

[AUTHORITY LOGO]

DATED [•]

(1) [NAME OF AUTHORITY]

AND

(2) [NAME OF SUPPLIER]

CONTRACT NO. [•]

CONTRACT FOR THE PROVISION OF DEPLOYED
SERVICES

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. Version includes agreed changes to date

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THIS CONTRACT is made on [•]

BETWEEN:

- (1) **[FULL NAME OF AUTHORITY]** ("**Authority**"); and
- (2) **[FULL NAME OF SUPPLIER]** a company registered in [•] with number [•] whose registered office is at [•] ("**Supplier**").

WHEREAS:

- (A) On [•] the Supplier was appointed to the Broadband Delivery Framework.
- (B) On [•] the Authority issued to all Framework Suppliers its ITT in accordance with the Call Off Procedure set out in the Framework Agreement.
- (C) On [•] following evaluation of the responses to the ITT, the Authority selected the Supplier as its preferred bidder and engaged in a process of contract finalisation.
- (D) Following conclusion of contract finalisation with the Supplier and on the basis of the Supplier's responses to the ITT, the Authority has selected the Supplier to provide the Deployed Services. The Supplier is willing to provide the Deployed Services on the terms set out in this Contract.

IT IS AGREED as follows:

PRELIMINARY

1. DEFINITIONS AND INTERPRETATION

- 1.1 In this Contract the definitions set out in Schedule 1 (Definitions) shall apply.
- 1.2 In this Contract:
 - 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 Contract for ease of reference only and shall not affect the interpretation or construction of this Contract;

- 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 Contract;
- 1.2.8 the words "day", "month" and "year" mean calendar day, calendar month and calendar year unless otherwise stated; and
- 1.2.9 a reference to GBP or £ shall mean pounds sterling.
- 1.3 Neither the giving of any approval, consent, examination, acknowledgement, knowledge of the terms of any agreement or document nor the review of any document or course of action by or on behalf of the Authority shall, unless otherwise expressly stated in this Contract, relieve the Supplier of any of its obligations pursuant to this Contract or of any duty which it may have hereunder to ensure the correctness, accuracy or suitability of the matter or thing which is the subject of approval, consent, examination, acknowledgement or knowledge or document review or course of action.
- 1.4 Where this Contract contemplates that the Authority may elect, determine, approve, consent, nominate, decide or consider any matter or thing, the Authority may make such election, determination, approval, consent, nomination, decision or consideration in its absolute discretion without being required to give reasons, unless this Contract expressly requires otherwise.
- 1.5 The Supplier shall remain responsible for all acts and omissions of each Subcontractor 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 Contract due to any act or omission of any Subcontractor and/or any Supplier Personnel unless expressly provided otherwise in this Contract. Without prejudice to the foregoing and any express requirement for the Supplier to procure that its Subcontractors do or refrain from doing any act or thing, 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. **[CONDITIONS PRECEDENT]**
- 2.1 [The rights and obligations of each Party under this Contract shall have no force or effect unless each of the following conditions has been fulfilled:
- 2.1.1 [•] **[Template Note: Authority to include any conditions precedent if required, e.g. legal opinion that the Guarantee (if required) is enforceable in the jurisdiction of the Parent Company, if based overseas. If there are no conditions precedent then the Clause 2 heading should be replaced with "NOT USED"]**
3. **ORDER OF PRECEDENCE**
- 3.1 In the event of any conflict, inconsistency or ambiguity arising between the provisions of this Contract, then (save as expressly provided elsewhere in this Contract) the order of precedence shall be as follows:
- 3.1.1 Clauses and Schedule 1 (Definitions);
- 3.1.2 Schedule 2 (Service Requirements) and its Appendices;
- 3.1.3 all other Schedules and their Appendices other than Schedule 3.1 (Supplier Solution) and its Appendices;
- 3.1.4 Schedule 3.1 (Supplier Solution) and its Appendices; and

- 3.1.5 any documentation that the Supplier is required to produce in accordance with Schedule 3.1 (Supplier Solution).
- 3.2 Unless expressly provided otherwise, if there is any inconsistency between any diagram and text, the text shall take precedence.
4. **NOT USED**
5. **DUE DILIGENCE**
- 5.1 Subject to Clause 5.5, the Supplier acknowledges that the Authority has delivered or made available the Due Diligence Information and consequently the Supplier shall be deemed to have:
- 5.1.1 satisfied itself of all details relating to the nature of the Service Requirements;
- 5.1.2 been supplied with sufficient information and satisfied itself about all relevant aspects of the Service Environment;
- 5.1.3 satisfied itself as to the ownership, functionality, capacity, condition and suitability for use in the Deployed Services of the Authority Assets;
- 5.1.4 raised all relevant due diligence questions with the Authority before the Effective Date and to have advised the Authority of:
- (a) any aspect of the Service Environment that is not suitable for the provision of the Deployed Services;
- (b) the proposed actions of the Supplier to accommodate any unsuitable aspects of the Service Environment and a timetable for such actions, which shall have been taken into consideration by the Supplier in the Implementation Plan and the Project Plan; and
- 5.1.5 made its own enquiries to satisfy itself as to the accuracy and completeness of the Due Diligence Information.
- 5.2 Subject to Clause 5.5, the Supplier acknowledges that:
- 5.2.1 the Authority has relied upon the Supplier's expertise and professionalism in the carrying out of all due diligence activities in relation to this Contract including the requesting of and verification of all Due Diligence Information; and
- 5.2.2 the Due Diligence Information, together with the Supplier's own expertise and working knowledge of the Authority's operations, are sufficient to enable the Supplier to satisfy itself that it is able to perform its obligations under this Contract.
- 5.3 Subject to Clause 5.5, the Supplier shall not be entitled to any additional payment, nor be excused from any liability under this Contract, and has no right to make a Claim against the Authority as a result of:
- 5.3.1 the Supplier having failed to inspect the Service Environment or failed to notify the Authority of any actions to accommodate the unsuitability of the Service Environment in accordance with Clause 5.1.4;
- 5.3.2 the Supplier misinterpreting any matter or fact relating to the Service Requirements, or the functions, facilities, condition or capabilities of the Service Environment or the Authority Assets; or

- 5.3.3 the Supplier having failed to review the Due Diligence Information or any documents referred to in the Due Diligence Information.
- 5.4 No warranty, representation or undertaking (whether express or implied) is given by the Authority as to the accuracy, completeness, adequacy or fitness for purpose of any Due Diligence Information or that such information constitutes all of the information relevant or material to the Service Requirements, the Authority Assets and the Deployed Services. Accordingly, all liability on the part of the Authority in connection with:
- 5.4.1 the content of any Due Diligence Information; and
- 5.4.2 any representations or statements made in respect of any Due Diligence Information,
- is excluded to the extent permitted by Law, except to the extent of any fraudulent misrepresentation.
- 5.5 At the Effective Date the Parties acknowledge that the Supplier has not had the opportunity to perform full surveys for all of the Service Environment for the purpose of Clauses 5.1 to 5.3 and that following the Effective Date the Supplier shall undertake the Post-Effective Date Surveys. As a consequence, the Authority has permitted the Supplier to make certain Survey Assumptions in respect of the Service Environment as set out in Appendix 3 of Schedule 5.1 (Milestone Payments and Claims Procedure) and the provisions set out in paragraph 15 of Schedule 5.1 (Milestone Payments and Claims Procedure) shall apply in respect of the Survey Assumptions. The Parties agree that Clauses 5.1 to 5.3 shall apply in full in respect of those particular aspects of the Service Environment that are subject to the Post-Effective Date Surveys, once those additional surveys have been completed.
- 5.6 Except as provided in Clause 5.5, the Supplier acknowledges that there shall not be any due diligence or joint verification with the Authority after the Effective Date.

PROVISION OF THE DEPLOYED SERVICES

6. PROVISION OF THE NETWORK

- 6.1 The Supplier shall design, build, lay, rollout, test, install, commission, connect, interconnect, complete, provide, operate and maintain the Network in the Coverage Area and in accordance with the terms of this Contract and shall:
- 6.1.1 install the Network and make it ready for use in accordance with the Implementation Plan, the Project Plan, Clauses 15 to 19 and the other terms of this Contract which relate to the installation of the Network; and
- 6.1.2 ensure that the Network shall upon the relevant Milestone Date provide the relevant functions, capability and broadband services required by this Contract.

7. NOT USED

8. SERVICE REQUIREMENTS AND SUPPLIER SOLUTION

- 8.1 The Supplier shall provide the Deployed Services for the duration of the Term and shall ensure that the Deployed Services:

8.1.1 comply in all respects with the Service Requirements and the other relevant terms of this Contract; and

8.1.2 are supplied in accordance with the Supplier Solution.

8.2 Subject to Clause 5.5:

8.2.1 the Supplier agrees that the inclusion of the Supplier Solution as part of this Contract shall not (subject to Clauses 5.5, 19 and 59) relieve the Supplier of its responsibility for ensuring compliance with the Service Requirements;

8.2.2 if either Party becomes aware of any conflict, inconsistency or ambiguity between the Service Requirements and the Supplier Solution, that Party shall as soon as reasonably practicable and in any event within ten (10) Working Days:

(a) notify the other Party of such conflict, inconsistency or ambiguity; and

(b) following receipt by the other Party of such notification, the Parties shall endeavour (acting reasonably) to promptly resolve such conflict, inconsistency or ambiguity and if necessary amend the Supplier Solution to address the conflict or inconsistency through the Change Control Procedure at no cost to the Authority.

9. OTHER BENEFICIARIES

9.1 The Parties agree that:

9.1.1 each Other Beneficiary shall:

(a) be entitled to benefit from the performance of the Supplier's obligations under this Contract to the same extent as the Authority is entitled to do so under the terms of this Contract (as if a Party) provided that, subject to Clause 9.1.3, each Other Beneficiary shall not itself be entitled to enforce any rights it has under this Contract nor bring any Claim against the Supplier; and

(b) be a third party beneficiary for the purposes of the Contracts (Rights of Third Parties) Act 1999;

9.1.2 the Authority shall use reasonable endeavours to procure that any Claim that any Other Beneficiary has under this Contract against the Supplier is assigned by that Other Beneficiary to the Authority and managed by the Authority. The Supplier agrees:

(a) that such Claims may be so assigned and managed; and

(b) in the circumstances contemplated under Clause 9.1.2(a), the Authority shall (subject to Clause 57) be entitled to recover Losses suffered by any Other Beneficiary to the same extent that such Losses would be recoverable from the Supplier under this Contract had they been suffered by the Authority, notwithstanding that such Losses may not have been suffered by the Authority;

9.1.3 to the extent that the Authority is unable to procure assignment of a Claim in accordance with Clause 9.1.2 (having complied with Clause 9.1.2), the relevant Other Beneficiary shall be entitled to bring such Claim under this Contract directly against the Supplier, as if that Other Beneficiary was the Authority (and the Authority shall provide reasonable notice to the Supplier

to the extent it is aware of the intention of the Other Beneficiary to bring such Claim);

9.1.4 subject to Clauses 9.1.2 and 9.1.3, the Authority shall be entitled to enforce the terms of this Contract against the Supplier in relation to the performance or non performance of the Supplier's obligations set out in this Contract to an Other Beneficiary; and

9.1.5 an Other Beneficiary shall have no authority to agree changes to, or to waive any breach of, this Contract.

10. GENERAL PERFORMANCE STANDARDS

10.1 Without prejudice to the Service Requirements, the Supplier shall ensure that the Deployed Services are at all times performed:

10.1.1 in an economic, efficient, effective and safe manner in accordance with Good Industry Practice;

10.1.2 in accordance with the applicable Codes and Standards and the Consents;

10.1.3 in such a manner as not to detract from or damage the image and reputation of the Authority or the Framework Authority; and

10.1.4 save as expressly provided in this Contract, so as not to unreasonably impede the Authority in carrying out its functions or increase the cost to the Authority of carrying out its functions.

10.2 Without prejudice to the Service Requirements, the Supplier shall ensure that Network Deployment is:

10.2.1 at all times performed so as to minimise interference with the convenience of the public, access to public/private roads or footpaths, or other users of the Service Environment;

10.2.2 wherever reasonably practicable, in accordance with all reasonably necessary directions given to the Supplier by the Authority during the Term, provided that those directions are not inconsistent with this Contract or are unreasonably burdensome to the Supplier having regard to the requirements of this Contract; and

10.2.3 in a manner that is not injurious to health and that (unless agreed otherwise with the Authority in writing) does not cause any nuisance or damage to any property or the environment.

[Template Note: The Authority should consider whether any other general service requirements are needed, e.g. in relation to carbon emissions, night time working, visual impact of installations and provision of information to the public]

10.3 The Parties shall at all times act reasonably and in good faith towards (and co-operate with) each other to the extent required for the performance of this Contract.

10.4 If the Supplier fails to comply with its obligations in accordance with this Contract the Authority may, in addition to its other rights, require the Supplier to comply with its obligations (with the costs of such compliance to be borne by the Supplier).

- 10.5 The Supplier shall use all reasonable endeavours to the extent permitted by Law:
- 10.5.1 as part of any further necessary detailed Supplier Solution design work under this Contract, to facilitate efficient geographical and technical synergies between the Network and Funded Mobile Projects; and
 - 10.5.2 to co-operate with any telecommunications provider appointed under a Funded Mobile Project in relation to the Deployed Services and/or the delivery of services pursuant to that Funded Mobile Project,

provided that the Supplier shall be entitled to (i) manage such facilitation and/or co-operation in accordance within its normal business practices; and (ii) reject any request made pursuant to this Clause 10.5 where the Supplier can reasonably demonstrate that any such request will place an unreasonable burden on the Supplier's resources.

11. **CODES AND STANDARDS**

The Parties shall discuss any conflict that either Party reasonably believes that there is or will be between any of the Codes and Standards, or between any of the Codes and Standards and any other obligation under this Contract, and the Supplier shall make proposals for resolution of the conflict for consideration by the Authority.

12. **CONSENTS**

- 12.1 Subject to Clause 12.2, the Supplier shall, in its name (or, where necessary, in the name of a relevant Subcontractor), apply for, obtain, maintain, renew and adhere to the applicable conditions of all Consents.
- 12.2 The Authority shall apply for, obtain, maintain and renew all Consents that, as a matter of law, only the Authority is eligible to obtain (as agreed by the Parties in writing).
- 12.3 The Supplier shall use reasonable endeavours to consult with all relevant local planning and related organisations such as existing broadcast and telecommunications services, English Heritage, air traffic service operators and local planning and highway authorities in respect of any development proposed pursuant to this Contract and the obtaining of the requisite Consents.

13. **COMPLIANCE WITH AND CHANGES IN LAW**

- 13.1 The Supplier shall ensure that it performs its obligations under this Contract at all times in compliance with all applicable Laws.
- 13.2 The Supplier shall neither be relieved of the performance of any of its obligations under this Contract nor be entitled to an increase in any Milestone Payment as the result of:
 - 13.2.1 a General Change in Law; or
 - 13.2.2 a Specific Change in Law where the effect of that Specific Change in Law on the obligations set out in this Contract is known at the Effective Date.
- 13.3 If a Specific Change in Law occurs or will occur during the Term (other than those referred to in Clause 13.2.2), the Supplier shall notify the Authority of the likely effects of that change, including where the Supplier reasonably believes that:
 - 13.3.1 a change is required to the terms of this Contract;
 - 13.3.2 relief from compliance with the Supplier's obligations under this Contract is required; and/or

13.3.3 it will incur material additional cost in the performance of its obligations under this Contract as a consequence of the Specific Change in Law.

13.4 As soon as reasonably practicable the Parties shall meet to discuss the likely effects of the Specific Change in Law. Subject to Clauses 13.2.2 and 20.2, any change to this Contract arising from this Clause 13 shall be processed by the Parties in accordance with Clause 31.

14. **[STEP-IN RIGHTS]**

[Template Note: If the Network is to be designed such that it can be isolated from the Supplier's wider infrastructure and business then for continuity of Deployed Service reasons, it may be appropriate for the Authority to have a right to take over (on a temporary basis) the performance of any or all of the Deployed Services itself or appoint a third party to do so in the following circumstances:

- a termination right arising;
- a regulatory requirement or statutory duty;
- a serious health and safety/environment risk;
- an emergency.

Similar issues arise in relation to exit where, depending on how the Network is designed, it may be feasible for the Network to be acquired by a third party. The Authority should consider its requirements for Network design and whether step-in rights may be needed prior to the issue of its ITT to the Framework Suppliers. If step-in rights are not required then the Clause 14 heading should be replaced with "NOT USED"]

IMPLEMENTATION

15. **IMPLEMENTATION PLAN AND PROJECT PLAN**

The Supplier shall implement the Deployed Services in accordance with the Implementation Plan and the Project Plan.

16. **MILESTONES**

16.1 The Supplier shall ensure that each Milestone is Achieved on or before the associated Milestone Date in accordance with the procedure set out in paragraph 6 of Schedule 4.1 (Implementation).

16.2 The Authority shall issue a Milestone Achievement Certificate upon the Achievement of each Milestone in accordance with paragraph 6 of Schedule 4.1 (Implementation). Notwithstanding the issuing of any Milestone Achievement Certificate, the Supplier shall remain solely responsible for ensuring that the Supplier Solution as designed and developed is suitable for the delivery of the Deployed Services and that the Deployed Services are delivered in accordance with the terms of this Contract. No estoppel or waiver shall arise as a result of the issue of any Milestone Achievement Certificate.

17. DELAY – GENERAL PROVISIONS

- 17.1 If the Supplier becomes aware that it will not (or is unlikely to) Achieve any Milestone by the Milestone Date it shall as soon as is practicable notify the Authority of the fact of the Delay and summarise the reasons for it.
- 17.2 The Supplier shall (without prejudice to the Authority's rights and remedies under this Contract):
- 17.2.1 in respect of Delay caused by the Supplier's Default, use all reasonable endeavours: and
 - 17.2.2 in respect of all other Delay, use reasonable endeavours,
- to eliminate or mitigate the consequences of the Delay.

18. DELAY DUE TO SUPPLIER DEFAULT

- 18.1 Unless agreed otherwise by the Parties in writing, the Supplier shall submit a draft Remedial Plan in accordance with Clause 38 where due to any Default by the Supplier:
- 18.1.1 it becomes aware that it will not Achieve a Milestone by the associated Milestone Date; and/or
 - 18.1.2 it has failed to Achieve a Milestone by the associated Milestone Date.
- 18.2 Each draft Remedial Plan provided pursuant to Clause 18.1 shall identify the issues arising out of the Delay and the steps that the Supplier proposes to take to Achieve the Milestone in accordance with the terms of this Contract.
- 18.3 If an M1 Milestone is not Achieved by the associated Milestone Date due (in whole or in part) to any Default by the Supplier, the Authority may at its discretion (without waiving any rights in relation to the other options or rights under or in relation to this Contract) elect to:
- 18.3.1 issue a Milestone Achievement Certificate conditional on the remediation of the issue in accordance with an agreed Remedial Plan; and/or
 - 18.3.2 escalate the matter in accordance with the Escalation Process;
- 18.4 Where the Authority issues a conditional Milestone Achievement Certificate in respect of a M1 Milestone in accordance with Clause 18.3.1:
- 18.4.1 the Authority shall be entitled to revise the failed Milestone Date and any subsequent Milestone Date;
 - 18.4.2 the Supplier shall be entitled to commence the performance of any work required to Achieve the subsequent M2 Milestone; and
 - 18.4.3 unless the Authority agrees otherwise in writing, any Milestone Payment associated with the relevant M1 Milestone shall not be payable until the remediation of the issue in accordance with the agreed Remedial Plan.

19. DELAY DUE TO A RELIEF EVENT

- 19.1 If and to the extent that as a direct result of the occurrence of a Relief Event the Supplier is unable to comply with its obligations under this Contract, then the Supplier shall be entitled to apply for relief in accordance with this Clause 19.

- 19.2 As soon as practicable after the Supplier becomes aware that a Relief Event has, will or is reasonably likely to cause the Supplier to be in Default of its obligations under this Contract, the Supplier shall promptly provide the Authority with a Relief Notice which shall include:
- 19.2.1 a description of the Relief Event along with the date of occurrence and likely duration of the Relief Event;
 - 19.2.2 the Supplier's proposals for either remedying or mitigating the effects of the Relief Event;
 - 19.2.3 the Supplier's claim for relief from its obligations under this Contract,
- and the Supplier shall provide such additional information and/or attend any meetings with the Authority as the Authority may reasonably require for the purpose of clarifying the Relief Notice.
- 19.3 Subject to Clauses 19.1 and 19.4 and provided the Supplier has complied with Clauses 17.2.2 and 19.2 and used reasonable endeavours to perform the relevant obligations affected by the Relief Event:
- 19.3.1 the Supplier shall not be treated as being in Default of this Contract to the extent that such Default is a direct result of the Relief Event; and
 - 19.3.2 if as a direct consequence of the Relief Event the Supplier is unable to meet a deadline related to the performance of its obligations under this Contract, the deadline date shall be postponed by a reasonable time taking into account the likely effect of the delay caused by the Relief Event.
- 19.4 The Supplier shall not be entitled to relief in accordance with this Clause 19 to the extent that the relief from its obligations under this Contract claimed could reasonably be expected to be mitigated by the Supplier acting in accordance with Good Industry Practice and without incurring material additional expenditure.
- 19.5 Following the issue of a Relief Notice in accordance with Clause 19.2 the Parties shall negotiate in good faith and as soon as reasonably practicable attempt to agree upon the relief to be granted to the Supplier. If the Parties cannot agree the extent of any relief required, or that a Relief Event has occurred, the Parties shall resolve the matter in accordance with the Dispute Resolution Procedure.
- 19.6 To the extent that the consequences of a Relief Event can be addressed by a change to the Project Plan without impacting upon the Implementation Plan, then the Parties shall use their respective reasonable endeavours to agree a change to the Project Plan in accordance with paragraph 5.8.2 of Schedule 4.1 (Implementation) without recourse to the Change Control Procedure.
- 19.7 To the extent that the consequences of a Relief Event:
- 19.7.1 materially adversely affect (or are likely to materially adversely affect) the performance of the Deployed Services for a sustained and indeterminate period;
 - 19.7.2 have been mitigated by the Supplier in accordance with Good Industry Practice without incurring material expenditure pursuant to Clause 19.4; and
 - 19.7.3 cannot be addressed solely by a change to the Project Plan without recourse to the Change Control Procedure in accordance with Clause 19.6,
- then the Parties shall use their respective reasonable endeavours to address the consequences of the Relief Event in accordance with Clause 31.

FINANCIAL MATTERS

20. MILESTONE PAYMENTS AND INVOICING

- 20.1 In consideration of the Supplier performing the Deployed Services the Authority shall pay the Milestone Payments to the Supplier subject to and in accordance with Schedule 5.1 (Milestone Payments and Claims Procedure) and the other terms of this Contract.
- 20.2 Unless agreed otherwise by the Authority in writing or as expressly set out in this Contract and save for any right to claim for damages under this Contract or at law (subject always to Clause 57), the Milestone Payments shall be the only payments (of any kind) made by the Authority in respect of the Supplier's performance of its obligations under this Contract.
- 20.3 Except as expressly provided in this Contract, the Parties shall each bear their own costs and expenses incurred in respect of compliance with their obligations set out in this Contract.
- 20.4 Interest shall be payable on the late payment of any undisputed Milestone Payment properly invoiced in accordance with the terms of this Contract at the rate of two (2) per cent per annum above the base rate for the time being of the Bank of England. Such interest shall accrue on a daily basis from the due date until the date of actual payment of the overdue amount.
- 20.5 The Supplier shall ensure that a term is included in any Key Subcontract permitted under this Contract which requires the Supplier to pay any undisputed sums due to the relevant Key Subcontractor within a specified period that does not exceed 30 days from the date the Supplier receives the Key Subcontractor's invoice.

21. WHOLESALE ACCESS PRICES

- 21.1 The Supplier shall make available Wholesale Access Products and Services at the Project Wholesale Access Prices in accordance with the relevant terms of this Contract.
- 21.2 The Project Wholesale Access Prices shall be benchmarked in accordance with Schedule 5.2 (Wholesale Access Pricing).

22. PROJECT MODEL

The provisions of Schedule 5.3 (The Project Model) shall apply in respect of the operation and maintenance of the Project Model.

