advise the Authority of any fact, matter or circumstance of which it may become aware which would render any such statement or representation to be materially false or misleading.

23.2 The Authority warrants to the Supplier that it has undertaken all necessary corporate action to approve the execution of this Framework Agreement by the Authority.

23.3 Except as expressly stated in this Framework Agreement, all warranties and conditions whether express or implied by statute, common law or otherwise are excluded to the extent permitted by law.

24. **AUTHORITY DATA**

24.1 The Supplier shall not delete or remove any proprietary notices contained within or relating to the Authority Data.

24.2 The Supplier shall not store, copy, disclose, or use the Authority Data except as necessary for the performance by the Supplier of its obligations under this Framework Agreement or as otherwise expressly authorised in writing by the Authority.

24.3 To the extent that Authority Data is held and/or processed by the Supplier, the Supplier shall at its cost supply that Authority Data to the Authority when reasonably requested by the Authority in the format reasonably specified by the Authority.

24.4 The Supplier shall take responsibility for preserving the integrity of Authority Data and preventing the corruption or loss of Authority Data as is reasonable in accordance with Good Industry Practice and taking into account the sensitivity of any such Authority Data.

24.5 If at any time the Supplier suspects or has reason to believe that Authority Data has or may become corrupted, lost or sufficiently degraded in any way for any reason, then the Supplier shall notify the Authority as soon as practicable.

25. **PROTECTION OF PERSONAL DATA**

25.1 With respect to the Parties' rights and obligations under this Framework Agreement, where the Supplier is the Data Processor the provisions set out in Clause 25.2 shall apply.

25.2 The Supplier shall:

25.2.1 Process the Personal Data only in accordance with instructions from the Authority (which may be specific instructions or instructions of a general nature as set out in this Framework Agreement or as otherwise notified by the Authority to the Supplier during the Term);

25.2.2 Process the Personal Data only to the extent, and in such manner, as is necessary for the performance of the Supplier's obligations under this Framework Agreement or as is required by Law or any Regulatory Body;

25.2.3 implement appropriate technical and organisational measures to protect the Personal Data against unauthorised or unlawful processing and against accidental loss, destruction, damage, alteration or disclosure. These measures shall be appropriate to the harm which might result from any unauthorised or unlawful Processing, accidental loss, destruction or damage to the Personal Data and having regard to the nature of the Personal Data which is to be protected;

25.2.4 notify the Authority (within five (5) Working Days) if it receives:

- (a) a request from a Data Subject to have access to that person's Personal Data; or
 - (b) a complaint or request relating to the Authority's obligations under the Data Protection Legislation;
- 25.2.5 provide the Authority with such cooperation and assistance as is reasonably necessary in relation to any complaint or request made, including by:
- (a) providing the Authority with full details of the complaint or request;
 - (b) complying with a data access request within the relevant timescales set out in the Data Protection Legislation and in accordance with the Authority's instructions;
 - (c) providing the Authority with any Personal Data it holds in relation to a Data Subject (within the timescales required by the Authority); and
 - (d) providing the Authority with any reasonable additional information requested by the Authority;
- 25.2.6 not Process or otherwise transfer any Personal Data outside the European Economic Area without the Authority's prior written consent. As part of the provision of any such consent the Authority shall be entitled to impose any additional terms relating to the transfer and use of any Personal Data outside the European Economic Area;
- 25.2.7 at all times comply with the Data Protection Legislation and shall not perform its obligations under this Framework Agreement in such a way as to cause the Authority to breach any of its applicable obligations under the Data Protection Legislation.

26. **FREEDOM OF INFORMATION**

- 26.1 The Supplier acknowledges that the Authority is subject to the requirements of the FOIA and the Environmental Information Regulations and shall assist and cooperate with the Authority to the extent reasonably necessary to enable the Authority to comply with its Information disclosure obligations.
- 26.2 The Supplier shall and shall procure that its Subcontractors shall:
- 26.2.1 transfer to the Authority any Request for Information that it receives as soon as practicable and in any event within three (3) Working Days of receiving a Request for Information;
 - 26.2.2 provide the Authority with a copy of all Information in its possession, or power in the form that the Authority requires within five (5) Working Days (or such other period as the Authority may specify) of the Authority's request; and
 - 26.2.3 provide all necessary assistance as reasonably requested by the Authority to enable the Authority to respond to the Request for Information within the time for compliance set out in section 10 of the FOIA or regulation 5 of the Environmental Information Regulations.
- 26.3 The Authority shall consult with the Supplier to inform its decisions regarding any exemptions as they may relate to the Commercially Sensitive Information and may consult with the Supplier to inform its decisions regarding any other exemptions, but the Authority shall be responsible for determining in its absolute discretion and

notwithstanding any other provision in this Framework Agreement or any other agreement whether the Commercially Sensitive Information and/or any other Information is exempt from disclosure in accordance with the provisions of the FOIA or the Environmental Information Regulations.

26.4 In no event shall the Supplier respond directly to a Request for Information unless expressly authorised to do so by the Authority in writing.

26.5 The Supplier shall ensure that all Information is retained for disclosure in accordance with Clause 13.2.

27. **CONFIDENTIALITY**

27.1 Except to the extent set out in this Clause 27 or where disclosure is expressly permitted elsewhere in this Framework Agreement, each Party shall:

27.1.1 treat the other Party's Confidential Information as confidential and safeguard it accordingly; and

27.1.2 not disclose the other Party's Confidential Information to any other person without the owner's prior written consent.

27.2 This Clause 27 shall not apply to the extent that:

27.2.1 such disclosure is a requirement of Law placed upon the Party making the disclosure, including any requirements for disclosure under the FOIA or the Environmental Information Regulations pursuant to Clause 26;

27.2.2 such information was in the possession of the Party making the disclosure without obligation of confidentiality prior to its disclosure by the information owner;

27.2.3 such information was obtained from a third party without obligation of confidentiality;

27.2.4 such information was already in the public domain at the time of disclosure otherwise than by a breach of this Framework Agreement; or

27.2.5 it is independently developed without access to the other Party's Confidential Information.

27.3 Notwithstanding any other term of this Framework Agreement, the Supplier gives its consent for the Authority to publish this Framework Agreement in its entirety (but with any information which is exempt from disclosure in accordance with the provisions of the FOIA redacted), as this Framework Agreement may have been varied at the relevant time, to the general public. The Supplier shall assist and cooperate with the Authority to enable the Authority to publish this Framework Agreement. For the purpose of this Clause 27.3 the Authority shall consult with the Supplier to inform its decision regarding any FOIA exemptions relating to the Commercially Sensitive Information but the Authority shall have the final decision in its absolute discretion.

27.4 The Supplier may only disclose the Authority Confidential Information to the Subcontractors and the Supplier Personnel who are directly involved in the performance of this Framework Agreement or any Call Off Contract and who need to know the information for such purpose.

27.5 The Supplier shall ensure that the Authority Confidential Information is used only for the purposes of this Framework Agreement or any Call Off Contract.

- 27.6 Nothing in this Framework Agreement shall prevent the Authority from disclosing the Supplier Confidential Information:
- 27.6.1 to any Crown Body where such disclosure is in connection with this Framework Agreement. All such Crown Bodies receiving such Confidential Information shall be entitled to further disclose the Confidential Information to other Crown Bodies where such disclosure is in connection with this Framework Agreement on the basis that the information is confidential and is not to be disclosed to any other third party;
 - 27.6.2 to any consultant, contractor or other person engaged by the Authority in relation to this Framework Agreement or any Call Off Contract or any person conducting an Official Assurance Review;
 - 27.6.3 for the purpose of the examination and certification of the Authority's accounts; or
 - 27.6.4 for any examination pursuant to Section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which the Authority has used its resources.
- 27.7 Nothing in this Framework Agreement shall prevent the Authority from disclosing:
- 27.7.1 the Reference Supplier Solution to any Local Body at any time; and
 - 27.7.2 the Reference Financial Model (excluding any data which relates exclusively to the specific scenario considerations for the 'Notional Call-Off' (being the notional Local Body scenario used by the Authority in the procurement of this Framework Agreement) to any Local Body that has issued an ITT to the Framework Suppliers,
- where such disclosure is in connection with this Framework Agreement.
- 27.8 The Authority shall ensure that any body or individual to whom the Supplier Confidential Information is disclosed pursuant to Clauses 27.6 and 27.7 is made aware of the Authority's obligations of confidentiality (including the commitment set out in Clause 26.3 to consult in respect of disclosure of Commercially Sensitive Information) under this Framework Agreement and the Authority shall:
- 27.8.1 in respect of disclosure to any body or individual that is part of the Crown, any Regulatory Body and/or any Local Body, use reasonable endeavours to ensure that any such body or individual to whom such disclosure is made complies with similar obligations of confidentiality;
 - 27.8.2 in respect of disclosure to any other body or individual, ensure that any such body or individual to whom such disclosure is made complies with similar obligations of confidentiality.
- 27.9 Nothing in this Clause 27 shall prevent either Party from using any techniques, ideas or know-how gained during the performance of this Framework Agreement in the course of its normal business to the extent that this use does not result in a disclosure of the other Party's Confidential Information or an infringement of IPR.
- 27.10 The Parties acknowledge that a material Default of this Clause 27 may cause irreparable harm to the disclosing Party, for which monetary damages would be inadequate, and injunctive relief may be sought for a material Default of this Clause 27.

28. PROHIBITED ACTS AND PREVENTION OF BRIBERY

28.1 Each Party:

28.1.1 shall not in connection with this Framework Agreement commit a Prohibited Act;

28.1.2 warrants, represents and undertakes that it is not aware of any financial or other advantage being given to any person working for or engaged by the other Party, or that an agreement has been reached to that effect, in connection with the execution of this Framework Agreement, excluding any arrangement of which full details have been disclosed in writing to the other Party before execution of this Framework Agreement.

28.2 Each Party shall, if requested, provide the other Party with any reasonable assistance to enable the other Party to perform any activity required by any relevant government or agency in any relevant jurisdiction for the purpose of compliance with the Bribery Act.

28.3 The Supplier shall have an anti-bribery policy (which shall be disclosed to the Authority) in place throughout the Term with the aim of preventing any Subcontractor or Supplier Personnel from committing a Prohibited Act and shall enforce it where necessary.

28.4 If any breach of Clause 28.1 by either Party is suspected or known, such Party shall promptly notify the other Party.

28.5 If a Party notifies the other Party that it suspects or knows that there may be a breach of Clause 28.1, the notified Party shall respond as soon as reasonably practicable and in any event within ten (10) Working Days to the notifying Party's enquiries and co-operate with any investigation.

29. CONFLICTS OF INTEREST

29.1 The Supplier shall as soon as practicable disclose to the Authority any actual or potential conflict of interest between (i) the interests of the Supplier and/or any Supplier Personnel; and (ii) the duties owed to the Authority under this Framework Agreement of which it becomes aware.

29.2 The Supplier shall at its cost give effect to such measures as may reasonably be required by the Authority for ending or avoiding any such actual or potential conflict of interest, or alleviating its effect, as soon as reasonably practicable.

30. CHANGE OF CONTROL

30.1 The Supplier shall provide written notice to the Authority within 15 Working Days of any Change of Control taking place.

30.2 Subject to Clauses 30.3 and 30.4, the Authority shall be entitled to terminate this Framework Agreement in accordance with Clause 32.1.1(b) where there is a Change of Control to which the Authority objects, except where the Authority has given its prior written consent to the particular Change of Control (such consent not to be unreasonably withheld or delayed), which subsequently takes place as proposed.

30.3 The non exhaustive grounds upon which the Authority may object to a Change of Control are:

30.3.1 it would mean the Authority would contract with an entity which:

- (a) the Authority would not have contracted with at the Effective Date (for example, where the entity would not have met the PQQ criteria);
 - (b) has materially failed to deliver services to the Authority or any Local Body to the standards required in any contract with the Authority or any Local Body; and/or
 - (c) takes a stance on matters relating to corporate social responsibility (including environmental sustainability) which is inconsistent with the policies of the UK government; and/or
- 30.3.2 the Change of Control might or would adversely affect or prejudice:
 - (a) national security or the level of threat of criminal activity; and/or
 - (b) the operations, reputation or good standing of the Authority.
- 30.4 The Authority's right to terminate this Framework Agreement under Clause 30.2 shall expire if not exercised within six (6) months of the date of written notice to the Authority by the Supplier pursuant to Clause 30.1.

LIABILITY

31. LIMITATIONS ON LIABILITY

- 31.1 Neither Party limits its liability for:
 - 31.1.1 death or personal injury caused by its negligence, or that of its employees, agents or Subcontractors (as applicable);
 - 31.1.2 fraud or fraudulent misrepresentation by it or its employees;
 - 31.1.1 breach of any obligation as to title implied by section 12 of the Sale of Goods Act 1979 or section 2 of the Supply of Goods and Services Act 1982; or
 - 31.1.2 any other matter for which it would be unlawful for either Party to exclude or limit or attempt to exclude or limit its liability.
- 31.2 Neither Party shall be liable to the other Party for:
 - 31.2.1 any indirect, special or consequential loss or damage; or
 - 31.2.2 any loss of profits, turnover, business opportunities or damage to goodwill (whether direct or indirect).
- 31.3 Subject to Clauses 31.1 and 31.5, the Supplier's total aggregate liability in respect of:
 - 31.3.1 the indemnity set out in Clause 21.2 relating to alleged or actual infringement of IPR shall in no event exceed [•] (£[•]);
 - 31.3.2 all other claims, losses or damages, whether arising from tort (including negligence), breach of contract or otherwise pursuant to this Framework Agreement shall in no event exceed [•] (£[•]).
- 31.4 Subject to Clause 31.1, the Authority's total aggregate liability in respect of:

- 31.4.1 the indemnity set out in Clause 21.3 relating to alleged or actual infringement of IPR shall in no event exceed [•] (£[•]);
- 31.4.2 all other claims, losses or damages, whether arising from tort (including negligence), breach of contract or otherwise pursuant to this Framework Agreement shall in no event exceed [•] (£[•]).
- 31.5 The liability of the Supplier pursuant to any Call Off Contract shall be determined in accordance with the relevant Call Off Contract and this Clause 31 shall not be deemed to limit any such liability.

TERMINATION AND SUSPENSION

32. TERMINATION

- 32.1 The Authority may terminate this Framework Agreement without penalty by written notice to the Supplier (where such notice shall specify the date of termination being the date of notice or later) upon the occurrence of one or more of the following events:
- 32.1.1 where the Supplier commits a material Default of this Framework Agreement and:
- (a) the Supplier has not remedied the material Default to the satisfaction of the Authority within 30 days, or such other longer period as may be specified by the Authority (including such longer period as may be specified in a Financial Distress Event Remedial Plan, which such plan is seeking to address the material Default), after issue of a written notice specifying the material Default and requesting it to be remedied; or
 - (b) in the reasonable opinion of the Authority the material Default is not capable of remedy;
- 32.1.2 where an Insolvency Event occurs in respect of the Supplier; or
- 32.1.3 in accordance with Clause 30.2 in relation to a Change of Control.
- 32.2 The Supplier may terminate this Framework Agreement without penalty by written notice to the Authority (where such notice shall specify the date of termination being the date of notice or later) where the Authority commits a material Default of this Framework Agreement and:
- 32.2.1 the Authority has not remedied the material Default within 30 days, or such other longer period as may be specified by the Supplier (acting reasonably), after issue of a written notice specifying the material Default and requesting it to be remedied; or
- 32.2.2 in the reasonable opinion of the Supplier the material Default is not capable of remedy.
- 32.3 The Supplier may terminate this Framework Agreement without penalty by written notice to the Authority within the Commission Outcome Review Period where:
- 32.3.1 the conditions of the Commission Decision are not in an acceptable form to the Supplier, and the Supplier has confirmed this to the Authority in writing in accordance with Clause 8.2.2(a); or

32.3.2 the Supplier does not wish to remain party to the Framework Agreement pending the outcome of an Investigation Referral, and the Supplier has confirmed this to the Authority in writing in accordance with Clause 8.2.2(b),

(such termination to be effective upon the expiry of the Commission Outcome Review Period), and the exercise of the right of termination pursuant to this Clause 32.3 shall not give rise to any right by either Party to bring a claim for damages or costs against the other Party.

32.4 Termination in accordance with this Clause 32 shall be without prejudice to any right of action or remedy of either Party which has accrued or which subsequently accrues.

33. **SUSPENSION FROM THE BROADBAND DELIVERY FRAMEWORK**

33.1 Subject to Clause 34.4 and without prejudice to the Authority's rights to terminate this Framework Agreement in accordance with Clause 32.1, the Authority may suspend the Supplier's appointment to the Broadband Delivery Framework (including its eligibility to participate in any future Call Off Procedure for the period of the suspension) by giving written notice to the Supplier if:

33.1.1 a right to terminate this Framework Agreement arises in accordance with Clause 32.1;

33.1.2 the Supplier proposes:

(a) a Call Off Supplier Solution in relation to a proposed Call Off Contract that, in the Authority's reasonable opinion (having consulted with the relevant Local Body as appropriate), is materially varied (to the material detriment of the relevant Local Body) from the relevant elements of the Reference Supplier Solution; and/or

(b) the Supplier proposes a Call Off Bid Financial Model in relation to a proposed Call Off Contract that, in the Authority's reasonable opinion (having consulted with the relevant Local Body as appropriate), is materially varied (to the material detriment of the relevant Local Body) from the relevant elements of the Reference Financial Model,

provided such variation is not reasonably justified having due regard to the relevant Local Body Service Requirements and the specific local conditions;

33.1.3 the Supplier has been unwilling to adjust pricing on reasonable request by the relevant Local Body as a result of a Wholesale Access Price Benchmarking pursuant to paragraph 4.3 of Schedule 5.2 (Wholesale Access Pricing) of a Call Off Contract; or

33.1.4 where the Supplier has failed to remedy a Financial Distress Event in accordance with a Financial Distress Event Remedial Plan produced pursuant to Clause 17 within the period specified in such plan.

33.2 If the Authority provides notice to the Supplier in accordance with Clause 33.1, the Supplier's appointment shall be suspended for the period set out in the notice, provided that if the event giving rise to the suspension is capable of remedy the suspension shall be lifted if the Supplier can demonstrate to the reasonable satisfaction of the Authority that the relevant event has been remedied.

34. CONSEQUENCES OF TERMINATION OR EXPIRY

- 34.1 In the event of termination or expiry of this Framework Agreement, the Supplier shall cease to use any Authority IPR and Authority Data and, at the reasonable direction of the Authority:
- 34.1.1 shall provide the Authority with a complete and uncorrupted version of the relevant Authority IPR and Authority Data in electronic form in a format and on media as reasonably requested by the Authority; and
 - 34.1.2 on the earlier of the receipt of the Authority's written instructions or 12 months after the date of expiry or termination, shall destroy (subject to any constraints of Law) all copies of the relevant Authority IPR and Authority Data remaining in its possession or control.
- 34.2 Upon the later of (i) the termination or expiry of this Framework Agreement; and (ii) the termination or expiry of all Call Off Contracts entered into pursuant to this Framework Agreement, the Authority shall cease to use any Supplier IPR and at the reasonable direction of the Supplier:
- 34.2.1 shall provide the Supplier with a complete and uncorrupted version of the relevant Supplier IPR in electronic form in a format and on media as reasonably requested by the Supplier; and
 - 34.2.2 on the earlier of the receipt of the Supplier's written instructions or 12 months after the later date referred to above, shall destroy (subject to any constraints of Law) all copies of the relevant Supplier IPR remaining in its possession or control.
- 34.3 The following provisions of this Framework Agreement shall survive the termination or expiry of this Framework Agreement and shall continue in effect along with such other provisions of this Framework Agreement which expressly or by implication have effect after termination: Clauses 1, 2, 5.1.3, 5.4, 13.2, 14, 16, 18 to 22, 24 to 27, 31, 34 and 37 to 45.
- 34.4 Neither the termination nor expiry of this Framework Agreement, nor the Supplier's suspension from the Broadband Delivery Framework pursuant to Clause 33, shall affect any Call Off Contract other than as and to the extent expressly provided for in the relevant Call Off Contract.

GENERAL PROVISIONS

35. ASSIGNMENT AND NOVATION

- 35.1 The Supplier shall not assign, novate or otherwise dispose of or create any trust in relation to any or all of its rights and obligations under this Framework Agreement without the prior written consent of the Authority (which in respect of a proposed assignment, novation or disposal to an Affiliate only, shall not be unreasonably withheld or delayed). The Supplier shall not be entitled to subcontract any of its rights or obligations under this Framework Agreement, provided that this Clause 35.1 shall not preclude the Reference Supplier Solution from reflecting the use of Subcontractors in respect of performance under any Call Off Contract.
- 35.2 The Authority may:

- 35.2.1 assign, novate or otherwise dispose of any or all of its rights and obligations under this Framework Agreement to any Contracting Authority; and/or
- 35.2.2 novate this Framework Agreement to any other body (including any private sector body) which substantially performs any of the functions that previously had been performed by the Authority in connection with the scope of this Framework Agreement (including where applicable the management of the relevant public subsidy), provided that where any such body is a competitor of the Supplier in respect of the Supplier's primary business or function within the UK such novation shall be subject to the prior written consent of the Supplier (such consent not to be unreasonably withheld or delayed).
- 35.3 A change in the legal status of the Authority shall not affect the validity of this Framework Agreement and it shall be binding on any successor body to the Authority.

36. FORCE MAJEURE

- 36.1 Neither Party shall be entitled to bring a claim for a breach of obligations under this Framework Agreement by the Affected Party or incur any liability to the Affected Party for any loss incurred by the Affected Party to the extent that a Force Majeure Event occurs and the Affected Party is prevented from carrying out obligations by that Force Majeure Event.
- 36.2 A Party cannot claim relief pursuant to Clause 36.1 to the extent that the Force Majeure Event is attributable to any Default by that Party or its wilful act or failure to take reasonable precautions against the relevant Force Majeure Event.
- 36.3 The Affected Party shall as soon as is practicable give the other Party written notice of the Force Majeure Event. Following the occurrence of a Force Majeure Event the Parties shall use their respective reasonable endeavours to prevent and mitigate the effects of the Force Majeure Event and the Supplier shall during the period which the effects of a Force Majeure Event are subsisting take all reasonable steps in accordance with Good Industry Practice to overcome or minimise the consequences of the Force Majeure Event.
- 36.4 The Affected Party shall notify the other Party as soon as practicable after the Force Majeure Event ceases or no longer causes the Affected Party to be unable to comply with its obligations under this Framework Agreement. Following such notification, this Framework Agreement shall continue to be performed on the terms existing immediately before the occurrence of the Force Majeure Event unless agreed otherwise by the Parties.
- 36.5 Nothing in this Clause 36 shall prevent either Party from performing any of its obligations set out in this Framework Agreement that are not affected by the relevant Force Majeure Event.

37. WAIVER AND CUMULATIVE REMEDIES

- 37.1 The rights and remedies provided by this Framework Agreement may be waived only in writing by the relevant Representative in a manner that expressly states that a waiver is intended, and such waiver shall only be operative with regard to the specific circumstances referred to.
- 37.2 Unless a right or remedy of a Party is expressed to be an exclusive right or remedy, the exercise of it by that Party shall be without prejudice to that Party's other rights and remedies. Any failure to exercise or any delay in exercising a right or remedy by either Party shall not constitute a waiver of that right or remedy or of any other rights or remedies.

- 37.3 The rights and remedies provided by this Framework Agreement are cumulative and, unless otherwise provided in this Framework Agreement, are not exclusive of any right or remedy provided at law or in equity or otherwise under this Framework Agreement.

38. **RELATIONSHIP OF THE PARTIES**

Nothing in this Framework Agreement is intended to create a partnership or legal relationship of any kind that would impose liability upon one Party for the act or failure to act of the other Party, or to authorise either Party to act as agent for the other Party. Neither Party shall have authority to make representations, act in the name of, or on behalf of, or to otherwise bind the other Party.

39. **PUBLICITY AND BRANDING**

- 39.1 Neither Party shall use the other Party's name or brand in any promotion or marketing or announcement of orders without the prior written consent of the other Party, which consent shall not be unreasonably withheld or delayed.
- 39.2 The Supplier shall not make any press announcements or publicise this Framework Agreement or its contents in any way without the prior written consent of the Authority, which consent shall not be unreasonably withheld or delayed.

40. **SEVERANCE**

If any provision of this Framework Agreement is held invalid, illegal or unenforceable for any reason by any court of competent jurisdiction, such provision shall be severed without effect to the remaining provisions.

41. **FURTHER ASSURANCES**

Each Party shall, at the request of the other, at its own cost to do all acts and execute all documents which may be necessary to give effect to this Framework Agreement.

42. **ENTIRE AGREEMENT**

- 42.1 This Framework Agreement, together with the documents referred to in it (save for the PQQ and the ITSFT, which are referred to in this Framework Agreement solely for the purpose of the recitals to this Framework Agreement and Clauses 23.1.6 and 30.3.1(a)) and/or attached to it, constitutes the entire agreement and understanding between the Parties in respect of the matters dealt with in it and supersedes any previous agreement between the Parties in relation to such matters notwithstanding the terms of any previous agreement or arrangement expressed to survive termination.
- 42.2 Each Party acknowledges and agrees that in entering into this Framework Agreement and the documents referred to in it and/or attached to it, it does not rely on, and shall have no remedy in respect of, any statement, representation, warranty or undertaking (whether negligently or innocently made) other than as expressly set out or referred to in this Framework Agreement.
- 42.3 Nothing in this Clause 42 shall operate to exclude any liability for fraud.

43. **THIRD PARTY RIGHTS**

Nothing in this Framework Agreement shall be deemed to grant any rights or benefits to any person other than the Parties, or entitle any third party to enforce any term or condition of this Framework Agreement.

44. **NOTICES**

- 44.1 Any notices given under or in relation to this Framework Agreement shall be in writing, signed by or on behalf of the Party giving it and shall be served by delivering it personally or by sending it by pre-paid first class post, recorded delivery or registered post or by fax or email to the address and for the attention of the relevant Party as follows:

Authority	Supplier

- 44.2 A notice shall be deemed to have been received:

- 44.2.1 if delivered personally, at the time of delivery;
- 44.2.2 in the case of pre-paid first class post, recorded delivery or registered post, three (3) Working Days from the date of posting;
- 44.2.3 in the case of fax, on the day of transmission if sent before 16:00 hours of any Working Day and otherwise at 09:00 hours on the next Working Day and provided that, at the time of transmission of a fax, an error-free transmission report has been received by the sender; and
- 44.2.4 in the case of email, at the time that the email enters the Information System of the intended recipient provided that no error message indicating failure to deliver has been received by the sender and provided further that, in relation to any notice provided under Clauses 1 to 45 of this Framework Agreement, within 24 hours of transmission a hard copy of the email signed by or on behalf of the person giving it is delivered by hand or sent by facsimile, pre-paid first class post, recorded delivery or registered post to the intended recipient.

- 44.3 In proving service, it shall be sufficient to prove that the envelope containing the notice was addressed to the relevant Party at its address previously notified for the receipt of notices (or as otherwise notified by that Party) and delivered either to that address or into the custody of the postal authorities as pre-paid first class post, recorded delivery, registered post or airmail letter, or that the notice was transmitted by fax to the fax number of the relevant Party at its fax number previously notified for the receipt of notices (or as otherwise notified by that Party).

45. **GOVERNING LAW AND JURISDICTION**

This Framework Agreement shall be governed by and construed in accordance with English law and without prejudice to the Dispute Resolution Procedure each Party agrees to submit to the exclusive jurisdiction of the courts of England and Wales.

EXECUTION

SIGNED for the **Secretary of State for Culture, Olympics, Media and Sport** by

Signature:

SIGNED for and on behalf of **[Name of Framework Supplier]** by

Signature:

Name:

Name:

Position:

Position:

Date:

Date:

who is authorised by the Secretary of State in that regard

SCHEDULE 1
DEFINITIONS

VERSION CONTROL

VERSION NUMBER	DATE	COMMENT
1.0	29 June 2012	Executed version
2.0	07 June 2013	Uplifted as part of Framework Agreement re-baseline. Version includes agreed changes to date

SCHEDULE 1 – DEFINITIONS

In this Framework Agreement the following words shall have the meanings set out below.

Access Line Speed	has the meaning given in Schedule 2 (Baseline Service Requirements);
Affected Party	the Party affected by a Force Majeure Event;
Affiliate	in relation to any person, any Holding Company or Subsidiary of that person or any Subsidiary of such Holding Company;
Annual RFM Review	the annual review described in paragraph 7 of Schedule 4 (Reference Financial Model);
Authority Confidential Information	all Personal Data and any information provided by or at the direction of the Authority (or its employees, agents, consultants and contractors) to the Supplier and/or its Subcontractors in relation to this Framework Agreement, however it is conveyed, that relates to the business, affairs, developments, trade secrets, know-how, personnel, and suppliers of the Authority, including all Intellectual Property Rights, together with all information derived from any of the above, and any other information clearly designated as being confidential (whether or not it is marked "confidential") or which ought reasonably be considered to be confidential;
Authority Data	<p>the data, text, drawings, diagrams, images or sounds (including any database made up of any of these) which are embodied in any electronic, magnetic, optical or tangible media, and which are:</p> <p>(a) supplied to the Supplier by or on behalf of the Authority pursuant to this Framework Agreement; and/or</p> <p>(b) Personal Data for which the Authority is the Data Controller and which is processed or otherwise made available pursuant to this Framework Agreement;</p>
Authority IPR	any IPR (excluding the Supplier IPR) owned by, or licensed to, the Authority in connection with this Framework Agreement;
Authority Representative	the representative appointed by the Authority in accordance with Clause 11.1;
Basic Broadband	an Access Line Speed of 2Mbps to 24Mbps;
Baseline Service Requirements	the baseline service requirements set out in Schedule 2 (Baseline Service Requirements), as qualified by the compliance statements set out in the Compliance Matrix, that a Local Body shall use to develop its Local Body Service Requirements in accordance with Schedule 9 (Call Off Procedure);
Benchmark Data	the Wholesale Access Price benchmark data set out, subject to the provisions of paragraph 3.3 of Schedule 5.2 of the corresponding Call Off Contract, in the corresponding Wholesale Product Template within the Reference Supplier Solution which provides a reference baseline for benchmarking under Call Off Contracts;

Bespoke Change	<p>any change to:</p> <ul style="list-style-type: none"> (a) the Reference Supplier Solution; (b) the Reference Financial Model; (c) the table of Commercially Sensitive Information set out in Schedule 12 (Commercially Sensitive Information); (d) the financial ratings for the Supplier set out in Clause 17.1; (e) the notice details for the Supplier set out in Clause 44.1; (f) the Level 1 and Level 2 representatives for the Supplier set out in paragraph 3.3 of Schedule 7 (Dispute Resolution Procedure); or (g) any other provision within this Framework Agreement that is unique to this Framework Agreement and does not appear in the framework agreement between the Authority and the other Framework Supplier;
Bespoke Change Form	the form for dealing with Bespoke Changes in accordance with the Change Control Procedure, substantially in the form set out in Appendix 1 to Schedule 6 (Change Control Procedure);
Bespoke Change Request	Part 1 of the Bespoke Change Form completed by a Party in accordance with paragraph 5 of Schedule 6 (Change Control Procedure);
Bribery Act	the Bribery Act 2010 and any subordinate legislation made under that Act from time to time together with any guidance or codes of practice issued by the relevant government department concerning the legislation;
Broadband Delivery Framework	the framework arrangement established by the Authority of suitably qualified appointed suppliers (including the Supplier) with the capability to provide certain network infrastructure and broadband related services;
Budget Planning Data	a non-binding budgetary estimate of (i) potential public subsidy cost for a Local Body; and (ii) indicative Supplier investment, for enablement of Superfast Broadband and Basic Broadband infrastructure within the Local Body's geographic area (taking into account any indicative requirement scope provided by the Local Body) using publicly available information;
Call Off Award Criteria	the call off award criteria set out in Schedule 10 (Call Off Award Criteria) that a Local Body shall use to develop the Local Body Call Off Award Criteria in accordance with Schedule 9 (Call Off Award Procedure);
Call Off Bid Financial Model	the financial model to be developed by the Supplier during the Call Off Procedure, using the Reference Financial Model in accordance with Schedule 4 (Reference Financial Model);

Call Off Contract	a contract for the provision of certain network infrastructure and broadband related services made between a Local Body and the Supplier pursuant to this Framework Agreement, substantially in the form of the Template Call Off Contract (as may be amended in accordance with the Call Off Procedure);
Call Off Costs	the costs relating to a Call Off Contract (including the level of public subsidy required) proposed by the Supplier during the Call Off Procedure;
Call Off Procedure	the procedure set out in paragraph 4 of Schedule 9 (Call Off Procedure);
Call Off Supplier Solution	the Supplier's solution to meet the Local Body Service Requirements for a Call Off Contract;
Case Summary	a concise summary of a Party's case in a Dispute subjected to mediation;
CEDR	the Centre for Effective Dispute Resolution, International Dispute Resolution Centre, 70 Fleet Street, London, EC4Y 1EU;
Change Authorisation	Part 3 of the Bespoke Change Form executed by the Parties in accordance with paragraph 7 of Schedule 6 (Change Control Procedure);
Change of Control	a change in Control of the Supplier;
Change Control Procedure	the procedure set out in Schedule 6 (Change Control Procedure);
Change Impact Assessment	Part 2 of the Bespoke Change Form completed by the Supplier in accordance with paragraph 6 of Schedule 6 (Change Control Procedure);
Change Request	a Common Change Request or a Bespoke Change Request (as the context requires);
Commercially Sensitive Information	the information listed in Schedule 12 (Commercially Sensitive Information) comprising the information of a commercially sensitive nature relating to the Supplier, its Intellectual Property Rights or its business or which the Supplier has indicated to the Authority that, if disclosed by the Authority, would cause the Supplier significant commercial disadvantage or material financial loss;
Commission Decision	a decision (corresponding to State aid notification SA.33671) from the European Commission approving an aid scheme (as defined in Council Regulation (EC) 659/1999), which establishes the conditions which a local broadband project must meet in order for public funding for that project to be within the scope of the aid scheme and which establishes the role of the Authority as competency centre in respect of the scheme;
Commission Outcome Review Period	has the meaning given in Clause 8.2.2;

Common Change	any change to this Framework Agreement which is not a Bespoke Change (which, therefore, is a change to a provision that is common to all framework agreements between the Authority and each Framework Supplier);
Common Change Form	the form for dealing with Common Changes in accordance with the Change Control Procedure, substantially in the form set out Appendix 2 to Schedule 6 (Change Control Procedure);
Common Change Request	Part 1 of the Common Change Form completed by the Authority in accordance with paragraph 9.1 and by the Supplier in accordance with paragraph 10.1 of Schedule 6 (Change Control Procedure);
Compliance Matrix	the compliance matrix set out in the Reference Supplier Solution which details the agreed compliance of the Reference Supplier Solution against the Baseline Service Requirements;
Confidential Information	the Authority Confidential Information and/or the Supplier Confidential Information;
Contracting Authority	any contracting authority as defined in Regulation 3 of the Public Contracts Regulations 2006 excluding the Authority;
Control	where a person possesses, directly or indirectly, the power to direct or cause the direction of the management and policies of another person (whether through the ownership of voting shares, by contract or otherwise) and " Controls " and " Controlled " shall be interpreted accordingly;
Coverage Area	has the meaning given in Schedule 2 (Baseline Service Requirements);
Crown Body	any department, office or agency of the Crown;
Data Controller	shall have the same meaning as set out in the DPA;
Data Processor	shall have the same meaning as set out in the DPA;
Data Protection Legislation	the Data Protection Act 1998, the EU Data Protection Directive 95/46/EC, the Regulation of Investigatory Powers Act 2000, the Telecommunications (Lawful Business Practice) (Interception of Communications) Regulations 2000 (SI 2000/2699), the Electronic Communications Data Protection Directive 2002/58/EC, the Privacy and Electronic Communications (EC Directive) Regulations 2003 (as amended) and all applicable laws and regulations relating to processing of personal data and privacy to the extent they relate to the performance of this Framework Agreement;
Data Subject	shall have the same meaning as set out in the DPA;
Default	any breach of the obligations of the relevant Party (including but not limited to fundamental breach or breach of a fundamental term) or any other default, act, omission, negligence or statement of the relevant Party, its employees, servants, agents or Subcontractors pursuant to this Framework Agreement and in respect of which such Party is liable to the other;

Deployed Services	has the meaning given in Schedule 2 (Baseline Service Requirements);
Dispute	any dispute, difference or question of interpretation arising pursuant to this Framework Agreement, including any dispute, difference or question of interpretation relating to a failure to agree in accordance with the Change Control Procedure or any matter where this Framework Agreement directs the Parties to resolve an issue by reference to the Dispute Resolution Procedure;
Dispute Resolution Procedure	the procedure set out in Schedule 7 (Dispute Resolution Procedure);
Dispute Resolution Timetable	the Standard Dispute Resolution Timetable or the Expedited Dispute Resolution Timetable;
DPA	the Data Protection Act 1998, including all subordinate legislation enacted under or pursuant to that act;
Environmental Information Regulations	the Environmental Information Regulations 2004 together with any guidance and/or codes of practice issued by the Information Commissioner or relevant Government Department in relation to such regulations;
Effective Date	the date on which this Framework Agreement is signed by both Parties;
End User	has the meaning given in Schedule 2 (Baseline Service Requirements);
Escalation Process	the process for escalation during commercial negotiations in accordance with paragraph 3 of Schedule 7 (Dispute Resolution Procedure);
Expedited Dispute Resolution Timetable	the reduced timetable for the resolution of material Disputes set out in the Appendix to Schedule 7 (Dispute Resolution Procedure) to be used in accordance with paragraph 2.6 of Schedule 7 (Dispute Resolution Procedure);
Financial Distress Event	<p>the occurrence of one or more of the following events:</p> <ul style="list-style-type: none"> (a) either or both of the Supplier's credit ratings drop one or more levels below the level set out in Clause 17.1; (b) the Supplier issues a profits warning to a stock exchange or makes any other public announcement about a material deterioration in its financial position or prospects; (c) there is a public investigation into improper financial accounting and reporting, suspected fraud and/or any other impropriety of the Supplier; (d) the Supplier commits a material breach of covenants to its lenders; (e) either of the following events: <ul style="list-style-type: none"> (i) commencement of any litigation against the

	Supplier with respect to financial indebtedness; or
	(ii) any financial indebtedness of the Supplier becoming due as a result of an event of default,
	which in respect of (e) only, the Authority reasonably believes could materially impact on the continued performance and delivery of this Framework Agreement;
Financial Distress Event Remedial Plan	a plan provided by the Supplier to remedy the potential adverse impact of the relevant Financial Distress Event on the performance of this Framework Agreement in accordance with Clause 17;
FOIA	the Freedom of Information Act 2000 and any subordinate legislation made under this Act together with any guidance and/or codes of practice issued by the Information Commissioner or relevant government department in relation to such legislation;
Force Majeure Event	any cause affecting the performance by a Party of its obligations arising from acts, events, omissions, happenings or non-happenings beyond its reasonable control, including acts of God, riots, war or armed conflict, acts of terrorism, acts of government, local government or Regulatory Bodies, fire, flood, storm or earthquake, or disaster but excluding (i) any industrial dispute relating to the Supplier or the Supplier Personnel; or (ii) any other failure in the Supplier or any Subcontractor's supply chain;
Framework Agreement	the Clauses of this Framework Agreement together with the Schedules and Appendices to it and the terms set out in any agreed (pursuant to a Change Authorisation) Common Change Form or Bespoke Change Form;
Framework Supplier	each supplier (including the Supplier) appointed by the Authority to the Broadband Delivery Framework;
Good Industry Practice	using standards, practices, methods and procedures (as practised in the UK) and conforming to Law and exercising that degree of skill, diligence, prudence and foresight which would reasonably and ordinarily be expected from a skilled and experienced service provider, manager, operator or other person (as the case may be) engaged in a similar type of undertaking as under this Framework Agreement under the same or similar circumstances;
Holding Company	has the meaning given in section 1159 Companies Act 2006 (and for the purposes of the membership requirement in section 1159(1)(b) and section 1159(1)(c) a company shall be treated as a member of another company even if its shares in that other company are registered (i) in the name of its nominee; or (ii) in the name of a person (or the nominee of that person) who is holding the shares as security);
IAR	an independent assurance review conducted in accordance with the process described in Appendix 4 to Schedule 4 (Reference Financial Model);

IA Reviewer	a third party appointed to conduct an IAR, as further described in Appendix 4 to Schedule 4 (Reference Financial Model);
IMR	has the meaning given in Appendix 3 to Schedule (Reference Financial Model);
IMR Report	has the meaning given in Appendix 3 to Schedule (Reference Financial Model);
IMR Reviewer	has the meaning given in Appendix 3 to Schedule (Reference Financial Model);
Indemnified Claim	any claim, demand, threatened or anticipated claim or demand or other similar circumstance which falls within the scope of one or more of the indemnities provided in this Framework Agreement;
Indemnified Party	the Party being indemnified in respect of an indemnity given under the terms of this Framework Agreement;
Indemnifying Party	the Party providing an indemnity in respect of an indemnity given under the terms of this Framework Agreement;
Information	has the meaning given by section 84 of the FOIA;
Information System	a system for generating, sending, receiving, storing or otherwise processing electronic communications;
Initial Term	the period of two (2) years beginning on the Effective Date;
Insolvency Event	<p>the occurrence of any of the following events (or any event analogous to any of the following events in a jurisdiction other than England and Wales) in relation to the Supplier (the "entity"):</p> <ul style="list-style-type: none"> (a) passing a resolution for its winding up or a court of competent jurisdiction making an order for the entity to be wound up or dissolved or the entity being otherwise dissolved; (b) the appointment of a liquidator, administrator, administrative receiver or the making of an administration order in relation to the entity or an encumbrancer taking possession of or selling all or a material part of the entity's undertaking, assets, rights or revenue; (c) any proposal being made for a voluntary arrangement, a composition of debts or a scheme of arrangement to be approved whether under the Insolvency Act 1986 or the Companies Act 2006 or otherwise with all or a substantial majority of its creditors; (d) being unable or admitting its inability to pay its debts as they fall due or being capable of being deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 (but with the phrase "it is proved to the satisfaction of the court that" removed from section 123(2) of the Insolvency Act 1986);