23. STATE AID

- 23.1 Both the Supplier and the Authority acknowledge that it is the Authority's responsibility to comply with the State Aid Terms and that the Milestone Payments made by the Authority to the Supplier pursuant to this Contract are made pursuant to an authorised State aid scheme.
- 23.2 The Supplier shall provide such assistance, information and/or support as the Authority may reasonably require from time to time in connection with the Authority's responsibilities under the State Aid Terms, or with any action, examination and/or investigation by the European Commission, pursuant to the State Aid Terms as may, in the Authority's view, be reasonably necessary and relevant, but for the avoidance of doubt shall not require the Supplier to provide legal advice subject to privilege to the Authority, and the Supplier shall be given adequate time to provide the information.

- 23.3 If the European Commission issues a recovery decision as defined in Article 14(1) of Council Regulation 659/1999 in connection with this Contract naming the Supplier as beneficiary, then, unless an earlier date has been specified by the European Commission or the national court, the Supplier shall within four (4) months of a written notice from the Authority at any time (where such notice shall include a copy of the relevant European Commission decision) pay an amount equivalent to the unlawful and incompatible aid of which the Supplier is beneficiary (plus interest, as applicable) which the European Commission requires to be repaid pursuant to its decision into a blocked account to which neither Party has unilateral access pending either: (i) the expiry of the deadlines for the Supplier to bring proceedings in respect of the repayment without the Supplier having brought any proceedings before such expiry; or, where the Supplier has brought proceedings before such expiry, (ii) the final outcome of those proceedings including any appeals, provided that where the European Commission's decision does not specify the precise amount of unlawful aid to be recovered, the Parties shall (acting reasonably) calculate and agree upon the precise amount to be repaid.
- 23.4 If the European Commission issues a recovery decision as defined in Article 14(1) of Council Regulation 659/1999 in connection with this Contract naming the Supplier as beneficiary, the Supplier acknowledges that Clause 23.3 shall apply regardless of whether:
- 23.4.1 the Supplier is in Default and irrespective of the Supplier's financial circumstances, except that the Authority shall apply paragraphs 60 to 68 of the Commission's recovery notice in respect of the Supplier; and
- 23.4.2 in the Authority's view, as previously indicated to the Supplier, the State aid granted in connection with this Contract complies with the State Aid Terms.
- 23.5 If the Supplier fails to bring proceedings in respect of the repayment obligation before the expiry of the deadlines for those proceedings or loses any proceedings and fails to the extent possible to bring an appeal against that loss:
- 23.5.1 the Supplier shall give its consent for the unlawful and incompatible aid (plus interest, as applicable) to be released from the blocked account to the Authority and/or to such other government body as the Authority may direct, including in particular the Framework Authority;
- 23.5.2 without prejudice to any other remedy available to the Supplier at law (subject always to Clause 57), the Authority shall make no payment to the Supplier to indemnify the Supplier for the recovery of the unlawful and incompatible State aid; and
- 23.5.3 subject to Clauses 20.2 and 23.5.2, the Parties shall deal with the effect on this Contract of the repayment of the unlawful State aid in accordance with the Change Control Procedure.

24. **[ADDITIONAL FUNDING]**

[Template Note: Schedule 5.4 (Additional Funding) contains guidance for Local Bodies should they wish to use non-DCMS third party funding in connection with a particular Call Off Contract. An operative provision may need to be included here which cross refers to Schedule 5.4, to the extent that additional third party funding is used. If non-DCMS third party funding is not used then the Clause 24 heading should be replaced with "NOT USED"]

25. **NO INDEXATION**

The Milestone Payments shall not be subject to indexation of any kind.

26. **TAX**

In the event that the Milestone Payments are, or become at any time, subject to VAT then the Authority shall provide such reasonable assistance as the Supplier may reasonably require in order to resolve this matter.

27. **COST OF PASSING PREMISES**

27.1 Subject to Clause 27.8, where the Supplier reasonably believes the average Qualifying Capital Expenditure for Network Deployment for:

27.1.1 an individual End User Premise; or

27.1.2 a group of contiguous End User Premises,

in the Coverage Area will exceed the Premises Cap ("**Affected Premises**"), the Supplier shall as soon as is reasonably practicable implement an alternative form of Network Deployment to achieve the same or better outcome where it is reasonably practicable to do so without in respect of the Affected Premises i) exceeding the Premises Cap; and/or ii) requiring a Contract Change.

27.2 In the event it is not reasonably practicable to provide an alternative form of Network Deployment in the manner described in Clause 27.1 without exceeding the Premises Cap and/or requiring a Contract Change, the Supplier shall as soon as reasonably practicable notify the Authority of the:

27.2.1 number of Affected Premises and the associated Phase and post codes;

27.2.2 non-financial/commercial reasons why the Premises Cap will be exceeded together with supporting evidence to validate such reasons;

27.2.3 forecast (as at the Effective Date) Qualifying Capital Expenditure for providing Network Deployment to the Affected Premises as planned, which shall include:

(a) an accurate breakdown of forecasted costs to at least line item level within the Project Model and any relevant financial assumptions (e.g. apportionment of costs)); and

(b) the accurate forecasted value of the proportion of the Milestone Payments for any and all M0 Milestones, M1 Milestones and M2 Milestones that are associated with the provision of Network Deployment to the Affected Premises (where such value shall be broken down on a per Milestone basis).

27.2.4 revised forecast Qualifying Capital Expenditure for providing Network Deployment to the Affected Premises as planned (which shall include an

accurate breakdown of forecasted costs to at least line item level within the Project Model and any relevant financial assumptions (e.g. apportionment of costs));

27.2.5 Qualifying Capital Expenditure for providing Network Deployment to the Affected Premises incurred by the Supplier as at the date of this notice (which shall include an accurate breakdown of costs incurred to at least line item level within the Project Model and any relevant financial assumptions (e.g. apportionment of costs));

27.2.6 where applicable, details of the alternative form of Network Deployment which could be provided by the Supplier under Clause 27.1 but which requires a Contract Change before it could be provided;

27.2.7 an impact assessment of each potential option under Clause 27.3 which shall include:

- (a) the impact of each option on this Contract including in respect of the Implementation Plan, the Speed and Coverage Template, the Milestone Payments, the Project Model and the provision of the Deployed Services;
- (b) the identification of the specific material technical or operational risks (if any) associated with the delivery of each option; and
- (c) any other matter considered by the Supplier to be relevant for the purpose of the Authority's selection of the relevant option under Clause 27.3.

27.3 The Authority shall as soon as reasonably practicable after receipt of the notification under Clause 27.2 select (at its sole discretion) one or more (if technically feasible to implement more than one option in respect of the Affected Premises) of the following options:

27.3.1 continue with the Network Deployment of the Affected Premises as planned, provided that agreement is reached between the Parties in accordance with Clause 27.4 as to the:

- (a) payment of any Qualifying Capital Expenditure for Network Deployment additional to the forecast (as at the Effective Date) Qualifying Capital Expenditure calculated in accordance with Clause 27.2.3 (which may include, where applicable, the use of the Investment Fund, any Network Deployment savings and/or any contingency); and/or
- (b) reduction in the scope of the Deployed Services to an appropriate level to compensate the Supplier for any additional Qualifying Capital Expenditure for Network Deployment of the Affected Premises;

27.3.2 place Network Deployment of the Affected Premises on hold for deferral provided that:

- (i) the number of End User Premises required to be passed under the relevant Phase in which the Affected Premises were originally placed and the corresponding M2 Milestone is reduced by the number of deferred Affected Premises;
- (ii) the Affected Premises together with an amount equal to the forecasted value of the proportion of the Milestone Payment(s) for the M2

Milestone(s) associated with the provision of Network Deployment to the Affected Premises as calculated in accordance with Clause 27.2.3 are transferred to the relevant Milestone Payment(s) in the deferred Phase (once such deferred Phase is agreed in accordance with Clause 27.6) with such sums/Affected Premises being held provisionally in the final Phase in the interim; and

(iii) there is at least one subsequent Phase which has not commenced.

27.3.3 remove the Affected Premises and de-scope the Deployed Services accordingly (including de-scoping the affected Milestone(s) and Speed and Coverage Template), provided that the Milestone Payments shall be reduced by an amount equivalent to the total forecasted Qualifying Capital Expenditure for each Affected Premise calculated in accordance with Clause 27.2.3 (less any actual Qualifying Capital Expenditure in respect of the Affected Premises (i) for which the Supplier is entitled to submit a Milestone Payment Claim but has not done so or has submitted a Milestone Payment Claim and the Authority has not made the corresponding Milestone Payment; or (ii) which has been paid by the Authority in the form of Milestone Payment(s), in each case following the Achievement of any applicable M0 Milestones, M1 Milestones and/or M2 Milestones and in accordance with the terms of this Contract); and/or

27.3.4 where it is reasonably practicable to provide an alternative form of Network Deployment in the manner described in Clause 27.1 without exceeding the Premises Cap but requiring a Contract Change, provide such alternative form of Network Deployment provided that agreement is reached between the Parties in respect of the necessary changes to this Contract in accordance with Clause 27.4.

27.4 Once an option(s) has been selected by the Authority pursuant to Clause 27.3 and notified to the Supplier the Parties shall agree any consequential changes required to this Contract without recourse to the Change Control Procedure (provided that once the changes are agreed the Supplier shall document such changes in a Change Request for authorisation by the Parties in a Change Authorisation). Any failure to agree the necessary changes in accordance with the option(s) selected by the Authority shall be dealt with by the Parties under the Dispute Resolution Procedure.

27.5 Provided the Supplier has acted in good faith to reach formal agreement of any changes as contemplated by Clause 27.4 and otherwise complied with its obligations under this Clause 27, if and to the extent that as a direct result of the operation of Clauses 27.2 to 27.4 the Supplier is unable to achieve a Milestone by the associated Milestone Date as planned, such circumstance shall not be treated by the Authority as a Supplier Default and shall not prevent or delay issue of a Milestone Achievement Certificate in respect of the Milestone Achievement Criteria that have been Achieved at the relevant Milestone Date.

27.6 If the deferred option under Clause 27.3.2 is selected by the Authority with corresponding amendments to this Contract agreed under Clause 27.4 to reflect such option, then prior to the commencement of each subsequent Phase:

27.6.1 the Supplier shall (providing the Supplier is not obliged to incur additional survey cost in doing so) determine whether Network Deployment can be provided to the Affected Premises as planned within the Premises Cap; or

27.6.2 where the Supplier determines that the Affected Premises still exceed the Premises Cap, the Authority shall determine whether to keep the Affected Premises deferred provisionally to the final Phase in accordance with Clause 27.3.2 or to select one of the other options under Clause 27.3 with relevant Contract Changes required to be agreed under Clause 27.4.

- 27.7 This Clause 27 shall not apply where the Premises Cap has been exceeded due (in whole or in part) to any Supplier Default.
- 27.8 For the purpose of Clause 27.1, the number of Affected Premises and the associated Qualifying Capital Expenditure shall be determined with reference to:
- 27.8.1 the particular Network Deployment structure(s) (e.g. cabinet, distribution point, manifold and/or splitter) being implemented in respect of the Affected Premises;
 - 27.8.2 the number of End User Premises planned to be passed by such structure(s) (which shall be the number of Affected Premises); and
 - 27.8.3 the Qualifying Capital Expenditure for Network Deployment associated with passing the Affected Premises and not passing and connecting the Affected Premises.

28. **FINANCIAL DISTRESS**

[Template Note: If a Guarantee is being provided in relation to a Call Off Contract, the Authority may decide that it is appropriate for the Parent Company and each Key Subcontractor (and not the Supplier) to be subject to the financial distress provisions below]

- 28.1 During the Term the Supplier shall regularly monitor its own and each of its Key Subcontractors' credit ratings or (where used as proxies for credit ratings) Dun & Bradstreet rating, which at the Effective Date are as follows:

ORGANISATION	AGENCY	RATING
Supplier	[Standard & Poor's]	
	[Moody's]	
[Name of Key Subcontractor]		

[Template Note: If a Supplier does not have credit ratings, it may be appropriate for appropriate financial ratios to be used instead of D&B ratings. This clause may be Supplier specific, to the extent of specifying the applicable referenced agency/rating]

- 28.2 The Supplier shall promptly notify (or shall procure that its auditors promptly notify) the Authority in writing 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).
- 28.3 In the event that the Authority reasonably believes that the Financial Distress Event could adversely impact the performance of this Contract and/or the security of public subsidy already granted (or to be granted) pursuant to this Contract, at the request of the Authority the Supplier shall:
- 28.3.1 (and shall procure that the relevant Key Subcontractors shall) meet with the Authority as soon as practicable to review the effect of the Financial Distress

Event on the continued performance of this Contract and/or the security of public subsidy already granted (or to be granted) pursuant to this Contract;

- 28.3.2 as soon as practicable and in any event within ten (10) Working Days (taking into account any discussions and any representations made pursuant to Clause 28.3.1), provide a draft Financial Distress Event Remedial Plan for approval by the Authority explaining how the Supplier and/or relevant Key Subcontractor will remedy the potential adverse impact of the Financial Distress Event on the continued performance of this Contract and/or the security of public subsidy already granted (or to be granted) pursuant to this Contract; and
- 28.3.3 provide such financial information as the Authority may reasonably require to support Clause 28.3.2.
- 28.4 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).
- 28.5 Following approval of any Financial Distress Event Remedial Plan pursuant to Clause 28.4, 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 Contract and/or the security of public subsidy already granted (or to be granted).
- 28.6 The Authority's rights set out in this Clause 28 shall be without prejudice to the Authority's termination rights set out in Clause 61.

29. **[GUARANTEE]**

[Template Note: The Authority shall be entitled to require the provision of a Guarantee in relation to its Call Off Contract where the Authority considers a Guarantee is required due to the financial circumstances of the Supplier. If a Guarantee is required and the Parent Company is based overseas, the Authority should consider whether a legal opinion from a law firm from the overseas jurisdiction as to the enforceability of the Guarantee in that jurisdiction is required. If a legal opinion is required the Contract will need to be amended to provide for this. If a Guarantee is not required then the Clause 29 heading should be replaced with "NOT USED"]

- 29.1 [On or before the execution of this Contract the Supplier shall procure that the Parent Company shall execute and deliver to the Authority an original copy of the Guarantee.
- 29.2 Nothing in the Guarantee shall in any way affect or diminish the obligations of the Supplier under this Contract which shall be required to be complied with in full.]

30. **[PERFORMANCE BOND]**

[Template Note: The Authority shall be entitled to require the provision of a Performance Bond in relation to its Call Off Contract where the Authority considers a Performance Bond is required due to the financial circumstances of the Supplier. If a Performance Bond is not required then the Clause 30 heading should be replaced with "NOT USED"]

- 30.1 [On or before the execution of this Contract the Supplier shall procure that the relevant parties shall execute and deliver to the Authority an original copy of the Performance Bond.
- 30.2 Nothing in the Performance Bond shall in any way affect or diminish the obligations of the Supplier under this Contract which shall be required to be complied with in full.
- 30.3 The surety under the Performance Bond shall be an entity authorised to issue bonds in England and Wales. The surety should have a minimum long term rating "A3" from Moody's or "A-" from Standard & Poors (or equivalent rating from a replacement agency if Moody's and/or Standard & Poors cease to exist) with both minimum rating levels to apply when the surety is rated by both agencies.
- 30.4 [Without prejudice to the rights and remedies of the Authority, if the Authority intends to call in the Performance Bond, the Authority shall give the Supplier five (5) Working Days' notice of such intention. If during the said five (5) Working Days the Supplier discharges by way of bank draft made payable to the Authority the full amount of the Performance Bond, then the Authority shall refrain from proceeding to call in the Performance Bond.]]

31. **SUPPLIER COSTS BORNE BY THE AUTHORITY**

- 31.1 Where the terms of this Contract expressly provide that any increased costs incurred by the Supplier in performing the Deployed Services shall be borne by the Authority (in full or in part) or otherwise that the matter is to be addressed in accordance with this Clause 31, unless expressly provided otherwise in this Contract the Parties shall use their respective reasonable endeavours to agree (using the Change Control Procedure where applicable) the application of one or more of the following options in respect of any such costs:
- 31.1.1 the Parties shall endeavour to agree that any increased costs incurred by the Supplier in performing Network Deployment can be absorbed within the existing Milestone Payment arrangements, for example where the Supplier has incurred less cost in other areas of the Network Deployment, without amendment to the Milestones and the associated Milestone Achievement Criteria;
- 31.1.2 the Parties shall endeavour to agree amendments to the Milestones, the Milestone Achievement Criteria and/or the Milestone Payments provided that (subject to Clause 31.1.5) the aggregate Milestone Payments from time to time shall not exceed the aggregate Milestone Payments agreed at the Effective Date;
- 31.1.3 the Parties shall endeavour to agree amendments to the Service Requirements, the Supplier Solution and/or (subject to Clauses 20.2 and 31.1.2) any other term of this Contract;
- 31.1.4 the Parties shall endeavour to agree that the Supplier shall bear the increased costs incurred by the Supplier in performing the Deployed Services; and/or

31.1.5 only in exceptional circumstances, the Authority may make available additional funds to satisfy some or all of the increased costs.

[Template Note: If the Authority elects to incorporate contingency arrangements in its Call Off Contract pursuant to paragraph 16 of Schedule 5.1 (Milestone Payments and Claims Procedure), then it may be appropriate for Clause 31 to be amended by adding recourse to these arrangements to the list of options above]

SUBCONTRACTING AND SUPPLY CHAIN RIGHTS

32. SUBCONTRACTORS

- 32.1 The Supplier shall not subcontract any Key Service without the Authority's prior written consent, which shall not be unreasonably withheld or delayed. In providing its consent pursuant to this Clause 32.1, the Authority may impose such conditions as the Authority reasonably considers appropriate including a requirement that certain terms and conditions from this Contract are flowed down to the relevant Key Subcontract.
- 32.2 At the Effective Date the Authority has consented to the engagement of the Key Subcontractors listed in Schedule 3.3 (Key Subcontractors). The Supplier shall provide to the Authority copies of any draft or final Key Subcontracts if required by Authority from time to time.
- 32.3 The Supplier shall ensure that a provision is included in each Key Subcontract requiring the Key Subcontractor to:
- 32.3.1 promptly notify the Supplier and the Authority in writing of a Key Subcontractor Financial Distress Event or any fact, circumstance or matter which could cause a Key Subcontractor Financial Distress Event (and in any event, provide such notification within ten (10) Working Days of the date on which the Key Subcontractor first becomes aware of the Key Subcontractor Financial Distress Event or the fact, circumstance or matter which could cause the Key Subcontractor Financial Distress Event); and
 - 32.3.2 co-operate with the Supplier and the Authority in order to give full effect to the provisions of Clauses 28.3 to 28.5, including meeting with the Supplier and the Authority to discuss and review the effect of the Key Subcontractor Financial Distress Event on the continued performance and delivery of the Deployed Services and/or the security of public subsidy already granted (or to be granted) pursuant to this Contract, and contributing to and complying with the Financial Distress Event Remedial Plan.
- 32.4 The Supplier shall not terminate or materially amend any Key Subcontract to the extent this could adversely affect the Supplier's compliance with its obligations under this Contract, or change the identity of any Key Subcontractor, without the Authority's prior written consent, which shall not be unreasonably withheld or delayed. This provision shall not apply to restrict amendments to Key Subcontracts to the extent these represent changes which ordinarily occur in the normal course of business.
- 32.5 At the Effective Date the Supplier undertakes that it has not entered into (and shall not enter into at any time during the Term) any form of exclusivity arrangement with any Subcontractor that would be detrimental to the level of competition for any other broadband project that may be procured by the Authority or other Local Body.
- 32.6 The Authority shall have the right to require the Supplier to cease to use any Subcontractor in connection with this Contract where the Subcontractor's failure has led to material Default of this Contract by the Supplier.

32.7 In respect of each Satellite Subcontract the Supplier shall promptly notify the Authority in writing where:

32.7.1 either party to the Satellite Subcontract is in material default of the Satellite Subcontract;

32.7.2 there is a material dispute between the parties to the Satellite Subcontract in respect of the Satellite Subcontract; and/or

32.7.3 there is a material deterioration in the commercial relationship between the parties to the Satellite Subcontract,

which, subject to the relevant confidentiality provisions in the Satellite Subcontract, shall include a brief description of the issue, an assessment of any potential impact of the issue on the Deployed Services, and details of the steps being taken to resolve the issue.

33. **SMALL AND MEDIUM SIZED ENTERPRISES**

33.1 Subject to Clause 33.3, the Supplier shall implement such processes and measures as may be appropriate so as to ensure that, where the Supplier is proposing to subcontract any of the Deployed Services prior to or at any time during the Term, SMEs (when compared with other potential Subcontractors) are given fair, equal and proportionate access to the subcontracting opportunity. At a minimum, the Supplier shall:

33.1.1 to the extent practicable, advertise its subcontracting opportunities in a form which is accessible by all potential Subcontractors including SMEs (for example, on the Government's Contracts Finder website); and

33.1.2 propose to potential Subcontractors that are SMEs, such commercial, financial and technical terms and conditions that are, where appropriate and proportionate to the nature, size and capacity of the proposed Subcontractor and having regard to the services to be subcontracted, no more onerous than the relevant terms and conditions proposed by the Supplier to other potential Subcontractors.

33.2 The Supplier shall report on its engagement with, and the opportunities made available to, SMEs pursuant to Clauses 33.1 and 33.3 in accordance with Schedule 6.4 (Reports). The Supplier shall be entitled to withhold specific details about the relevant SMEs to the extent this would place the Supplier in breach of confidentiality obligations owed by the Supplier to such SMEs.

33.3 Nothing in this Clause 33 shall require the Supplier to disrupt or not utilise contracted supply chain arrangements which are in place for the purposes of the Supplier's wider business and which are in effect prior to, or which come into effect after, the Effective Date, provided that the Supplier can demonstrate to the reasonable satisfaction of the Authority that such supply chain arrangements are consistent with the SME objectives set out in this Clause 33.

GOVERNANCE AND KEY PROCEDURES

34. **REPRESENTATIVES**

34.1 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 the

respective Party on the matters pursuant to this Contract. 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.

34.2 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 Contract.

35. **GOVERNANCE**

The Parties agree to manage their relationship and this Contract in accordance with Schedule 6.1 (Governance).

36. **AUDIT**

36.1 If an audit is imposed on the Authority and/or this Contract 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 36 shall apply.

36.2 The relevant Regulatory Body (and/or its agents or representatives) may perform any such audit in accordance with this Clause 36.

36.3 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 where applicable 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.

36.4 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 Contract.

36.5 Subject to Clauses 36.6 and 50, 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:

36.5.1 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 37 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 36.5.1); and

36.5.2 reasonable access to any site controlled by the Supplier or any Key Subcontractor (including any Network implementation or maintenance works conducted pursuant to this Contract) 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 36.5.1.

36.6 The Parties agree that:

36.6.1 the provision of information by electronic means shall be used to satisfy an audit pursuant to this Clause 36 unless in the relevant Regulatory Body's (or its agent's or representative's) reasonable opinion this will not satisfy the audit requirement; and

- 36.6.2 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 agents or representatives) in advance of the relevant inspection.
- 36.7 The Supplier shall bear its own costs and expenses incurred in respect of compliance with this Clause 36, unless and to the extent such costs and expenses are recoverable as Qualifying Capital Expenditure pursuant to Schedule 5.1 (Milestone Payments and Claims Procedure).
- 36.8 The Authority shall procure that the relevant Regulatory Body (and where applicable its agents and representatives) shall bear its own costs and expenses incurred in respect of compliance with this Clause 36.
- 36.9 Where as a consequence of any audit carried out pursuant to this Clause 36 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 36.

37. **REPORTS AND RECORDS**

- 37.1 The Supplier shall produce and provide to the Authority the reports set out in Schedule 6.4 (Reports) and such other reports as are expressly set out in this Contract, along with such reasonable additional ad hoc reports concerning the operation of this Contract 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 37.1 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).