- (e) enforcement of any security over all or a material part of the assets of the entity; or
- (f) any expropriation, attachment, sequestration, distress or execution affecting all or any material part of any asset or assets of the entity which is not discharged within 14 days,

except where applicable, in respect of any resolution by the relevant entity or a court order that such entity be wound up for the purpose of a bona fide solvent reconstruction or amalgamation;

Intellectual Property Rights	<ul style="list-style-type: none"> (a) copyright, rights related to or affording protection similar to copyright, rights in databases, patents and rights in inventions, semi-conductor topography rights, trade marks, rights in Internet domain names and website addresses and other rights in trade names, designs, know-how, trade secrets and other rights in Confidential Information; (b) applications for registration, and the right to apply for registration, for any of the rights listed at (a) that are capable of being registered in any country or jurisdiction; and (c) all other rights having equivalent or similar effect in any country or jurisdiction;
Investigation Referral	has the meaning given in Clause 8.2.1;
IPR	Intellectual Property Rights;
ISDS	the invitation to submit detailed solutions issued by the Authority on 17 October 2011;
ITSFT	the invitation to submit final tenders issued by the Authority on 10 February 2012;
ITPD	the invitation to participate in dialogue issued by the Authority on 12 September 2011;
ITT	an invitation to tender for the provision of certain network deployment and broadband related services issued by a Local Body to the Framework Suppliers in accordance with the Call Off Procedure;
Key Subcontractor	each party defined as such under a Call Off Contract executed by the Supplier;
Law	any applicable law, statute, bye-law, regulation, order, regulatory policy, rule of court or directives or requirements of any Regulatory Body, delegated or subordinate legislation or notice of any Regulatory Body;
Local Body	<p>each of the following bodies within the UK borders including successors to those bodies' functions and organisations created to deliver their functions and objectives:</p> <ul style="list-style-type: none"> (a) local authorities (including groups of local authorities)

within the UK borders, a list of which as at the Effective Date is available at: http://webarchive.nationalarchives.gov.uk/20120604101819/http://direct.gov.uk/en/DI1/Directories/Localcouncils/AToZOfLocalCouncils/DG_A-Z_LG;

- (b) Local Enterprise Partnerships established (or to be established) between any of the local authorities within the UK borders referred to above and businesses, a current list of which is available at: <https://www.gov.uk/government/policies/supporting-economic-growth-through-local-enterprise-partnerships-and-enterprise-zones/supporting-pages/local-enterprise-partnerships>;
- (c) the following Regional Development Agencies in England: Advantage West Midlands; East Midlands Development Agency; East of England Development Agency; London Development Agency; Northwest Regional Development Agency; One North East; South East England Development Agency; South West of England Regional Development Agency; Yorkshire Forward;
- (d) the Welsh Ministers;
- (e) the Scottish Ministers;
- (f) Scottish Enterprise;
- (g) Highlands and Islands Enterprise; and
- (h) the Department of Enterprise, Trade and Investment in Northern Ireland;

Local Body Call Off Award Criteria	the call off award criteria developed by a Local Body pursuant to Schedule 9 (Call Off Procedure);
Local Body Service Requirements	the service requirements developed by a Local Body pursuant to Schedule 9 (Call Off Procedure);
Master Reference Supplier Solution	the Parties' agreed version of the Reference Supplier Solution, as updated from time to time in accordance with Schedule 3 (Reference Supplier Solution), which represents the agreed master copy of the Reference Supplier Solution for the purposes of this Framework Agreement;
Mediator	the independent third party appointed in accordance with paragraph 4.2 of Schedule 7 (Dispute Resolution Procedure);
Milestone	has the meaning given in Schedule 1 (Definitions) of the relevant Call Off Contract;
Notice of Dispute	a written notice served by one Party on the other stating that the Party serving the notice believes there is a Dispute;
Official Assurance Review	a formal review of the Authority and/or its projects or programmes, including gateway reviews, integrated assurance, starting gate or other reviews recommended or mandated by

	the Cabinet Office and/or its major projects authority;
OJEU Notice	the contract notice with reference number 2011/S 122-202671 dated 29 June 2011 published in the Official Journal of the European Union;
Parties	the parties to this Framework Agreement (which at the Effective Date is the Authority and the Supplier) and their permitted assigns, and references to a " Party " shall mean one of the parties to this Framework Agreement;
Personal Data	shall have the same meaning as set out in the DPA;
PQQ	the pre-qualification questionnaire relating to the Broadband Delivery Framework made available by the Authority on its Delta eSourcing procurement portal from 1 July 2011;
Preferred Supplier	the Framework Supplier appointed as such pursuant to paragraph 4.4.1(b) of Schedule 9 (Call Off Procedure);
Process	has the meaning given to it under the Data Protection Legislation but, for the purposes of this Framework Agreement, shall include both manual and automatic processing;
Procurement Legislation	Directive 2004/18/EC of the European Parliament and of the Council and Council Directive 89/665/EEC of the European Parliament and of the Council (as amended by Directive 2007/66EC) or any legislation implementing either or both of them;
Prohibited Act	<p>each of the following constitutes a Prohibited Act:</p> <ul style="list-style-type: none"> (a) to directly or indirectly offer, promise or give any person working for or engaged by the Authority a financial or other advantage to: <ul style="list-style-type: none"> (i) induce that person to perform improperly a relevant function or activity; or (ii) reward that person for improper performance of a relevant function or activity; (b) to directly or indirectly request, agree to receive or accept any financial or other advantage as an inducement or a reward for improper performance of a relevant function or activity in connection with this Framework Agreement; (c) committing any offence: <ul style="list-style-type: none"> (i) under the Bribery Act; (ii) under legislation creating offences concerning fraudulent acts; (iii) at common law concerning fraudulent acts relating to this Framework Agreement or any other contract with the Authority; or (iv) defrauding, attempting to defraud or conspiring to

defraud the Authority;

Project Period	has the meaning given in the relevant Call Off Contract;
Project Unit Margin	has the meaning given in the relevant Call Off Contract;
Project Wholesale Access Prices	has the meaning given in the relevant Call Off Contract;
Public Satellite Project	a public sector procurement of satellite connectivity (which includes related services);
Reference Cost Book	the relevant sheets or cells contained in, or referenced from, the Reference Financial Model which contain input cost data;
Reference Financial Model	the reference financial model, including the Reference Cost Book and the Reference Wholesale Access Price Book, which at the Effective Date is set out at Schedule 4 (Reference Financial Model) and thereafter as updated from time to time in accordance with that Schedule;
Reference Supplier Solution	the reference Supplier solution set out in Schedule 3 (Reference Supplier Solution) that the Supplier shall use to develop the Call Off Supplier Solution in accordance with that Schedule;
Reference Wholesale Access Price Book	the relevant sheets contained in, or referenced from, the Reference Financial Model which contain wholesale access pricing;
Regulations	<ul style="list-style-type: none">(a) in relation to England, Wales and Northern Ireland, the Public Contracts Regulations 2006;(b) in relation to Scotland, the Public Contracts (Scotland) Regulations 2006;
Regulatory Bodies	those government departments (including the Authority only for the purpose of its function as competency centre pursuant to the Commission Decision) and regulatory, statutory and other entities, committees and bodies which, whether under statute, rules, regulations, codes of practice or otherwise, are entitled to regulate, investigate, or influence the matters dealt with in this Framework Agreement or any other affairs of the Authority and " Regulatory Body " shall be construed accordingly;
Request for Information	has the meaning set out in the FOIA or any apparent request for information under the FOIA or the Environmental Information Regulations;
Representative	the Authority Representative or the Supplier Representative as the context requires;
Retail Service Provider	has the meaning given in Schedule 2 (Baseline Service Requirements);
Service Requirements	has the meaning given in Schedule 1 (Definitions) of the relevant Call Off Contract;
Solution Component	a template setting out details for each Solution Component, as set out in the Reference Supplier Solution;

Template

Solution Components	has the meaning given in Schedule 2 (Baseline Service Requirements);
Standard Dispute Resolution Timetable	the standard timetable for the resolution of Disputes set out in the Appendix to Schedule 7 (Dispute Resolution Procedure);
Subcontractor	each party defined as such under any Call Off Contract entered into by the Supplier;
Subsidiary	has the meaning given in section 1159 Companies Act 2006 (and for the purposes of the membership requirement in section 1159(1)(b) and section 1159(1)(c) a company shall be treated as a member of another company even if its shares in that other company are registered (i) in the name of its nominee; or (ii) in the name of a person (or the nominee of that person) who is holding the shares as security);
Superfast Broadband	an Access Line Speed of over 24Mbps;
Supplier Confidential Information	any information supplied by or on behalf of the Supplier to the Authority in relation to this Framework Agreement, however it is conveyed, that relates to the business, affairs, developments, trade secrets, know-how, personnel and suppliers of the Supplier, including Intellectual Property Rights, together with all information derived from the above, and any other information clearly designated as being confidential (whether or not it is marked as "confidential") or which ought reasonably to be considered to be confidential;
Supplier IPR	any IPR (excluding the Authority IPR) owned by the Supplier or any Subcontractor (or their respective Affiliates), or licensed to or used by the Supplier or any Subcontractor (or their respective Affiliates) in connection with this Framework Agreement;
Supplier Personnel	all employees, agents, consultants and contractors of the Supplier and/or of any Subcontractor;
Supplier Representative	the representative appointed by the Supplier in accordance with Clause 11.1;
Supplier Solution	has the meaning given in the relevant Call Off Contract;
Template Call Off Contract	the template call off contract set out in Schedule 11 (Template Call Off Contract) that a Local Body shall use to develop its draft Call Off Contract in accordance with Schedule 9 (Call Off Procedure);
Take-up	has the meaning given in Schedule 2 (Baseline Service Requirements);
Term	the period that this Framework Agreement is in force, excluding the survival of any provision pursuant to Clause 34.3;
Wholesale Access Prices	the reference wholesale access prices set out in the Reference Financial Model;

Wholesale Access Products and Services	has the meaning given in Schedule 2 (Baseline Service Requirements);
Wholesale Product Template	the wholesale product template set out in the Reference Supplier Solution;
Working Day	any day other than a Saturday, Sunday or public holiday in England and Wales or a day which falls on a privilege holiday for the Authority.

SCHEDULE 2
BASELINE SERVICE REQUIREMENTS

VERSION CONTROL

VERSION NUMBER	DATE	COMMENT
1.0	29 June 2012	Executed version
2.0	21 January 2013	Updated to reflect final Commission Decision

CONTENTS

1	BACKGROUND	4
2	SOLUTION REQUIREMENTS	4
3	SOLUTION COMPONENT REQUIREMENTS	9
4	WHOLESALE ACCESS PRODUCTS AND SERVICES	10

SCHEDULE 2 – BASELINE SERVICE REQUIREMENTS

Access Line Speed	the maximum speed of the data connection between the End User termination point and the Handover Point, local exchange or cable head end. This constitutes the maximum speed a consumer will be able to experience and will take into account any contention built into the Supplier Solution but will not take into account any contention introduced by RSPs;
Adds	provision of additional services to an End User;
ALA	Active Line Access, as defined by NICC;
Automated Retail Online Platform	a range of interfaces, systems and processes with allow Retail Service Providers to deliver, maintain, cease or transfer an End User's retail broadband service, through the inputs needed to build a broadband access service;
BSS	the Supplier's business support systems which comprise software applications that support the RSP to the extent provided for in paragraph 2.13 of Schedule 2;
Business Continuity Plan (BCP)	the business continuity plan which identifies the organisation's exposure to internal and external threats and sets out the activities that are intended to enable continued business operation in the event of unforeseen interruption;
Busy Hour Committed Rate	the applicable minimum Service Frame (as defined by NICC ND 1030) throughput rate (as specified in the Speed and Coverage Template) that each Retail Service Provider shall be able to consume on a wholesale basis for at least 90% of the time during the busiest (i.e. highest total traffic load) three (3) hours of each day during the Term;
Cabinet Office	a department of the Government of the United Kingdom responsible for supporting the Prime Minister and Cabinet of the United Kingdom;
Community Build and Benefit	a business, operations and services model, under which a community secures the appropriate demand level, bears the cost of civil works, including wayleaves, while the Supplier pays for all active components costs and assumes all operational, billing and revenue collection, and maintenance responsibility for the network extensions. The Supplier will be entitled to the revenues received from this model;
Community Concession	a business, operations and services model, under which a community may secure the appropriate demand level and offer a concession to the Supplier to build and operate the network as an extension to the Supplier's Superfast Broadband solution. The community bears the cost of civil works, wayleaves and pays for all active components costs. The Supplier assumes all operational, billing and revenue collection, and maintenance duties for the network extension for the term of the concession, while title to the assets will remain with the community. The Supplier will be entitled to the revenues received from this model;
Community Partnership	a business, operations and services model, under which a community may secure the appropriate demand level and agree to work in partnership with the Supplier to deliver an extension to the NGA solution. The community's contribution will be a combination of 'in kind' services (civil works and associated wayleaves) and financial investment. The Supplier and community secure their investment in a partnership vehicle. The Supplier assumes all operation, billing and maintenance duties for the network extension for the term of the partnership. The revenues received will be negotiated and shared in agreement with the members of the partnership. Title to the assets will be shared by the members of the partnership;
Compliance Matrix	the compliance matrix set out in the Supplier Solution of the relevant Call Off Contract which details the agreed compliance of the Supplier Solution against the Service Requirements;
Coverage Area	the area designated as white for either Superfast Broadband or Basic Broadband by a Local Body within the Speed and Coverage Template within which the Deployed Services are to be provided;
Demand Stimulation	the stimulation of End User broadband demand and Take-up;

Deployed Services	all or any part of the services to be provided and/or obligations to be performed by the Supplier to cover the agreed number of premises within the Coverage Area as set out within the Speed and Coverage Template in order to comply with the Service Requirements, the Supplier Solution and Schedule 4.1 (Implementation), and shall include Demand Stimulation, Network Deployment and the Wholesale Access Products and Services;
End User	a consumer or a business in the Coverage Area who/which uses any communications service offered on the Network by a Retail Service Provider;
End User Premises	the End User's home, community or business premises;
Enterprise Network	a private network designed to support corporate and SME organisations;
Handover Points	network interconnection points between different communications providers or a communications provider and an RSP;
IEEE	the Institute of Electrical and Electronic Engineering;
IETF	the Internet Engineering Task Force;
Implementation Plan	the implementation plan set out at Appendix 2 to Schedule 4.1 (Implementation) of the relevant Call Off Contract;
ISO	the International Standards Organisation;
ITU	the International Telecommunication Union;
Lead-to-Cash Process	shall mean process which starts with a sales dialogue between a buyer and supplier which establishes that a product or service will meet the buyer's needs and ends when this need is fulfilled, the service is available to use and the supplier has been paid;
MACD	Moves, Adds, changes and disconnects;
Mbps	megabits per second;
Minimum Access Requirements	the minimum network access requirements specified at paragraph 4.4 of Schedule 2 (Baseline Service Requirements);
Minimum Service Requirements	the minimum service requirements as identified by the minimum service levels specified at paragraph 4.5 of Schedule 2 (Baseline Service Requirements);
Moves	refers to an End User that requests to be moved from one RSP to another RSP and/or is moving from one home/office location to a different location;
Network	the electronic communications network from any Handover Point to all End User termination points as specified for the Deployed Services, which is a Solution Component and which shall be constructed, rolled out, installed, commissioned, deployed and operated by the Supplier in accordance with the relevant Call Off Contract;
NGA (Next Generation Access)	access networks which consist wholly or in part of optical elements and which are capable of delivering broadband access services with enhanced characteristics (such as higher throughput) as compared to those provided over existing copper networks. In this context NGA broadband networks must be capable of delivering access line speeds of at least 30 Mbps;
NICC	NICC Standards Limited, being a technical forum for the UK communications sector that develops interoperability standards for public communications networks and services in the UK. It is an independent organisation owned and run by its members;
NICC ALA Specifications	[1] ND1030 Ethernet ALA Service Definition [2] ND1031 ALA UNI Specification [3] ND1036 ALA NNI Specification [4] ND1642 Requirements for Ethernet Interconnect and Ethernet ALA [5] ND 1644 Architecture for Ethernet Active Line Access (ALA) [6] ND 1704 End to End Network Performance Rules and Objectives for the Interconnect of NGNs
NICC B2B Specifications	[1] ND 1421 NICC B2B User Story Approach [2] ND 1422 NICC B2B Best Practice [3] ND1427 B2B Location & Address Identification Principles

	[4] ND 1429 Guidelines on Tools for Structuring B2B Specifications [5] ND 1430 B2B Designers and Developers Guide [6] ND 1507 NICC B2B Interface Framework Document [7] ND 1508 Trouble To Resolve (T2R) white paper proposal [8] ND 1509 B2B Trouble-To-Resolve (T2R) International Gap Analysis [9] ND 1510 Lead-To-Cash (L2C) White Paper Proposal [10] ND 1617 Automated Business to Business (B2B) Transactions: Architecture and Principles [11] ND 1618 Profile for ebXML Messaging Service 2.0 Gateways [12] ND 1622 NICC B2B Interface Requirements Document [13] ND 1623 B2B Trouble-To-Resolve (T2R) User Story Requirements [14] ND1624 B2B Lead-to-Cash (L2C) User Story Requirements [15] ND 1626 NICC B2B Trouble-To-Resolve (T2R) Interface Standard [16] ND 1627 B2B Lead-to-Cash (L2C) Interface Standard [17] ND 1637 B2B Trouble-To-Resolve (T2R) XML Standard [18] ND 1641 L2C XML Schema
Ofcom	national regulatory authority for the telecommunication industries in the United Kingdom;
Open Access	separation of access to the network from delivery of services, where the owner or operator of the network allows other communication providers to make use of the facilities for the provision of Wholesale Access Products and Services on commercial terms which are non-discriminatory between the other communication providers;
OSS	operational support system which comprises software applications (and occasionally hardware) that support back-office activities in a telecommunications service provider's network including processes such as maintaining network inventory, provisioning services (the process of preparing and equipping a network to allow it to provide services to its users), configuring network components, and managing faults. The OSS layer contains the infrastructure for technical network management;
PSN or Public Sector Network	a network to support Local Bodies which is compliant with CESG 2-2-2 assurance;
Public Enterprise Network	a network carrying voice and data traffic between public sector offices and which provides access to and from other networks. This may include access to the public switched telephone network (PSTN) and the public internet;
Retail Service Provider (RSP)	a provider of various retail broadband services to End Users or a reseller of wholesale broadband services to providers of retail internet services to End Users;
Service Level	the service levels set out in paragraph 4.5 of Schedule 2 (Baseline Service Requirements);
SOGE	Sustainable operations on the Government Estate;
Solution Component	a physical and/or logical component constituting the technology underlying the Supplier Solution as set out in the Solution Component Template;
Solution Component Template	sets out details for each Solution Component as part of the Reference Supplier Solution;
Speed and Coverage Template	the speed and coverage template to be completed by the Supplier in its response to the ITT and included in the Supplier Solution;
Supplier Solution	the solution provided by the Supplier to meet the Service Requirements set out in the relevant Call Off Contract;
Symmetrical	the capability of the network devices to transmit and receive data at equal rates;
Take-up	the adoption by any End User of retail services delivered on the Network in the Coverage Area;
Wholesale Access	the wholesale access products and services to be leased to Retail Service Providers as set out in the Wholesale Product Template;

Products and Services	
	Words and phrases defined in the NICC ALA specifications (as the same may be updated or amended from time to time) shall have the same meanings in this Framework Agreement and the relevant Call Off Contract.

1. **BACKGROUND**

1.1 This Schedule 2 sets out the Baseline Service Requirements that Local Bodies shall use to develop the Local Body Service Requirements for Call Off Contracts in accordance with Schedule 9 (Call Off Procedure) and the terms of this Framework Agreement.

1.2 There are three levels of requirements:

1.2.1 Solution Requirements – those requirements that define the Supplier Solution based on Solution Components.

1.2.2 Solution Component Requirements – those requirements that relate to the Solution Components that underpin the Wholesale Access Products and Services and the Supplier Solution.

1.2.3 Wholesale Access Products and Services Requirements – those requirements that define a minimum set of products and services that shall be retailed by Retail Service Providers.

2. **SOLUTION REQUIREMENTS**

The following requirements apply to both the Reference Supplier Solution and each Supplier Solution .

2.1 The Supplier Solution shall be an Open Access Network which supports the UK's broadband policy objectives by providing Retail Service Providers the Wholesale Access Products and Services through Solution Components that can support Take-up.

2.2 The Supplier Solution shall provide wholesale access network services from Handover Points to End User network termination points, supporting the provision of Wholesale Access Products and Services in the Coverage Area.

2.3 The Supplier shall implement, operate and maintain the Supplier Solution to provide:

2.3.1 Wholesale Access Products and Services delivering the level of Access Line Speed and Busy Hour Committed Rates to the agreed number of premises in each of the specified geographic areas within the Coverage Area as set out in the Speed and Coverage Template;

2.3.2 Wholesale Access Products and Services at charges which allow Retail Service Providers to provide affordable superfast and standard broadband services to End Users;

2.3.3 community solutions to the following communities in the Coverage Area (as agreed between the Supplier and the Local Body during the relevant Call Off Procedure):

(a) [•] (Note: These will be defined in Local Bodies' ITTs.)

2.4 The Supplier Solution shall provide:

- 2.4.1 integrated network access and data transport components to End User Premises that comply with the relevant NICC standards or achieve functions/performance levels that are equivalent to or better than those provided for by such standards as are necessary to ensure interoperability; and
- 2.4.2 integrated network access and data transport components to Handover Points that comply with the relevant NICC interconnect standards or achieve functions/performance levels that are equivalent to or better than those provided for by such standards as are necessary to ensure interoperability.
- 2.5 The Supplier shall mitigate and minimise, in accordance with Good Industry Practice, the number of single points of failure within the Network.
- 2.6 The Supplier Solution shall be capable of enabling Symmetrical services for RSPs.
- 2.7 The Supplier shall consider potential future demand by itself and alternative operators in the infrastructure design of the Supplier Solution and the deployment of physical assets, and shall design the Supplier Solution accordingly in order to minimise the likelihood of further creation of infrastructure assets, including for example in the course of delivering publically-funded mobile infrastructure projects.

OPERATIONS

- 2.8 The Supplier shall provide the same Automated Retail Online Platform (capable of handling volume transactions) for use by all Retail Service Providers. Where the Supplier is developing new systems and associated processes, these shall align with an industry standard service management framework (e.g. FTM Framework, eTOM, ITIL).
- 2.9 The Supplier shall provide a Lead-to-Cash Process to support Retail Service Providers which, as a minimum, shall include the following:
 - 2.9.1 order entry;
 - 2.9.2 order fulfilment such as line testing;
 - 2.9.3 distribution;
 - 2.9.4 billing and invoicing; and
 - 2.9.5 buyer payment/collection.
- 2.10 The Supplier Solution shall include capabilities so as to be able to service MACDs.
- 2.11 The Supplier shall provide full OSS facilities to provide high quality and on-going operational management to Retail Service Providers, and which as a minimum shall include:
 - 2.11.1 maintaining network inventory (including both physical and logical);
 - 2.11.2 providing communications providers with location-based, capacity management information for all offered products on subsidised infrastructure;
 - 2.11.3 provisioning services;
 - 2.11.4 configuring network components;
 - 2.11.5 monitoring and managing faults;

- 2.11.6 trouble-ticketing; and
- 2.11.7 service assurance.
- 2.12 The Supplier's OSS shall be designed so as to be capable of being scaled to manage increased Take-up delivered by Retail Service Providers as necessary to achieve the Minimum Service Requirements. All OSS/BSS Supplier systems that are not as at the date of this Framework Agreement capable of dealing with large volumes of operations shall be upgraded as part of the Deployed Services so as to become compliant with the NICC B2B specifications.
- 2.13 The Supplier shall operate a BSS, which as a minimum shall include the following B2B processes:
 - 2.13.1 RSP contact service;
 - 2.13.2 customer relationship management;
 - 2.13.3 order management;
 - 2.13.4 order fulfilment;
 - 2.13.5 service activation; and
 - 2.13.6 billing and invoicing.
- 2.14 The Supplier's BSS shall be designed so as to be capable of being scaled to manage increased Take-up delivered by Retail Service Providers whilst continuing to meet at least the Minimum Service Requirements.
- 2.15 The Supplier shall provide a service management model to address disputes with and complaints from Retail Service Providers.
- 2.16 The Supplier shall have standard OSS and BSS processes and procedures for Retail Service Providers. These shall, as applicable, comply with the relevant NICC standards or achieve functions/performance levels that are equivalent to or better than those provided for the purpose of such standards.
- 2.17 The Supplier Solution shall enable RSPs using it to adhere to Ofcom's Approved Code of Practice for Complaints Handling as the same may be amended, updated or replaced from time to time.

PROJECT DELIVERY

- 2.18 The Supplier shall roll out its Wholesale Access Products and Services in accordance with the relevant Call Off Contract and in doing so shall:
 - 2.18.1 adopt a standard project management approach, and
 - 2.18.2 meet and communicate with the Local Body team as appropriate.
- 2.19 The Supplier shall, where a Local Body investment includes European Regional Development Fund (ERDF) funds, meet standards required by ERDF for reporting and branding as set out in Schedule 5.4 (Additional Funding) of the relevant Call Off Contract.
- 2.20 The Supplier, if requested by a Local Body, shall confirm in the Supplier Solution the extent that it will reuse those Local Body assets identified in Schedule 4.2 (Authority Assets) of the relevant Call Off Contract so as to reduce implementation costs.

- 2.21 The Supplier Solution shall include:
- 2.21.1 the agreed and defined Milestones for delivery of the Supplier Solution;
 - 2.21.2 the timetable for the preparation and delivery of the Supplier's detailed marketing strategy;
 - 2.21.3 the Supplier's change management process for change to the Project Plan, an example of which could be the rollout delivery phasing;
 - 2.21.4 the Supplier's detailed coverage map, Speed and Coverage Template and modelling criteria for the deployment of the Network for the specified Coverage Area;
 - 2.21.5 details of the Supplier's project management processes including its procedures, standards, tools and documentation that it will use to deliver its Supplier Solution;
 - 2.21.6 details of the Supplier's quality management process, including standards, tools and key performance indicators that shall be used by the Supplier to deliver the Supplier Solution;
 - 2.21.7 the Supplier's project organisation and staffing including key roles and responsibilities;
 - 2.21.8 the type of project team availability (on site / back office / remotely / on call, etc) during the various project phases;
 - 2.21.9 a detailed project plan for each Phase including key planning information with respect to the design, build and testing of the Supplier Solution associated with each Milestone;
 - 2.21.10 details of the Wholesale Access Product and Service documentation to be provided by the Supplier to Retail Service Providers and the Local Body, such as functional and technical admin specifications and guides, training manuals, configuration and customisation manuals; and
 - 2.21.11 details of the Supplier's project finance management processes, including with respect to grant audit.
- 2.22 During the term of the relevant Call Off Contract the Supplier shall provide assistance to the Local Body which may include:
- 2.22.1 providing test validation reports;
 - 2.22.2 site visits;
 - 2.22.3 systems/records review;
 - 2.22.4 field strength measurements and surveys;
 - 2.22.5 witnessing testing; and
 - 2.22.6 End User visits.

PUBLIC SECTOR AND COMMUNITY NETWORK REQUIREMENTS

- 2.23 The following requirements apply only where a Local Body has included a specific public sector or community network requirement as part of the Service Requirements

for a relevant Call Off Contract. The following establishes the associated minimum requirements to be met by the Supplier.

- 2.23.1 The Supplier shall be capable of maintaining the separation, bandwidth and integrity of wholesale traffic if the Network is used by any RSP to provide a Public Enterprise Network or Enterprise Network, subject to non-duplication and other conditions stated in the Commission Decision;
- 2.23.2 The Supplier shall ensure that for Cabinet Office Public Sector Networks, traffic separation practices and security on individual data streams are implemented.
- 2.24 The Supplier shall provide, subject to the Change Control Procedure set out in the relevant Call Off Contract, a network access and data transport components service, as agreed with the Local Body, to communities requesting to extend Wholesale Access Products and Services connectivity and or to increase access line speeds, beyond the Supplier's originally planned Supplier Solution provided that such change falls within the Commission Decision.
- 2.25 The Supplier shall support extensions to the Supplier Solution by offering and supporting a Community Build and Benefit scheme. Additionally, upon reasonable request, the Supplier may also support extensions to its NGA proposals by offering and supporting a Community Partnership Scheme and/or a Community Concession Scheme.
- 2.26 The Supplier shall identify and provide connectivity to nominated points, where the local community (for example, a local authority, residential groups, local businesses) provides, builds and maintains its own access network. This is described as a community backhaul solution.

Note: Nothing under paragraphs 2.23 to 2.26 shall prevent a local community from sourcing services that are available outside of the relevant Call Off Contract that are capable of achieving similar objectives for the local community.

SUSTAINABILITY

- 2.27 The Supplier shall as a minimum:
 - 2.27.1 roll out Deployed Services which are sustainable and comply with or exceed the UK Government sustainability targets, including SOGE and 'Greening Government ICT';
 - 2.27.2 ensure compliance with relevant environmental legislation; and
 - 2.27.3 in association with the Local Body develop, implement and operate the Supplier's plans to meet the Local Body targets, as agreed with the Supplier, for sustainability in accordance with the Local Body ITT when developing the Supplier Solution.

DELIVERING TAKE-UP

- 2.28 The Supplier shall provide Demand Stimulation in conjunction with its Retail Service Providers to drive Take-up, and as a minimum:
 - 2.28.1 the Supplier shall create and deliver within the timescales specified in the Project Plan a detailed marketing strategy and programme which supports the maximum Take-up during the term of the relevant Call Off Contract. As a minimum the Supplier's marketing sales plan shall provide for:

- (a) white label generic unbranded marketing to encourage maximum business and residential Take-up;
 - (b) the establishment of a marketing and account resource to support Take-up;
 - (c) a range of marketing communications channels (examples: web, newspaper, radio, local community presentations, brochures, etc.) to ensure maximum coverage of information during the broadband implementation;
- 2.28.2 the Supplier shall provide reports on the adoption by RSPs of Wholesale Access Products and Services in accordance with Schedule 6.4 (Reports) of the relevant Call Off Contract in order to enable monitoring of the success of the marketing plan;
- 2.28.3 the Supplier, together with the Local Body, shall engage with local businesses, residents and communities to discuss an engagement and resourcing plan for Demand Stimulation in the identified target areas detailed in the relevant Call Off Contract and shall agree such plan with the Local Body; and
- 2.28.4 the Supplier shall conduct such additional Demand Stimulation activities as may be requested and funded (in whole or in part) by the relevant Local Body.

3. **SOLUTION COMPONENT REQUIREMENTS**

The following requirements relate to the Solution Components as detailed in the Solution Components Template as part of the Reference Supplier Solution.

- 3.1 Not used.
- 3.2 The Compliance Matrix shall set out the Supplier's compliance statement against paragraphs 3.3 to 3.9.
- 3.3 The Solution Components shall have a lifespan and an upgrade path for the term of the relevant Call Off Contract.
- 3.4 The Solution Components, including data transport components, shall be upgradable so as to support increasing access line speeds throughout the term of the relevant Call Off Contract.
- 3.5 The Solution Components when configured together shall be capable of providing Wholesale Access Products and Services that underpin the broadband products and services offered by Retail Service Providers in the marketplace as at the Effective Date of this Framework Agreement.
- 3.6 The Solutions Components shall support the following ALA (as defined in ALA ND 1644) classes of service:
 - 3.6.1 (except satellite based access Solution Components) Class A Real time, delay sensitive, applications (e.g. voice);
 - 3.6.2 (except satellite based access Solution Components) Class B Streaming applications (e.g. video);
 - 3.6.3 Class C Internet Data; and
 - 3.6.4 Class D Guest or 3rd party access,

having taken account of the packet loss, delay, round trip delay, jitter and wander characteristics inherent in the Supplier Solution. For QoE and QoS harmonisation, NICC ND 1030 recommendations will be used as a guideline.

- 3.7 Throughout the term of the relevant Call Off Contract the Supplier shall ensure all Solution Components comply with the applicable Codes and Standards or achieve function/performance levels that are equivalent to or better than those provided for in terms of the purpose of such Codes and Standards including:
- 3.7.1 All Solution Components whether independent or integrated as part of the Supplier Solution shall comply with all relevant ITU, IETF, NICC, Broadband-Forum (BBF), and IEEE standards appropriate to achieving a high quality data transport infrastructure capable of achieving the Minimum Service Requirements;
 - 3.7.2 All non-fixed line Solution Components (including radio, satellite or mobile broadband) shall comply with all relevant IEEE, ITU-T or 3GPP standards for the delivery of the data transport infrastructure. Solution Components using radio spectrum shall have the relevant certificates proving the right to use; and
 - 3.7.3 All Ethernet based Solution Components shall, as part of a Supplier Solution, comply with the relevant NICC - ALA profiles and NICC B2B specifications.
- 3.8 The Solution Components shall independently, and as part of a Supplier Solution, be capable of meeting the requirements of the acceptance criteria detailed in the Test Strategy. These shall include, at a minimum:
- 3.8.1 interoperability tests;
 - 3.8.2 operations tests, including end to end testing of BSS, OSS and Network;
 - 3.8.3 performance tests;
 - 3.8.4 operations readiness tests, including monitoring, failovers; and
 - 3.8.5 other relevant technology-specific tests.
- 3.9 The Supplier shall maintain, and when appropriate publish to Retail Service Providers a technical release schedule for each Solution Component which supports new software and hardware changes to continue service delivery with equal or higher quality and/or performance.

4. WHOLESALE ACCESS PRODUCTS AND SERVICES

- 4.1 The Wholesale Product Template shall set out the Supplier's range of Wholesale Products and Services which will be published and available to the Retail Service Providers, including the access products set out at paragraph 4.4.
- 4.2 Wholesale Access Products and Services shall support Retail Service Providers in gaining Take-up, excluding the impact the Retail Service Provider may have on the retail products and services consumed by the End User.
- 4.3 The Supplier shall develop and configure new or existing Wholesale Access Products and Services on a regular basis throughout the term of the relevant Call Off Contract in line with reasonable Retail Service Provider requirements and the goal of maximising Take-up.

4.4 The Supplier shall meet the following minimum access requirements for the term of the relevant Call Off Contract in order to meet Commission Decision:

4.4.1 Active layer: The Supplier shall offer wholesale products suitable to allow communication providers, including mobile communication providers to obtain effective bit stream access to the Supplier Solution (whether access or backhaul components) on commercially acceptable terms and consistent with the Commission Decision in regard to its commitments to open access. The Supplier shall document how multiple communication providers can use this and how capacity is managed between multiple communications providers.

4.4.2 Physical assets: The Supplier shall offer wholesale products suitable to allow communication providers, including mobile communication providers to obtain effective access to various physical assets on commercially acceptable terms and consistent with the Commission Decision, in regard to its commitments to open access with:

- (a) paragraphs 4.4.3 to 4.4.6 below relating to Duct Space, New Ducts and New Poles;
- (b) paragraph 4.4.7 relating to existing infrastructure; and
- (c) paragraph 4.4.8 relating to additional network access;

specifically covering how such types of access are addressed and consistent with the Commission Decision.

This obligation shall, as a minimum, apply to all infrastructure assets that have been subsidised by State aid. The Supplier shall document how multiple communication providers can use the physical assets and how capacity is managed between multiple communications providers.

4.4.3 Duct space: In the event of State aid funding for Superfast Broadband being used to build new, or augment existing, duct the relevant network operator will consider potential future demand for duct space, by itself and from alternative operators, and will design the size of the duct accordingly in order to minimise the likelihood of further duct enhancements being required.

4.4.4 **"New Duct"** means that subsidised physical infrastructure located underground that is installed as part of the Deployed Services, where no existing duct infrastructure exists and where the duct deployment will have individual length of not less than 1.0km and have deployment costs of £50,000 or greater. New Duct includes that physical infrastructure deployed for the purposes of providing both access (from the local exchange or relevant point of presence to End User premises) and backhaul (from the core network to the relevant point of presence). **"New Poles"** means that subsidised physical infrastructure located above ground that is installed as part of the Deployed Services, where no existing pole infrastructure exists and where the poles will be deployed over a distance of not less than 1.0km and have deployment costs of £50,000 or greater. New Poles includes that physical infrastructure deployed for the purposes of providing both access (from the local exchange or relevant point of presence to End User premises) and backhaul (from the core network to the relevant point of presence). New Duct and New Poles excludes all existing duct and pole infrastructure (including all new sub-duct and new fibre tube deployed in that existing duct infrastructure), new duct and new poles deployed in lengths/values below the thresholds identified above, duct and poles subject to partial repair and ducts subject to clearing

4.4.5 New Ducts and New Poles must be:

- (a) offered on an Open Access and equality of access basis to all communications providers seeking to use that infrastructure;
- (b) dimensioned in such a way as to offer effective shared access to at least three other competing communications providers, unless it is not technically feasible to do so in relation to access to New Poles by any such communications providers; and
- (c) designed and dimensioned in a manner that is capable of accommodating and supporting reasonably foreseeable alternative technologies. For example, allows hosting of both point-to-point (P2P) and point-to-multipoint (P2M) technologies and ensures that the drop segment is designed and dimensioned to support these.

4.4.6 For the avoidance of doubt, requests for access to New Duct and New Pole infrastructure for a communications service include the supply of any type of wholesale local access and backhaul service used to supply residential and business markets (e.g. next generation access (NGA), leased lines, or radio base station backhaul).

4.4.7 Existing infrastructure: Where a communications provider is committed to investing in NGA infrastructure to facilitate the competitive delivery of retail superfast broadband within the part of Coverage Area in which the Supplier is selected to provide the Deployed Services by the Local Body, subject to 4.4.7 (A) up to and including 4.4.7(C) below, the Supplier must not prohibit or otherwise restrict the communications provider from using the Wholesale Access Products and Services that provide access to the Supplier's physical infrastructure within that part of the Coverage Area for the primary purpose of NGA deployment (the "**Primary Purpose**") and for the supplementary purpose of providing business connectivity services within that part of the Coverage Area(the "**Supplementary Purpose**").

- (a) In order to validate that the communications provider is committed to the Primary Purpose and for the Supplier to enable the Supplementary Purpose, the Parties acknowledge that the Supplier shall be entitled to require that the communications provider:
 - (i) submits a credible business plan for NGA investment for a mass market NGA offering to an independent expert (being such chartered accountants as agreed between the Supplier and the communications provider, or in default of agreement, as may be nominated by the President of the Chartered Institute of Chartered Accountants in England and Wales) who shall assess and confirm whether the submitted plan clearly demonstrates a credible return on NGA investment for a mass market NGA provider. The business plan must, amongst other things be:
 - *sustained by a material contribution in terms of NGA take up* - the NGA business model the communications provider implements (covering proposals for products, pricing, marketing and take up) for a mass market NGA offering must be sustained by a material contribution in terms of NGA take up from superfast broadband services supplied to customers within that part of the Coverage Area. An example of such a

material contribution for a mass market NGA offering might be one that is built on the effective targeting of approximately 25% of the customer base within that part of the Coverage Area i.e. having the network build and capacity to serve this extent of customers with NGA services and that this marketing would generate take-up of approximately 5% of such customer base;

- *based on NGA revenues as the prime source* - revenues from other sources to bolster the implementation of such plan can be included by the communications provider but these cannot be the prime revenue source (i.e. revenues from such other sources cannot at any time be greater than the NGA revenues);
- *based on margin positive customer connections* - NGA customer connections would be expected to be margin positive.
- *based on the communications provider being in a position to provide on demand a mass market NGA offering* – the plan must include evidence which clearly demonstrates that the communications provider has an on demand mass market NGA offering, including sufficient:
 - built NGA network deployment;
 - OSS/BSS facilities
 - marketing; and
 - initial End User take up.
- *based on the Primary Purpose deployment being in conjunction with the Supplementary Purpose* – the plan must demonstrate deployment of NGA for the Primary Purpose takes place in conjunction with the Supplementary Purpose.

(ii) obtains confirmation from NCC and Ofcom whether or not the communications provider is required to offer wholesale bitstream access to further downstream competition in order to promote effective competition.

(b) The Supplier shall be entitled to subsequently request (on a regular basis but not more frequently than annually) that the communications provider submits evidence to an independent expert (being such chartered accountants as agreed between the Supplier and the communications provider, or in default of agreement, as may be nominated by the President of the Chartered Institute of Chartered Accountants in England and Wales) for such expert to confirm that the communications provider's revenues are consistent with the principles set out in 4.4.7 (a) (i) above, and that revenue from NGA is at all times in

excess of that from all other sources (“**Revenue Consistency Confirmation**”). If the expert cannot provide Revenue Consistency Confirmation, the Supplier may at its sole discretion, in its agreement with the communications provider for the Supplementary Purpose:

- (i) suspend use for the Supplementary Purpose for new business connectivity services until such time as the communications provider submits evidence to such expert so the expert can provide NGA Revenue Consistency Confirmation for the period since such suspension;
 - (ii) if the communications provider fails to submit evidence to such expert within a reasonable period (specified by the Supplier) following such suspension so the expert can provide NGA Revenue Consistency Confirmation for that subsequent period, suspend use for the Supplementary Purpose for existing business connectivity services, until such time as the communications provider subsequently submits evidence to such expert so the expert can provide NGA Revenue Consistency Confirmation for the period since such suspension; and
 - (iii) if the communications provider is found to be continuing to use such services for the Supplementary Purpose during any suspension period invoked in relation to (i) and/or (ii) above (in respect of new or existing business, as applicable), declare a material breach of its agreement for the Supplementary Purpose and/or terminate the agreement allowing use for the Supplementary Purpose.
- (c) Should the case for a request for legitimate access for the Supplementary Purpose by a communications provider be disputed by the Supplier and not accepted by the communications provider, the Supplier shall grant a right for the communications provider to raise such dispute with the NCC and Ofcom who shall jointly determine, in accordance with the Commission Decision and based on evidence provided by the independent expert appointed by the Supplier and the communications provider, whether the communications provider has provided sufficient evidence required under paragraph 4.4.7 (a) or 4.4.7 (b) as applicable.
- (d) The Supplier shall include in its agreements with communications providers within the scope of this paragraph 4.4.7, requirements that: (i) each communications provider requests, on an annual basis, confirmation from the NCC and Ofcom as to whether or not that communications provider is required to offer wholesale bitstream access to further downstream competition in order to promote effective competition; and (ii) where NCC and Ofcom confirms that such access is required, the communications providers concerned shall make such wholesale bitstream access available.