- 37.2 The Supplier shall keep and maintain:

37.2.1 for the duration of the Term; and

37.2.2 for seven (7) years or such longer period if required by Law after the termination or expiry of this Contract (taking into account the Supplier's own information retention policies in respect of such seven (7) year or longer period):

(i) the MPC Supporting Documentation described in paragraph 4 and the Project Accounts and other financial records described in paragraph 5 of Schedule 5.1 (Milestone Payments and Claims Procedure); and (ii) such other reasonable and complete records concerning the provision of the Deployed Services and the operation of this Contract as may reasonably be necessary to keep and maintain in accordance with Good Industry Practice, which the Supplier shall provide to (i) the Authority pursuant to paragraph 4.3 of Schedule 5.1 (Milestone Payments and Claims Procedure); and (ii) as required pursuant to Clause 36.

- 37.3 Subject to Clause 50, the Authority may share the reports and records provided or made available to it pursuant to this Clause 37 with any Crown Body or Local Body.

38. **REMEDIAL PLAN PROCESS**

- 38.1 Subject to Clause 38.2, if the Supplier commits a material Default and such Default is capable of remedy in accordance with Clause 61.1.1(a), or an event to which the Remedial Plan Process is stated to apply occurs, the Remedial Plan Process shall apply.

38.2 The Remedial Plan Process shall be without prejudice to the Authority's right to terminate this Contract without providing a remedy period in accordance with Clauses 61.1.1(b) and 61.1.2 to 61.1.6.

39. CHANGE CONTROL

39.1 Subject to Clause 39.2, the Parties shall comply with their respective obligations in relation to Contract Changes as set out in Schedule 6.2 (Change Control Procedure).

39.2 Subject to Clause 39.3, 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:

39.2.1 the Supplier shall promptly identify to the Authority in writing any relevant and material change to such prices, terms and/or other items; and

39.2.2 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.

39.3 Where any change to the regulated published list prices, regulated terms and/or other regulated items referred to in Clause 39.2 affects any relevant compliance statement set out in the Compliance Matrix or any other provision in this Contract, 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.

40. DISPUTES

All Disputes shall be resolved in accordance with the Dispute Resolution Procedure set out in Schedule 6.3 (Dispute Resolution Procedure).

PERSONNEL, PREMISES AND ASSETS

41. SUPPLIER PERSONNEL

41.1 General

The Authority may refuse admission to the Authority Premises and/or direct the Supplier to end the involvement in the performance of the Supplier's obligations under this Contract of any of the Supplier Personnel whom the Authority reasonably believes represents a security risk and/or does not have the required levels of training and expertise and/or where the Authority has other grounds for doing so. The Authority shall provide an explanation for any such decision, subject to confidentiality, safety or other reasonable restraints on releasing such information.

41.2 Convictions

41.2.1 For each of the Supplier Personnel who, in providing the Deployed Services, has, will have or is likely to have access to children, vulnerable persons, or other members of the public to whom the Authority owes a special duty of care, the Supplier shall (unless and to the extent agreed otherwise by the Authority in writing):

- (a) carry out appropriate checks in accordance with Good Industry Practice in relation to Convictions (including conducting a Criminal Records Bureau check where to conduct such a check would be consistent with Good Industry Practice); and
- (b) conduct such questioning and investigation as is reasonable regarding any Convictions, where the above required checks reveal a Conviction.

41.2.2 The Supplier shall not (and shall ensure that a Subcontractor shall not) engage or continue to utilise in the provision of those Deployed Services involving or which are likely to involve access to children, vulnerable persons, or other members of the public to whom the Authority owes a special duty of care, any member of the Supplier Personnel whose Conviction means it would reasonably be regarded as inappropriate for them to be conducting such activity.

41.2.3 For the purpose of this Clause 41.2, references to "access" shall not include incidental access to members of the public due to Network Deployment on or about a public highway.

41.3 **Key Personnel**

41.3.1 The Parties have agreed to the appointment of the Key Personnel as at the Effective Date. The Supplier shall obtain the prior written consent of the Authority (such consent not to be unreasonably withheld or delayed, but without prejudice to the Supplier needing to take any action as may reasonably be required in accordance with its employment procedures) before any member of the Key Personnel is removed or replaced from their corresponding role during the Term, and, where possible, at least three (3) months' written notice shall be provided by the Supplier of its intention to replace any member of Key Personnel from their corresponding role.

41.3.2 The Supplier acknowledges that the Key Personnel are essential to the proper provision of the Deployed Services. The Supplier shall ensure that the role of any Key Personnel is not vacant for any longer than ten (10) Working Days and that any replacement shall be as or more qualified and experienced as the previous incumbent of such role to carry out the tasks assigned to the role of the member of Key Personnel whom he or she has replaced.

41.3.3 The Supplier shall ensure that each of the Key Personnel shall work for such a period of time in the performance of the Deployed Services that is commensurate with and sufficient to perform the obligation of that person's role (which shall be at least for the expected duration of the role set out in Schedule 3.4 (Key Personnel)), unless the Authority otherwise gives its prior written consent (such consent not to be unreasonably withheld or delayed). To the extent that it can do so without disregarding its statutory obligations, the Supplier shall take such steps as are reasonably necessary to ensure that it retains the services of all the Key Personnel.

41.3.4 The Authority may identify any of the roles performed by Supplier Personnel as Key Personnel for agreement by the Supplier (such agreement not to be unreasonably withheld or delayed), who will then be included on the list of Key Personnel by the Supplier in accordance with the Change Control Procedure. The Authority may also require the Supplier to remove any member of the Key Personnel that the Authority considers in any respect unsatisfactory and the Supplier shall take such action as may reasonably be required in accordance with its employment procedures.

41.3.5 The Authority shall not be liable for the cost of replacing any member appointed to a Key Personnel role.

41.4 **Supplier Personnel Security**

41.4.1 The Supplier shall ensure that proper staff vetting procedures are in place in respect of all Supplier Personnel employed or engaged in the performance of the Deployed Services.

41.4.2 The Supplier shall provide training on a continuing basis for all Supplier Personnel employed or engaged in the provision of the Deployed Services and maintain a proper and adequate security policy which the Supplier shall employ in the provision of the Deployed Services.

42. **NOT USED**

43. **AUTHORITY ASSETS**

[Template Note: The appropriateness of the default Authority Assets provisions below will need to be reviewed within the specific context of any Authority Assets that may be used under a particular Call Off Contract]

43.1 During the Term the Authority shall permit the Supplier to have access to and use of the Authority Assets subject to this Clause 43.

43.2 Title to the Authority Assets shall remain with the Authority (or, to the extent they are leased or licensed to the Authority, the relevant third party) at all times and, subject to the permissions granted under this Clause 43, the Supplier shall have no right or interest in them and shall not obtain title to the Authority Assets.

43.3 The Authority shall not be responsible for, where applicable, the delivery of Authority Assets to and from the Supplier Locations and/or to and from the Authority Premises, nor any costs of delivery, off-loading, packaging and removal of packaging or the costs of delivering the Authority Assets back.

43.4 In respect of the Authority Assets, the Supplier shall:

43.4.1 only use, and permit its Subcontractors to use, the Authority Assets to the extent necessary in order to provide the Deployed Services and in a manner which shall minimise the disruption to the business and operations of the Authority;

43.4.2 operate and manage the Authority Assets in accordance with this Contract, any other reasonable instructions provided by the Authority and otherwise in accordance with Good Industry Practice;

43.4.3 be responsible for all loss or damage which occurs before the Authority Assets are delivered back to the Authority in accordance with Clause 65.2.2, provided that the Supplier shall not be liable for fair wear and tear of any Authority Asset resulting from its normal and proper use in connection with the provision of the Deployed Services;

43.4.4 not move any Authority Asset from any location without the Authority's prior written consent (such consent not to be unreasonably withheld or delayed);

43.4.5 take reasonable and proper care of the Authority Assets in its possession or control;

- 43.4.6 ensure that any instructions or manuals supplied by the manufacturer of the Authority Assets or the Authority for their use and which are made available to the Supplier shall be followed by the Supplier Personnel;
 - 43.4.7 take such steps as may be properly recommended by the manufacturer of the Authority Assets or the Authority (to the extent that such steps have been notified to it);
 - 43.4.8 not knowingly use or permit any Authority Asset to be used in contravention of any Law;
 - 43.4.9 not permit or assert any lien over, sell, offer for sale, assign, mortgage, encumber, pledge, sub-let or lend out any Authority Asset, and ensure that no lien claims are made in respect thereof;
 - 43.4.10 where the Authority Assets are leased to the Authority, ensure that these are used only in accordance with the terms of any relevant leasing agreement (to the extent that such terms have been notified to it);
 - 43.4.11 keep a record of all improvements, alterations and upgrades made by or on behalf of the Supplier in and to the Authority Assets; and
- 43.5 Unless the Parties otherwise agree in writing, the Authority shall be responsible for the maintenance and repair of the Authority Assets and the Supplier shall:
- 43.5.1 notify the Authority if the Authority Assets need to be maintained and/or repaired; and
 - 43.5.2 permit the Authority and/or its contractors to enter the relevant Supplier Locations in response to the notification under Clause 43.5.1 or otherwise as required by the Authority to maintain or repair the Authority Assets.

INTELLECTUAL PROPERTY, DATA AND CONFIDENTIALITY
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44. INTELLECTUAL PROPERTY RIGHTS

- 44.1 Save as expressly set out in Clauses 45 and 46, a Party shall not by virtue of this Contract acquire any right, title or interest in or to the IPR of the other Party or that other Party's licensors.
- 44.2 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 44.1, 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.

45. LICENCE GRANTED BY THE SUPPLIER

- 45.1 For the duration of the Term and subject to Clause 50 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 or permit its agents, consultants, professional advisers, other Crown Bodies and each Local Body to copy or otherwise use to the

extent permitted under Clause 50) 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:

45.1.1 receiving and benefiting from the Deployed Services, the Authority's rights and the Supplier's obligations provided under this Contract;

45.1.2 the Authority performing its responsibilities:

- (a) under this Contract;
- (b) in connection with the Broadband Delivery Framework; and/or
- (c) in connection with the exercise of its business or function in relation to this Contract.

[Template Note: It may be appropriate for the licence to use Supplier IPR to extend beyond the Term, depending on the nature of the Supplier IPR in relation to particular Call Off Contracts]

46. LICENCE GRANTED BY THE AUTHORITY

46.1 Subject to Clause 50, 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 Contract.

46.2 Upon the termination or expiry of this Contract, the licence referred to in Clause 46.1 shall terminate automatically and the Supplier shall deliver to the Authority all Authority IPR and Authority Data in accordance with Clause 65.2. If upon the expiry of this Contract 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.

47. AUTHORITY DATA

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

47.2 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 Contract or as otherwise expressly authorised in writing by the Authority.

47.3 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.

47.4 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.

47.5 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.

48. **PROTECTION OF PERSONAL DATA**

48.1 With respect to the Parties' rights and obligations under this Contract, where either Party is the Data Processor the provisions set out in Clause 48.2 shall apply in respect of that Party.

48.2 The Party that is the Data Processor shall:

48.2.1 Process the Personal Data only in accordance with reasonable instructions from the other Party (which may be specific instructions or instructions of a general nature as set out in this Contract or as otherwise notified by the other Party during the Term);

48.2.2 Process the Personal Data only to the extent, and in such manner, as is necessary for the performance of this Contract or as is required by Law or any Regulatory Body;

48.2.3 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;

48.2.4 notify the other Party (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 other Party's obligations under the Data Protection Legislation;

48.2.5 provide the other Party with such cooperation and assistance as is reasonably necessary in relation to any complaint or request made, including by:

(a) providing the other Party 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 other Party's reasonable instructions;

(c) providing the other Party with any Personal Data it holds in relation to a Data Subject (within the reasonable timescales required by the other Party); and

(d) providing the other Party with any reasonable additional information requested by the other Party;

48.2.6 not Process or otherwise transfer any Personal Data outside the European Economic Area without the other Party's prior written consent. As part of the provision of any such consent the other Party shall be entitled to impose any additional terms relating to the transfer and use of any Personal Data outside the European Economic Area.

48.3 Each Party shall comply with its applicable obligations under the Data Protection Legislation and shall not perform its obligations under this Contract in such a way as

to cause the other Party to breach any of its applicable obligations under the Data Protection Legislation.

49. **FREEDOM OF INFORMATION**

49.1 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.

49.2 The Supplier shall and shall procure that its Subcontractors shall:

49.2.1 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;

49.2.2 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

49.2.3 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.

49.3 The Authority:

49.3.1 shall consult with the Supplier to inform its decisions regarding any exemptions as they may relate to any Commercially Sensitive Information; and **[Template Note: The Authority should accept a consultation obligation in respect of the Commercially Sensitive Information only if Schedule 3.2 can be agreed in a form which refers to a limited set of specific information that is genuinely commercially sensitive to the Supplier]**

49.3.2 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 Contract 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.

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

49.5 The Supplier shall ensure that all Information is retained for disclosure in accordance with Clause 37.2.

50. **CONFIDENTIALITY**

50.1 Except to the extent set out in this Clause 50 or where disclosure is expressly permitted elsewhere in this Contract, each Party shall:

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

- 50.1.2 not disclose the other Party's Confidential Information to any other person without the owner's prior written consent.
- 50.2 This Clause 50 shall not apply to the extent that:
- 50.2.1 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 49;
 - 50.2.2 such information was in the possession of the Party making the disclosure without obligation of confidentiality prior to its disclosure by the information owner;
 - 50.2.3 such information was obtained from a third party without obligation of confidentiality;
 - 50.2.4 such information was already in the public domain at the time of disclosure otherwise than by a breach of this Contract; or
 - 50.2.5 it is independently developed without access to the other Party's Confidential Information.
- 50.3 Notwithstanding any other term of this Contract, the Supplier gives its consent for the Authority to publish this Contract in its entirety (but with any information which is exempt from disclosure in accordance with the provisions of the FOIA redacted), as this Contract 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 Contract. For the purpose of this Clause 50.3 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. **[Template Note: The Authority should accept a consultation obligation in respect of the Commercially Sensitive Information only if Schedule 3.2 can be agreed in a form which refers to a limited set of specific information that is genuinely commercially sensitive to the Supplier]**
- 50.4 The Supplier may only disclose the Authority Confidential Information to the Subcontractors and Supplier Personnel who are directly involved in the performance of this Contract and who need to know the information for such purpose.
- 50.5 The Supplier shall ensure that Authority Confidential Information is used only for the purposes of this Contract.
- 50.6 Nothing in this Contract shall prevent the Authority from disclosing the Supplier Confidential Information:
- 50.6.1 to any Crown Body where such disclosure is in connection with this Contract. 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 Contract on the basis that the information is confidential and is not to be disclosed to any other third party;
 - 50.6.2 to any other Local Body where such disclosure is in connection with this Contract, [provided that the Authority shall not be permitted to disclose to any other Local Body the subset of Commercially Sensitive Information identified in Schedule 3.2 (Commercially Sensitive Information) as being not for disclosure to other Local Bodies]; **[Template Note: There may be a subset of particularly sensitive Commercially Sensitive Information which the Supplier may not want disclosed to another Local Body]**

- 50.6.3 to any consultant, supplier or other person engaged by the Authority in relation to this Contract or any person conducting an Official Assurance Review;
 - 50.6.4 for the purpose of the examination and certification of the Authority's accounts; or
 - 50.6.5 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.
- 50.7 The Authority shall ensure that any body or individual to whom the Supplier Confidential Information is disclosed pursuant to Clause 50.6 is made aware of the Authority's obligations of confidentiality (including the commitment set out in Clause 49.3 to consult in respect of disclosure of Commercially Sensitive Information) under this Contract and the Authority shall:
- 50.7.1 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;
 - 50.7.2 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.
- 50.8 Nothing in this Clause 50 shall prevent either Party from using any techniques, ideas or know-how gained during the performance of this Contract 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.
- 50.9 The Parties acknowledge that a material Default of this Clause 50 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 50.
- 51. PROHIBITED ACTS AND PREVENTION OF BRIBERY**
- 51.1 Each Party:
- 51.1.1 shall not in connection with this Contract commit a Prohibited Act;
 - 51.1.2 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 Contract, excluding any arrangement of which full details have been disclosed in writing to the other Party before execution of this Contract.
- 51.2 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.
- 51.3 The Supplier shall have an anti-bribery policy (which shall be disclosed to the Authority) in place throughout the Term with aim of preventing any Subcontractor or Supplier Personnel from committing a Prohibited Act and shall enforce it where necessary.

51.4 If any breach of Clause 51.1 by either Party is suspected or known, such Party shall promptly notify the other Party.

51.5 If a Party notifies the other Party that it suspects or knows that there may be a breach of Clause 51.1, the other Party shall respond as soon as reasonably practicable and in any event within ten (10) Working Days to the notifying Party's enquires and co-operate with any investigation.

52. CONFLICTS OF INTEREST

52.1 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 the Supplier Personnel; and (ii) the duties owed to the Authority under this Contract of which it becomes aware.

52.2 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.

53. CHANGE OF CONTROL

53.1 The Supplier shall provide written notice to the Authority within 15 Working Days of any Change of Control of the Supplier [or the Parent Company] taking place. **[Template Note: Parent Company wording needed only if the Supplier is required to procure a Guarantee in relation to a particular Call Off Contract]**

53.2 Subject to Clauses 53.4 and 53.5, the Authority shall be entitled to terminate this Contract in accordance with Clause 61.1.1(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.

53.3 [If at any time the Guarantor ceases to be the Parent Company of the Supplier, following a change of Control of the Supplier or the Parent Company itself, the Supplier shall, within 20 days of the request by the Authority procure that a replacement Guarantee substantially in the form set out in Schedule 7 (Form of Guarantee) is executed by the Supplier's new Parent Company.] **[Template Note: Clause needed only if the Supplier is required to procure a Guarantee in relation to a particular Call Off Contract]**

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

53.4.1 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 ITT evaluation criteria);
- (b) has materially failed to deliver services to the Authority to the standards required in any contract with the Authority or any other 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

53.4.2 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.

53.5 The Authority's right to terminate this Contract under Clause 53.2 shall expire if not exercised within six (6) months of the date of written notice to the Authority by the Supplier pursuant to Clause 53.2.

WARRANTIES, INDEMNITIES, LIABILITY AND FORCE MAJEURE

54. WARRANTIES

54.1 Each Party warrants, represents and undertakes that:

54.1.1 it has full capacity and authority to enter into and to perform this Contract;

54.1.2 this Contract is executed by a duly authorised representative of that Party;

54.1.3 as at the Effective Date there are no actions, suits or proceedings or regulatory investigations pending or, to that party's knowledge, threatened against or affecting that Party before any court or administrative body or arbitration tribunal that might affect the ability of that party to meet and carry out its obligations under this Contract; and

54.1.4 once duly executed this Contract will constitute its legal, valid and binding obligations.

54.2 The Supplier warrants, represents and undertakes for the duration of the Term that:

54.2.1 it shall discharge its obligations under this Contract with all due skill, care and diligence including in accordance with Good Industry Practice;

54.2.2 it has and will continue to hold all necessary Consents to perform the Supplier's obligations under this Contract (excluding any Consents that only the Authority is eligible to obtain as a matter of law);

54.2.3 it has and will continue to have all IPR (excluding Authority IPR) necessary to perform the Supplier's obligations under this Contract;

54.2.4 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 responses to the ITT are to the best of its knowledge, information and belief, complete, true and accurate and that it will 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;

54.2.5 all Supplier Personnel have been vetted and recruited on a basis of proper and adequate staff vetting procedures; and

54.2.6 it shall at all times comply with all applicable Law in carrying out its obligations under this Contract.

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

54.4 Except as expressly stated in this Contract, all warranties and conditions whether express or implied by statute, common law or otherwise are hereby excluded to the extent permitted by Law.

55. THIRD PARTY IPR INDEMNITY

55.1 Each Party shall procure that the performance of its responsibilities under this Contract shall not infringe or cause the infringement of any IPR of any third party.

55.2 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 Contract.

55.3 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 Contract.

56. HANDLING OF INDEMNIFIED CLAIMS

56.1 Each Party shall promptly notify the other in writing of any Indemnified Claim of which it becomes aware.

56.2 In respect of each Indemnified Claim, subject to Clause 56.3 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.

56.3 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.

56.4 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).

56.5 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:

56.5.1 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;

- 56.5.2 any such action by the Indemnifying Party does not have an adverse effect on the performance of this Contract or the Indemnified Party;
- 56.5.3 there is no additional cost to the Indemnified Party; and
- 56.5.4 the terms of this Contract shall continue to apply to the items and activities concerned.

57. LIMITATIONS ON LIABILITY

57.1 Neither Party limits its liability for:

- 57.1.1 death or personal injury caused by its negligence, or that of its employees, agents or Subcontractors (as applicable);
- 57.1.2 fraud or fraudulent misrepresentation by it or its employees;
- 57.1.3 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
- 57.1.4 any other matter for which it would be unlawful for either Party to exclude or limit or attempt to exclude or limit its liability.

57.2 Subject to Clause 57.1, the Supplier's total aggregate liability:

- 57.2.1 in respect of the indemnity set out in Clause 55.2 relating to alleged or actual infringement of IPR shall be unlimited;
- 57.2.2 for all loss of or damage to the Authority Premises or any real property, real assets, equipment or infrastructure of the Authority or any third party (including any Other Beneficiary where applicable) caused by the Supplier's Default shall in no event exceed £[*] [in respect of any one event].
[Template Note: Authority to consider the scope of potential Supplier liability for damage to Authority or third party property, and any potential loss that may be suffered (or liability that may be incurred) by the Authority as a consequence of such damage. For example, the Supplier may cause damage to third party property during Network Deployment, where the third party attempts to bring a claim against the Authority in relation to such damage. In this example, the Authority would wish to be made whole for any loss arising]
- 57.2.3 in respect of all other claims, losses or damages, whether arising from tort (including negligence), breach of contract or otherwise pursuant to this Contract (including where suffered or incurred by any Other Beneficiary) shall in no event exceed 115% of the aggregate Milestone Payments paid, due or which would have been payable in the future under this Contract.

57.3 Subject to Clause 57.1, the Authority's total aggregate liability, in addition to its obligation to pay the Milestone Payments as and when they fall due for payment, in respect of:

- 57.3.1 the indemnity set out in Clause 55.3 relating to alleged or actual infringement of IPR shall be unlimited;
- 57.3.2 in respect of all other claims, losses or damages, whether arising from tort (including negligence), breach of contract or otherwise pursuant to this Contract shall in no event exceed 65% of the aggregate Milestone Payments paid, due or which would have been payable in the future under this Contract.

- 57.4 Subject to Clauses 57.1 and 57.5, neither Party will be liable to the other Party for:
- 57.4.1 any indirect, special or consequential loss or damage; or
 - 57.4.2 any loss of profits, turnover, business opportunities or damage to goodwill (whether direct or indirect).
- 57.5 Subject to Clause 57.2, the Authority may, amongst other things, recover as a direct loss:
- 57.5.1 any additional operational and/or administrative costs and expenses arising from the Supplier's Default;
 - 57.5.2 any wasted expenditure or charges rendered unnecessary and/or incurred by the Authority arising from the Supplier's Default; and
 - 57.5.3 the additional cost of procuring Replacement Services for the remainder of the Term.
- 57.6 The Parties expressly agree that if any limitation or provision contained or expressly referred to in this Clause 57 is held to be invalid under any Law, it will be deemed omitted to that extent, and if any party becomes liable for loss or damage to which that limitation or provision applied, that liability will be subject to the remaining limitations and provisions set out in this Clause 57.
- 57.7 Nothing in this Clause 57 shall act to reduce or affect a Party's general duty to mitigate its loss.

58. **[INSURANCE]**

[Template Note: The Authority should consider whether it requires the Supplier to maintain any specific types of insurance and, if so, the basis upon which such insurance should be maintained and the nature of any associated rights needed by the Authority (e.g. notice of insurance claims). The Authority should seek specialist insurance advice if it considers that specific insurance may be needed. If specific insurance is not required then the Clause 58 heading should be replaced with "NOT USED"]

59. **FORCE MAJEURE**

- 59.1 Neither Party shall be entitled to bring a claim for a breach of obligations under this Contract 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.
- 59.2 Where the Affected Party is the Supplier, none of the following events and circumstances shall be regarded as a Force Majeure Event that relieves liability under this Clause 59:
- 59.2.1 an event to the extent it is capable of being mitigated by any of the Deployed Services;
 - 59.2.2 a failure by a Subcontractor to perform any obligation owed to the Supplier unless and to the extent that the failure is directly caused by a Force Majeure Event directly affecting that Subcontractor;
 - 59.2.3 an event or circumstance caused by a Default by the Supplier, a Subcontractor or Supplier Personnel;

- 59.2.4 an event or circumstance attributable to the Supplier's or any Subcontractor's wilful act, neglect or failure to take reasonable precautions against the relevant event; or
- 59.2.5 an event or circumstance where its effect is such that a prudent provider of services similar to the Deployed Services, operating to the standards required by this Contract, would have foreseen and prevented or avoided the consequences of such event or circumstance.
- 59.3 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 any delay and the Supplier shall during the period which the effects of a Force Majeure Event are subsisting take such reasonable steps as are necessary in accordance with Good Industry Practice to overcome or minimise the consequences of the Force Majeure Event.
- 59.4 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 Contract. Following such notification, this Contract shall continue to be performed on the terms existing immediately before the occurrence of the Force Majeure Event unless agreed otherwise by the Parties.
- 59.5 Nothing in this Clause 59 shall prevent either Party from performing any of its obligations set out in this Contract that are not affected by the relevant Force Majeure Event.
- 59.6 To the extent that the consequences of a Force Majeure Event can be addressed by a change to the Project Plan without impacting upon the Implementation Plan, then the Parties shall use their respective reasonable endeavours to agree a change to the Project Plan in accordance with paragraph 5.8 of Schedule 4.1 (Implementation) without recourse to the Change Control Procedure.
- 59.7 To the extent that the consequences of a Force Majeure Event:
- 59.7.1 materially adversely affect (or are likely to materially adversely affect) the performance of the Deployed Services for a sustained and indeterminate period;
- 59.7.2 have been mitigated by the Supplier in accordance with Good Industry Practice pursuant to Clause 59.3; and
- 59.7.3 cannot be addressed solely by a change to the Project Plan without recourse to the Change Control Procedure in accordance with Clause 59.6,
- then subject to Clause 59.1 the Parties may elect to use their respective reasonable endeavours to address the consequences of the Force Majeure Event in accordance with the Change Control Procedure, provided that unless the Parties agree otherwise in writing the Parties shall in respect of the agreement of any such change adhere to the principle that each Party shall bear its own costs incurred in dealing with a Force Majeure Event.

TERM AND TERMINATION

60. TERM OF THIS CONTRACT

This Contract shall commence on the Effective Date and, unless terminated at an earlier date by operation of Law or in accordance with the provisions of this Contract, shall expire on the Expiry Date.

61. TERMINATION FOR SUPPLIER DEFAULT

61.1 The Authority may terminate this Contract 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:

61.1.1 where the Supplier commits a material Default of this Contract and:

- (a) the material Default is capable of remedy but which, subject to Clause 38, it has failed to remedy in accordance with the Remedial Plan Process; or
- (b) in the reasonable opinion of the Authority the material Default is not capable of remedy;

61.1.2 where the Supplier is in material Default of its State aid obligations set out in Clause 23 and the material Default is capable of remedy (in which case Clause 61.1.1(a) shall apply) or in the reasonable opinion of the Authority the material Default is not capable of remedy (in which case Clause 61.1.1(b) shall apply);

61.1.3 [where the Supplier has failed to Achieve a Milestone by the associated Longstop Date due to Supplier Default;] **[Template Note: The Longstop Date concept should be used by the Authority only to the extent there are timing constraints or dependencies on the availability of funding for the Achievement of relevant Milestones]**

61.1.4 where an Insolvency Event occurs in respect of the Supplier [and/or the Guarantor]; **[Template Note: Guarantor wording needed only if the Supplier is required to procure a Guarantee in relation to a particular Call Off Contract]**

61.1.5 in accordance with Clause 53.2 in relation to a Change of Control; or

61.1.6 in accordance with paragraphs 2.3.1 or 2.3.3 of Schedule 6.5 (Remedial Plan Process).

61.2 Termination in accordance with this Clause 61 shall be without prejudice to any right of action or remedy of either Party which has accrued or which subsequently accrues.

62. TERMINATION FOR AUTHORITY DEFAULT

The Supplier may terminate this Contract only if the Authority is in material breach of its obligation to pay undisputed Milestone Payments by giving the Authority 60 days' written notice specifying the breach and requiring its remedy and the breach is not resolved upon the expiry of such notice.

63. TERMINATION DUE TO FORCE MAJEURE

63.1 Either Party may, by written notice to the other, terminate this Contract, or in respect of Clause 63.1.2 only require the partial termination of the part of this Contract affected by the Force Majeure Event in accordance with Clause 64, if:

63.1.1 a Force Majeure Event occurs which affects all or a substantial part of the Deployed Services for a continuous period of more than 90 Working Days; or

63.1.2 a Force Majeure Event occurs which affects a non-substantial part of the Deployed Services for a continuous period of more than 120 Working Days.

64. PARTIAL TERMINATION

Where the Authority has the right to terminate this Contract for Supplier Default in accordance with Clause 61, the Authority may terminate the part of the Deployed Services affected by such Supplier Default by written notice to the Supplier (where such notice shall specify the date of termination for the relevant part of this Contract). The consequences of any such partial termination shall be addressed by the Parties in accordance with the Change Control Procedure.

65. CONSEQUENCES OF TERMINATION OR EXPIRY

65.1 Following the service of notice terminating this Contract by:

65.1.1 the Authority in accordance with Clause 61 due to Supplier Default:

- (a) subject to Clause 65.3, the Supplier shall continue to be under an obligation to perform its obligations under this Contract until the date of the termination specified in the termination notice;
- (b) the Authority shall pay any outstanding undisputed Milestone Payments which are properly due and payable prior to the date of the termination specified in the termination notice in accordance with the terms of this Contract;
- (c) the Authority shall make no termination or compensation payment of any kind;
- (d) the Supplier shall, within 45 days of service of such termination notice, pay to the Authority all amounts standing to the credit of the Investment Fund; and
- (e) the Parties shall consult with the European Commission and the Framework Authority in its capacity as a competency centre to ensure that any public funding paid under this Contract is not rendered unlawful State aid as a result of the early termination of this Contract (which the Parties acknowledge for such purpose may include the application of certain ongoing requirements in respect of the Network following the early termination of this Contract). Any respective rights and obligations of either Party agreed pursuant to such consultation shall be set out in a written document and executed by duly authorised representatives of each Party.

65.1.2 the Supplier in accordance with Clause 62 due to Authority Default:

- (a) subject to Clause 65.3, the Supplier shall not be under an obligation to continue to perform its obligations under this Contract;

- (b) save in respect of any contract damages claim successfully made by the Supplier (subject to the provisions of this Contract), the Authority shall make no termination or compensation payment of any kind;
- (c) the Supplier shall, within 45 days of service of such termination notice, pay to the Authority all amounts standing to the credit of the Investment Fund; and
- (d) the Parties shall consult with the European Commission and the Framework Authority in its capacity as a competency centre to ensure that any public funding paid under this Contract is not rendered unlawful State aid as a result of the early termination of this Contract (which the Parties acknowledge for such purpose may include the application of certain ongoing requirements in respect of the Network following the early termination of this Contract). Any respective rights and obligations of either Party agreed pursuant to such consultation shall be set out in a written document and executed by duly authorised representatives of each Party.

65.1.3 either Party in accordance with Clause 63 due to a Force Majeure Event:

- (a) subject to Clause 65.3, the Supplier shall not be under an obligation to continue to perform its obligations under this Contract;
- (b) the Authority shall pay any outstanding undisputed Milestone Payments which are properly due and payable prior to the date of the termination specified in the termination notice in accordance with the terms of this Contract;
- (c) each Party shall bear its own costs in relation to such termination;
- (d) the Supplier shall, within 45 days of service of such termination notice, pay to the Authority all amounts standing to the credit of the Investment Fund; and
- (e) the Parties shall consult with the European Commission and the Framework Authority in its capacity as a competency centre to ensure that any public funding paid under this Contract is not rendered unlawful State aid as a result of the early termination of this Contract (which the Parties acknowledge for such purpose may include the application of certain ongoing requirements in respect of the Network following the early termination of this Contract). Any respective rights and obligations of either Party agreed pursuant to such consultation shall be set out in a written document and executed by duly authorised representatives of each Party.

65.2 Upon termination or expiry of this Contract:

- 65.2.1 the Supplier shall cease to use any Authority IPR and Authority Data and, at the direction of the Authority:
 - (a) 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

- (b) on the earlier of the receipt of the Authority's written instructions or 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;

65.2.2 at the direction of the Authority the Supplier shall cease to use any Authority Assets and, at its own cost and expense, perform such action as the Authority may require in relation to the handover and/or delivery back to the Authority of such Authority Assets.

65.3 The following provisions of this Contract shall survive the termination or expiry of this Contract and shall continue in effect along with such other provisions of this Contract which expressly or by implication have effect after termination: Clauses 1, 3, 9, 23, 36, 37.2, 40, 44 to 50, 55 to 57, 65 and 67 to 76.

[Template Note: If the Network and the Deployed Services will be designed such that they can be taken over by another operator, then the drafting will need to provide for any necessary exit arrangements including (e.g.) the procurement of a replacement supplier, the maintenance of asset registers, the acquisition of assets and the ongoing use of Supplier IPR. The presumption is that in most cases this will not be possible and so standard exit drafting (supporting by an exit schedule) has not been included. If detailed exit arrangements are needed on this issue, the drafting above will need to be amended in the context of the specific Call Off Contract – in most instances this is anticipated as unlikely]

MISCELLANEOUS

66. ASSIGNMENT AND NOVATION

66.1 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 Contract 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). In circumstances where the Authority gives its prior written consent it may stipulate certain conditions of such consent (such as the provision of a guarantee substantially [in the form of the Guarantee] [in a form satisfactory to the Authority] from the parent company of the assignee or novatee). **[Template Note: Authority to consider if specific conditions need to be stipulated in respect of any potential excess profits arising from the sale of the Network by the Supplier]**

66.2 The Authority may:

66.2.1 assign, novate or otherwise dispose of any or all of its rights and obligations under this Contract to any Contracting Authority or Local Body; and/or

66.2.2 novate this Contract 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 Contract (including where applicable the payment of Milestone Payments), 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).

66.3 A change in the legal status of the Authority shall not affect the validity of this Contract and it shall be binding on any successor body to the Authority.

67. **WAIVER AND CUMULATIVE REMEDIES**

67.1 The rights and remedies provided by this Contract 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.

67.2 Unless a right or remedy of a Party is expressed to be an exclusive right or remedy, the exercise of it by that Party is 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.

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

68. **RELATIONSHIP OF THE PARTIES**

Nothing in this Contract 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.

69. **PUBLICITY AND BRANDING**

69.1 Neither Party shall:

69.1.1 make any press announcement or publicise this Contract or its contents in any way; or

69.1.2 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 shall not be unreasonably withheld or delayed.

70. **SEVERANCE**

If any provision of this Contract 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.

71. **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 the meaning of this Contract.

72. **ENTIRE AGREEMENT**

72.1 This Contract, together with the documents referred to in it (save for the ITT, which is referred to in this Contract solely for the purpose of the recitals to this Contract and Clauses 53.4.1(a) and 54.2.4) 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.

72.2 Each Party acknowledges and agrees that in entering into this Contract 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 Contract.

72.3 Nothing in this Clause 72 shall operate to exclude any liability for fraud.

73. THIRD PARTY RIGHTS

73.1 Except as provided in Clauses 9 and 73.2, nothing in this Contract 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 Contract.

73.2 Each Other Beneficiary may enforce the terms of this Contract subject to and in accordance with the provisions of Clause 9 and the Contracts (Rights of Third Parties) Act 1999.

74. NOTICES

74.1 Any notices given under or in relation to this Contract 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
[Address to be inserted]	[Address to be inserted]
For the attention of: [•]	For the attention of: [•]
Fax: [•]	Fax: [•]
Email: [•]	Email: [•]

74.2 A notice shall be deemed to have been received:

74.2.1 if delivered personally, at the time of delivery;

74.2.2 in the case of pre-paid first class post, recorded delivery or registered post, three (3) Working Days from the date of posting;

74.2.3 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

74.2.4 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 76 of this Contract, 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.

74.3 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).

75. AUTHORITY POWERS

Nothing contained or implied in this Contract or any consent or approval granted pursuant to it shall fetter the discretion or otherwise prejudice or affect the rights, powers, duties and obligations of the Authority in the exercise of its functions as the local authority, the local planning authority, the highway authority or other statutory authority and such rights, powers, duties and obligations under Law may be as fully and effectually exercised as if the Authority were not party to this Contract and any approval, consent, direction or authority given by the Authority as the local or other statutory authority shall not be or be deemed to be an approval, consent, direction or authority given under this Contract and vice versa.

76. GOVERNING LAW AND JURISDICTION

This Contract 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.

[Template Note: This Contract will need to be amended where applicable if it is to be governed by Scottish or Northern Irish law]

EXECUTION

SIGNED for and on behalf of the **[Name of Authority]** by

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

Signature:

Signature:

Name:

Name:

Position:

Position:

Date:

Date:

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 Contract the following words shall have the meanings set out below.

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;
Achieve	in relation to a Milestone, the Milestone Achievement Criteria for that Milestone have been satisfied and " Achieved " and " Achievement " shall be construed accordingly;
Actual Additional Supplier Expenditure	the actual Additional Supplier Expenditure incurred;
Actual Qualifying Capital Expenditure	the actual Qualifying Capital Expenditure incurred;
Additional Service Revenue	gross revenue derived by the Supplier from Wholesale Access Products and Services, other than broadband revenues (excluding RSP services that utilise Wholesale Access Products and Services);
Additional Service Revenue Amount	an amount calculated in accordance with paragraph 11.2 of Schedule 5.1 (Milestone Payments and Claims Procedure), which is credited to the Investment Fund;
Additional Service Review Point	(a) the third anniversary of the Effective Date and thereafter the expiry of each two (2) year period during the Term (each being an 'interim Additional Service Review Point'); and (b) the Expiry Date (being the 'final Additional Service Review Point');
Additional Supplier Expenditure	Qualifying Capital Expenditure which has not attracted a Subsidy Payment from any source;
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;
Authority Assets	the assets, equipment and infrastructure owned by or leased or licensed to the Authority (except where leased or licensed to the Authority by the Supplier under this Contract) to which the Supplier requires access to and/or use of in order to provide the Deployed Services and which are listed in Schedule 4.2 (Authority Assets);
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 Contract, however it is conveyed, that relates to the business, affairs, developments, trade secrets, know-how, personnel, and suppliers of the Authority, including all IPR, 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	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: (a) supplied to the Supplier by or on behalf of the Authority pursuant to this Contract; and/or (b) Personal Data for which the Authority is the Data Controller and which is processed or otherwise made available pursuant to this Contract;
Authority IPR	any IPR (excluding the Supplier IPR) owned by, or licensed to, the Authority in connection with this Contract;
Authority Premises	the premises owned, controlled and/or occupied by the Authority or other Local Body or Crown Body;
Authority Representative	the representative appointed by the Authority in accordance with Clause 34.1;
Baseline Service Requirements	the baseline service requirements set out in Schedule 2 (Baseline Service Requirements) of the Framework Agreement, as qualified by the compliance statements set out in the compliance matrix attached to the Reference Supplier Solution;
Basic Broadband	an Access Line Speed of 2Mbps to 24Mbps;
Benchmark Data	that data used to form the basis of comparison in a Wholesale Access Prices Benchmarking, as described in paragraphs 3.3 and 3.4 of Schedule 5.2 (Wholesale Access Pricing);
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 with the same name established by the Authority of certain appointed suppliers (including the Supplier);
Call Off Procedure	the procedure set out in paragraph 4 of Schedule 9 (Call Off Procedure) of the Framework Agreement, which the Authority shall use to conduct a mini competition with Framework Suppliers under the Framework Agreement;
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 Change Form executed by the Parties in accordance with paragraph 4 of Schedule 6.2 (Change Control

	Procedure);
Change Control Procedure	the procedure set out in Schedule 6.2 (Change Control Procedure);
Change Form	a form for dealing with Contract Changes in accordance with the Change Control Procedure, substantially in the form set out in the Appendix to Schedule 6.2 (Change Control Procedure);
Change Impact Assessment	Part 2 of the Change Form completed by the Supplier in accordance with paragraphs 2 and 3 of Schedule 6.2 (Change Control Procedure);
Change of Control	a change in Control of the Supplier;
Change Request	Part 1 of the Change Form completed by a Party in accordance with paragraph 2 of Schedule 6.2 (Change Control Procedure);
Change in Law	any change in Law which impacts on the performance of the Deployed Services and which comes into force after the Effective Date;
Claim	any action, claim, demand or proceedings;
Codes and Standards	<p>(a) all of the codes and standards listed in the Service Requirements and/or the Supplier Solution;</p> <p>(b) all applicable codes of practice issued pursuant to the New Roads and Street Works Act 1991;</p> <p>(c) all applicable standards, specifications and codes of practice issued by the Secretary of State for Transport, the Department for Transport (or a successor body) and/or the Department for the Environment, Food and Rural Affairs including in respect of the design, construction, operation or maintenance of highways;</p> <p>(d) all applicable national and local planning policy in respect of electronic communications and sensitive locations and buildings including the natural, built and historic environment;</p> <p>(e) all applicable guidelines published by the International Commission on Non-Ionising Radiation Protection;</p> <p>(f) the Code of Best Practice on Mobile Phone Network Development published by the Office of the Deputy Prime Minister (where applicable to the Deployed Services),</p> <p>as updated or amended from time to time;</p>
Commission Decision	the decision from the European Commission approving an aid scheme (as defined in Council Regulation (EC) 659/1999) with reference number C(2012) 8223 final;
Commercially Sensitive Information	the information listed in Schedule 3.2 (Commercially Sensitive Information) comprising the information of a commercially sensitive nature relating to the Supplier, its IPR 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;

Compliance Matrix	the compliance matrix set out in the Supplier Solution which details the agreed compliance of the Supplier Solution against the Service Requirements, as further specified in paragraph C of Schedule 2 (Service Requirements);
Confidential Information	the Authority Confidential Information and/or the Supplier Confidential Information;
Consents	all permits, licences, permissions, consents, approvals, certificates and authorisations (whether statutory or otherwise) which are required for the performance of any of the Supplier's obligations under this Contract, whether required in order to comply with Law or as a result of the rights of any third party;
Contract	the Clauses of this Contract together with the Schedules and Appendices to it and the terms set out in any executed Change Form;
Contract Change	any change to the terms of this Contract;
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;
Conviction	other than for minor road traffic offences, any previous or pending prosecutions, convictions, cautions and binding-over orders (including any spent convictions as contemplated by section 1(1) of the Rehabilitation of Offenders Act 1974 by virtue of the exemptions specified in Part II of Schedule 1 of the Rehabilitation of Offenders Act 1974 (Exemptions) Order 1975 (SI 1975/1023) or any replacement or amendment to that Order, or being placed on a list kept pursuant to section 1 of the Protection of Children Act 1999 or being made the subject of a prohibition or restriction under section 218(6) of the Education Reform Act 1988);
Cost Book	the relevant sheets contained in, or referenced from, the Project Model which contain certain input cost data;
Coverage Area	the area designated as white for either Superfast Broadband or Basic Broadband by the Authority within the Speed and Coverage Template within which the Deployed Services are to be provided;
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 Contract;
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 Contract and in respect of which such Party is liable to the other;
Delay	any period of time by which the implementation of the Deployed Services is delayed by reference to the Implementation Plan;
Demand Stimulation	the stimulation of End User broadband demand and Take-up in accordance with the terms of this Contract;
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;
Dispute	any dispute, difference or question of interpretation pursuant to this Contract, 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 Contract directs the Parties to resolve an issue by reference to the Dispute Resolution Procedure;
Dispute Resolution Procedure	the procedure set out in Schedule 6.3 (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;
Due Diligence Information	all information and documents that the Supplier considers either necessary or relevant for the performance of its obligations under this Contract, the development of the Supplier Solution and the calculation of the Milestone Payments (including all information and documents requested by the Supplier);

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;
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 Contract is signed by both Parties;
Escalation Process	the process for escalation during commercial negotiations in accordance with paragraph 3 of Schedule 6.3 (Dispute Resolution Procedure);
Expedited Dispute Resolution Timetable	the reduced timetable for the resolution of material Disputes set out in the Appendix to Schedule 6.3 (Dispute Resolution Procedure) to be used in accordance with paragraph 2.6 of Schedule 6.3 (Dispute Resolution Procedure);
Expiry Date	<p>(a) in respect of the claw back mechanism contained in paragraphs 8 to 11 of Schedule 5.1 (Milestone Payments and Claims Procedure), the earlier of:</p> <p style="margin-left: 40px;">(i) [•] [Template Note: This should be expressed here at the Effective Date as a calendar date fixed at [7] years from the planned Full Service Commencement Date (which the Supplier may replicate in the Project Plan for clarity)]</p> <p style="margin-left: 40px;">(ii) the date specified in (b) below;</p> <p>(b) in respect of all other provisions of this Contract, the date that is [7] years from the Full Service Commencement Date; [Template Note: This needs to be a minimum period of 7 years to comply with State aid guidance]</p>
Final Additional Service Claw Back Amount	an amount calculated in accordance with paragraph 11.3 of Schedule 5.1 (Milestone Payments and Claims Procedure), which is refundable to the Authority;
Final Take-up Claw Back Amount	an amount calculated in accordance with paragraph 10.5 of Schedule 5.1 (Milestone Payments and Claims Procedure), which is refundable to the Authority;
Financial Distress Event	<p>the occurrence of one or more of the following events:</p> <p>(a) the Supplier's or the relevant Key Subcontractor's credit or Dun & Bradstreet rating (as applicable) drops one or more levels below the level set out in Clause 28.1;</p> <p>(b) the Supplier or a Key Subcontractor issues a profits warning to a stock exchange or makes any other public announcement about a material deterioration in its financial position or prospects;</p> <p>(c) there is a public investigation into improper financial</p>

accounting and reporting, suspected fraud and/or any other impropriety of the Supplier or a Key Subcontractor;

- (d) the Supplier or a Key Subcontractor commits a material breach of covenants to its lenders;
- (e) a Key Subcontractor notifies the Authority that the Supplier has not satisfied any material sums properly due under a specified invoice and not subject to a genuine dispute;
- (f) either of the following events:
 - (i) commencement of any litigation against the Supplier or a Key Subcontractor with respect to financial indebtedness; or
 - (ii) any financial indebtedness of the Supplier or a Key Subcontractor becoming due as a result of an event of default,

which in respect of (f) only, the Authority reasonably believes could materially impact on the continued performance and delivery of the Deployed Services in accordance with this Contract and/or puts at risk public subsidy already granted (or to be granted) pursuant to this Contract;

Financial Distress Event Remedial Plan

a plan provided by the Supplier in accordance with Clause 28 to remedy the potential adverse impact of the relevant Financial Distress Event on the continued performance of this Contract and/or the security of public subsidy already granted (or to be granted) pursuant to this Contract;

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:

- (a) acts of God, riots, war or armed conflict;
- (b) acts of terrorism;
- (c) acts of the Crown or any Regulatory Body;
- (d) fire, flood, storm or earthquake, subsidence or disaster (including epidemics or pandemics);
- (e) any failure or shortage of power, fuel or transport,

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;

Forecast Qualifying Capital Expenditure	the Supplier's forecasted capital expenditure for this Contract as detailed in the Project Model;
Framework Agreement	the framework agreement relating to the Broadband Delivery Framework between the Supplier and the Framework Authority dated 29 June 2012 as amended from time to time in accordance with its terms;
Framework Authority	the Secretary of State for Culture, Olympics, Media and Sport acting through the Department for Culture, Media and Sport as party to the Framework Agreement (or any successor body);
Framework Supplier	each supplier (including the Supplier) appointed by the Authority to the Broadband Delivery Framework;
Full Service Commencement Date	the date on which the M2 Milestone with ID [•] specified in the Implementation Plan has been Achieved;
Funded Mobile Project	any publically-funded mobile infrastructure project;
General Change in Law	a Change in Law that is not a Specific Change in Law;
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 Contract under the same or similar circumstances;
[Guarantee]	[the deed of guarantee in favour of the Authority entered into by the Guarantor on or about the date of this Contract which is in the form set out in Schedule 7 (Form of Guarantee), or any guarantee acceptable to the Authority that replaces it from time to time;]
Handover Point	a network interconnection point between different communications providers or a communications provider and an RSP;
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);
Implementation Plan	the implementation plan set out at Appendix 2 to Schedule 4.1 (Implementation) as updated from time to time in accordance with paragraph 5.8 of Schedule 4.1 (Implementation);
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 Contract;
Indemnified Party	in respect of an indemnity being given under the terms of this Contract, the Party being indemnified;