4.4.8 Additional network access: The Supplier shall also offer other forms of wholesale access if and to the extent Ofcom has mandated it as a regulatory remedy pursuant to a full market review in the product and geographic markets where the subsidised infrastructure is situated. Other forms of access may include (without limitation) dark fibre access or splitter access, if

required. If Ofcom mandates other forms of wholesale access in this way ("additional wholesale access products"), the Supplier shall provide such access on all existing and future infrastructure in receipt of public subsidy under the Commission Decision. At the Effective Date of this Framework Agreement it is anticipated that Ofcom would provide that:

- (a) all reasonable costs of providing the additional wholesale access products would be met by access seekers;
- (b) the products shall be used for the primary purpose of supplying broadband services; and
- (c) the availability of the additional access products in the area covered by the subsidised infrastructure would be required in Ofcom's reasonable opinion to deliver sustainable competition in broadband services.

The additional access product requirements set out in this paragraph 4.4 shall continue for as long as the Ofcom remedy is in place. The Supplier shall document (technically, operationally, and commercially) how different unbundled access products could be provided with its Supplier Solution architecture.

4.4.9 Subject to paragraph 4.4.10, the Supplier shall provide a process for assessing and facilitating requests for additional forms of wholesale access, and the Supplier shall provide appropriate additional forms of wholesale access through this process where there is reasonable demand, in accordance with this paragraph 4.4.9 up to and including paragraph 4.4.18. The Supplier's process should mirror the existing condition relating to new network access under the UK's SMP regulatory framework (i.e. the Statement Of Requirements process) but take into account the following in its assessment of whether requests for additional forms of wholesale access represent a reasonable demand:

- (a) Costs – all reasonable costs of providing the new wholesale access products (including an appropriate contribution to the Supplier's commercial costs (less those costs paid for by public subsidy) in light of its own investment into the superfast broadband infrastructure) should be met by the access seeker(s);
- (b) Competition – the introduction of the new wholesale access products should deliver sustainable and effective competition in the downstream market(s); and
- (c) Purpose – the new wholesale access products should clearly address the broadband market failure (subject to paragraph 4.4.6) that led to the original intervention/obligation.

4.4.10 The provisions of paragraph 4.4.11 up to and including paragraph 4.4.18 shall only apply where the Supplier at the Effective Date does not have an established process in place (i.e. a Statement of Requirements process) to meet the existing condition relating to new network access under the UK's SMP regulatory framework. Where the Supplier does have such an established process in place, requests made pursuant to the mirrored process established pursuant to paragraph 4.4.9, shall not apply to areas outside of the Coverage Area.

Specification of a Statement Of Requirements Process

- 4.4.11 The Supplier shall, for the purposes of transparency, publish and adhere to reasonable guidelines in relation to requests for additional forms of wholesale access made to it in accordance with paragraph 4.4.9. Such guidelines shall detail: (a) the form in which such a request should be made; (b) the information that the Supplier requires in order to consider a request for additional forms of wholesale access; and (c) the time-scales in which such requests will be handled by the Supplier.
- 4.4.12 These guidelines shall meet the following principles: (a) the process should be documented end-to-end; (b) the timescales for each stage of the process shall be reasonable; and (c) the criteria by which requests will be assessed shall be clearly identified.
- 4.4.13 The Supplier shall keep these guidelines under review to ensure that they remain adequate for the purpose of assessing and facilitating requests for additional forms of wholesale access. Any changes to the guidelines must be agreed between the Supplier and the National Competency Centre.

Execution of a Statement Of Requirements Process

- 4.4.14 The Supplier shall, upon a reasonable request from a communications provider considering making a request for additional forms of wholesale access in accordance with paragraph 4.4.9, provide that communications provider with information so as to enable that communications provider to make a request for additional forms of wholesale access. Such information shall be provided within a reasonable period.
- 4.4.15 On receipt of a written request for additional forms of wholesale access, the Supplier shall deal with the request in accordance with the guidelines described at paragraph 4.4.11 above. A modification of a request for additional forms of wholesale access that has previously been submitted to the Supplier, and rejected by the Supplier, shall be considered as a new request.
- 4.4.16 The Supplier shall consider the following in its assessment of whether requests for additional forms of wholesale access represent a reasonable demand:
 - (a) Costs – all reasonable costs of providing the new wholesale access products (including an appropriate contribution to the Supplier's commercial costs (less those costs paid for by public subsidy) in light of its own investment into the superfast broadband infrastructure) should be met by the access seeker(s);
 - (b) Competition – the introduction of the new wholesale access products should deliver sustainable and effective competition in the downstream market(s); and
 - (c) Purpose – the new wholesale access products should clearly address the broadband market failure (subject to paragraph 4.4.6) that led to the original intervention/obligation.
- 4.4.17 If the Supplier judges such requests for additional forms of wholesale access to be reasonable, then it shall provide such new wholesale access products in a reasonable timescale. The additional wholesale access requirements set out in this paragraph 4.4 shall continue in respect of such additional forms of wholesale access for the remainder of the Term.
- 4.4.18 The Supplier shall offer, as part of its process, an escalation route whereby a communications provider may ask Ofcom to review the Supplier's decision

and arbitrate on any disagreement between the Supplier and the communications provider in terms of the outcome of the assessment of the request and its offer (if any) of additional forms of wholesale access. The Supplier shall be bound by Ofcom's decision.

SERVICE LEVEL CATEGORY

- 4.5 The Supplier Solution shall at all times meet or exceed the following Service Levels which together constitute the Minimum Service Requirements:
- 4.5.1 The Supplier shall provide minimum network availability and support for its Retail Service Providers which shall include:
- (a) Network availability of 99.5%, measured on a monthly basis and in accordance with Good Industry Practice;
 - (b) Trouble to Resolve (T2R) (as defined in NICC ND1626) time of a maximum of two (2) Working Days; and
 - (c) technical support and customer care hours – 0800 to 1800 7 days a week.
- 4.5.2 The Supplier Solution shall enable the Retail Service Providers to provide End Users with order, installation and availability service levels, including as a minimum a provisioning order installation timescale of 90% of all orders completed in five (5) Working Days, unless otherwise agreed with the RSP and to be calculated on a monthly basis.
- 4.6 In order to enable the Retail Service Providers to support the End User experience, the Supplier shall back up the achievement of the Service Levels set out in paragraph 4.5 with appropriate service credits or similar mechanisms to compensate the Retail Service Providers in the event that the Supplier fails to achieve any of the Minimum Service Requirements.

SCHEDULE 3
REFERENCE SUPPLIER SOLUTION

VERSION CONTROL

VERSION NUMBER	DATE	COMMENT
1.0	29 June 2012	Executed version
2.0	07 June 2013	Uplifted as part of Framework Agreement re-baseline. Unchanged as against version 1.0

CONTENTS

1	BACKGROUND	1
2	THE REFERENCE SUPPLIER SOLUTION	1
3	THE MASTER REFERENCE SUPPLIER SOLUTION	1
4	UPDATES TO THE MASTER REFERENCE SUPPLIER SOLUTION	1
5	PROPOSING CHANGES TO THE REFERENCE SUPPLIER SOLUTION	1
6	REASONS FOR CHANGE	2
7	DEVELOPMENT OF EACH CALL OFF SUPPLIER SOLUTION	2

SCHEDULE 3 – REFERENCE SUPPLIER SOLUTION

1. BACKGROUND

1.1 This Schedule 3:

- 1.1.1 references, at Appendix 1, the version of the Reference Supplier Solution agreed at the Effective Date; and
- 1.1.2 sets out requirements in respect of the use and ongoing management of changes to the Reference Supplier Solution.

2. THE REFERENCE SUPPLIER SOLUTION

The Reference Supplier Solution shall be used by the Supplier during the operation of the Call Off Procedure to develop a corresponding Call Off Supplier Solution.

3. THE MASTER REFERENCE SUPPLIER SOLUTION

- 3.1 Subject to paragraph 4, the Authority shall hold the Master Reference Supplier Solution.
- 3.2 In the event of any conflict or inconsistency between the Master Reference Supplier Solution and any other copy of the Reference Supplier Solution, the Master Reference Supplier Solution shall take precedence.

4. UPDATES TO THE MASTER REFERENCE SUPPLIER SOLUTION

- 4.1 The Reference Supplier Solution shall be updated as described in this Schedule 3.
 - 4.2 The Supplier shall ensure that any such updates meet and continue to meet the requirements set out in this Framework Agreement, including the Baseline Service Requirements.
 - 4.3 For any changes to the Reference Supplier Solution:
 - 4.3.1 subject to Clause 15.2, the Change Control Procedure shall apply;
 - 4.3.2 the Authority shall, where such actual release is required to effect the change, release a copy of the Reference Supplier Solution to the Supplier to enable agreed changes to be made (only those changes 'approved in principle' in advance by the Parties should be made to that copy); and
 - 4.3.3 once the change to the Reference Supplier Solution has been effected in accordance with paragraph 4.3.1, that revised version shall be the new Master Reference Supplier Solution.
 - 4.4 All updates to the Reference Supplier Solution should be auditable (i.e. any changes can be clearly identified). Each proposed and agreed updated version of the Reference Supplier Solution shall be clearly identified (and distinguishable from earlier versions) by version number and date.
- ### **5. PROPOSING CHANGES TO THE REFERENCE SUPPLIER SOLUTION**
- 5.1 Save to the extent such change falls within Clause 15.2, the Supplier shall carry out the steps below should it require a change to the Reference Supplier Solution:
 - 5.1.1 The Supplier shall complete a Solution Component Template for presentation to the Authority for review, providing full details as to:

- (a) the purpose of the component;
- (b) the benefits that would be achieved by using this component;
- (c) the costs of the component;
- (d) an impact assessment on the implementation of the component either in an existing or planned Call-Off Solution; and
- (e) when the component would be available for implementation.

5.1.2 The Supplier shall provide a written supporting statement to the Authority identifying how the Solution Component meets the Baseline Service Requirements.

5.2 If after reviewing the Supplier's proposal the Authority is in agreement that the component should be included as part of the Reference Supplier Solution, the Change Control Procedure shall apply in accordance with paragraph 4.3.

6. REASONS FOR CHANGE

6.1 Either Party may propose Bespoke Change Requests in respect of the Reference Supplier Solution:

6.1.1 following discussion at an annual Solution Component Refresh meeting as detailed in Appendix 1 of Schedule 5 (Governance);

6.1.2 as an ad hoc Bespoke Change Request, which at the discretion of the Authority may be followed with a Solution Change meeting (as detailed in Appendix 1 of Schedule 5 (Governance)).

6.2 In exceptional circumstances, the Supplier may propose a variant Solution Component as part of the operation of the Call Off Procedure, noting that:

6.2.1 the Local Body may request additional assurance of the proposed variant Solution Component and will not accept any Supplier costs associated with providing such assurance;

6.2.2 this may, subject to the corresponding Call Off Procedure terms applied by the Local Body, affect the Supplier's associated evaluation result; and

6.2.3 the Supplier shall as soon as reasonably practical seek to incorporate the revised Solution Component into the Reference Supplier Solution using the Change Control Procedure.

7. DEVELOPMENT OF EACH CALL OFF SUPPLIER SOLUTION

7.1 Call Off Supplier Solutions shall be developed by the Supplier to meet the Local Body Service Requirements as specified pursuant to the Call Off Procedure.

7.2 Call Off Supplier Solutions shall, subject to paragraph 6.2, be derived from the Reference Supplier Solution.

7.3 Deviations from the Reference Supplier Solution are only justifiable where:

7.3.1 necessary as a result of the relevant Local Body Service Requirements and/or the specific local conditions; and/or

7.3.2 they represent a change which reasonably: (i) would have otherwise been addressed at the next annual Solution Component Refresh meeting

referenced in paragraph 6.1.1; and/or (ii) represents a change within the scope of paragraph 2 of Schedule 6 (Change Control Procedure), provided a Bespoke Change Request is submitted by the Supplier as soon as reasonably practical thereafter to provide for the updating of the Reference Supplier Solution).

- 7.4 Any deviations from the Reference Supplier Solution and their associated justifications must be detailed by the Supplier in the corresponding Call Off Procedure ITT response.

APPENDIX 1 – REFERENCE SUPPLIER SOLUTION

The Reference Supplier Solution at the Effective Date is attached to this Appendix.

SCHEDULE 4
REFERENCE FINANCIAL MODEL

VERSION CONTROL

VERSION NUMBER	DATE	COMMENT
1.0	29 June 2012	Executed version
2.0	07 June 2013	Uplifted as part of Framework Agreement re-baseline. Unchanged as against version 1.0

CONTENTS

1	BACKGROUND	1
2	THE REFERENCE FINANCIAL MODEL	1
3	THE MASTER REFERENCE FINANCIAL MODEL	1
4	MANAGEMENT OF CHANGES TO THE REFERENCE FINANCIAL MODEL	1
5	WHOLESALE ACCESS PRICE BOOK	2
6	REASONS FOR CHANGE	2
7	ANNUAL RFM REVIEW	3
8	DEVELOPMENT OF EACH CALL OFF BID FINANCIAL MODEL	3
9	INDEPENDENT MODEL REVIEW	3
10	INDEPENDENT ASSURANCE REVIEW	3

SCHEDULE 4 – REFERENCE FINANCIAL MODEL

1. BACKGROUND

1.1 This Schedule 4:

- 1.1.1 references, at Appendix 1, the version of the Reference Financial Model agreed at the Effective Date;
- 1.1.2 sets out requirements in respect of the ongoing use and management of changes to the Reference Financial Model.

2. THE REFERENCE FINANCIAL MODEL

- 2.1 The Reference Financial Model shall be used by the Supplier during the operation of the Call Off Procedure to develop a corresponding Call Off Bid Financial Model.
- 2.2 If the Supplier is awarded the relevant Call Off Contract then the Call Off Bid Financial Model shall become the 'Project Model' for the applicable Call Off Contract (upon finalisation and signature of the Call Off Contract).
- 2.3 Appendix 1 references the Reference Financial Model as at the Effective Date, and also contains certain assurances to be made by the Supplier in respect of that Reference Financial Model at the Effective Date.
- 2.4 To the extent data has been included in the Reference Financial Model which relates exclusively to the specific scenario considerations for the 'Notional Call-Off' (being the notional Local Body scenario used by the Authority in the procurement of this Framework Agreement), this data is only for the purpose of illustrating the mechanics of the Reference Financial Model.

3. THE MASTER REFERENCE FINANCIAL MODEL

- 3.1 The Authority shall, subject to paragraph 4, hold the Master Reference Financial Model.
- 3.2 In the event of any conflict or inconsistency between the Master Reference Financial and any other copy of the Reference Financial Model, the Master Reference Financial Model shall take precedence.

4. MANAGEMENT OF CHANGES TO THE REFERENCE FINANCIAL MODEL

- 4.1 The Reference Financial Model shall be updated as described in this Schedule 4.
- 4.2 For any changes to the Reference Financial Model:
 - 4.2.1 subject to Clause 15.2, the Change Control Procedure shall apply;
 - 4.2.2 the Authority shall, where such actual release is required to effect the change, release a copy of the Reference Financial Model to the Supplier to enable agreed changes to be made (only those changes 'approved in principle' in advance by the Parties should be made to that copy); and
 - 4.2.3 once the change to the Reference Financial Model has been effected in accordance with paragraph 4.2.1, that revised version shall be the new Master Reference Financial Model.
- 4.3 All updates to the Reference Financial Model should be auditable (i.e. any changes can be clearly identified). Each proposed and agreed updated version of the

Reference Financial Model shall be clearly identified (and distinguishable from earlier versions) by version number and date.

- 4.4 The Supplier shall ensure that each updated version of the Reference Financial Model delivered to the Authority for agreement under the Change Control Procedure is certified by the Chief Finance Officer or a director of the Supplier as:

4.4.1 being accurate and not misleading;

4.4.2 being in conformity with the terms of this Framework Agreement; and

4.4.3 reflecting only the change(s) as previously 'approved in principle' by the Parties.

5. **WHOLESALE ACCESS PRICE BOOK**

- 5.1 The Wholesale Access Prices are contained in the Reference Wholesale Access Price Book, which is to be updated periodically in accordance with this Framework Agreement.

- 5.2 The Reference Wholesale Access Price Book shall include:

5.2.1 Wholesale Access Products and Services, where such products are to be supplied over the Network; and

5.2.2 current Wholesale Access Prices for those Wholesale Access Products and Services, to be used by the Supplier in deriving its Project Wholesale Access Prices.

- 5.3 The Wholesale Access Prices shall be expressed in £ sterling exclusive of VAT.

- 5.4 The Supplier shall ensure that the Reference Financial Model contains the Wholesale Access Prices, with the corresponding Benchmark Data to be set out in the Wholesale Product Template within the Reference Supplier Solution (this will form the basis for Wholesale Access Price benchmarking under Call Off Contracts, subject to the relevant terms of those contracts).

6. **REASONS FOR CHANGE**

- 6.1 It is intended that the following shall result in a change to the Reference Financial Model:

6.1.1 a material change (upwards or downwards) in the Supplier's costs and/or wholesale prices, whether identified at an Annual RFM Review or on an ad hoc basis;

6.1.2 correction of a variance from the then current Benchmark Data, which is identified by any benchmarking undertaken pursuant to Schedule 5.2 (Wholesale Access Pricing) of a Call Off Contract; and/or

6.1.3 a change to the Reference Supplier Solution.

- 6.2 The Supplier must provide reasonable documentary evidence to substantiate and support any proposed change to the Reference Financial Model.

7. ANNUAL RFM REVIEW

- 7.1 An Annual RFM Review is required on each anniversary of the Effective Date during the Term.
- 7.2 This Annual RFM Review is undertaken to ensure that the Reference Financial Model remains up to date (including reflecting the Supplier's actual cost base and wholesale pricing at the time of the review).

8. DEVELOPMENT OF EACH CALL OFF BID FINANCIAL MODEL

- 8.1 Each Call Off Bid Financial Model shall, subject to paragraph 8.2, be derived by the Supplier from the Reference Financial Model.
- 8.2 Deviations from the Reference Financial Model are only justifiable where:
- 8.2.1 necessary as a result of the relevant Local Body Service Requirements and/or the specific local conditions; and/or
 - 8.2.2 they represent a change which reasonably: (i) would have otherwise been addressed at the next Annual RFM Review as falling within the scope of paragraph 7; and/or (ii) represents a change within the scope of paragraph 6, provided a Bespoke Change Request is submitted by the Supplier as soon as reasonably practical thereafter to provide for the updating of the Reference Financial Model.
- 8.3 Any deviations from the Reference Financial Model and their associated justifications shall be detailed by the Supplier in the corresponding ITT response submitted during the relevant Call Off Procedure.

9. INDEPENDENT MODEL REVIEW

An Independent Model Review shall be conducted in accordance with Appendix 3 to this Schedule.

10. INDEPENDENT ASSURANCE REVIEW

An IAR process shall be conducted in respect of the Reference Financial Model, as described in Appendix 4 to this Schedule.

APPENDIX 1 – REFERENCE FINANCIAL MODEL

Reference Financial Model

The Reference Financial Model at the Effective Date is contained in the attached CD-ROM titled "*Schedule 4 Reference Financial Model*".

Commentary on certain ongoing content requirements for the Reference Financial Model is contained in Appendix 2 to this Schedule 4.

Supplier's Statement of Assurance on the Reference Financial Model

The Supplier shall provide, within ten (10) Working Days of the Effective Date, a copy of the following statement signed by suitably qualified finance representative of the Supplier or its external auditor in respect of this Framework Agreement (failure to do so shall represent a material Default of this Framework Agreement):

It is hereby confirmed that:

- *The processes and core data used to assemble the costs shown in the Reference Cost Book for the Reference Financial Model are consistent with the solution costs offered by the Supplier in similar local authority contracts (e.g. ERDF, Local Authority and/or DCMS funded); and*
- *The costs shown in the Reference Cost Book for the Reference Financial Model are calculated on a consistent basis to those costs offered by the Supplier when investing in non-"white" areas (as defined under State aid regulations).*

APPENDIX 2 – RFM REQUIREMENTS

This Appendix 2 sets out content requirements which must be maintained when making changes to the Reference Financial Model (RFM):

1.1 General Requirements:

The RFM must:

- show calculations and outputs on either a monthly or quarterly basis;
- use Microsoft Excel 2007 or fully compatible versions.