Indemnifying Party	in respect of an indemnity being given under the terms of this Contract, the Party providing the indemnity;
Information	has the meaning given by section 84 of the Freedom of Information Act 2000;
Information System	a system for generating, sending, receiving, storing or otherwise processing electronic communications;
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 [and/or the Parent Company] (the "entity"): [Template Note: Parent Company wording in square brackets needed only if a Guarantee is required]</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, <p>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;</p>
Intellectual Property Right	(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;
Investment Fund	the fund of monies available for reinvestment in the Network pursuant to paragraph 12 of Schedule 5.1 (Milestone Payments and Claims Procedure), which shall be recorded in the Project Accounts;
IPR	Intellectual Property Right;
ITT	the invitation to tender for the provision of certain network deployment and broadband related services issued by the Authority to the Framework Suppliers on [•] (as may have been updated by the Authority during the relevant Call Off Procedure);
Key Personnel	those members of the Supplier Personnel listed in Schedule 3.4 (Key Personnel);
Key Service	any Deployed Service (in whole or in part), excluding Deployed Services provided under any Satellite Subcontract, where in the Authority's reasonable view from time to time: <ul style="list-style-type: none"> (a) the relevant Deployed Service is critical to the provision of the Deployed Services as a whole; (b) there is no immediately available equivalent or comparable replacement service; and/or (c) the non-performance of the relevant Deployed Service would disproportionately affect the delivery of this Contract relative to the delivery of network and wholesale broadband related services by the Supplier in areas of the UK without public subsidy;
Key Subcontract	a Subcontract between the Supplier and a Key Subcontractor;
Key Subcontractor	in the Authority's opinion, any Subcontractor providing, or that is proposed to provide, a Key Service, which at the Effective Date comprises those Subcontractors listed in Schedule 3.3 (Key Subcontractors);
Key Subcontractor Financial Distress Event	a Financial Distress Event affecting a Key Subcontractor;
Law	any applicable law, statute, by-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;
LCIA	the London Court of International Arbitration;

Local Body

each of the following bodies within the UK borders including successors to those bodies' functions and organisations created to deliver their functions and objectives:

- (a) local authorities (including groups of local authorities) within the UK borders a list of which as at the date of signature of the Framework Agreement 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;

[Longstop Date]

[each of the dates described as such in the Implementation Plan;] **[Template Note: See Clause 61.1.3 and the associated Template Note]**

Loss

all damages, losses, liabilities, costs, expenses (including legal and other professional charges and expenses), and charges whether arising under statute, contract or at common law or in connection with judgments, proceedings, internal costs or demands;

M0 Milestone

an M0 type Milestone specified as such in the Implementation Plan, which shall be consistent with the relevant Milestone Achievement Criteria set out in Appendix 1 of Schedule 4.1 (Implementation);

M1 Milestone

an M1 type Milestone specified as such in the Implementation Plan, which shall be consistent with the relevant Milestone Achievement Criteria set out in Appendix 1 of Schedule 4.1 (Implementation);

M2 Milestone	an M2 type Milestone specified as such in the Implementation Plan, which shall be consistent with the relevant Milestone Achievement Criteria set out in Appendix 1 of Schedule 4.1 (Implementation);
M3 Milestone	an M3 type Milestone specified as such in the Implementation Plan, which shall be consistent with the relevant Milestone Achievement Criteria set out in Appendix 1 of Schedule 4.1 (Implementation);
Master Project Model	the Parties' agreed version of the Project Model, as updated from time to time in accordance with Schedule 5.3 (The Project Model), which represents the agreed master copy of the Project Model for the purposes of this Contract;
Milestone	each of the milestones set out in the Implementation Plan;
Milestone Achievement Certificate	a certificate provided by the Authority upon the Achievement of a Milestone in accordance with paragraph 6 of Schedule 4.1 (Implementation), substantially in the form set out in Appendix 3 to Schedule 4.1 (Implementation);
Milestone Achievement Criteria	the criteria for the Achievement of each Milestone type as specified in Appendix 1 of Schedule 4.1 (Implementation);
Milestone Achievement Report	a report provided by the Supplier in accordance with paragraph 6 of Schedule 4.1 (Implementation);
Milestone Date	each of the dates described as such in the table set out in Appendix 2 of Schedule 4.1 (Implementation);
Milestone Payment	each of the payments specified as such in Appendix 1 of Schedule 5.1 (Milestone Payments and Claims Procedure);
Milestone Payment Claim	the Supplier's claim for payment in respect of the Achievement of a Milestone;
Mediator	the independent third party appointed in accordance with paragraph 4.2 of Schedule 6.3 (Dispute Resolution Procedure);
MPC	Milestone Payment Claim;
MPC Supporting Documentation	the documentation described in paragraph 4 of Schedule 5.1 (Milestone Payments and Claims Procedure);
Net Additional Service Revenue	has the meaning given in paragraph 11.2 of Schedule 5.1 (Milestone Payments and Claims Procedure);
Net Additional Take-up	has the meaning given in paragraph 10.2 of Schedule 5.1 (Milestone Payments and Claims Procedure);
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 this Contract;
Network Deployment	the design, Testing, installation, implementation, rollout, provision and ongoing maintenance of the Network in

	accordance with the Implementation Plan, the Project Plan and the other relevant terms of this Contract;
Notice of Dispute	a written notice served by one Party on the other in accordance with paragraphs 2.1 and 2.2 of Schedule 6.3 (Dispute Resolution Procedure);
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;
Other Beneficiary	each of the following bodies: [Template Note: Authority to list any other local bodies it may be contracting on behalf of]; and such other public body beneficiary notified by the Authority to the Supplier from time to time and agreed by the Parties (acting reasonably) in accordance with the Change Control Procedure;
Outturn Investment Ratio	a calculation that shows the actual Additional Supplier Expenditure the Supplier has incurred and forecasts to incur during the Term compared to the Subsidy Payments the Supplier has received and forecasts to receive, calculated as follows: Outturn Investment Ratio = (Additional Supplier Expenditure incurred to date and forecast by the Supplier to be incurred during the Term) divided by the sum of: (i) Additional Supplier Expenditure incurred to date and forecast by the Supplier to be incurred during the Term; plus (ii) Subsidy Payments received and forecast by the Supplier to be received during the Term;
[Parent Company]	[the ultimate Holding Company of the Supplier, who shall enter into the Guarantee pursuant to this Contract;] [Template Note: Definition needed only if a Guarantee is required]
Parties	the parties to this Contract (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 Contract;
[Performance Bond]	[the on demand performance bond provided to the Authority in accordance with Clause 30 which is in a form approved by the Authority, or any performance bond acceptable to the Authority that replaces it from time to time;] [Template Note: Definition needed only if a Performance Bond is required]
Permitted Expenditure	the capital expenditure incurred by the Supplier in respect of the implementation of the Network as detailed in Appendix 2 to Schedule 5.1 (Milestone Payments and Claims Procedure) and which, as a consequence, qualifies for public subsidy provided solely by the Framework Authority and/or the Authority (i.e. not EU funding or other forms of UK government funding);
Personal Data	shall have the same meaning as set out in the DPA;

Phase	each phase of Implementation as set out in the Implementation Plan;
Post-Effective Date Surveys	those surveys of the Service Environment agreed by the Parties to be conducted after the Effective Date pursuant to Clause 5.5, as detailed in the Supplier Solution;
Premises Cap	£[*]; [Template Note: Local Bodies should agree an appropriate £ cap with the Supplier during the mini-competition, which would be triggered only by the most expensive premises in the Coverage Area. Local Bodies are encouraged to discuss with the Supplier how the cap level applied has sufficient cost headroom to ensure the cap would be applied only in only exceptional cases]
Process	has the meaning given to it under the Data Protection Legislation but, for the purposes of this Contract, 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 European 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 Contract; (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 Contract or any other contract with the Authority; or (iv) defrauding, attempting to defraud or conspiring to defraud the Authority;
Project Accounts	the summary financial records to be maintained by the Supplier in respect of this Contract, as described in paragraph 5 of

Schedule 5.1 (Milestone Payments and Claims Procedure);

Project Investment Ratio	<p>a project investment calculation made in the Project Model that shows the Additional Supplier Expenditure the Supplier forecasts to incur during the Term compared to the Subsidy Payments the Supplier forecasts to receive, calculated as follows:</p> <p>Project Investment Ratio = Additional Supplier Expenditure the Supplier forecasts to incur during the Term divided by the sum of: (i) Additional Supplier Expenditure the Supplier forecasts to incur during the Term; plus (ii) Subsidy Payments the Supplier forecasts to receive during the Term;</p>
Project Model	<p>the Supplier's financial model (including the Cost Book and the Wholesale Access Price Book) for this Contract, which at the Effective Date is set out in the Appendix to Schedule 5.3 (The Project Model), as updated from time to time in accordance with this Contract;</p>
Project Period	<p>a defined period against which costs and revenues are set out in the Project Model – i.e. monthly/quarterly;</p>
Project Plan	<p>the Supplier's project plan which shall comply with the requirements for such plan set out in paragraph 5 of Schedule 4.1 (Implementation) and which at the Effective Date is referenced at Appendix 2 to Schedule 4.1 (Implementation);</p>
Project Specific IPR	<p>(a) IPR in items or works created by the Supplier (or a Subcontractor or third party on behalf of the Supplier) for the purposes of this Contract and updates and amendments of such items or works; and/or</p> <p>(a) IPR arising as a result of the performance of the Supplier's obligations under this Contract;</p>
Project Unit Margin	<p>a proxy profit margin figure per End User per Project Period expressed (before interest, tax, depreciation and amortisation) as an average over the project life or timeline as set out in the Project Model for the period following the final M2 Milestone;</p>
Project Wholesale Access Prices	<p>the wholesale access prices applicable to this Contract, as described in paragraph 2 of Schedule 5.2 (Wholesale Access Pricing);</p>
Qualifying Capital Expenditure	<p>(a) the Permitted Expenditure;</p> <p>(b) other qualifying capital expenditure as may be defined in Schedule 5.4 (Additional Funding),</p> <p>to the extent incurred by the Supplier in respect of the implementation of the Network;</p>
Reference Financial Model	<p>the Supplier's reference financial model set out in Schedule 4 (Reference Financial Model) of the Framework Agreement;</p>
Reference Supplier Solution	<p>the reference Supplier solution set out in Part A of Schedule 3.1 (Supplier Solution);</p>

Regulator	the body responsible for regulating the UK telecommunications market from time to time, which at the Effective Date is Ofcom;
Regulatory Bodies	those government departments and UK and EU regulatory, statutory and other entities, committees and bodies (excluding the Authority) which, whether under statute, rules, regulations or otherwise, are entitled to regulate, investigate, audit or influence the matters dealt with in this Contract or any other affairs of the Authority (which shall include any body required to perform any annual statutory financial audit or any value for money (VfM) audit of the Authority and any successor body responsible from time to time for performing the audit function previously performed by the Audit Commission) and " Regulatory Body " shall be construed accordingly;
Relief Event	the failure of the Authority to perform a dependency listed in Schedule 4.3 (Relief Events) upon which the Supplier is dependent in order to perform the Deployed Services;
Relief Notice	a notice provided by the Supplier in accordance with Clause 19.2;
Remedial Plan	a remedial plan agreed by the Parties in accordance with the Remedial Plan Process;
Remedial Plan Process	the remedial plan process described in Clause 38 and Schedule 6.5 (Remedial Plan Process);
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;
Replacement Services	any services which are the same as or substantially similar to any of the Deployed Services and which are provided, or are to be provided, in substitution for any of the Deployed Services following the termination (in whole or in part) and/or expiry of this Contract;
Representative	the Authority Representative or the Supplier Representative as the context requires;
Retail Service Provider	a provider of retail internet services to End Users and/or a reseller of wholesale broadband services to providers of retail internet services to End Users;
RSP	Retail Service Provider;
Satellite Subcontract	a Subcontract from time to time between the Supplier and a specialist satellite provider for the provision of relevant Deployed Services;
Service Commencement Date	the actual date on which the Supplier commences provision of a Deployed Service;
Service Environment	the environment within which the Deployed Services shall be provided and/or connected to including all relevant land, property, buildings, carriageways, highways, infrastructure, networks and airspace;

Service Requirements	the Authority's requirements for the Deployed Services set out in Schedule 2 (Service Requirements), as qualified by the compliance statements set out in the Compliance Matrix;
SMEs	small and medium sized enterprises;
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	a template setting out details for each Solution Component, as set out in the Supplier Solution;
Specific Change in Law	a Change in Law that solely affects or solely relates to the provision of the Deployed Services (or services equivalent to the Deployed Services) in any area in the UK which receives or which is eligible to receive public subsidy to stimulate private broadband infrastructure investment;
Speed and Coverage Template	the speed and coverage template set out at Appendix [•] of the Supplier Solution;
State Aid Terms	the terms set out in: <ul style="list-style-type: none"> (a) the Commission Decision; (b) the relevant articles of the Treaty on the Functioning of the European Union, in particular Articles 107 - 109; and (c) the European Community rules, regulations and guidelines relating to State aid in force from time to time, including at the Effective Date the Community Guidelines for the application of State aid rules in relation to rapid deployment of broadband networks (reference 2009/C 235/04);
Subcontract	any agreement (other than this Contract) in which a third party agrees to provide (i) any part of the Deployed Services; and/or (ii) any facilities or services materially required for the provision of the Deployed Services;
Subcontractor	a third party other than the Supplier which enters into a Subcontract;
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);
Subsidy Payments	those UK or European Union public funding payments paid to the Supplier pursuant to this Contract;
Superfast Broadband	an Access Line Speed of over 24Mbps;
Supplier Confidential	any information provided by the Supplier (or its Subcontractors or Supplier Personnel) to the Authority in relation to this

Information	Contract, however it is conveyed, that relates to the business, affairs, developments, trade secrets, know-how, personnel and suppliers of the Supplier, including IPR, 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 Contract, and which shall include the Project Specific IPR;
Supplier Location	any location at or from which the Supplier provides the Deployed Services (other than the Authority Premises);
Supplier Personnel	all employees, agents, consultants and contractors of the Supplier and/or of any Subcontractor employed or engaged in the performance of this Contract from time to time;
Supplier Representative	the representative appointed by the Supplier in accordance with Clause 34.1;
Supplier Solution	the Supplier's solution to meet the Service Requirements set out in Schedule 3.1 (Supplier Solution);
Survey Assumption	a survey assumption specified in Appendix 3 of Schedule 5.1 (Milestone Payments and Claims Procedure);
Take-up	the adoption by any End User of retail services delivered on the Network in the Coverage Area;
Take-up Reinvestment Amount	an amount calculated in accordance with paragraph 10.4 of Schedule 5.1 (Milestone Payments and Claims Procedure), which shall be used for Network reinvestment in accordance with paragraph 12 of Schedule 5.1 (Milestone Payments and Claims Procedure);
Take-up Review Point	<p>(a) the later of (i) the third anniversary of the Effective Date; and (ii) Achievement of the final type 2 Milestone, and thereafter the expiry of each two (2) year period during the Term (each being an 'interim Take-up Review Point'); and</p> <p>(b) the Expiry Date (being the 'final Take-up Review Point');</p>
Template Call Off Contract	the template call off contract set out at Schedule 11 (Template Call Off Contract) of the Framework Agreement as updated from time to time;
Term	the period that this Contract is in force;
Test	a test performed by the Supplier in respect of a Test Item, in accordance with the Test Strategy and paragraph 7 of Schedule 4.1 (Implementation);
Test Item	an item or Deployed Service (or part of a Deployed Service) identified in the Test Strategy as being subject to Testing;

Test Success Criteria	the test success criteria for each Test as specified in the Test Strategy;
Test Strategy	the strategy for Testing that shall be maintained by the Supplier in accordance with paragraph 7.3 of Schedule 4.1 (Implementation), the version agreed at the Effective Date being set out in Appendix 4 of Schedule 4.1 (Implementation);
Testing	the performance of Tests in accordance with paragraph 7 of Schedule 4.1 (Implementation);
VAT	any value added tax;
Wholesale Access Prices Benchmarking	a benchmarking exercise as described in paragraph 3 of Schedule 5.2 (Wholesale Access Pricing);
Wholesale Access Price Book	the relevant sheets contained in, or referenced from, the Project Model which contain wholesale access pricing;
Wholesale Access Products and Services	the wholesale access products and services to be leased to Retail Service Providers as set out in the Wholesale Product Template;
Wholesale Product Template	the wholesale product template set out in the 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
SERVICE REQUIREMENTS

VERSION CONTROL

VERSION NUMBER	DATE	COMMENT
1.0	29 June 2012	Executed version
2.0	15 April 2013	Revised to incorporate the updated Baseline Service Requirements from the Framework Agreement and allow for the inclusion of additional local requirements.

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SCHEDULE 2 – SERVICE REQUIREMENTS

[Template Note: BDUK has prepared this amended version of the original Schedule 2 (Service Requirements) indicating BDUK's view on the changes that would be required to incorporate the updated Baseline Service Requirements from the Framework Agreement. The Authority will need review this document and make adjustments where applicable (for example, the definition of "Service Levels" below may need to be extended to include any additional service levels that are to be set out in the Further Service Requirements in Part B)]

A. BACKGROUND

This Schedule 2 sets out the Service Requirements for the purpose of this Contract.

B. SERVICE REQUIREMENTS

- (i) The Service Requirements are set out in two parts:
 - a. Part A sets out the Authority's baseline requirements for the Deployed Services; and
 - b. Part B sets out certain further Authority requirements for the Deployed Services.

[Template Note: It is expected that any further local requirements specified by the Authority in Part B will complement the baseline requirements and, in general, the Authority should ensure that any further requirements do not conflict with the baseline requirements. To the extent the Authority intends that certain local requirements do vary the baseline requirements, this should be expressly identified and addressed in the Authority's drafting]

C. COMPLIANCE MATRIX

- (i) The Compliance Matrix comprises three matrices which shall be set out in Schedule 3.1 (Supplier Solution):
 - a. a matrix confirming full, partial or non-compliance for the overall Solution against the Service Requirements in Part A resulting due to local circumstances;
 - b. a matrix confirming full, partial or non-compliance for individual Components against paragraphs 3.3 to 3.9 in Part A of this Schedule 2 resulting due to local circumstances; and
 - c. a matrix confirming full, partial or non-compliance against the further requirements specified in Part B of this Schedule 2.

D. SERVICE REQUIREMENTS GLOSSARY

- (i) Capitalised terms in this Schedule 2 that are not defined in Schedule 1 (Definitions) shall have the following meanings:

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;
Enterprise Network	a private network designed to support corporate and SME organisations;
IEEE	the Institute of Electrical and Electronic Engineering;
IETF	the Internet Engineering Task Force;
ISO	the International Standards Organisation;
ITU	the International Telecommunication Union;
Lead-to-Cash	process which starts with a sales dialogue between a buyer

Process	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;
Minimum Service Requirements	the minimum service requirements as identified by the minimum service levels specified at paragraph 4.5 of Schedule 2;
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;
National Competence Centre	the national competence centre established by the UK in accordance with the Commission Decision;
NCC	National Competence Centre;
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

	<p>[11] ND 1618 Profile for ebXML Messaging Service 2.0 Gateways</p> <p>[12] ND 1622 NICC B2B Interface Requirements Document</p> <p>[13] ND 1623 B2B Trouble-To-Resolve (T2R) User Story Requirements</p> <p>[14] ND1624 B2B Lead-to-Cash (L2C) User Story Requirements</p> <p>[15] ND 1626 NICC B2B Trouble-To-Resolve (T2R) Interface Standard</p> <p>[16] ND 1627 B2B Lead-to-Cash (L2C) Interface Standard</p> <p>[17] ND 1637 B2B Trouble-To-Resolve (T2R) XML Standard</p> <p>[18] ND 1641 L2C XML Schema;</p>
Ofcom	the 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;
Service Level	the service levels set out in paragraph 4.5 of Schedule 2;
SOGE	Sustainable operations on the Government Estate;
Symmetrical	the capability of the network devices to transmit and receive data at equal rates.

- (ii) 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 Contract.

SERVICE REQUIREMENTS PART A: BASELINE SERVICE REQUIREMENTS

1. PART A

1.1 This Part A sets out the Authority's baseline Service Requirements for the Deployed Services.

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; and

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 the 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:

(a) **[•]] [Template Note: If applicable, to reflect to the community requirements in the Authority's ITT]**

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 Contract 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 this Contract and in doing so shall:
- 2.18.1 adopt a standard project management approach, and
 - 2.18.2 meet and communicate with the Authority team as appropriate.
- 2.19 The Supplier shall, where the Authority's 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 this Contract.
- 2.20 The Supplier, if requested by the Authority, shall confirm in the Supplier Solution the extent that it will reuse those Authority assets identified in Schedule 4.2 (Authority Assets) of this 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 Authority, 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 this Contract the Supplier shall provide assistance to the Authority 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 the Authority has included a specific public sector or community network requirement as part of the Service Requirements for this 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, a network access and data transport components service, as agreed with the Authority, 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 this 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 Authority develop, implement and operate the Supplier's plans to meet the Authority targets, as agreed with the Supplier, for sustainability in accordance with the Authority's 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 this 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 this Contract in order to enable monitoring of the success of the marketing plan;

2.28.3 the Supplier, together with the Authority, 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 this Contract and shall agree such plan with the Authority; 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 Authority.

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 As noted in paragraph C above, 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.

3.4 The Solution Components, including data transport components, shall be upgradable so as to support increasing access line speeds throughout the Term.

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.

3.6 The Solution 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 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 the 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 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 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 Authority, subject to paragraph 4.4.7(a) up to and including paragraph 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 paragraph 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 Contract it is anticipated that Ofcom would provide that: **[Template Note: BDUK to confirm prior to signature of this Contract that the provisions below reflect the current anticipated Ofcom position]**

- (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 Competence 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.

SERVICE REQUIREMENTS PART B: FURTHER SERVICE REQUIREMENTS

[Template Note: Any required additional Service Requirements are to be developed by the Authority and set out in this Part B as the Contract is finalised during the relevant Call Off Procedure. If there are no additional Service Requirements the Authority should include a new paragraph 5.2: "At the Effective Date there are no further Authority requirements for the Deployed Services"]

5. PART B

5.1 This Part B sets out certain further Authority requirements for the Deployed Services.

SCHEDULE 3.1
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

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1	BACKGROUND	1
2	SUPPLIER SOLUTION	1

SCHEDULE 3.1 – SUPPLIER SOLUTION

1. BACKGROUND

This Schedule 3.1 sets out the Supplier Solution for the purpose of this Contract and should be read in conjunction with Clause 8.

2. SUPPLIER SOLUTION

[Template Note: The Supplier Solution once agreed with the Authority during the relevant Call Off Procedure will be appended here. The Supplier will use its Reference Supplier Solution set out in the Framework Agreement as the basis for development of the Supplier Solution during the Call Off Procedure, in accordance with Schedule 3 (Reference Supplier Solution) of the Framework Agreement]

[Template Note: The Speed and Coverage Template, comprising part of the Supplier Solution, is agreed during the relevant Call Off Procedure. The agreed Speed and Coverage Template should (with regard to structure and content level) be substantially equivalent to that template with file reference "*Toolkit Speed and Coverage Template 210612.xlsx*" as provided on 26th June 2012 by the Authority to the Supplier (the "Toolkit SCT"). This Toolkit SCT captures certain principles (which are subject to the final two sentences of this template note) as follows:

- **The contractual commitments with regard to speed and coverage are specified at a Phase or Milestone level; and**
- **A more detailed view shall also be provided by a bidding Supplier as part of the Call-Off Procedure at (i) postcode sector ('4 digit' postcode) level; or (ii) the Lower Super Output Area (LSOA) level (if a Local Body provides a postcode to LSOA mapping) or comparable aggregation level where Local Body can demonstrate this is reasonably required for stakeholder governance (if Local Body can provide appropriate postcode mapping). However, this level of data will not be contractually committed under the Call-Off Contract.**

Should a Local Body wish to depart from any aspect of the structure and content level set out in the Toolkit SCT this would need to be addressed as part of the operation of the Call-Off Procedure. The impact of such departure(s) on the solutions offered would need to be considered as part of that procedure.]

SCHEDULE 3.2

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 3.2 – COMMERCIAL SENSITIVE INFORMATION

1. BACKGROUND

1.1 This Schedule 3.2 sets out the information that the Parties agree be treated as Commercially Sensitive Information for the purpose of Clause 49.

1.2 For the avoidance of doubt, without prejudicing each Party's obligations under Clause 49, 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. COMMERCIAL SENSITIVE INFORMATION

[Template Note: This should be a list of specific items/categories of information which the Supplier considers to be of a commercially sensitive nature relating to the Supplier, its IPR or its business. General and/or vague statements should not be accepted by the Authority]

INFORMATION	BASIS OF COMMERCIAL SENSITIVITY	PERIOD OF COMMERCIAL SENSITIVITY
Example: Project Model	Example: The Project Model contains Supplier Confidential Information that, if made public, may give a commercial advantage to the competitors of the Supplier.	Example: Duration of the Term

SCHEDULE 3.3
KEY SUBCONTRACTORS

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	KEY SUBCONTRACTORS	1

SCHEDULE 3.3 – KEY SUBCONTRACTORS

1. BACKGROUND

This Schedule 3.3 sets out the Key Subcontractors for the purpose of this Contract and should be read in conjunction with Clause 32.

2. KEY SUBCONTRACTORS

2.1 At the Effective Date the parties listed below are Key Subcontractors for the purpose of this Contract provided that, unless approved otherwise by the Authority in writing, the Authority's approval shall extend only to the relevant Deployed Services set out below.

Name and Registered Address	Subcontracted Deployed Services	Approximate Value Of Key Subcontract

SCHEDULE 3.4
KEY PERSONNEL

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

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1 BACKGROUND

1

SCHEDULE 3.4 – KEY PERSONNEL

1. BACKGROUND

This Schedule 3.4 sets out (in the Appendix) the Key Personnel for the purpose of this Contract and should be read in conjunction with Clause 41.3.

APPENDIX – KEY PERSONNEL

NAME	ROLE	EMPLOYER	FULL TIME OR PART TIME	EXPECTED DURATION OF ROLE
	[Network Deployment Manager]			
	[Contract Manager]			
	[Technical Lead]			

SCHEDULE 4.1
IMPLEMENTATION

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

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4	IMPLEMENTATION PHASES	1
5	IMPLEMENTATION PLAN AND PROJECT PLAN	2
6	MILESTONE ACHIEVEMENT PROCEDURE	3
7	TESTING	4

SCHEDULE 4.1 – IMPLEMENTATION

1. BACKGROUND

This Schedule 4.1 contains provisions relating to Network Deployment, Testing, the Implementation Plan and the Project Plan.

2. GENERAL SUPPLIER OBLIGATIONS

2.1 In addition to its obligations set out in Clause 10 and the requirements for Network Deployment set out in the Service Requirements and elsewhere in this Contract, the Supplier shall:

2.1.1 perform Network Deployment in accordance with the Implementation Plan and the Project Plan so as to Achieve each Milestone by the associated Milestone Date;

2.1.2 perform such activities, functions and services as are necessary to perform Network Deployment in accordance with the Implementation Plan and the Project Plan;

2.1.3 perform Testing in accordance with paragraph 7, the Test Strategy, the Implementation Plan and the Project Plan;

2.1.4 be responsible for the overall management of Network Deployment, the Implementation Plan and the Project Plan;

2.1.5 appoint an appropriately qualified single point of contact who shall be responsible for Network Deployment and identified as Key Personnel;

2.1.6 identify and manage the resolution of any problems encountered in relation to Network Deployment in order to ensure the timely and effective completion of each task; and

2.1.7 develop and adhere to appropriate risk mitigation and contingency plans (copies of which shall be provided to the Authority).

3. MILESTONES

3.1 Subject to Clauses 5.5, 19 and 59, the Supplier shall ensure that each Milestone is Achieved on or before the associated Milestone Date in accordance with the procedure set out in paragraph 6.

3.2 The Milestone Achievement Criteria for each Milestone type are set out in Appendix 1.

4. IMPLEMENTATION PHASES

Network Deployment is comprised of Phases. Each Phase is a set of activities which are designed to facilitate the delivery of Network Deployment to enable availability of Wholesale Access Products and Services in the Coverage Area. The Phases and Milestones are detailed in the Implementation Plan.

5. IMPLEMENTATION PLAN AND PROJECT PLAN

5.1 The Implementation Plan and the Project Plan shall be maintained in accordance with this paragraph 5.

5.2 At the Effective Date:

5.2.1 the Implementation Plan has been agreed by the Parties and is set out at Appendix 2; and

5.2.2 the first version of the Project Plan has been agreed by the Parties and its document reference is set out at Appendix 2.

5.3 No later than [twenty (20)] Working Days (or such alternative period as agreed by the Parties in writing, reflecting the number and duration of the applicable Phase(s)) prior to the planned start date for each Phase, the Supplier shall provide to the Authority for approval an updated draft Project Plan providing supplementary plan content (in accordance with paragraph 5.4).

5.4 The Supplier shall ensure that the Project Plan comprises, at a minimum for the then current and next Phase, such planning data as is reasonably necessary to provide identification and notice of the Deployed Service activities in order to support the practical operation of this Contract and tracking of the progress of the Deployed Services. The Project Plan may also set out supplementary planning data for Phases beyond the next Phase but only to such degree as the Supplier can reasonably forecast at that point in time. The Project Plan, and each Phase update in accordance with paragraph 5.3, must be consistent with the then current version of the Implementation Plan.

5.5 As soon as reasonably practicable after receipt of a draft Project Plan pursuant to paragraph 5.3 and in any event within [ten (10)] Working Days of such receipt, the Authority shall notify the Supplier that it either:

5.5.1 approves the draft Project Plan, in which case it shall (subject to paragraph 5.8) become the Project Plan for the purpose of this Contract; or

5.5.2 requires the draft Project Plan to be amended and/or developed further (along with a brief explanation of the areas requiring amendment or further development).

5.6 If the draft Project Plan requires further amendment and/or development pursuant to paragraph 5.5.2, the Supplier shall, taking into account any reasonable comments provided by the Authority, resubmit to the Authority for approval a further version of the draft Project Plan as soon as practicable and in any event within five (5) Working Days after receiving the Authority's notice under paragraph 5.5.2. The Supplier shall produce such number of revised drafts of the Project Plan as the Authority may reasonably require until such time as the Project Plan is agreed.

5.7 The procedure set out at paragraphs 5.5 and 5.6 shall apply to the revised version of the Project Plan provided under paragraph 5.6 and any subsequent draft versions produced thereafter.

5.8 Changes to the Implementation Plan and the Project Plan shall be dealt with as follows:

5.8.1 Any amendment to the Implementation Plan must be agreed by the Parties in accordance with the Change Control Procedure.

5.8.2 Any update to the Project Plan may be agreed in writing by suitably authorised representatives of each Party without recourse to the Change

Control Procedure, provided such amendments remain consistent with the then current Implementation Plan. Until such agreement is obtained, the then currently agreed Project Plan shall continue to apply.

5.8.3 The Supplier shall establish an appropriate version control procedure so as to ensure that the agreed version of the Project Plan is made available to the Authority at all times.

5.9 The Supplier shall upon reasonable request provide the Authority with reasonable 'read only' access to its detailed project management plan (which it is anticipated would comprise further levels of detail beyond that required for the Project Plan) as part of the project governance arrangements under this Contract.

6. MILESTONE ACHIEVEMENT PROCEDURE

6.1 The procedure described in this paragraph 6 shall apply to the Achievement of each Milestone.

6.2 The Supplier shall not less than ten (10) Working Days prior to the Milestone Date for each Milestone provide the Authority with an initial Milestone Achievement Report and on the Milestone Date provide the Authority with the final Milestone Achievement Report which (in each case) details the extent of the Supplier's Achievement of the relevant Milestone.

6.3 The Supplier shall ensure that the initial and final versions of each Milestone Achievement Report contain sufficient evidence to enable the Authority to verify the extent of the Achievement of the Milestone.

6.4 The Authority shall within ten (10) Working Days of receipt of each final Milestone Achievement Report either:

6.4.1 issue a Milestone Achievement Certificate confirming that the relevant Milestone has been Achieved; or

6.4.2 notify the Supplier in writing that the Authority considers that the relevant Milestone has not been Achieved and provide supporting reasons.

6.5 If the Authority notifies the Supplier in accordance with paragraph 6.4.2 then, without prejudice to the Authority's rights and remedies under this Contract in relation to the Achievement of Milestones, the Parties shall as soon as practicable meet to discuss the Achievement of the relevant Milestone and (subject to paragraph 6.7) agree an appropriate course of action which may include compliance with the Remedial Plan Process. Unless the Authority elects to issue a conditional Milestone Achievement Certificate in respect of an M1 Milestone in accordance with Clause 18, the Authority shall issue a Milestone Achievement Certificate only if the Parties agree that the relevant Milestone has been Achieved.

6.6 In the event that the Parties fail to agree whether or not the relevant Milestone has been Achieved then the matter shall be treated as a Dispute which the Parties shall attempt to resolve in accordance with the Dispute Resolution Procedure.

6.7 The Supplier shall not be entitled to submit an invoice to the Authority for a Milestone Payment (in accordance with Schedule 5.1 (Milestone Payments and Claims Procedure)) until such time as the relevant Milestone has been Achieved and the Authority has issued a Milestone Achievement Certificate in respect of the relevant Milestone.

7. **TESTING**

7.1 The Supplier shall undertake Testing in accordance with this paragraph 7 and the Service Requirements.

7.2 Any Testing shall be without prejudice to the Authority's rights and remedies set out elsewhere in this Contract and the passing of any Test shall not relieve the Supplier from complying with its other obligations in this Contract.

7.3 **Test Strategy**

7.3.1 The version of the Test Strategy agreed at the Effective Date, and containing full details of the testing (where applicable) of each Milestone type and full details for how each Milestone testing procedure will apply to each applicable Phase of the Supplier Solution, is set out in Appendix 4.

7.3.2 The Test Strategy shall include:

- (a) an overview of how Testing shall be conducted in relation to the Implementation Plan and the Project Plan;
- (b) the Test Success Criteria for each applicable Test;
- (c) the process to be used to capture and record Test results and Test issues and a procedure for the resolution of Test issues;
- (d) the method for mapping the expected Test results to the Test Success Criteria;
- (e) the names and contact details of the Authority's and the Supplier's Test representatives; and
- (f) a high level identification of the resources required for Testing, including facilities, infrastructure, personnel and/or the third party involvement in the conduct of the Tests.

7.3.3 No later than 20 Working Days prior to the planned start date for a Phase, the Supplier shall provide to the Authority for approval an updated Test Strategy (to the extent such updates are required taking into account the existing content of the Test Strategy) providing full details for that Phase in accordance with paragraph 7.3.2.

7.3.4 As soon as reasonably practicable and in any event within five (5) Working Days of receipt the Authority shall notify the Supplier that it either approves the updates to the draft Test Strategy (in which case it shall become the Test Strategy for the purpose of this Contract) or, acting reasonably, requires the draft Test Strategy to be amended and/or developed further (in which case the Supplier shall provide such revised drafts as is necessary, taking into account any reasonable comments provided by the Authority, until the Test Strategy is approved by the Authority). The Authority's approval of any Test Strategy shall not be unreasonably withheld or delayed.

7.4 **Test Attendance**

7.4.1 The Supplier shall notify the Authority when any Test Item is in such state, form and completeness as to be ready for Testing. The Supplier shall give such notice at least five (5) Working Days prior to the date for commencing the applicable Testing.

7.4.2 The Authority shall be entitled but is not obliged to attend any Test. Where the Authority has notified the Supplier in writing providing not less than three (3) Working Days prior to commencement of the Test that it wishes to attend a particular Test, the Supplier shall facilitate such attendance. Subject to the Supplier's compliance with this paragraph 7.4, the Authority's non-attendance at a Test shall not prevent completion of the Test by the Supplier.

APPENDIX 1 – MILESTONE ACHIEVEMENT CRITERIA

MILESTONE TYPE	MILESTONE ACHIEVEMENT CRITERIA
<p>Milestone Type 0: Survey and Detailed Design Completion</p>	<p>There shall be one Milestone M0 allocated to each Phase:</p> <p><u>Outcomes:</u></p> <ul style="list-style-type: none"> (i) Completion of detailed Supplier Solution design; (ii) Completion of detailed implementation planning; (iii) Closure of Survey Assumptions, <p>for the scope of the applicable Milestone M0 (as such scope is specified in the Implementation Plan) and in accordance with the Service Requirements.</p> <p><u>Supporting evidence:</u></p> <ul style="list-style-type: none"> (a) confirmation of completion of the Post-Effective Date Surveys for this Milestone (as specified in the Project Plan); (b) output data from Post-Effective Date Surveys; (c) an update (pursuant and subject to Clause 5.5 and paragraph 15 of Schedule 5.1 (Milestone Payments and Claims Procedure)) to the Supplier Solution taking into account the information identified through the Post-Effective Date Surveys and the applicable express Survey Assumptions, including any updates to the detail of: <ul style="list-style-type: none"> a. the Project Model; b. the Implementation Plan; c. the Project Plan; d. the Speed and Coverage Template, (d) per premise estimated Access Line Speeds for Wholesale Access Products and Services across the scope of this Milestone (as specified in the Implementation Plan), together with a set of agreed release management guidelines.
<p>Milestone Type 1: Network Build</p>	<p>There shall be one or more Milestone M1 allocated to each Phase:</p> <p><u>Outcomes:</u></p> <p>Implemented and operationally ready deployed Network for the scope of this Milestone (as specified in the Implementation Plan) and in accordance with the Service Requirements.</p> <p><u>Supporting evidence:</u></p> <ul style="list-style-type: none"> (a) Copies of 'As-built' documentation (and/or, if agreed by the Parties in writing, all reasonable access to that documentation) for the applicable Network infrastructure. Any such 'As built' documentation shall contain an updated inventory of infrastructure assets and locations sufficient to comply with corresponding State Aid and public

MILESTONE TYPE	MILESTONE ACHIEVEMENT CRITERIA
	<p>sector subsidy requirements;</p> <p>(b) Confirmation from the Supplier that the applicable Tests (supporting the Milestone outcomes noted above) have been successfully completed in accordance with the Test Strategy;</p> <p>(c) Test data (e.g. Ethernet tests, optical tests) available to the Authority on request, evidencing that the applicable Tests have been successfully completed in accordance with the Test Strategy; and</p> <p>(d) Issued Milestone Achievement Certificate for the corresponding Milestone M0 for the corresponding Phase.</p>
<p>Milestone Type 2: Availability of Wholesale Access Products and Services</p>	<p>There shall be one or more Milestone M2 allocated to a Phase, or across multiple Phases:</p> <p><u>Outcomes:</u></p> <p>Wholesale Access Products and Services are made available:</p> <p>(i) in the applicable part of the Coverage Area;</p> <p>(ii) against the specified minimum volume of End User Premises for that Milestone;</p> <p>(iii) at the specified Access Line Speed ranges within the Speed and Coverage Template,</p> <p>for the scope of this Milestone (as specified in the Implementation Plan) and in accordance with the Service Requirements. This shall include:</p> <p>(1) the establishment of an operational business to business (B2B) system (comprising part of the Supplier's OSS/BSS), providing Retail Service Providers the ability to access Wholesale Access Products and Services;</p> <p>(2) that the End User Premises which can be provisioned (if a Retail Service Provider orders corresponding Wholesale Access Products and Services) with retail broadband products and services by Retail Service Providers include as a minimum those premises specified for this Milestone;</p> <p>(3) the Access Line Speed ranges for the End User Premises in (2) above meet or exceed the Access Line Speed ranges agreed in the Speed and Coverage Template,</p> <p>for the scope of this Milestone (as specified in the Implementation Plan) and in accordance with the Service Requirements.</p> <p><u>Supporting evidence:</u></p> <p>(a) Confirmation from the Supplier that the applicable Tests (supporting the Milestone outcomes noted above) have been successfully completed in accordance with the Test Strategy;</p> <p>(b) detailed test data demonstrating proof of full functionality of the Supplier's B2B system for access by Retail Service Providers;</p>

MILESTONE TYPE	MILESTONE ACHIEVEMENT CRITERIA
	<p>(c) detailed test data showing at least one available Wholesale Access Product and Service available to Retail Service Providers through the B2B system;</p> <p>(d) detailed data evidencing that the End User Premises which can be provisioned (if a Retail Service Provider orders the corresponding Wholesale Access Product and Service) with retail broadband products and services by Retail Service Providers include as a minimum those premises specified for this Milestone. Such data to include address point and postcode data by premise and Access Line Speed by premise; and</p> <p>(e) issued Milestone Achievement Certificates for the applicable Milestone M0(s) and M1(s) corresponding to this Milestone.</p>
<p>Milestone Type 3 End User Take Up</p>	<p>There shall be one or more Milestone M3 at defined stages of planned cumulative End User Take-up:</p> <p><u>Outcomes:</u></p> <p>(a) Required level of cumulative Take-up of Basic Broadband and Superfast Broadband at End User Premises on the Network, achieving the level set out below in accordance with the Service Requirements.</p> <p>(b) the Supplier's Take-up for End User Premises in the Coverage Area meets or exceeds a maximum of 30% of the Supplier's forecast Take-up (as shown in the Project Model) (e.g. if the forecast Take-up is 20%, the Take-up percentage would be 6%) to a maximum of 10% expressed in number of End User Premises – in accordance with the Milestone M3 breakdown set out in the Implementation Plan.</p> <p><u>Supporting evidence:</u></p> <p>(a) evidence, based on a OSS/BSS data, that the required minimum threshold of End User Premises Take-up has been achieved;</p> <p>(b) identification of the corresponding Qualifying Capital Expenditure; and</p> <p>(c) data demonstrating the Take-up concerned is consistent with its definition in Schedule 1 (Definitions).</p>

APPENDIX 2 – IMPLEMENTATION PLAN AND PROJECT PLAN

1. IMPLEMENTATION PLAN

[Template Note: The Implementation Plan is to be developed as part of the Call Off Procedure and included here. This should identify the Phases (including the relevant start and end dates), Milestones (including their scope), Milestone Dates, any applicable Longstop Dates and other key high level data]

2. PROJECT PLAN

[Template Note: Reference to the initial Project Plan to be inserted]

APPENDIX 3 – FORM OF MILESTONE ACHIEVEMENT CERTIFICATE

MILESTONE ACHIEVEMENT CERTIFICATE

MILESTONE REFERENCE [•]

SUPPLIER

Supplier signs below to confirm its understanding that Milestone has been achieved:

Role		Name (print)	Signature	Date
Supplier Manager	Project			

AUTHORITY

Authority signs below to confirm its understanding that Milestone has been achieved:

Role		Name (print)	Signature	Date
Authority Manager	Project			
Authority Quality Manager <i>(if applicable)</i>				

APPENDIX 4 – TEST STRATEGY

[Template Note: To be developed by the Supplier and agreed by the Parties as part of the Call Off Procedure and inserted/referenced here]

SCHEDULE 4.2
AUTHORITY ASSETS

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

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1	BACKGROUND	1
2	AUTHORITY ASSETS	1

SCHEDULE 4.2 – AUTHORITY ASSETS

1. BACKGROUND

This Schedule 4.2 identifies the Authority Assets for the purpose of this Contract.

2. AUTHORITY ASSETS

Each of the items listed in the Appendix to this Schedule is an Authority Asset for the purpose of this Contract, which the Supplier may use in relation to the delivery of the Deployed Services as permitted below and in accordance with Clause 43.

APPENDIX

ID	ITEM	LOCATION	PERMITTED USE BY THE SUPPLIER	SUPPLEMENTARY LEASE/LICENCE TERMS (IF APPLICABLE)*

*These terms, unless expressly stated in the table for the item concerned, are without prejudice to Clause 43

[Template Note: If any assets are to be fully transferred to the Supplier, this may be dealt with in a separate asset transfer agreement]

SCHEDULE 4.3

RELIEF EVENTS

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

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1	BACKGROUND	1
2	RELIEF EVENTS	1
3	QUALIFYING PERIOD	1

SCHEDULE 4.3 – RELIEF EVENTS

1. BACKGROUND

This Schedule 4.3 sets out details of the Relief Events and should be read in conjunction with Clause 19.

2. RELIEF EVENTS

Subject to Clause 19, an event shall qualify as being a Relief Event only if the event concerns an Authority responsibility upon which the Supplier is dependent in order to provide the Deployed Services and the event is described in the Appendix to this Schedule 4.3.

3. QUALIFYING PERIOD

The Supplier shall not be eligible to apply for relief in accordance with Clause 19 if and to the extent the relevant Relief Event occurs outside of the relevant qualifying period set out in the table in the Appendix to this Schedule 4.3.

APPENDIX – RELIEF EVENTS

ID	RELIEF EVENT DESCRIPTION	QUALIFYING PERIOD (e.g. duration of Term, Network Deployment phase only)	EXPECTED IMPACT OF RELIEF EVENT	EXPECTED SUPPLIER MITIGATION / WORKAROUND (IF APPLICABLE)

SCHEDULE 5.1

MILESTONE PAYMENTS AND CLAIMS 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

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SCHEDULE 5.1 – MILESTONE PAYMENTS AND CLAIMS PROCEDURE

1. BACKGROUND

- 1.1 This Schedule 5.1 sets out:
- 1.1.1 the Milestone Payment amounts associated with each Milestone (with the full description of each Milestone and the associated Milestone Date and Milestone Achievement Criteria set out in Schedule 4.1 (Implementation));
 - 1.1.2 the claims procedure applicable to Milestone Payments;
 - 1.1.3 certain payment specific record keeping, audit and reporting obligations;
 - 1.1.4 details of eligibility criteria for Qualifying Capital Expenditure; and
 - 1.1.5 the claw-back mechanism applicable to Qualifying Capital Expenditure.
- 1.2 [Supplementary requirements (relating to matters including funding claims, reporting and audit) specific to funding streams other than those provided by the Framework Authority or the Authority are contained in Schedule 5.4 (Additional Funding).]
[Template Note: This paragraph 1.2 can be removed if non-DCMS third party funding is not used]

2. MILESTONE PAYMENTS

- 2.1 The Milestone Payments payable, subject to the terms of this Contract, to the Supplier for Achievement of each Milestone (in accordance with Schedule 4.1 (Implementation)) are as detailed in Appendix 1 to this Schedule 5.1.