The RFM must not include any protected or hidden areas.

1.2 Reference Cost Book:

The Reference Cost Book, within the RFM, must show the Solution Components. For each Solution Component the Reference Cost Book shall contain:

- Sub-Solution Component descriptions;
- Sub-Solution Component measurement (per meter, per cabinet etc);
- Sub-Solution Component capital costs;
- Sub-Solution Component operating cost;
- Name of supplier in Supplier's supply chain providing the Sub-Solution Component (or if not identified at the time of submission, labelled as such);
- Description of circumstances where cost would be unchanged from values presented;
- Description of circumstances where cost would be expected to vary from values presented;
- Capital cost inflation assumption;
- Operating cost inflation assumption; and
- Sub-Solution Component's eligibility for public sector subsidy.

1.3 Reference Wholesale Access Price Book:

The Reference Wholesale Access Price Book, within the RFM, must show:

- Wholesale access product prices and their associated charges to Retail Service Providers (e.g. installation and decommissioning) broken down by different Solution Components or product types (e.g. for business customers, residential customers, etc);
- A description of each wholesale product; and
- The inflation type for each wholesale product.

1.4 Other sections on the Reference Financial Model

In addition to the Reference Cost Book and Reference Wholesale Access Price Book, the structure of the RFM must allow for information in the following areas to be presented for each Call Off Contract:

1.4.1 Take-up:

- Churn rate (the rate at which the existing End User base reduces but new End Users are added);

- Profile of additional premises passed (i.e. those premises that can be easily connected to the Supplier's network); and
- Profile of net additional Take-up (new connections in addition to new connections replacing lost customers), as a function of premises passed.

1.4.2 Funding:

The Supplier's calculation of its own funding requirements for the relevant Supplier Solution, in terms of:

- Public subsidy (from any of the available sources, and which meets the eligibility criteria);
- Supplier's own funding; and
- Milestone payments.

1.4.3 Capex:

- Details of the expected capital expenditure ("Capex") per Project Period and including a summary on the eligibility of Capex.
- A comparison of the cumulative Capex against the cumulative public subsidy paid against Milestones.

1.4.4 Cash flow:

- A schedule of expected cash flows.

1.4.5 Profit & Loss:

- A summary profit and loss schedule (to a minimum of EBITDA level);
- The Project Unit Margin.

1.4.6 Calculations that generate the following outputs:

- The Supplier's internal rate of return (IRR) calculated for the Term of the relevant Call Off Contract (i.e. to cover the project until at least 7 years post implementation, in order to align with the open access requirement);
- The IRR of the relevant Call Off Contract calculated over the number of years the Supplier has assumed in its own investment appraisal (reflecting the Supplier's target rate of return);
- The payback period;
- Qualifying Capital Expenditure (as defined in the relevant Call Off Contract) – i.e. that which meets the criteria for public subsidy (from any of the subsidy streams);
- Leverage;
- A summary and breakdown of the capital invested in each cost book component;
- A summary of the capital investment split over the access solution types;
- A cost per premises connected / total capital input.

APPENDIX 3 – INDEPENDENT MODEL REVIEW

1) Terms of Reference

The Supplier shall commission an independent review of the Reference Financial Model (an "IMR"). The IMR must result in the issue, by the IM Reviewer (described below), of a report (the "IMR Report") to the Authority (who shall treat that IMR Report and the other deliverables noted in section 3 below as Supplier Confidential Information in accordance with Clause 27 subject to the terms of this Appendix) confirming that the:

- Reference Financial Model (or an updated draft version as referred to in section 3 below) has been constructed appropriately so as to materially achieve the objective that it was designed to meet, insofar as its logical integrity under the base case input data is concerned. For the avoidance of doubt, the scope of work should include a cell-by-cell check of the arithmetic accuracy of the formulae in the model. Further, the scope of work should be designed to detect not only actual errors that impact the model outputs but also errors that do not currently affect the model outputs but could have an impact if the inputs were to change;
- Reference Financial Model (or an updated draft version as referred to in section 3 below) has been developed in a well structured manner to reasonable professional standards such that its logical integrity will be maintained with amended input data;
- Investment Ratio and Project Unit Margin (in, as applicable, the then contracted Reference Financial Model or the updated draft noted in section 3 below) have been calculated in accordance with the terms of Schedule 5.1 of the Template Call Off Contract.

The operation of this Appendix is without prejudice to the Supplier's responsibility for the integrity and arithmetical accuracy of the Reference Financial Model and any project models it submits and the accuracy of inputs, calculations, assumptions and results/outputs from those models.

2) Reviewing Body

The Supplier shall as soon as reasonably practical after the Effective Date:

- appoint an independent company or firm recognised within the UK market as competent to review financial models (the "IM Reviewer") to conduct the IMR and prepare the corresponding IMR Report;
- obtain the Authority's agreement (not to be reasonably withheld or delayed) to: (i) the Supplier's choice of IM Reviewer; and (ii) the detailed scope of the IMR (which must be consistent with this Appendix).

3) Timeline and Frequency

Prior to: (i) the Supplier submitting its first bid project model under the Call Off Procedure; or (ii) two calendar months from the Effective Date, whichever is the earlier (subject to such time frame being extended so that in any event the timing of the Authority's agreement to the IM Reviewer and detailed scope of the IMR gives the Supplier at least 20 Working Days for the production of the IMR Report and the other deliverables noted below), the Supplier shall provide to the Authority:

- the IMR Report;
- where applicable, an updated draft Reference Financial Model, for agreement by the Parties in accordance with the Change Control Procedure, reflecting any changes to the then contracted Reference Financial Model to rectify any matters (identified by the IMR Reviewer in conducting the IMR review) inconsistent with the factors noted in section 1 of this Appendix; and

- where applicable, a memorandum identifying: (a) the proposed changes from the then contracted Reference Financial Model, applied to produce the draft Reference Financial Model noted above; and (b) the reason for such changes (by reference to the factors noted in section 1).

This IMR process set out in this Appendix shall be conducted once only throughout the Term, save where the Authority by notice to the Supplier requires the process to be repeated in circumstances of a material change to the structure of the Reference Financial Model which would reasonably justify the re-application of this IMR process. In such circumstances the provisions of this Appendix 3 shall re-apply, save that the timeline for provision of the IMR Report (and, where applicable, an updated draft Reference Financial Model and corresponding memorandum) shall be no later than 20 Working Days from Authority agreement to both the IMR Reviewer and the detailed scope of the IMR.

4) Changes to Reference Financial Model

The operation of the IMR shall not permit any changes to the Reference Financial Model other than to address matters within the terms of reference set out in section 1 of this Appendix with any changes to the Reference Financial Model being dealt with in accordance with paragraph 4 of Schedule 4 (Reference Financial Model). Accordingly, the operation of this Appendix must not serve to:

- change any input data, save where such data had been incorrectly inputted; or
- reduce the transparency, traceability and accuracy of the Reference Financial Model.

5) Cost of the Model Review Process

The Supplier shall be responsible for its own costs and expenses incurred in the operation of this IMR process, including the IM Reviewer's charges.

APPENDIX 4 – INDEPENDENT ASSURANCE REVIEW

1) IAR Objectives

The objective of the IAR process, described in this Appendix 4, is to provide insight and assurance to: (i) the Authority; and (ii) Local Bodies procuring under the Call Off Procedure, that the solution costs provided by a Supplier for the scope of an applicable Call Off Contract are consistent with:

- the Supplier's Reference Financial Model;
- the solution costs offered by the Supplier in local authority contracts for similar network deployment and provision of wholesale access services both inside and outside of the Broadband Delivery Framework (provided any such contracts outside of the Broadband Delivery Framework were signed no earlier than 18th May 2010);
- international benchmarks for superfast broadband network deployment (covering privately as well as, in whole or part, publically funded projects); and
- helping support Authority and Local Body assessments of cost effectiveness.

2) Methodology/Approach

Each IAR shall be undertaken by a third party, appointed by the Authority, with appropriate information, skills and expertise to carry out the exercise (an **"IA Reviewer"**). An IA Reviewer must: (i) have an appropriate level of understanding of cost accounting and pricing in the telecommunications market; and (ii) be subject to appropriate terms of reference (covering key matters including appropriate confidentiality obligations consistent with the requirements of this Framework Agreement).

IARs shall be based on the following data, with the specific data sets being agreed by the Parties at the time the review is undertaken (such agreement not to be unreasonably withheld):

- existing cost data used within project models (at the corresponding contract effective dates) of Call Off Contracts or in the case of contracts outside of the Broadband Delivery Framework such cost data as would provide an equivalent representative set of cost data to such Call Off Contract cost data, as is reasonably practicable from local authority contracts for network deployment and provision of similar wholesale access services (e.g. Authority, Local Body and/or ERDF funded) including both those inside and outside of the Broadband Delivery Framework. The Supplier agrees to use reasonable endeavours to support the Authority in obtaining such data from the local authorities concerned, provided the Authority treats such data as Supplier Confidential Information in accordance with Clause 27 subject to the terms of this Appendix;
- international benchmarks of cost for superfast broadband network deployment (covering privately as well as, in whole or part, publically funded projects); and
- applicable OFCOM cost data.

This cost data noted above should be at a sufficient level of detail to allow meaningful comparisons and conclusions to be drawn. The Supplier shall be given reasonable opportunity, but shall be under no obligation, to identify and provide: (i) supporting context; and (ii) relevant considerations, for the data to be used within the IAR. The IA Reviewer's terms of reference must provide for that party to give reasonable consideration to any such information provided by the Supplier when conducting the IAR.

3) IAR Report

The IA Reviewer shall provide an output IAR report to the Authority and the Supplier. The IAR report shall comprise a format and level of detail which can:

- inform the Authority and Local Bodies (to the extent permitted below) of the extent to which the Reference Financial Model reflects those comparators noted in section 1 above;
- meaningfully inform the Authority in assessing the cost effectiveness of the Reference Financial Model and its application under the Call Off Procedure; and
- help Local Bodies to make an informed assessment of the cost effectiveness of solutions offered by Suppliers for their individual coverage areas,

taking into account the IAR objectives noted in section 1 above.

The IAR Report should contain:

(i) detailed analysis and conclusions; and

(ii) a summary view of its conclusions (such summary view must have no specific identifying reference to the local authorities from whom or the contracts from which the data used for the IAR Report has been sourced),

which may be shared with other recipients in a manner consistent with Clause 27 of the Framework Agreement subject to the terms of this Appendix. Only item (ii) may be shared with Local Bodies and then only those Local Bodies that have commenced the Call-Off Procedure.

Prior to finalisation of the IAR report, the IA Reviewer shall:

(a) make a draft version of the IAR Report available to the Parties and invite comments from both Parties; and

(b) meet with both Parties to discuss the draft report and comments provided,

and the IA Reviewer's terms of reference must provide for it to give reasonable consideration to any such comments and discussion content prior to finalising the IAR Report.

4) Timing

A separate IAR shall be undertaken at two points. The specific timing of each IAR shall be determined by the Authority (acting reasonably) but shall be consistent with the following:

- The first IAR at an early stage in the Term at a point when sufficient Call Off Contract costing information and/or estimates are available such that meaningful comparisons can be made;
- The second IAR at a later stage in the Term at a point when a representative overall view of the Supplier's costing approach can be determined.

More detailed timings for the individual IAR process steps described in this Appendix will be confirmed by the Authority (acting reasonably and having consulted with the Supplier and the IA Reviewer, as appropriate) at the time of the IAR process concerned.

5) Use of IAR Reports

The outputs comprising or derived from the IAR, as identified above, shall be used respectively:

- by Local Bodies to make an informed assessment of the apparent cost effectiveness of solution costs for their individual coverage areas during the Call Off Procedure, with the Authority using reasonable endeavours to support the intention that any queries from such Local Bodies relating to the summary view of the IAR conclusions should at first instance be handled by the Authority; and
- by the Authority (at its discretion) to make an informed assessment of the apparent cost effectiveness of the Reference Financial Model and, if appropriate, initiate proposed change requests to the Supplier's Reference Financial Model in accordance with paragraph 4 of Schedule 4 (Reference Financial Model).

Without limiting the IAR requirements above, the Parties shall use reasonable endeavours to agree a suitable additional output to those described above derived from the IAR Report which may be shared with Local Bodies that have not, at the time concerned, commenced the Call Off Procedure.

6) Cost of the IAR Process

Each Party shall be responsible for its own costs and expenses incurred in the operation of this IAR process, save that the IAR Reviewer's charges shall be paid by the Authority.

SCHEDULE 5
GOVERNANCE

VERSION CONTROL

VERSION NUMBER	DATE	COMMENT
1.0	29 June 2012	Executed version
2.0	07 June 2013	Uplifted as part of Framework Agreement re-baseline. Unchanged as against version 1.0

CONTENTS

1	BACKGROUND	1
2	GENERAL	1
3	MEETINGS	1

SCHEDULE 5 – GOVERNANCE

1. BACKGROUND

This Schedule 5 sets out the governance arrangements for the purpose of this Framework Agreement.

2. GENERAL

2.1 Nothing in the governance arrangements provided in this Schedule 5 or their operation shall be construed as prejudicing or varying either Party's obligations and/or rights under this Framework Agreement (unless agreed by the Parties in accordance with the Change Control Procedure).

2.2 There shall be no charge levied by the Supplier (including its Subcontractors) for attendance and/or participation in the governance arrangements described in this Schedule 5.

3. MEETINGS

3.1 The Parties shall hold the meetings specified in Appendix 1 and in respect of those meetings:

3.1.1 either Party may, on giving reasonable prior notice to the other Party and in addition to the attendees specified in Appendix 1, reasonably request the attendance of a particular individual from the other Party or an associated party at the meeting. The other Party shall use reasonable efforts to procure that such individual is available to attend in person;

3.1.2 the Authority may, on reasonable notice, opt to bring other third parties (including subject matter experts and interested civil service colleagues) to the meetings (for the avoidance of doubt, this attendance is subject to Clause 27);

3.1.3 the Authority (or the Supplier, if the Authority so directs a reasonable period in advance) will prepare and circulate in advance a proposed agenda for the meeting and the other Party may add additional items; and

3.1.4 subject to Clause 13.1, the Supplier shall circulate in advance any related reports or documents required or reasonably requested by the Authority for consideration at or subsequent to any meeting (including any reports/submissions specified in Appendix 1).

APPENDIX 1 - MEETINGS

Meeting	Purpose	Frequency	Reports / submissions	Membership
Framework Management	<p>Review and management of framework-level changes and framework-level issues (i.e. changes, risks and/or issues affecting all Framework Suppliers and/or projects)</p> <p>To obtain Framework Suppliers' and Local Bodies' experiences and feedback from mini-competitions for Call Off Contracts</p>	Quarterly	N/A	<p>Supplier: Supplier Representative</p> <p>Authority: Authority Representative Head of Procurement Technical Manager (optional) Legal (optional)</p> <p>Framework Suppliers: Framework Supplier representatives</p> <p>Local Bodies: Local Body representatives</p>
Supplier Performance	<p>Individual meeting with the Supplier to review Supplier performance (in aggregate across all Call Off Contracts plus framework-level account management issues such as best in Europe reporting, funding and progress on removing barriers to SMEs in the supply chain). These meetings will also cover:</p> <ul style="list-style-type: none"> • Network build and commission (in particular, progress of Network Deployment) (as defined in the relevant Call Off Contracts) • Milestone Payments (as defined in the relevant Call Off Contracts) • Operational performance (customer provisioning, technical performance and support) • RSP and end-customer take-up 	Quarterly	As per Schedule 8 (Reports)	<p>Supplier: Supplier Representative Project Delivery Manager (Network Build) Service Manager (BAU Operations)</p> <p>Authority: Authority Representative Technical Manager (optional) Procurement Manager (optional)</p>

Meeting	Purpose	Frequency	Reports / submissions	Membership
	<ul style="list-style-type: none"> use of SMEs on projects and approach to enabling opportunities for SMEs in the supply chain 			
Solution Component Refresh	Review of proposed solution evolution, product/solution roadmaps and evolution	Annual	Supplier product briefings	<p>Supplier: Supplier Representative Supplier Technical/Solution Design Manager</p> <p>Authority: Technical Manager (chair) Authority Representative (optional) Head of Procurement (optional) Finance Manager (optional)</p> <p>Local Bodies: Local Body representatives</p>
Solution Change	To review any Bespoke Change Requests or Common Change Forms issued by the Authority or the Supplier. The meeting may be ex-com or an actual in-person meeting, depending on the complexity of the change that is being proposed.	Ad hoc following the issue of a Bespoke Change Request or Common Change Form	Supplier product briefings, test and trial evidence	<p>Supplier: Supplier Representative Technical/Solution Design Manager Service Manager (BAU Operations) Legal (optional)</p> <p>Authority: Authority Representative Technical Manager Head of Procurement (optional) Legal (optional)</p>

SCHEDULE 6
CHANGE CONTROL PROCEDURE

VERSION CONTROL

VERSION NUMBER	DATE	COMMENT
1.0	29 June 2012	Executed version
2.0	07 June 2013	Uplifted as part of Framework Agreement re-baseline. Version includes agreed changes to date

CONTENTS

PART A: GENERAL	1
1 BACKGROUND	1
2 CONTINUOUS IMPROVEMENT	1
3 FAST-TRACK CHANGES	1
4 COSTS	1
PART B: BESPOKE CHANGES	2
5 BESPOKE CHANGE REQUESTS	2
6 CHANGE IMPACT ASSESSMENT	2
7 AUTHORITY'S RIGHT OF APPROVAL	3
8 SUPPLIER'S RIGHT OF REJECTION	3
PART C: COMMON CHANGES	4
9 COMMON CHANGES - AUTHORITY	4
10 COMMON CHANGES - SUPPLIER	5
11 EXECUTION OF CHANGE AUTHORISATIONS AND COMMON CHANGE FORMS	5

SCHEDULE 6 – CHANGE CONTROL PROCEDURE

PART A: GENERAL

1. BACKGROUND

- 1.1 Subject to Clause 15.2, this Schedule 6 sets out the procedure for dealing with Bespoke Changes (in Part B) and Common Changes (in Part C).
- 1.2 Save where such a requirement would reasonably involve undue delay in progressing the change concerned, proposed changes should be subject to reasonable consideration through the governance arrangements provided under Schedule 5 (Governance) prior to issue of a Bespoke Change Request or a Common Change Request in accordance with this Schedule 6.

2. CONTINUOUS IMPROVEMENT

- 2.1 During the Term and within the scope of the update and review processes provided under Schedule 3 (Reference Supplier Solution) and Schedule 4 (Reference Financial Model), the Supplier shall review the Reference Supplier Solution and the Reference Financial Model and propose Bespoke Changes for consideration by the Authority which:
- 2.1.1 in respect of the Reference Supplier Solution, improve the quality, efficiency and/or capability of the Reference Supplier Solution (which shall, where applicable, take into account technological advances); and/or
- 2.1.2 in respect of the Reference Financial Model, improve the value for money provided by the Reference Financial Model.

3. FAST-TRACK CHANGES

The Parties acknowledge that in order to ensure operational efficiency there may be circumstances where it is desirable to expedite the processes set out in this Schedule 6. If the Parties agree in writing that such circumstances apply in relation to a Bespoke Change, or if the Parties and the other Framework Suppliers agree in writing that such circumstances apply in relation to a Common Change, then the Parties in respect of a Bespoke Change and the Parties and the other Framework Suppliers in respect of a Common Change, shall agree an accelerated timetable for the steps described in this Schedule 6 in order to effect the Bespoke Change or Common Change.

4. COSTS

- 4.1 Save as expressly provided in this paragraph 4, each Party shall be responsible for its own costs and expenses incurred in compliance with this Schedule 6 including the preparation and assessment of all Bespoke Change Forms and Common Change Forms.
- 4.2 Subject to paragraph 4.3, if the Supplier considers (acting reasonably) that the proper review of a Common Change or the Change Impact Assessment for a Bespoke Change (in each case in respect of an Authority issued Change Request) would require more than three (3) FTE Working Days of Supplier Personnel time to complete, the Supplier shall (within five (5) Working Days of receipt of the relevant Common Change Request or the Bespoke Change Request) identify to the Authority in writing the cost and timescale for preparing and providing the corresponding Common Change review comments or Change Impact Assessment for a Bespoke Change. If the Authority wishes to proceed with the relevant change:
- 4.2.1 it shall inform the Supplier in writing of this; and

- 4.2.2 the Supplier shall provide the review comments for the Common Change or the Change Impact Assessment for the Bespoke Change (as applicable) in the timescale and at the cost of the Authority as identified above by the Supplier.
- 4.3 Paragraph 4.2 shall not require the Authority to pay costs for any Common Change review or Change Impact Assessment for a Bespoke Change where the corresponding Change Request concerns a change to align the content of the Framework Agreement with any variation agreed under a Call Off Contract.