3. MILESTONE PAYMENT CLAIMS

- 3.1 Where the Authority has issued a Milestone Achievement Certificate in respect of a Milestone the Supplier shall be entitled to submit a Milestone Payment Claim (MPC) to the Authority.
- 3.2 The Authority shall make payment to the Supplier within 30 days of receipt of a MPC that complies with the requirements of this Schedule 5.1.
- 3.3 The Supplier shall ensure that each MPC contains the following information:
- 3.3.1 the date of the MPC;
 - 3.3.2 a unique MPC number;
 - 3.3.3 the unique Milestone reference;
 - 3.3.4 the period and activity to which the MPC relates;
 - 3.3.5 reference to the information required and provided for issue of the corresponding Milestone Achievement Certificate (in accordance with Schedule 4.1 (Implementation));
 - 3.3.6 the MPC Supporting Documentation;
 - 3.3.7 a contact name and telephone number of a responsible person in the Supplier's finance department in the event of administrative queries; and

- 3.3.8 the banking details for payment to the Supplier via electronic transfer of funds (i.e. name and address of bank, sort code, account name and number).
- 3.4 Each MPC shall at all times be accompanied by MPC Supporting Documentation along with copies of any applicable Milestone Achievement Certificates to enable the Authority to assess whether the MPC is correctly calculated and whether any public subsidy is properly payable.
- 3.5 The Supplier shall submit all MPCs and supporting information (including the MPC Supporting Documentation) required under this Schedule 5.1 in such format as the Authority may reasonably specify to the following address (or such alternative address as notified by the Authority in accordance with this Contract):
- [•]
- with a copy (including all supporting information) to the Framework Authority.
- 3.6 All Supplier MPCs shall be expressed in Pounds Sterling (£) or such other currency as shall be permitted by the Authority in writing.
- 3.7 The Authority shall only regard an MPC as valid if it complies with the provisions of this Contract. Where any MPC does not conform to the provisions of this Contract, the Authority shall return the deficient MPC to the Supplier identifying the deficiencies. The Supplier shall promptly issue a replacement MPC.
- 3.8 Only one MPC submission shall take place in any 30 day period, save that where multiple MPCs are to be claimed, these can be consolidated in one submission provided the information noted in this paragraph 3 is clearly and distinguishably set on a Milestone basis within that submission.
- 3.9 Where a de minimis for the value of a single MPC is set out in the Service Requirements, this must be adhered to by the Supplier save for a final balancing MPC.
- 3.10 Where either Party identifies (whether through MPC verification or otherwise) any overpayment has been made by the Authority (including administrative error and where it becomes apparent a Milestone had not in fact been achieved), the Supplier shall:
- 3.10.1 where the next milestone payment is less than 90 days after identification of the overpayment, reduce the claim for the next MPC payment; or
- 3.10.2 where no further MPC payments are to be made or the next planned MPC payment is more than 90 days after identification of the overpayment, promptly issue a refund for that overpayment to the Authority.

At the Authority's discretion, where the overpayment is due to a Default of the Supplier, the refund (or reduced claim, as applicable) shall also include an interest rate based uplift calculated as follows:

$$C = O + (O \times (\text{interest rate}) \times (T \div 365))$$

Where:

C = the amount of credit;

O = the overpayment;

Interest rate = an annual rate equivalent to 2% above the Bank of England base rate (as adjusted from time to time and set out in the London Financial Times);

T = the number of days between the date on which the overpayment arose and the date on which the notification of the overpayment was made by the Authority or the Supplier to the other Party.

- 3.11 Without prejudice to paragraph 3.10, where the Authority has reasonable grounds for believing that an overpayment has been made in respect of any MPC, it may request that the Supplier reviews and re-submits verification of the supporting evidence provided pursuant to paragraph 4.1. Such verification shall be provided by the Supplier within 15 Working Days of receiving that Authority request.

4. MPC SUPPORTING DOCUMENTATION

- 4.1 Each MPC shall be provided with the following MPC Supporting Documentation:

4.1.1 evidence (through copies of invoices, receipts, timesheets, payroll records and other accounting information) that the MPC is for Qualifying Capital Expenditure only and is in relation to the scope of this Contract only;

4.1.2 evidence (through payment or bank records and statements, BACS lists, receipts or other confirmation) that the Qualifying Capital Expenditure has actually been incurred by the Supplier at the date of the MPC, provided that in relation to Deployed Services performed by the Supplier's Subcontractors, Qualifying Capital Expenditure shall for the purposes of this Schedule be deemed "incurred" if the circumstances in paragraph 4.1.2A are satisfied (this qualification of how the word "incurred" shall be construed herein is without prejudice to any other requirement in this Schedule);

4.1.2A Qualifying Capital Expenditure in respect of Deployed Services performed by the Supplier's Subcontractors shall be deemed incurred when the Subcontractor has invoiced the Supplier for the amount to be claimed by the Supplier as Qualifying Capital Expenditure, provided that:

4.1.2A(a) the Supplier confirms in the MPC Supporting Documentation that the expenditure does not represent an advance payment for work or services;

4.1.2A(b) the Supplier confirms in the MPC Supporting Documentation that the invoice(s) in question are otherwise correct, due and payable by the Supplier in accordance with the terms of the relevant Subcontract; and

4.1.2A(c) providing a minimum of 120 days has elapsed since payment of the relevant MPC, the Authority may subsequently request that the Supplier provide evidence to demonstrate that applicable amounts were in due course actually paid to the Subcontractors. If no such evidence can be provided, then, if the Authority requests a refunding of the payment made by the Authority, the Supplier shall refund (as soon as reasonably practical) in the form of an electronic re-payment (with the payment details to be notified to the Supplier by the Authority) any such amounts claimed as being incurred Qualifying Capital Expenditure. If subsequently the Supplier provides evidence to demonstrate that applicable amounts were actually paid to the Subcontractors such amounts will then be re-paid by the Authority to the Supplier.

- 4.1.3 signed confirmation from a suitably qualified finance representative of the Supplier that:
- (a) the Qualifying Capital Expenditure is not covered by (i) any other form of public subsidy; or (ii) more than one form of public subsidy; and
 - (b) the Subsidy Payment claimed is matched by an equivalent sum of Qualifying Capital Expenditure;
- 4.1.4 signed confirmation from a suitably qualified finance representative of the Supplier that part apportionment or allocation of Qualifying Capital Expenditure between this Contract and other contracts or services provided by the Supplier, is accurate and a fair reflection of the work carried out;
- 4.1.5 signed confirmation from a suitably qualified finance representative of the Supplier that the Qualifying Capital Expenditure has been properly incurred and is in accordance with the financial control, financial management and internal risk processes of the Supplier. The confirmation should also state that the Qualifying Capital Expenditure has been incurred and is in accordance with the accounting requirements for Qualifying Capital Expenditure, and is consistent with accepted accounting practice and the accounting policies that the Supplier applies under its corporate financial reporting and audit standards; and
- 4.1.6 details of Additional Supplier Expenditure incurred in the period to which the MPC relates, such that the Authority can calculate investment ratios in accordance with this Schedule 5.1.
- 4.2 In all cases the MPC Supporting Documentation shall be of sufficient detail to allow the Authority to determine the eligibility of the relevant Qualifying Capital Expenditure and the validity of the MPC.
- 4.3 As part of its own internal financial control process, the Authority (and/or its agents or representatives) may undertake a review of the payments made under this Contract (such reviews taking place on an annual basis and, in addition, where there are reasonable grounds to consider a material error has been made in respect of an MPC). In such circumstances, the Authority (and/or its agents or representatives) may require the Supplier to provide, as soon as is reasonably practical, additional reasonable assistance and reasonable supporting information regarding any MPC (as supplementary assurance to the evidence provided pursuant to paragraph 4.1).
- 4.4 Paragraphs 3.11 and 4.3 of this Schedule shall continue to be effective until:
- 4.4.1 12 months following the Term, subject to early termination of this Contract; or
 - 4.4.2 in the event of early termination of this Agreement, 24 months following such termination date.
- 4.5 Paragraphs 3.10 of this Schedule shall continue to be effective until 7 years following the Term or early termination of this Contract.
5. **PROJECT ACCOUNTS AND FINANCIAL RECORDS**
- 5.1 The Supplier shall maintain separate summary Project Accounts (for use, among other matters, for reconciliation of MPC claims to expenditure and costs incurred and to

calculate the financial reporting measures relating to clawback as described in paragraphs 8 to 13). The Project Accounts shall include:

- 5.1.1 a summary revenue and expenditure statement (including public subsidy received) in respect of this Contract;
- 5.1.2 a record of Network assets created or deployed in respect of this Contract;
- 5.1.3 an Investment Fund account, including opening and closing balances; and
- 5.1.4 supporting notes and information as appropriate for the reasonable understanding of the Project Accounts.

5.2 The Project Accounts shall be:

- 5.2.1 prepared on a basis that is consistent with the accounting policies that the Supplier applies under its own corporate financial reporting and audit standards; and
- 5.2.2 subject to the Supplier's own internal and external audit procedures.

5.3 Within 30 days of each anniversary of the Effective Date the Supplier shall submit to the Authority a copy of the Project Accounts and an accompanying short narrative report for the preceding 12 months, certified by a suitably qualified finance representative or the external auditor of the Supplier. On expiry or termination of this Contract, the Supplier shall prepare an equivalent copy of the Project Accounts for the period since the preceding copy of Project Accounts produced pursuant to this paragraph 5.3 (noting that the specific timing of the production of such copy on expiry or termination must support the operation of those provisions of this Contract which themselves take effect at expiry or termination of this Contract).

5.4 The Supplier shall maintain accounting records for all Qualifying Capital Expenditure funded partly or wholly pursuant to this Contract in accordance with Clause 37. These accounting records shall include, original invoices, receipts, accounts, deeds, bank records and any other relevant documentation whether in written or electronic form.

6. **SUPPLIER AUDIT**

The Supplier shall ensure that all public subsidy it receives pursuant to this Contract is subject to the Supplier's own internal and external audit processes.

7. **INVESTMENT RATIOS**

7.1 The Supplier shall ensure that the Project Model:

- 7.1.1 contains the details of the Additional Supplier Expenditure that is forecast to be incurred over the Term; and
- 7.1.2 calculates a Project Investment Ratio.

7.2 Between the Effective Date and the Full Service Commencement Date, the Authority shall from time to time calculate the Outturn Investment Ratio. The Outturn Investment Ratio shall be compared to the Project Investment Ratio to report on the level of overall Supplier investment.

7.3 Where any Outturn Investment Ratio indicates that Actual Additional Supplier Expenditure is below or is likely to be below that forecast in the Project Model, then the Parties shall work together to ensure that, on achievement of the final Milestone

type 2 Milestone, Actual Additional Supplier Expenditure is equal to the Additional Supplier Expenditure forecast in the Project Model.

7.4 Where any Outturn Investment Ratio indicates that Actual Additional Supplier Expenditure is significantly above, or is likely to be significantly above, that forecast in the Project Model, then the Authority shall use reasonable endeavours to consider with the Supplier whether any adjustments may be made to the remaining Deployed Services (without adversely impacting upon the Supplier Solution outcomes delivered). However, for the avoidance of doubt, this paragraph 7.4: (i) does not represent an obligation to agree any change to the Parties' respective contracted obligations; and (ii) any agreement arising from such consideration would be subject to the Change Control Procedure. In any event where the Outturn Investment Ratio is higher than the Project Investment Ratio, it is noted that this is relevant to the claw-back equation in paragraph 10.3.

7.5 Any Supplier expenditure forecast used for the purposes of the Project Model and/or the ratios described in this paragraph 7 must be consistent with the then current Project Plan.

8. **CLAW-BACK**

The procedures set out in paragraphs 9 to 13 apply to support the prevention of public fund over-subsidy taking place under this Contract.

9. **OVER-SUBSIDY CLAW-BACK: CAPITAL EXPENDITURE**

9.1 Where at the Full Service Commencement Date, the Outturn Investment Ratio at that time indicates that Actual Additional Supplier Expenditure is below the Additional Supplier Expenditure forecast in the Project Model (i.e. an under-spend), then the Authority shall be entitled to require:

9.1.1 a reasonable and proportionate adjustment to the remaining Milestone Payments or the timing of the remaining Milestone Payments in accordance with the Change Control Procedure; and/or

9.1.2 the Additional Supplier Expenditure under-spend (or any remaining Additional Supplier Expenditure under-spend, having also exercised its right under paragraph 9.1.1 above) shall be credited by the Supplier to the Investment Fund.

10. **OVER-SUBSIDY CLAW-BACK: POST IMPLEMENTATION**

10.1 At each Take-up Review Point the Supplier shall perform an assessment of Take-up in accordance with paragraph 10.2.

10.2 At each Take-up Review Point the Supplier shall submit updated Project Accounts to the Authority which shall include actual total Take-up per Project Period. The actual Take-up shall be compared to the forecast Take-up as shown in the Project Model, for each Project Period, from the Effective Date to the relevant Take-up Review Point. If the sum of the cumulative actual Take-up per Project Period (being the Cumulative Sum in the column of the table exemplified below) is more than the cumulative forecast Take-up per Project Period the difference represents a "**Net Additional Take-up**" - see table below for example:

Project Period	1	2	3	4	Cumulative Sum Across Periods 1-4
Project Model	150	200	250	250	850

Actual	175	200	200	300	875
---------------	-----	-----	-----	-----	-----

Notes: The Take-up numbers included in columns 1-4 are the Take-up total at the end of the Project Period.

In this example the Net Additional Take-up would be 25 i.e. 875 minus 850.

The above table is solely a simplified set of numbers to example the principles of this paragraph 10.2 – the figures have no other application or relevance.

10.3 Exposure to claw-back at each interim Take-up Review Point shall be calculated as follows:

- *Exposure to claw-back at Take-up Review Point = Net Additional Take-up x Project Unit Margin x [(1 – the higher of (i) the Project Investment Ratio; or (ii) the Outturn Investment Ratio)]*

[Template Note: DCMS advises Local Bodies to consider whether their project is likely to have a high level of subsidy payment relative to the Supplier investment, and that in greater-than-expected Take-up scenarios, the resultant low proportion of profits deriving from additional Take-up that would be retained by the Supplier (as calculated for this limb of the claw-back formula) may not cover the additional capital investment necessary to serve these End Users. Consequently the level of non subsidy investment required could detrimentally impact upon the Supplier’s incentive to achieve additional Take-up on the Network.

In such circumstances, and recommending the Local Body should seek supporting evidence from Suppliers making this case, the Local Body should consider adjusting the element of the claw-back formula identified using square brackets above to ensure the Supplier is able to retain a minimum proportion (i.e. a ‘floor’ for the Project Investment Ratio) of the additional profit where the Project Investment Ratio would otherwise drive a lower proportion. For example, a Local Body may agree with the Supplier (after considering its supporting evidence) that the Project Investment Ratio used in the claw-back formula would be a minimum of 20%, or alternatively agree a tiered approach where the floor Project Investment Ratio increases dependent on the level of Take-up above the forecast.]

10.4 At each interim Take-up Review Point, a Take-up Reinvestment Amount shall be calculated as follows:

- *Take-up Reinvestment Amount = (Exposure to claw-back at Take-up Review Point less any Take-up Reinvestment Amounts previously credited to the Investment Fund) x X%: 50% or higher if agreed at the time by the Parties.*

Any positive Take-up Reinvestment Amount shall be credited by the Supplier to the Investment Fund within five (5) Working Days.

10.5 At the final Take-up Review Point a Final Take-up Claw Back Amount shall be calculated, with reference to the Net Additional Take-up across the Term, as follows:

- *Final Take-up Claw-back Amount = Exposure to claw-back at Take-up Review Point less any Take-up Reinvestment Amounts previously credited to the Investment Fund*

Any Final Take-up Claw-back Amount shall be credited by the Supplier to the Investment Fund within five (5) Working Days.

11. OVER-SUBSIDY CLAW-BACK: ADDITIONAL SERVICES

11.1 At each Additional Service Review Point the Supplier shall perform an assessment of Additional Service Revenue in accordance with paragraph 11.2.

11.2 At each Additional Service Review Point the Supplier shall submit updated Project Accounts to the Authority, additionally showing actual total Additional Service Revenue in relation to this Contract. The actual Additional Service Revenue shall be compared to the forecast Additional Service Revenue as shown in the Project Model, from the Effective Date to the relevant Additional Service Review Point. If the actual Additional Service Revenue is more than the forecast Additional Service Revenue the difference represents a "**Net Additional Service Revenue**". Exposure to claw-back at each interim Additional Service Review Point shall be calculated as follows:

- *Additional Service Revenue Amount = (Net Additional Service Revenue x A%, less any Additional Service Revenue Amounts previously credited to the Investment Fund) x X%: (50% or higher if agreed at the time by the Parties).*

Any Additional Service Revenue Amounts shall be credited by the Supplier to the Investment Fund within five (5) Working Days.

11.3 At the final Additional Service Review Point a Final Additional Service Claw Back Amount shall be calculated, with reference to the Net Additional Service Revenue across the Term (i.e. less any amounts reinvested pursuant to paragraph 12.1), as follows:

- *Final Additional Service Claw Back Amount = Net Additional Service Revenue x A%, less any Additional Service Revenue Amounts previously credited to the Investment Fund.*

11.4 Any Final Additional Service Claw Back Amount shall be credited by the Supplier to the Investment Fund within five (5) Working Days.

11.5 For the purposes of paragraphs 11.2 and 11.3, "A%" shall be determined at each Additional Service Review Point as follows:

11.5.1 The Supplier shall provide to the Authority details of the total margin achieved in respect of the Net Additional Service Revenue including the accounting principles used to calculate that margin;

11.5.2 As part of the Additional Services Review Point concerned, the Parties shall, acting reasonably, agree A% such that it represents an appropriate portion of the margin achieved on the Net Additional Service Revenue (taking into account relevant factors including (i) the extent to which the infrastructure used by the Wholesale Access Products and Services concerned was funded under this Contract; and (ii) the Commission Decision). If agreement of A% is not achieved within 10 Working Days from commencing that Additional Services Review Point this shall represent a Dispute.

12. **INVESTMENT FUND: REINVESTMENT AND FUND RETURN**

12.1 During the Term the Parties shall work together to invest the Investment Fund, in a manner consistent with the Commission Decision, on capital investment in the Network such that, by the end of the Term, the Investment Fund is reduced to zero. This will be a collaborative process, between the Parties, using the Change Control Procedure and applying the implementation regime as provided under this Contract (including as set out in Schedule 4.1 (Implementation), with MPCs submitted in accordance with this Schedule 5.1).

12.2 If at the end of the Term (following completion of the processes described in paragraphs 9 to 11) the Investment Fund remains a positive amount, this shall be returned by the Supplier to the Authority as soon as reasonably practical in the form of an electronic re-payment (with the payment details to be notified to the Supplier by the Authority). The amounts returned pursuant to this provision or otherwise re-invested from the Investment Fund shall not exceed the total public subsidy received by the Supplier during the Term.

13. INVESTMENT FUND: ACCOUNTS AND INTEREST

13.1 The Investment Fund shall be detailed in the Project Accounts.

13.2 The Supplier shall supplement the Investment Fund by depositing into it an amount equivalent to interest on the sum in the Investment Fund calculated on a monthly compound basis at an annual rate equivalent to 2% above the Bank of England base rate (as adjusted from time to time and set out in the London Financial Times).

14. [TAKE-UP RISK SHARE MECHANISM]

[Template Note: If, during the Call-Off process, a Local Body wishes to agree a 'stretch-target' against the Take-up assumptions set out by a Supplier in its originally bid Project Model (in order to achieve higher levels of overall investment), a mechanism would also be included to enable sharing of associated increased risk. The following principles are provided for consideration in respect of the Call-Off concerned but it is recognised this is an area that would be refined at the Call-Off level.]

Principles for consideration:

- **Following a Framework Supplier's provision of its own 'original' submitted bid model Take-up assumption, the Local Body may then request as part of the Call Off Procedure that the Framework Supplier provides and contracts to a variant bid Project Model using a revised Take-up assumption.**
- **At interim and the final Take-up Review Point for the Call-Off Contract concerned, an assessment of Take-up shall be conducted by comparing actual Take-up to the forecast Take-up (as shown in the Project Model), for each completed Project Period during the Call-Off Contract Term.**
- **If the Net Additional Take-up calculated in accordance with paragraph 10 of Schedule 5.1 is below forecast, this difference represents a "Risk-Share Take-up Difference". The Risk-Share Take-up Difference is capped at the difference between the Take-up assumptions shown in the contracted Project Model and the Supplier's original Take-up bid assumptions.**
- **A risk-share payment would be calculated as follows:**
 - **Risk-share payment = Risk-Share Take-up Difference x Project Unit Margin x (1 – Project Investment Ratio)**
- **Interim risk-share payment calculations would be applied and payments made to ameliorate the impact of the length of time taken to make payment of such funds to the Supplier.**
- **The overall aggregate risk-share payment would be capped as follows:**

- **Maximum risk-share payment = (Additional Supplier Expenditure shown in the Variant Project Model less Additional Supplier Expenditure shown in the Original Bid Model) x (1 – Project Investment Ratio)]**

15. **SURVEY ASSUMPTIONS**

15.1 The Milestone Payments are based on the Survey Assumptions set out in Appendix 3 to this Schedule 5.1. Save for those Survey Assumptions detailed in Appendix 3 and then only to the extent provided in this paragraph 15, no other survey or cost assumptions (whether contained in the Project Model or otherwise) are intended by the Parties to vary the Milestone Payments or any other obligation under this Contract.

15.2 Where and to the extent any Post-Effective Date Survey demonstrates that the actual circumstances differ from those set out in a relevant Survey Assumption, then provided and to the extent:

15.2.1 the reason for the Survey Assumption no longer holding true is not due, directly or indirectly, to any act or omission of the Supplier, its Subcontractors and/or agents; and

15.2.2 as a consequence of the Survey Assumption no longer holding true, the Supplier's costs for provision of the Network are impacted (including increases or decreases in cost),

the Parties shall as soon as reasonably practicable after completion of the Post-Effective Date Surveys review the options to address the impact under this Contract (noting those options referred to at Clause 31 and the additional information concerning the Survey Assumption provided in the table at Appendix 3). The Supplier shall raise a Change Request based on the conclusions from that review. The Parties shall work together to reach agreement in accordance with the Change Control Procedure (such agreement not to be unreasonably withheld).

16. **[CONTINGENCY]**

[Template Note: A Local Body may incorporate contingency arrangements in its Call-Off – i.e. an identified contingency sum (to be funded by the respective Parties on an agreed and specified basis) for funding any additional cost exposure arising from application of the Survey Assumptions. The detail of those contingency arrangements would be identified in the applicable Call-Off ITT and set out in the awarded Call Off Contract Schedule 5.1.]

APPENDIX 1 – MILESTONE PAYMENTS

ID	MILESTONE	MILESTONE PAYMENT

[Template Note: The Milestone Payments included in this Appendix must be consistent with the following and with Schedule 4.1 Appendix 1:

Milestone Type 0: Survey and Detailed Design Completion payments

- The minimum amount of public sector funding attributable to Milestone Type 0's will be 0%. The maximum amount of public sector funding attributable to Milestone Type 0 will be 5% which will be identified as a requirement during Call Off ITT;
- Milestone Type 0 payment(s) are claimable by the Supplier against Qualifying Capital Expenditure aligning to the relevant funding stream from which the payment will be made; and
- Milestone Type 0 payments which are in advance of any payments against Qualifying Capital Expenditure would apply only in limited circumstances given the requirements for reporting and audit of Supplier expenditure. Milestone Type 0 payments may be subject to timing and payment security constraints.

Milestone Type 1: Infrastructure Build

- There will be no minimum amount of public sector funding attributable to this Milestone type 1. The maximum amount of public sector funding attributable to the aggregate of Milestone type 1 payment(s) will be at the discretion of the Local Body. However, it is not expected to exceed 80% of total public sector funds remaining following the allocation of Milestone type 0s and Milestone type 3s, but may do so exceptionally given local circumstances. The total amount attributed to both Milestone type 1s and Milestone type 2s will total 100% of the Public Sector funding remaining following the allocation of both Milestone type 0s and Milestone type 3s.

Milestone Type 2: Availability of Wholesale Access Products and Services

- The minimum amount of public sector funding attributable to Milestone type 2 payments will be at the discretion of the Local Body. It is not expected to be more than 40% of total public sector funds remaining following the allocation of Milestone type 0s and Milestone type 3s, but may do so exceptionally given local circumstances. The total amount attributed to both Milestone type 1s and Milestone type 2s will total 100% of the public sector funding remaining following the allocation of both Milestone type 0s and Milestone type 3s.

Milestone Type 3: End User Take-up

- **The minimum amount of public sector funding attributable to Milestone type 3 will be 0%. The maximum amount of public sector funding attributable to the aggregate of Milestone type 3 payment(s) will be 10%. The Local Body will establish the minimum acceptable allocation of public subsidy to Milestone type 3s in the Call Off ITT within these limits.**
- **Milestone type 3s will apply to all cumulative Take-up]**

APPENDIX 2 – PERMITTED EXPENDITURE CATEGORIES

[Template Note: The table below reflects general guidance only. For the Call-Off concerned a specific list of expenditure items comprising Permitted Expenditure must be included in this Appendix.