PART B: BESPOKE CHANGES

5. BESPOKE CHANGE REQUESTS

- 5.1 Either Party may issue a Bespoke Change Request to the other Party at any time during the Term by completing Part 1 of the Bespoke Change Form set out in Appendix 1.
- 5.2 If the Supplier issues a Bespoke Change Request, it shall also provide a Change Impact Assessment (by completing Part 2 of the Bespoke Change Form) to the Authority as soon as reasonably practicable but in any event within five (5) Working Days of the date of issue of the Bespoke Change Request. The Supplier shall provide such further information and revised versions of each Bespoke Change Request and/or Change Impact Assessment and within such timescales as the Authority may reasonably require.
- 5.3 Subject to paragraph 4, if the Authority issues a Bespoke Change Request, the Supplier shall provide a Change Impact Assessment to the Authority as soon as reasonably practicable but in any event by the date specified by the Authority in the Bespoke Change Request (or if no date is specified within ten (10) Working Days of receipt of the Bespoke Change Request).
- 5.4 If the Supplier requires any reasonable clarification in relation to a Bespoke Change Request before it can deliver a Change Impact Assessment, it shall promptly notify the Authority and the Authority shall respond to the request for clarification as soon as is reasonably practicable (and the response date specified in or pursuant to paragraph 5.3 shall be extended by the time it takes the Authority to respond to such clarification).

6. CHANGE IMPACT ASSESSMENT

- 6.1 Each Change Impact Assessment shall include (to the extent applicable):
- 6.1.1 proposed drafting changes to this Framework Agreement, provided that any proposed change shall, where applicable, take into account any drafting changes proposed by the Authority in the Bespoke Change Request;
- 6.1.2 an assessment of the impact of the proposed Bespoke Change on:
- (a) the Baseline Service Requirements;
 - (b) the Reference Supplier Solution;
 - (c) the Reference Financial Model;
 - (d) the provisions of the Template Call Off Contract;
 - (e) the Supplier's ability to meet its other obligations under this Framework Agreement;

- (f) any other matter requested by the Authority at the time of the assessment, or considered by the Supplier to be relevant;
- 6.1.3 details of how the proposed Bespoke Change will ensure compliance with any applicable change in Law.
- 6.2 If the proposed Bespoke Change has no impact of the kind described in paragraph 6.1.2, the Supplier shall provide a statement of this fact in the Change Impact Assessment.
- 6.3 The Authority shall review each Change Impact Assessment and as soon as reasonably practicable shall respond to the Supplier in accordance with paragraph 7.
- 7. AUTHORITY'S RIGHT OF APPROVAL**
- 7.1 The Authority shall review each Bespoke Change Request and/or Change Impact Assessment and as soon as reasonably practicable shall do one of the following:
 - 7.1.1 approve the proposed Bespoke Change, in which case the Parties shall follow the procedure set out in paragraph 7.2;
 - 7.1.2 reject the Bespoke Change, in which case it shall notify the Supplier of the rejection along with its reasons. The Authority shall not reject any proposed Bespoke Change to the extent the Bespoke Change is necessary for the Supplier or this Framework Agreement to comply with any change in Law;
 - 7.1.3 require the Supplier to modify the Bespoke Change Request and/or Change Impact Assessment in which case the Supplier shall as soon as practicable submit a modified proposal for consideration by the Authority which takes the Authority's comments into account. The Authority shall have the approval rights set out in this paragraph 7.1 in respect of each modified Bespoke Change Request and Change Impact Assessment and any subsequent version required by the Authority.
- 7.2 If the Authority approves a Bespoke Change pursuant to paragraph 7.1.1 and it has not been rejected by the Supplier in accordance with paragraph 8, it shall notify the Supplier and the Parties shall sign a Change Authorisation (by completing Part 3 of the Bespoke Change Form) within three (3) Working Days. Upon the signature by both Parties, a Change Authorisation shall constitute a binding variation to this Framework Agreement.
- 7.3 Until such time as a Change Authorisation has been signed by both Parties in accordance with paragraph 7.2, unless the Parties (acting reasonably having regard to the nature of the proposed Bespoke Change) agree otherwise in writing the Supplier shall continue to perform its obligations in accordance with the existing terms of this Framework Agreement as if the proposed Bespoke Change did not apply.
- 8. SUPPLIER'S RIGHT OF REJECTION**
- Any proposed Bespoke Change shall be subject to agreement by the Supplier (such agreement not to be unreasonably withheld or delayed) provided that the Supplier shall not reject any proposed Bespoke Change to the extent the Bespoke Change is necessary for the Authority or this Framework Agreement to comply with any change in Law. If the Supplier does not agree to any proposed Bespoke Change it shall promptly notify the Authority of this fact and its reasons.

PART C: COMMON CHANGES

9. COMMON CHANGES – AUTHORITY

- 9.1 The Authority may issue a Common Change Request at any time during the Term by completing Part 1 of the Common Change Form and providing the completed form to each Framework Supplier.
- 9.2 Subject to paragraph 4, if the Supplier wishes to provide any reasonable comments on the proposed Common Change, it shall, as soon as reasonably practicable and in any event within ten (10) Working Days, complete Part 2 of the Common Change Form and provide the completed form to the Authority.
- 9.3 The Authority shall take into consideration any reasonable comments on the proposed Common Change provided by any Framework Supplier and shall be entitled to modify or withdraw the Common Change by amending Part 1 of the Common Change Form and providing the amended form to each Framework Supplier. Paragraph 9.2 and this paragraph shall apply in relation to any modified Common Change Form issued by the Authority.
- 9.4 The Supplier shall be entitled to reject any Common Change proposed by the Authority only if the Supplier reasonably believes that the proposed Common Change would:
- 9.4.1 require the Supplier to perform its obligations under this Framework Agreement in a way that infringes any Law; and/or
 - 9.4.2 materially and adversely impacts the commercial risk profile underpinning the Supplier's obligations under this Framework Agreement, provided the Supplier can demonstrate to the reasonable satisfaction of the Authority that such impact cannot be addressed by the Parties as part of the relevant Common Change. This paragraph 9.4.2 shall not permit the Supplier to reject any proposed Common Change to the extent the Common Change is necessary for the Authority to comply with any change in Law ,
- in which case the Supplier shall provide written notice to the Authority which sets out the Supplier's rationale and supporting information for its proposed rejection.
- 9.5 If the Authority receives no reasonable comments on the proposed Common Change from the Framework Suppliers pursuant to paragraphs 9.2 within the timeframe provided by that provision, the Authority shall sign the Common Change Form in Part 3 and provide the signed form to the Supplier (and each other Framework Supplier) who shall sign the Common Change Form and provide the signed form to the Authority within three (3) Working Days.
- 9.6 Until such time as a Common Change Form has been signed by the Authority and each Framework Supplier in accordance with paragraph 9.5, unless the Parties (and the other Framework Suppliers) agree otherwise in writing (acting reasonably having regard to the nature of the proposed Common Change) the Parties shall comply with their respective obligations in accordance with the existing terms of this Framework Agreement as if the proposed Common Change did not apply.

10. COMMON CHANGES – SUPPLIER

- 10.1 The Supplier may issue a Common Change Request at any time during the Term by completing Part 1 of the Common Change Form and providing the completed form to the Authority.
- 10.2 The Authority shall review each Common Change proposed by the Supplier and as soon as reasonably practicable shall do one of the following:
- 10.2.1 if the proposed Common Change is acceptable to the Authority, the Authority shall issue the Common Change Form to each Framework Supplier who shall be entitled to provide, as soon as reasonably practicable and in any event within ten (10) Working Days, any reasonable comments by the date specified by the Authority in the Common Change Form;
 - 10.2.2 reject the proposed Common Change (providing reasons for the rejection), in which case it shall notify the Supplier of the rejection. The Authority shall not reject any proposed Common Change to the extent the Common Change is necessary for the Supplier or the Authority to comply with any change in Law;
 - 10.2.3 require the Supplier to modify the proposed Common Change in which case the Supplier shall make such modifications, as soon as reasonably practicable. The Authority shall have the approval rights set out in this paragraph 10.2 in respect of each modified proposed Common Change and any subsequent version required by the Authority.
- 10.3 If the Authority has provided the proposed Common Change to the Framework Suppliers pursuant to paragraph 10.2.1, it shall (in consultation with the Supplier) take into account any reasonable comments provided by the Framework Suppliers within the timeframe provided in paragraph 10.2.1 and shall be entitled to modify or withdraw the proposed Common Change by providing an amended Common Change Form to the Framework Suppliers. The Authority shall have the approval rights set out in paragraph 10.2 and this paragraph in respect of each amended Common Change Form issued by the Authority.
- 10.4 If the Authority receives no reasonable comments on the proposed Common Change from the Framework Suppliers pursuant to paragraphs 10.2.1 or 10.3 within the timeframe provided by those provisions, the Authority shall sign the Common Change Form in Part 3 and provide the signed form to the Supplier (and each other Framework Supplier) who shall sign the Common Change Form and provide the signed form to the Authority within three (3) Working Days.
- 10.5 Until such time as a Common Change Form has been signed by the Authority and each Framework Supplier in accordance with paragraph 10.4, unless the Parties and the other Framework Suppliers agree otherwise in writing (acting reasonably having regard to the nature of the proposed Common Change) the Parties shall comply with their respective obligations in accordance with the existing terms of this Framework Agreement as if the proposed Common Change did not apply.

11. EXECUTION OF CHANGE AUTHORISATIONS AND COMMON CHANGE FORMS

The Parties acknowledge that Change Authorisations or Common Change Forms may be signed in any number of counterparts. Such signature shall be effective when the signing Party delivers its signed Change Authorisation or Common Change Form to the other Party by email in scanned PDF format or by hand, post or fax.

APPENDIX 1 – BESPOKE CHANGE FORM

PART 1: BESPOKE CHANGE REQUEST

BESPOKE CHANGE REQUEST	
CONTRACT NO:	<i>[Please state]</i>
CHANGE NO:	<i>[Please state]</i>
DESCRIPTION OF THE PROPOSED CHANGE: <i>[Please state]</i>	
FAST-TRACK PROPOSED IN RELATION TO CHANGE?	<i>[Yes/No]</i>
PROPOSED DATE FOR CHANGE:	<i>[Please state]</i>
SUBMITTED TO:	<i>[Please state]</i>
REQUESTING PARTY:	<i>[Please state]</i>
SIGNED:	
NAME:	<i>[Please state]</i>
DATE:	<i>[Please state]</i>

PART 2: CHANGE IMPACT ASSESSMENT

BESPOKE CHANGE – CHANGE IMPACT ASSESSMENT	
CONTRACT NO:	<i>[Please state]</i>
CHANGE NO:	<i>[Please state]</i>
SUPPLIER'S CHANGE IMPACT ASSESSMENT: <i>[Please state – refer to paragraph 6 of Schedule 6 (Change Control Procedure)]</i>	
SUBMITTED TO:	<i>[Please state]</i>
SUPPLIER:	<i>[Please state]</i>
SIGNED:	
NAME:	<i>[Please state]</i>
DATE:	<i>[Please state]</i>

PART 3: CHANGE AUTHORISATION

BESPOKE CHANGE – CHANGE AUTHORISATION	
CONTRACT NO:	<i>[Please state]</i>
CHANGE NO:	<i>[Please state]</i>
ON BEHALF OF THE SUPPLIER	
SIGNED:	
NAME:	<i>[Please state]</i>
DATE:	<i>[Please state]</i>
ON BEHALF OF THE AUTHORITY	
SIGNED:	
NAME:	<i>[Please state]</i>
DATE:	<i>[Please state]</i>

APPENDIX 2 – COMMON CHANGE FORM

PART 1: COMMON CHANGE REQUEST

COMMON CHANGE – COMMON CHANGE REQUEST	
CONTRACT NO:	<i>[Please state]</i>
CHANGE NO:	<i>[Please state]</i>
DESCRIPTION OF THE PROPOSED CHANGE: <i>[Please state]</i>	
FAST-TRACK PROPOSED IN RELATION TO CHANGE?	<i>[Yes/No]</i>
PROPOSED DATE FOR CHANGE:	<i>[Please state]</i>
SUBMITTED TO:	<i>[Please state – unless provided pursuant to paragraph 10 this will be submitted to each Framework Supplier pursuant to paragraph 9.1]</i>
REQUESTING PARTY:	<i>[Please state]</i>
SIGNED:	
NAME:	<i>[Please state]</i>
DATE:	<i>[Please state]</i>

PART 2: FRAMEWORK SUPPLIER COMMENTS (OPTIONAL)

COMMON CHANGE – FRAMEWORK SUPPLIER COMMENTS	
CONTRACT NO:	<i>[Please state]</i>
CHANGE NO:	<i>[Please state]</i>
SUPPLIER'S COMMENTS: <i>[Please state]</i>	
SUBMITTED TO:	<i>[Please state]</i>
SUPPLIER:	<i>[Please state]</i>
SIGNED:	
NAME:	<i>[Please state]</i>
DATE:	<i>[Please state]</i>

PART 3: EXECUTION

By each Framework Supplier:

COMMON CHANGE – EXECUTION	
CONTRACT NO:	<i>[Please state]</i>
CHANGE NO:	<i>[Please state]</i>
ON BEHALF OF THE SUPPLIER SIGNED:	
NAME:	<i>[Please state]</i>
DATE:	<i>[Please state]</i>

By the Authority:

COMMON CHANGE – EXECUTION	
CONTRACT NO:	<i>[Please state]</i>
CHANGE NO:	<i>[Please state]</i>
ON BEHALF OF THE AUTHORITY SIGNED:	
NAME:	<i>[Please state]</i>
DATE:	<i>[Please state]</i>

SCHEDULE 7
DISPUTE RESOLUTION PROCEDURE

VERSION CONTROL

VERSION NUMBER	DATE	COMMENT
1.0	29 June 2012	Executed version
2.0	07 June 2013	Uplifted as part of Framework Agreement re-baseline. Unchanged as against version 1.0

CONTENTS

1	BACKGROUND	1
2	NOTICE OF DISPUTE	1
3	COMMERCIAL NEGOTIATIONS	1
4	MEDIATION	2
5	URGENT RELIEF	5

SCHEDULE 7 – DISPUTE RESOLUTION PROCEDURE

1. BACKGROUND

This Schedule 7 sets out the Dispute Resolution Procedure for the purpose of this Framework Agreement.

2. NOTICE OF DISPUTE

2.1 The Dispute Resolution Procedure shall commence with the service of a Notice of Dispute by either Party on the other Party.

2.2 The Notice of Dispute shall:

2.2.1 set out the material particulars of the Dispute;

2.2.2 set out the reasons why the Party serving the Notice of Dispute believes that the Dispute has arisen;

2.2.3 subject to paragraph 2.6 of this Schedule 7, elect whether the Dispute should be dealt with under the Standard Dispute Resolution Timetable or the Expedited Dispute Resolution Timetable; and

2.2.4 if the Party serving the Notice of Dispute believes that the Dispute should be dealt with under the Expedited Dispute Resolution Timetable, explain the reason why.

2.3 Unless agreed otherwise in writing, the Parties shall continue to comply with their respective obligations under this Framework Agreement regardless of the nature of the Dispute and notwithstanding the referral of the Dispute to the Dispute Resolution Procedure.

2.4 Subject to paragraph 3.5 of this Schedule 7, the Parties shall seek to resolve Disputes firstly by commercial negotiation (in accordance with paragraph 3 of this Schedule 7), then by mediation (in accordance with paragraph 4 of this Schedule 7) and lastly, subject to paragraph 4.11, by recourse to litigation.

2.5 The time periods set out in the Dispute Resolution Timetable shall apply to all Disputes unless the Parties agree that an alternative timetable should apply in respect of a specific Dispute.

2.6 The Parties may only agree to use the Expedited Dispute Resolution Timetable in exceptional circumstances where the use of the Standard Dispute Resolution Timetable would be unreasonable, including (by way of example) where one Party would be materially disadvantaged by a delay in resolving the Dispute. If the Parties are unable to reach agreement on the use of the Expedited Dispute Resolution Timetable within five (5) Working Days of the issue of the Notice of Dispute then the use of this timetable shall be at the sole discretion of the Authority.

2.7 If at any point it becomes clear that an applicable deadline set out in the Dispute Resolution Timetable cannot be met or has passed, the Parties may agree in writing to extend the deadline. Any agreed extension shall have the effect of delaying the start of the subsequent stages set out in the Dispute Resolution Timetable by the period agreed in the extension.

3. COMMERCIAL NEGOTIATIONS

3.1 Subject to paragraph 3.5 of this Schedule 7, the Parties shall use all reasonable endeavours to settle any Dispute between them as soon as possible through

commercial negotiation conducted in good faith and in accordance with the procedure set out in this paragraph 3.

3.2 The Parties shall refer the Dispute to the Level 1 representatives set out in the table below, who shall meet as soon as practicable after the service of the Notice of Dispute but in any event within ten (10) Working Days.

3.3 If the Dispute cannot be resolved by the Level 1 representatives within the relevant time period specified in the Dispute Resolution Timetable, or within any other period agreed by the Parties, the Dispute shall be referred to the Level 2 representatives set out in the table below for resolution, who shall meet within five (5) Working Days after such referral, or such other period as the Parties may agree, in order to attempt to resolve the Dispute.

Level	For the Authority	For the Supplier
Level 1		
Level 2		

3.4 Any resolution reached during commercial negotiations shall not be legally binding until it has been documented in writing and signed by, or on behalf of, the Parties and in accordance with the Change Control Procedure where changes to this Framework Agreement are required.

3.5 If either Party is of the reasonable opinion that the resolution of a Dispute by commercial negotiation, or the continuance of commercial negotiations, shall not result in an appropriate solution or that the Parties have already held discussions of a nature and intent (or otherwise were conducted in the spirit) that would equate to the conduct of commercial negotiations in accordance with this paragraph 3 and which have not resulted in an appropriate solution, that Party shall serve a written notice to that effect and the Parties shall proceed to mediation in accordance with paragraph 4 of this Schedule 7.

4. **MEDIATION**

4.1 In the event that a Dispute between the Parties cannot be resolved by commercial negotiation in accordance with paragraph 3 of this Schedule 7 the Parties shall attempt to resolve it in accordance with CEDR's model mediation procedure.

4.2 If the Parties are unable to agree on the joint appointment of a Mediator within the timescale specified in the applicable section of the Dispute Resolution Timetable, they shall make a joint application to CEDR to nominate the Mediator.

4.3 The Mediator, after consultation with the Parties where appropriate, shall:

4.3.1 attend any meetings with either or both of the Parties preceding the mediation, if requested or if the Mediator decides this is appropriate and the Parties agree;

4.3.2 read before the mediation each Case Summary and all the documents sent to him;

4.3.3 chair, and determine the procedure for the mediation;

4.3.4 assist the Parties in drawing up any written settlement agreement; and

4.3.5 abide by the terms of CEDR's model mediation procedure and CEDR's code of conduct for mediators.

4.4 The Mediator (and any member of the Mediator's firm or company) shall not act for either of the Parties individually in connection with the Dispute in any capacity during the Term. The Parties accept that in relation to the Dispute neither the Mediator nor CEDR is an agent of, or acting in any capacity for, any of the Parties. Furthermore, the Parties and the Mediator accept that the Mediator (unless an employee of CEDR) is acting as an independent contractor and not as an agent or employee of CEDR.

4.5 **CEDR**

4.5.1 CEDR, in conjunction with the Mediator, shall make the necessary arrangements for the mediation including, as necessary:

- (a) nominating, and obtaining the agreement of the Parties to, the Mediator;
- (b) organising a suitable venue and dates;
- (c) organising exchange of the Case Summaries and documents;
- (d) meeting with either or both of the Parties (and the Mediator if appointed), either together or separately, to discuss any matters or concerns relating to the mediation; and
- (e) general administration in relation to the mediation.

4.5.2 If there is any issue about the conduct of the mediation upon which the Parties cannot agree within a reasonable time, CEDR shall, at the request of either Party, decide the issue for the Parties, having consulted with them.

4.5.3 The Parties agree to notify the Mediator that they wish to observe the relevant timescales agreed in the Dispute Resolution Timetable.

4.6 **Participants**

4.6.1 Each Party shall state the names of:

- (a) the person(s) who shall be the lead negotiator(s) for that Party, who must have full authority to settle the Dispute for the purpose of the Mediation; and
- (b) any other person(s) (such as professional advisers, colleagues or subcontractors) who shall also be present at, and/or participating in, the mediation on that Party's behalf.

4.7 **Exchange of Information**

4.7.1 Each Party shall send to CEDR at least two (2) weeks before the mediation, or such other date as may be agreed between the Parties and CEDR, sufficient copies of:

- (a) its Case Summary; and
- (b) all the documents to which the Case Summary refers and any others to which it may want to refer in the mediation.

4.7.2 In addition, each Party may send to the Mediator (through CEDR) and/or bring to the mediation further documentation which it wishes to disclose in confidence to the Mediator but not to any other Party, clearly stating in writing that such documentation is confidential to the Mediator and CEDR.

4.7.3 The Mediator shall be responsible for sending a copy of each Party's Case Summary and supporting documents (pursuant to paragraph 4.7.1 of this Schedule 7) to the other simultaneously.

4.7.4 The Parties shall endeavour to agree:

- (a) the maximum number of pages of each Case Summary; and
- (b) a joint set of supporting documents or the maximum length of each set of supporting documents.

4.8 The Mediation

4.8.1 The mediation shall take place at the time and place arranged by CEDR. The Parties agree to request that CEDR arrange the time and place for the mediation within the timescale specified in the applicable section of the Dispute Resolution Timetable. If the mediation cannot be arranged within the relevant timescale the Parties shall treat the delay as though they had agreed an extension to the Dispute Resolution Timetable in accordance with paragraph 2.7 of this Schedule 7.

4.8.2 The Mediator shall chair, and determine the procedure at, the mediation.

4.8.3 No recording or transcript of the mediation shall be made.

4.8.4 The Parties agree to notify CEDR that the maximum duration for the mediation meeting shall be as set out in the applicable section of the Dispute Resolution Timetable.

4.9 Settlement Agreement

Any settlement reached in the mediation shall not be legally binding until it has been reduced to writing and signed by, or on behalf of, the Parties and in accordance with the Change Control Procedure where changes are required to this Framework Agreement. In any event any settlement agreement must be finalised within the timescales specified in the Dispute Resolution Timetable unless the Parties agree an extension to the Dispute Resolution Timetable in accordance with paragraph 2.7 of this Schedule 7. The Mediator shall assist the Parties in recording the outcome of the mediation.

4.10 Termination

4.10.1 The mediation shall terminate when:

- (a) a Party withdraws from the mediation;
- (b) a written settlement agreement is concluded;
- (c) the Mediator decides that continuing the mediation is unlikely to result in a settlement; or
- (d) the Mediator decides he should retire for any of the reasons in CEDR's code of conduct.

4.11 No Stay of Proceedings

Any litigation in relation to the Dispute may be commenced or continued notwithstanding the mediation unless the Parties agree otherwise or a court so orders.

4.12 Confidentiality

4.12.1 Every person involved in the mediation shall keep confidential and not use for any collateral or ulterior purpose:

- (a) information that the mediation is to take place or has taken place, other than to inform a court dealing with any litigation relating to the Dispute of that information; and
- (b) all information (whether given orally, in writing or otherwise) arising out of, or in connection with, the mediation including the fact of any settlement and its terms.

4.12.2 All information (whether oral or documentary and on any media) arising out of, or in connection with, the mediation shall be without prejudice, privileged and not admissible as evidence or disclosable in any current or subsequent litigation or other proceedings whatsoever. This does not apply to any information, which would in any event have been admissible or disclosable in any such proceedings.

4.12.3 Paragraphs 4.12.1 and 4.12.2 of this Schedule 7 shall not apply insofar as any such information is necessary to implement and enforce any settlement agreement arising out of the mediation.

4.12.4 None of the Parties to the mediation shall call the Mediator or CEDR (or any employee, consultant, officer or representative of CEDR) as a witness, consultant, arbitrator or expert in any litigation or other proceedings whatsoever. The Mediator and CEDR shall not voluntarily act in any such capacity without the written agreement of all the Parties.

4.13 **Mediator's fees and expenses**

4.13.1 CEDR's fees (which include the Mediator's fees) and the other expenses of the mediation shall be borne equally by the Parties. Payment of these fees and expenses shall be made to CEDR in accordance with its fee schedule and terms and conditions of business.

4.13.2 Each Party shall bear its own costs and expenses of its participation in the mediation.

4.14 **Exclusion of Liability**

Neither the Mediator nor CEDR shall be liable to the Parties for any act or omission in connection with the services provided by them in, or in relation to, the mediation, unless the act or omission is shown to have been in bad faith.

5. **URGENT RELIEF**

Nothing in this Schedule 7 shall prevent either Party from seeking injunctive relief at any time.

APPENDIX – DISPUTE RESOLUTION TIMETABLE

Disputes shall be escalated in accordance with the following timetable:

Stage	Standard Dispute Resolution Timetable	Expedited Dispute Resolution Timetable
Time permitted for resolution of the Dispute by the Level 1 representatives pursuant to paragraph 3.2 of this Schedule 7 from the date of reference to them	Ten (10) Working Days	Three (3) Working Days
Time permitted for resolution of the Dispute by the Level 2 representatives pursuant to paragraph 3.3 of this Schedule 7 from the date of reference to them	15 Working Days	Five (5) Working Days
Period of time in which Dispute is to be referred to mediation in accordance with paragraph 4.1 from the date of the expiry of the period set out immediately above	Ten (10) Working Days	Five (5) Working Days
Period of time permitted in paragraph 4.2 of this Schedule 7 to agree the appointment of the Mediator	ten (10) Working Days	five (5) Working Days
Period of time in which Mediator may convene the mediation meeting from the date of appointment in accordance with paragraph 4.8.1 of this Schedule 7	30 Working Days	20 Working Days
Maximum duration of mediation meeting in accordance with paragraph 4.8.4 of this Schedule 7	Three (3) Working Days	One (1) Working Day
Period of time in which the mediation settlement is to be recorded in writing and signed by the Parties in accordance with paragraph 4.9 of this Schedule 7	Ten (10) Working Days	Five (5) Working Days

SCHEDULE 8
REPORTS

VERSION CONTROL

VERSION NUMBER	DATE	COMMENT
1.0	29 June 2012	Executed version
2.0	07 June 2013	Uplifted as part of Framework Agreement re-baseline. Unchanged as against version 1.0

CONTENTS

1	BACKGROUND	1
2	REPORTS	2

SCHEDULE 8 – REPORTS

1. BACKGROUND

This Schedule 8 contains details of the reports that shall be provided by the Supplier in accordance with Clause 13.1 of this Framework Agreement.

2. REPORTS

ID	Report Name	Description	Frequency and Coverage Period	Start Date (provision of first report)	Primary Recipients
F1	Bidding activity	Report summarising: <ul style="list-style-type: none"> - Number of Call Off Contracts bid for, number won - Delivery capacity report <ul style="list-style-type: none"> • Number of Call Off Contracts in pre-sales • Number of tendered Call Off Contracts in procurement process • Number of Call Off Contracts won and in delivery 	Quarterly	First quarter end (i.e. three (3) months) after Effective Date	Authority
F2	Build & Roll-Out Report	Report, providing summary detail for all Call Off Contracts entered into by the Supplier, on: <ul style="list-style-type: none"> - Coverage achieved against plan - Implementation progress report (including details of superfast and standard broadband geographic coverage achieved against plan) - Milestones achieved / missed / delayed - Network coverage - Average customer speed 	Quarterly	First quarter end after Effective Date	Authority
F3	Build Forecast report (three (3) month build plan)	Report identifying the forecasted key network survey, build, commission, test, launch and operate activities that are planned in the then forthcoming three (3) months. This is an overarching report identifying key matters across the Call Off Contracts entered into by the Supplier.	Quarterly	First quarter end after Effective Date	Authority
F4	Customer report	Aggregated report that identifies: <ul style="list-style-type: none"> - “Retail-Ready” Wholesale Access Products and Services availability (by county/unitary authority, town/village, post code) - Names of RSPs offering retail services - Wholesale Access Products and Services - Total new active wholesale connections - Total cancelling wholesale connections 	Quarterly	First quarter end after Effective Date	Authority

		<ul style="list-style-type: none"> - Total numbers of active wholesale connections <ul style="list-style-type: none"> • Split into business/residential (or appropriate proxy) • Split by geographic take-up • Split by wholesale product type • Split by RSP (subject to any applicable regulatory constraints) - Average End User product pricing (this data provided only once per annum in this F4 report covering previous 12 months) 			
F5	Financial Report	<p>Summary report to demonstrate across all Call Off Contracts entered into by the Supplier:</p> <ul style="list-style-type: none"> - Supplier expenditure, broken down by main types of Solution Component in the period (with a cumulative summary) - Subsidy Payments(as defined in the relevant Call Off Contract) claimed in the period (with a cumulative summary) - A summary of any commercial revenue, falling within the scope of the Call Off Contract project model(s), earned in the period (with a cumulative summary) - Additional Supplier Expenditure (as defined in the relevant Call Off Contract) across all Call Off Contracts for the purpose of the Authority estimation and reporting on Supplier investment 	Six monthly	Six (6) months after Effective Date	Authority

SCHEDULE 9
CALL OFF PROCEDURE

VERSION CONTROL

VERSION NUMBER	DATE	COMMENT
1.0	29 June 2012	Executed version
2.0	07 June 2013	Uplifted as part of Framework Agreement re-baseline. Version includes agreed changes to date

CONTENTS

1	BACKGROUND	1
2	USE OF THE CALL OFF PROCEDURE	1
3	PRIOR TO THE CALL OFF PROCEDURE	1
4	CALL OFF PROCEDURE	1

SCHEDULE 9 – CALL OFF PROCEDURE

1. BACKGROUND

This Schedule 9 sets out the Call Off Procedure for the purpose of this Framework Agreement.

2. USE OF THE CALL OFF PROCEDURE

2.1 Subject to approval by the Authority in writing, at any time during the Term any Local Body may initiate a mini-competition for broadband and related services in accordance with the Call Off Procedure and the Procurement Legislation. If there is any conflict between the Call Off Procedure and the Procurement Legislation, the Procurement Legislation shall apply.

2.2 The Supplier acknowledges that notwithstanding the fact that a Local Body has followed the Call Off Procedure, the Local Body shall at all times prior to the execution of a Call Off Contract be entitled to decline to make an award for that Call Off Contract and, where applicable, bring the Call Off Procedure to an end.

2.3 The Local Body shall keep each proposal submitted by the Supplier pursuant to the Call Off Procedure confidential, in accordance with the terms set out in the ITT developed by the Local Body pursuant to paragraph 4.1.1(a).

3. PRIOR TO THE CALL OFF PROCEDURE

3.1 The Call Off Procedure is set out in paragraph 4. Prior to the commencement of the Call Off Procedure a Local Body may carry out market warming and other pre-Call Off Procedure activity. Such activity shall be at the discretion of the Local Body and examples of such activity include:

3.1.1 conducting a Framework Suppliers' day;

3.1.2 establishing a data room and providing access to the data room to the Framework Suppliers;

3.1.3 advance preparation of draft tender documentation and making the documentation available to the Framework Suppliers; and/or

3.1.4 requesting informal expressions of interest from the Framework Suppliers, which shall be non-binding and a Framework Supplier shall be entitled to participate in the Call Off Procedure even if it did not submit an informal expression of interest.

3.2 Any market warming or other pre-Call Off Procedure activity carried out by the Supplier prior to the Call Off Procedure shall not be evaluated for the purpose of the Call Off Procedure and/or award of the relevant Call Off Contract.

4. CALL OFF PROCEDURE

4.1 Stage 1: Commence Mini-Competition

4.1.1 The Local Body shall develop the following documentation:

- (a) the ITT, which shall include a timetable for the Call Off Procedure including a time limit or time limits for receipt of proposals from the Framework Suppliers. Any time limits set shall take into account factors such as the complexity of the Local Body Service Requirements and the draft Call Off Contract and the time needed by the Framework Suppliers to develop their proposals;

- (b) the Local Body Call Off Award Criteria, which shall be based on the Call Off Award Criteria set out in Schedule 10 (Call Off Award Criteria);
- (c) the Local Body Service Requirements, which shall be based on the Baseline Service Requirements set out in Schedule 2 (Baseline Service Requirements); and
- (d) a draft Call Off Contract, which shall be based on the Template Call Off Contract set out in Schedule 11 (Template Call Off Contract).

4.1.2 In developing the documentation referred to in paragraph 4.1.1, the Local Body shall amend the relevant baseline/template documentation set out in this Framework Agreement to reflect the particular circumstances and requirements of the Local Body to the extent permitted by and in accordance with the relevant baseline/template documentation and the Procurement Legislation.

4.1.3 The Local Body shall issue the documentation developed pursuant to paragraph 4.1.1 to all Framework Suppliers.

4.2 **Stage 1: Optional Initial Down-Selection**

The Local Body shall be entitled to perform an initial down-selection of the Framework Suppliers as part of Stage 1 and prior to Stage 2 below, in which case the following provisions shall apply:

- 4.2.1 The Local Body shall provide full details of the down-selection terms and process (including instructions to Framework Suppliers) in the ITT.
- 4.2.2 The Local Body shall evaluate compliant proposals submitted by the Framework Suppliers by applying the Local Body Call Off Award Criteria developed pursuant to paragraph 4.1.1(b).
- 4.2.3 The Local Body shall notify the Framework Suppliers of its down-selection decision.

4.3 **Stage 2: Optional Engagement and Formal or Informal Evaluation**

4.3.1 The Local Body may:

- (a) invite each Framework Supplier to a clarification meeting to discuss aspects of the Framework Supplier's proposal; and/or
- (b) perform formal or informal evaluation of proposals provided by the Framework Suppliers, in which case the provisions set out in paragraph 4.3.2 shall apply.

4.3.2 If the Local Body elects to perform formal or informal evaluation pursuant to paragraph 4.3.1(b) the following provisions shall apply:

- (a) The Local Body shall provide full details of the formal or informal evaluation terms and process (including instructions to Framework Suppliers) in the ITT (which may include presentations by Framework Suppliers).
- (b) The Local Body shall evaluate compliant proposals submitted by the Framework Suppliers by applying the Local Body Call Off

Award Criteria developed pursuant to paragraph 4.1.1(b) and otherwise in accordance with the approach specified in the ITT.

- (c) The Local Body shall notify the Framework Suppliers of the outcome of any formal or informal evaluation (including, as applicable, the results of any down-selection and/or feedback on Framework Suppliers' proposals).

4.4 **Stage 3: Receipt of Tenders and Contract Award**

4.4.1 The Local Body shall:

- (a) evaluate compliant tenders submitted by the Framework Suppliers in accordance with the ITT by applying the Local Body Call Off Award Criteria developed pursuant to paragraph 4.1.1(b); and
- (b) seek to appoint a Preferred Supplier and, if appointed, endeavour to finalise the Call Off Contract with the Preferred Supplier. The Local Body shall have the right to re-open the mini competition during the Preferred Supplier stage if permitted to do so under the terms of the ITT.

4.4.2 Once the Call Off Contract has been finalised in accordance with paragraph 4.4.1(b) the Local Body may (subject to any necessary approvals being in place) announce its decision to award the Call Off Contract to the Preferred Supplier and:

- (a) where both Framework Suppliers submitted tenders in response to the ITT, enter into the Call Off Contract with the Preferred Supplier following a ten (10) day standstill period;
- (b) where the other Framework Supplier withdrew from (or elected not to participate in) the Call Off Procedure by providing the Local Body with written notice or otherwise has not submitted a tender in response to the ITT, enter into the Call Off Contract with the Preferred Supplier without following a ten (10) day standstill period.

SCHEDULE 10
CALL OFF AWARD CRITERIA

VERSION CONTROL

VERSION NUMBER	DATE	COMMENT
1.0	29 June 2012	Executed version
2.0	07 June 2013	Uplifted as part of Framework Agreement re-baseline. Unchanged as against version 1.0

CONTENTS

1	BACKGROUND	1
2	CALL OFF AWARD CRITERIA	1

SCHEDULE 10 – CALL OFF AWARD CRITERIA

1. BACKGROUND

This Schedule 10 sets out the Call Off Award Criteria that Local Bodies shall use to develop the Local Body Call Off Award Criteria for the award of Call Off Contracts in accordance with Schedule 9 (Call Off Procedure).

2. CALL OFF AWARD CRITERIA

2.1 The Call Off Award Criteria are set out in the Appendix to this Schedule 10.

2.2 The following is a supplementary explanation of the Call Off Award Criteria and a statement of their use in bid evaluation as part of the application of the Call Off Procedure:

2.2.1 Level 1 award criteria identify (i) the value and pricing award criteria; and (ii) the quality award criteria. The weighting applied to Level 1 award criteria is the summation of the corresponding Level 2 award criteria.

2.2.2 Level 2 award criteria develop Level 1 award criteria to provide greater clarity on the five areas of importance to the Call Off Procedure evaluation concerned. A weighting is defined for Level 2 award criteria which allows a total of 100% to be allocated across all five (5) Level 2 award criteria.

2.2.3 Level 3 award criteria will be used to evaluate and score by a Local Body pursuant to the Call Off Procedure. Under each Level 2 award criteria a total sum of 100% will be allocated across all corresponding Level 3 award criteria.

2.2.4 Weighting ranges apply for each Level 2 and 3 award criterion, allowing a Local Body flexibility to adjust weightings to meet their local priorities and needs.

2.2.5 A specific weighting percentage is chosen by a Local Body within the identified range. The sum of the weightings must total no more or less than the total sums identified above for both Level 2 award criteria (100% allocated across all Level 2 award criteria) and Level 3 award criteria (100% allocated across each subset of Level 2 award criteria).

2.2.6 Each of the Level 3 award criteria will be allocated a maximum and minimum number of marks. These criteria will then be scored.

2.2.7 A threshold score may be applied to Level 3 criteria – if applied this will be defined by the Local Body as part of the corresponding application of the Call Off Procedure and will be identified in the applicable ITT documentation. The threshold score would provide a minimum hurdle under which a bidder may be excluded from participation in further stages of the corresponding Call Off Procedure (including exclusion from any associated award of a Call Off Contract pursuant to that procedure).

2.2.8 The weightings will be applied to the scores to provide a final weighted score by bidder response.

APPENDIX – CALL OFF AWARD CRITERIA

Call-off Award & Evaluation Criteria											
Level 1		Level 2	Weighting Range			Draft Level 3	Weighting Range		Call Off (local Determination)	Threshold Score (Illustrative Only - local determination)	Contribution of Criteria (Illustrative Only - Local Determination)
		Award Criteria	Low	High		Evaluation Criteria	Low	High			
Award Criteria	Call-off (summation of Level 2 criteria)	Award Criteria	Low	High	Call Off (local Determination)	Evaluation Criteria	Low	High			
1. Value and Pricing	30%-72%	3.1 Affordability and leverage	30%	60%		3.1.1 Financial model and wholesale / user pricing	20%	35%		-	0.00%
						3.1.2 Commercial sustainability	20%	35%		-	0.00%
						3.1.3 Affordability	20%	35%		-	0.00%
			3.1.4 Leverage	20%	35%		-	0.00%			
		3.2 Contract and commercial fit	0%	12%		3.2.1 Transfer of risk in Call Off Contract	100%	100%		-	0.00%
2. Quality	28%-70%	4.1 Local solution design	12%	30%		4.1.1 Solution design	30%	40%		-	0.00%
						4.1.2 Retail proposition and delivery	10%	15%		-	0.00%
						4.1.3 Community proposition	0%	30%		-	0.00%
						4.1.4 Environment (and social) sustainability	0%	15%		-	0.00%
						4.1.5 Risk from non- framework Solution Components	30%	40%		-	0.00%
		4.2 Solution outcomes	12%	50%		4.2.1 Extent of coverage	30%	70%		-	0.00%
						4.2.2 Superfast roll-out	30%	70%		-	0.00%
		4.3 Delivery	3%	10%		4.3.1 Implementation plan	100%	100%		-	0.00%

SCHEDULE 11
TEMPLATE CALL OFF CONTRACT

VERSION CONTROL

VERSION NUMBER	DATE	COMMENT
1.0	29 June 2012	Executed version
2.0	07 June 2013	Uplifted as part of Framework Agreement re-baseline. Version includes changes to the Template Call Off Contract agreed to date

CONTENTS

1	BACKGROUND	1
2	TEMPLATE CALL OFF CONTRACT	1

SCHEDULE 11 – TEMPLATE CALL OFF CONTRACT

1. BACKGROUND

This Schedule 11 sets out the Template Call Off Contract that shall be used by Local Bodies to develop draft Call Off Contracts in accordance with Schedule 9 (Call Off Procedure).

2. TEMPLATE CALL OFF CONTRACT

The Template Call Off Contract at the Effective Date is attached to this Schedule.

SCHEDULE 12

COMMERCIALLY SENSITIVE INFORMATION

VERSION CONTROL

VERSION NUMBER	DATE	COMMENT
1.0	29 June 2012	Executed version
2.0	07 June 2013	Uplifted as part of Framework Agreement re-baseline. Unchanged as against version 1.0

CONTENTS

1	BACKGROUND	1
2	COMMERCIALLY SENSITIVE INFORMATION	1

SCHEDULE 12 – COMMERCIALLY SENSITIVE INFORMATION

1. BACKGROUND

- 1.1 This Schedule 12 sets out the information that the Parties agree be treated as Commercially Sensitive Information for the purpose of Clause 26.
- 1.2 For the avoidance of doubt, without prejudicing each Party's obligations under Clause 26, the content of the table below should not be construed so as to purportedly indicate any extension of the scope of the Authority's statutory obligations under FOIA to disclose Information pursuant to FOIA.

2. COMMERCIALLY SENSITIVE INFORMATION

INFORMATION	BASIS OF COMMERCIAL SENSITIVITY	PERIOD OF COMMERCIAL SENSITIVITY