FRAMEWORK AUTHORITY FUNDING

Permitted Expenditure under the Authority Capital Funding (not ERDF or local authority revenue funding)	Expenditure not attracting the Authority Capital Funding
<p>“Permitted Expenditure” is that expenditure incurred by the Supplier which will attract the capital public subsidy made available by the Framework Authority and local authorities for the purposes of this Contract. This definition does not apply to European funding which is governed by separate eligibility criteria (and termed “eligible expenditure”) or to other forms of subsidy that may be available (e.g. local authority revenue funding or RDPE)</p> <p>Permitted Expenditure is that Supplier expenditure which (i) can be reasonably allocated or apportioned to this Contract; (ii) is incurred in accordance with this Contract; (iii) is directly attributable to bringing the wholesale access infrastructure to the location and working condition necessary for its intended use; and (iv) is capable of being capitalised under generally accepted accounting practices</p> <p>In the event that expenditure pertains to broadband infrastructure that might be used to provide services to both “white” and other broadband areas, then the Supplier should apportion that expenditure according to the expected level of consumer take up in the respective areas.</p> <p>Detailed categories of Supplier Permitted Expenditure will be dependent on the solution offered. FOR GUIDANCE ONLY the following categories of Supplier expenditure are deemed to be Permitted Expenditure:</p> <p>The cost of tangible broadband infrastructure (plant, machinery and equipment) in both active and passive layers)</p> <p>Infrastructure installation and assembly costs</p> <p>Cost of active electronics, data transport and</p>	<p>The following are examples of expenditure by the Supplier which will not attract the capital public subsidy made available by the Framework Authority and local authorities for the purposes of this Contract. This examples do not apply to European funding which is governed by separate eligibility criteria (and termed “eligible expenditure”) or to other forms of subsidy that may be available (e.g. local authority revenue funding or RDPE)</p> <p>Supplier expenditure that will not attract the capital public subsidy made available by the Framework Authority and local authorities is any Supplier expenditure which is (i) not incurred in accordance with this Contract; (ii) not directly attributable to bringing the wholesale access infrastructure to the location and working condition necessary for its intended use; (iii) cannot be reasonably allocated or apportioned to this Contract; and/or (iv) is not capable of being capitalised under generally accepted accounting practices</p> <p>Detailed categories of Supplier expenditure will be dependent on the solution offered. FOR GUIDANCE ONLY the following categories of Supplier expenditure are considered as not attracting capital public subsidy made available by the Framework Authority and local authorities for the purposes of this Contract :</p> <p>Expenditure supported from other government sources or EC structural funds</p> <p>Operating and maintenance costs of the broadband infrastructure created</p> <p>Additional costs incurred as a result of Supplier under performance against or in breach of this Contract</p> <p>Retail connection costs and End User</p>

Permitted Expenditure under the Authority Capital Funding (not ERDF or local authority revenue funding)	Expenditure not attracting the Authority Capital Funding
<p>backhaul equipment</p> <p>Software and systems (including reporting systems) development costs directly attributable to bringing the broadband infrastructure into use</p> <p>Staff costs directly attributable to bringing the broadband infrastructure into use</p> <p>Planning, way-leaves, site investigation and site preparation costs directly attributable to bringing the broadband infrastructure into use (expenditure that will attract subsidy under Milestone 0)</p> <p>Network termination equipment and End User Premises equipment as required to deliver wholesale services</p> <p>Power connection costs</p> <p>Borrowing costs (capitalised under IAS 23) which are attributable to bringing the broadband infrastructure into use and where the Authority has a policy of capitalising such costs.</p> <p>Professional fees directly attributable to bringing the broadband infrastructure into use (expenditure that will attract subsidy under Milestone 0)</p>	<p>Premises equipment at retail level</p> <p>Operating costs of providing broadband services (wholesale or retail) to third parties and consumers</p> <p>Demand surveys, marketing other sales costs</p> <p>Corporation tax and non domestic rates</p> <p>Power and other utility running costs</p> <p>Costs Incurred before the date of this Contract (including bid costs)</p> <p>Any cost relating to insurance and insurance policies</p> <p>Customer acquisition and churn costs</p> <p>General corporate or unabsorbed overheads</p> <p>Depreciation, amortisation and impairment of assets</p> <p>Service and financing costs under finance leases, of broadband infrastructure, plant, machinery and equipment</p> <p>Operating lease rentals</p> <p>Provisions and contingent liabilities (including for risk related to this Contract)</p> <p>Supplier profit mark up, margin or administration charge that is added to the actual bought in costs of goods or services procured from third parties</p> <p>Administration and general management costs</p> <p>Dividends</p> <p>Other interest and financing charges</p> <p>Costs resulting from the deferral of payments to creditors</p> <p>Costs involved in winding up a company</p>

Permitted Expenditure under the Authority Capital Funding (not ERDF or local authority revenue funding)	Expenditure not attracting the Authority Capital Funding
	<p>Payments for unfair dismissal</p> <p>Payments into private pension schemes</p> <p>Payments for un-funded pensions</p> <p>Compensation for loss of office</p> <p>Bad debts arising from loans to employees, proprietors, partners, directors, guarantors, shareholders or a person connected with any of these</p> <p>Payments for gifts and donations</p> <p>Payment for entertainment</p> <p>Input VAT reclaimable by the Supplier</p> <p>Statutory fines and penalties</p> <p>Criminal fines and damages</p> <p>Legal expenses in respect of litigation</p> <p>Expenditure on works or activities which any person has a statutory duty to undertake</p> <p>Any liability arising out of negligence</p> <p>Professional fees not directly attributable to bringing the broadband infrastructure into use</p>

See note at head of table]

APPENDIX 3 – SURVEY ASSUMPTIONS

[Template Note: Survey Assumptions table below to be completed in respect of the specific Call Off Contract. Rows to be added as required. The Survey Assumptions must be (i) agreed as at the Effective Date; and (ii) detailed to a sufficient level to support impact analysis and the application of the process described in this Schedule]

REF:	SURVEY ASSUMPTION	EXPECTED IMPACT OF SURVEY ASSUMPTION ON THE DEPLOYED SERVICES, THE IMPLEMENTATION PLAN AND/OR THE PROJECT MODEL	AGREED INDICATIVE RESOLUTION (WITHOUT PREJUDICE TO CLAUSE 31)
[*]	[*]	[*]	
[*]	[*]	[*]	

For the avoidance of doubt, whilst items asterisked in the above table are Survey Assumptions which shall be closed as part of MO achievement in respect of each Phase, this does not preclude such items where they occur post-Survey Assumption closure from then qualifying as a Force Majeure Event for the purposes of and subject to Clause 59 where the definition of a Force Majeure Event in Schedule 1 is satisfied in the circumstances concerned. **[Template Note: Survey Assumptions in the above table which the Parties agree could conceivably be treated as Force Majeure Events should be marked with an asterisk. The assessment as to whether such events are in fact Force Majeure Events will be made at the time in accordance with the Force Majeure Event provisions in the Contract]**

SCHEDULE 5.2

WHOLESALE ACCESS PRICING

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

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2	PROJECT WHOLESALE ACCESS PRICES	4
3	WHOLESALE ACCESS PRICE BENCHMARK MECHANISM	4
4	CHANGES TO THE WHOLESALE ACCESS PRICES	5

SCHEDULE 5.2 – WHOLESALE ACCESS PRICING

1. BACKGROUND

- 1.1 This Schedule 5.2 sets out the process for benchmarking Project Wholesale Access Prices.

2. PROJECT WHOLESALE ACCESS PRICES

- 2.1 The "**Project Wholesale Access Prices**" are the prices for the Wholesale Access Products and Services, identified in the Project Model.
- 2.2 The Project Wholesale Access Prices shall include Wholesale Access Products and Services to be supplied over the Network.
- 2.3 The Project Wholesale Access Prices shall be expressed in £s sterling exclusive of VAT.

3. WHOLESALE ACCESS PRICE BENCHMARK MECHANISM

- 3.1 The Supplier shall at least annually conduct a Wholesale Access Prices Benchmarking comparison of the Project Wholesale Access Prices with the Benchmark Data and, if so required by this Schedule, revise those prices. This annual requirement excludes any benchmarking performed pursuant to paragraph 3.7.
- 3.2 The specific timings of each Wholesale Access Prices Benchmarking shall be agreed by the Supplier with the Authority (such agreement not to be unreasonably withheld or delayed) but shall not be within six (6) months of the previous Wholesale Access Prices Benchmarking comparison (excluding any benchmarking performed pursuant to paragraph 3.7).
- 3.3 The "**Benchmark Data**" used for each Wholesale Access Prices Benchmarking comparison will be identified by the Supplier for agreement with the Authority (such agreement not to be unreasonably withheld or delayed), with the Parties acknowledging that the Benchmark Data to be used shall be as set out in the Wholesale Access Product Template(s) corresponding to the Wholesale Access Products and Services concerned (all as comprised within the Supplier Solution) unless such Benchmark Data no longer meets the description provided in Paragraph 3.4 of this Schedule.
- 3.4 The Benchmark Data should be such that it would provide a reasonable basis for determining how the Project Wholesale Access Prices compare with the average published (regulated) wholesale prices that prevail in other comparable (including more competitive) areas of the country or the European Community or, in the absence of such published prices, on prices already set or approved by the Regulator for the markets and services concerned.
- 3.5 The Supplier shall provide a written Wholesale Access Prices Benchmarking report to the Authority for each Wholesale Access Prices Benchmarking conducted. This report shall:
- 3.5.1 set out a comparison of the Project Wholesale Access Prices against the Benchmark Data;
 - 3.5.2 justify and provide evidence for any deviation of the Project Wholesale Access Prices from the Benchmark Data (including the expected timescale over which the deviations will remain in place, and the circumstances under which such deviations will be re-evaluated); and

- 3.5.3 set out proposals for changes to the Project Wholesale Access Prices, so that they align to the Benchmark Data taking into account any justifiable basis for deviation (see paragraph 4 for the process for implementation of changes).
- 3.6 The Wholesale Access Prices Benchmarking report will be provided to the Authority within the timescale agreed pursuant to paragraph 3.2, noting that the report must be provided within five (5) Working Days of conducting the data comparison as part of the benchmarking concerned.
- 3.7 The Authority shall be entitled (for the avoidance of doubt, at no cost to the Authority) to require ad-hoc Wholesale Access Prices Benchmarking exercises at any time during the Term between previously conducted and forthcoming (pursuant to paragraph 3.1 above) Wholesale Access Prices Benchmarkings where there is reasonable evidence that any of the following may be taking place:
 - 3.7.1 higher or lower pricing relative to recent Benchmark Data; and/or
 - 3.7.2 a change in the market having a significant impact on potential applicable Benchmark Data.

4. **CHANGES TO THE WHOLESALE ACCESS PRICES**

- 4.1 Where the Wholesale Access Prices Benchmarking identifies Project Wholesale Access Prices that are higher or lower than the Benchmark Data and there is no applicable reasonable justification for the deviation, the Authority may:
 - 4.1.1 request the Supplier to provide further evidence or justification for the deviation between the Project Wholesale Access Prices and the Benchmark Data;
 - 4.1.2 require that the Supplier reviews and adjusts the actual Project Wholesale Access Prices to better align with the Benchmark Data, taking into account any justifiable basis for deviation; and/or
 - 4.1.3 report such deviation to the Framework Authority.
- 4.2 Where pursuant to paragraph 4.1.2 above an adjustment is to be made to the Project Wholesale Access Prices, this shall be implemented using the process provided in Schedule 5.3 (The Project Model), as soon as reasonably practical and in any event to achieve agreement within ten (10) Working Days (unless extended by written agreement of the Parties) of a request by the Authority pursuant to paragraph 4.1. Neither Party shall unreasonably withhold or delay agreement to such changes.
- 4.3 If the Supplier has been unwilling to adjust pricing on reasonable request by the Authority as a result of a Wholesale Access Prices Benchmarking under this Contract the Authority may also:
 - 4.3.1 notify the Framework Authority which may suspend the Supplier from the Framework Agreement pursuant to Clause 33 of the Framework Agreement; and/or
 - 4.3.2 notify the Regulator and/or the European Commission of those circumstances.

SCHEDULE 5.3
THE PROJECT 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

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1	BACKGROUND	1
2	THE PROJECT MODEL	1
3	MANAGEMENT OF CHANGES TO THE PROJECT MODEL	1

SCHEDULE 5.3 – THE PROJECT MODEL

1. BACKGROUND

- 1.1 This Schedule 5.3:
 - 1.1.1 references, at Appendix 1, the version of the Project Model agreed at the Effective Date;
 - 1.1.2 sets out requirements in respect of the ongoing management of changes to the Project Model; and
 - 1.1.3 sets out the general requirements of the Project Model in Appendix 2.

2. THE MASTER PROJECT MODEL

- 2.1 The Authority shall, subject to paragraph 3, hold the Master Project Model.
- 2.2 In the event of any conflict or inconsistency between the Master Project Model and any other copy of the Project Model, the Master Project Model shall take precedence.
- 2.3 Appendix 1 references the Project Model as at the Effective Date, and also contains certain assurances made by the Supplier in respect of that Project Model at the Effective Date.

3. MANAGEMENT OF CHANGES TO THE PROJECT MODEL

- 3.1 The Project Model shall be updated as described in this Schedule 5.3.
- 3.2 For any Changes to the Project Model:
 - 3.2.1 subject to Clause 39.2, the Change Control Procedure shall apply;
 - 3.2.2 the Authority shall, where such actual release is required to effect the change, release a copy of the Project 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
 - 3.2.3 once the change to the Project Model has been effected in accordance with paragraph 3.2.1, that revised version shall be the new Master Project Model.
- 3.3 All updates to the Project Model shall be auditable (i.e. any changes can be clearly identified). Each proposed and agreed updated version of the Project Model shall be clearly identified (and distinguishable from earlier versions) by version number and date.
- 3.4 The Supplier shall ensure that each updated version of the Project Model delivered to the Authority for agreement under the Change Control Procedure is certified by a suitably qualified finance representative of the Supplier as:
 - 3.4.1 being accurate and not misleading;
 - 3.4.2 being in conformity with the terms of this Contract; and
 - 3.4.3 reflecting only the change(s) as previously 'approved in principle' by the Parties.

APPENDIX 1 – THE PROJECT MODEL

1. THE PROJECT MODEL

The Project Model at the Effective Date is contained in the attached CD-ROM titled "Schedule 5.3 The Project Model".

Commentary on certain ongoing content requirements for the Project Model is contained in Appendix 2 to this Schedule 5.3.

2. SUPPLIER'S STATEMENT OF ASSURANCE ON THE PROJECT MODEL

[Template Note: The Supplier must provide a statement on its Project Model. This statement must be signed by a suitably qualified finance representative or the external auditor of the Supplier]

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

It is hereby confirmed that:

Reference Cost Book and Project Model Consistency

- *The processes and core data used in assembling the costs in the Project Model are consistent with the processes and core data used in assembling the Reference Cost Book (as defined in the Framework Agreement).*

Explanation of Variances

- *The explanations of variances between the cost book used in the Project Model and the Reference Cost Book are accurate and consistent.*

Compliance with Schedule 5.1

- *The Project Model is prepared on a basis that meets the requirements of Schedule 5.1 of the Call Off Contract.*

APPENDIX 2 – PROJECT MODEL REQUIREMENTS

This Appendix 2 sets out content requirements which must be maintained when making changes to the Project Model:

1.1 General Requirements:

The Project Model must:

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

The Project Model must not include any protected or hidden areas.

1.2 Cost Book:

The Cost Book shows the Solution Components. For each Solution Component the 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 Wholesale Access Price Book:

- Wholesale 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 Project Model

In addition to the Cost Book and Wholesale Access Price Book, the structure of the Project Model must allow for information in the following areas to be presented for this Contract:

1.4.1 Take-up:

- Churn rate (the rate at which the existing customer base reduces but new customers 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 Supplier Solution, in terms of:
 - Public subsidy
 - Supplier's own funding
- 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 Outputs:

- The Supplier's internal rate of return (IRR) calculated for the duration of the Term;
- The IRR 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 – ie that which meets the criteria for public subsidy (from any of the subsidy streams);
- Leverage;
- Project Investment Ratio;
- 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.

SCHEDULE 5.4
ADDITIONAL FUNDING

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

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2	ADDITIONAL FUNDING	1

SCHEDULE 5.4 – ADDITIONAL FUNDING

1. BACKGROUND

- 1.1 This Schedule 5.4 contains provisions relating to additional funding obtained by the Authority from third parties (excluding the Framework Authority) for the purpose of this Contract.

2. ADDITIONAL FUNDING

[Template Note: This template Call Off Contract deals only with the impact of funding provided by DCMS and the Authority. If the Authority obtains additional grant funds from other sources, then any additional contract terms which may be required as a consequence of the provision of such funding should be set out in this Schedule. This should include details of the relevant permitted expenditure for the purposes of the definition of Qualifying Capital Expenditure. Please see below for further guidance.

General

BDUK acknowledges that the Authority may obtain additional grant funding from third parties (for example ERDF and Defra's Rural Community Broadband Fund (RCBF)) in connection with procuring the provision of the Network and/or Deployed Services. Provision of such grant funding may be subject to terms imposed by the granting body which need to be reflected in the Call Off Contract. The Authority will need to ensure that if it does obtain additional funding from a third party that it can comply with any differing governing procedures under the rest of the Call Off Contract and the relevant additional funding agreement.

This Schedule is included in the template Call Off Contract for the Authority to set out any terms specific to any non DCMS/Local Body funding where such terms differ from those set out elsewhere in this template Call Off Contract.

Potential Issues for Consideration

Given the different types of non-DCMS/Local Body funding which might be available, it will be the Authority's responsibility to ensure it understands fully the requirements of the relevant granting body and to ensure that appropriate provisions are included in this Schedule to achieve compliance with the terms imposed by the granting body.

Specifically with regard to EDRF funding, outlined below are examples of obligations which are found within the standard ERDF funding agreement (at the date of this note) which may need to be specifically addressed in the Call Off Contract (or where differing procedures may be needed to those set out elsewhere in the Call Off Contract).

- The Authority is required to establish and maintain an inventory of fixed and major assets which are to be acquired, developed, enhanced, constructed or installed using ERDF funding. Most importantly, there are various restrictions in place in connection with these assets. For example, a restriction that the assets may only be used for approved purposes and that the assets may not be disposed of without the granting body's prior consent.
- The Authority is required to make information and know-how relating to or derived from the project publicly available (regardless of whether this know-how may constitute IPR belonging to the Authority or a third

party). It is also required to comply with the granting body's branding and publicity requirements.

- The Authority is required to comply with additional regulations and guidelines outlined by the granting body regarding eligible expenditure and payment arrangements for ERDF installments. It is expressly required to comply with EU Regulations 1080, 1083 and 1828.
- Grant monies are paid to the Authority on either a monthly or quarterly basis. At the end of each month/quarter the Authority is required to submit claims for eligible costs it has occurred in the previous month/quarter. Further, 10% of the overall grant will not be paid to the Authority until a satisfactory final audit report is prepared.
- The granting body reserves its rights of action or remedies for any mistake, misrepresentation or error of judgment made in the original application (and supporting papers) upon which the granting body has relied in agreeing to provide the ERDF funding.
- The Authority is required to provide details of any match funding necessary to meet the balance of the total funding (after taking the grant into consideration). Any change to this match funding must be notified to the granting body immediately.
- The Authority is required to maintain accounts and documentary evidence for the project on 'an open book basis' and to retain documents and records for a specified period (31 December 2025). Further, the audit may be carried out by an auditor appointed by the Audit Commission or the Department for Communities and Local Government or any successor body from time to time.
- The Authority is required to comply with provisions dealing with malicious software.

With respect to ERDF funding there may be additional project specific conditions which are imposed upon the Authority by the granting body. For example, aside from rights of recovery where financial irregularities occur, the granting body may impose a condition that grant monies can be recovered where there is a lack of progress towards achieving the targets of the project.

The guidance above does not cover any specific requirements of the RCBF (see below under Guidance section). The requirements of the RCBF are similar to those prescribed with respect to ERDF funding. A number of the differences to the ERDF requirements outlined above are:

- the ability to withhold 15% of the total RCBF grant (rather than 10% with respect to ERDF funding) until a satisfactory final audit report is prepared;
- the ability to have RCBF audits carried out at the request of the Department for the Environment, Food and Rural Affairs or its executive agency, the Rural Payments Agency, the European Court of Auditors, the European Commission, the National Audit Office or Government Office;
- the requirement to comply with additional regulations such as the EC Rural Development Regulations, specifically 1698/2005, 1944/2006 and 1975/2006; and

- the requirement that RCBF documents and records are retained for 7 years after the final grant payment is made (rather than the end of 2025 with respect to ERDF funding).

Guidance

With respect to other items the Authority will need to consider in connection with ERDF funding, guidance is available at:

- www.communities.gov.uk; and
- http://www.london.gov.uk/sites/default/files/ERDF_Project_Management_Guidance%20%28aug%202011%29.doc.

With regard to RCBF, advice and guidance will need to be sought from Defra regarding the terms they require to be incorporated in the Call Off Contract, to the extent different requirements and processes arise. Guidance is however available at:

- RDPE (2007-2013) Programme Document:
<http://archive.defra.gov.uk/rural/rdpe/progdoc.htm>;
- Rural Community Broadband Fund pages:
<http://rdpenetwork.defra.gov.uk/funding-sources/rural-community-broadband-fund>; and
- RDPE (2007-2013) Measure Fiches:
<http://archive.defra.gov.uk/rural/documents/rdpe/progdoc/chapter5.pdf>.

The Authority will be responsible for obtaining its own legal advice in connection with any potential ERDF funding or other non-DCMS/Local Body funding arrangement used under a Call Off Contract.

Precedence between this Schedule and Remainder of the Call Off Contract

It is important to note that this Schedule may be in some circumstances inconsistent with other provisions of the template Call Off Contract. The Authority should seek to address any inconsistencies prior to conclusion of the Call Off Contract. However, it may also want to review the precedence (Clause 3 of the template Call Off Contract) of this and other elements of the contract]

SCHEDULE 6.1

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

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2	REPRESENTATIVES	1
3	MEETINGS	1

SCHEDULE 6.1 – GOVERNANCE

1. BACKGROUND

This Schedule 6.1 sets out the governance arrangements for the purpose of this Contract.

2. GENERAL

2.1 Nothing in the governance arrangements provided in this Schedule 6.1 or their operation shall be construed as prejudicing or varying either Party's obligations and/or rights under this Contract (unless agreed by the Parties in accordance with the Change Control Procedure).

2.2 Subject to the extent this constitutes agreed Qualifying Capital Expenditure, 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 6.1.

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 endeavours 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 50);

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 37.1, 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
Build / Roll-out	<p>To review the Supplier's overall performance of this Contract. These meetings will cover:</p> <ul style="list-style-type: none"> • Network build and commission (in particular, progress in Network Deployment) • Milestone Payments • Operational performance (customer provisioning, technical performance and support) • RSP take-up • use of SMEs and approach to enabling opportunities for SMEs in the supply chain • review Network implementation issues and minor amendments to the Network build and commission roll-out plan (subject to the Change Control Procedure) • review of other Contract Change proposals (subject to the Change Control Procedure) 	Monthly but changing to quarterly once the Network has been successfully implemented	As per Schedule 6.4 (Reports)	<p>Supplier: Supplier Representative</p> <p>Authority: Authority Representative</p>
Strategic	[To be inserted]	Quarterly	As per Schedule 6.4 (Reports)	<p>Supplier: Supplier Representative</p> <p>Authority: Authority Representative</p>

[Template Note: The table of governance meetings outlined above are the baseline for a Call Off Contract. However, the Authority may require amendments to these arrangements]

SCHEDULE 6.2
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

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4	AUTHORITY'S RIGHT OF APPROVAL	2
5	SUPPLIER'S RIGHT OF REJECTION	3
6	FAST-TRACK CHANGES	3
7	CHANGES TO THE TEMPLATE CALL OFF CONTRACT	3
8	COSTS	4
9	EXECUTION OF CHANGE AUTHORISATIONS	4

SCHEDULE 6.2 – CHANGE CONTROL PROCEDURE

1. BACKGROUND

- 1.1 Subject to Clause 39.2, this Schedule 6.2 sets out the procedure for dealing with Contract Changes.
- 1.2 The following Contract Changes may be agreed by the Parties in writing without recourse to the Change Control Procedure:
- 1.2.1 any change to the Project Plan which does not necessitate a change to the Implementation Plan;
 - 1.2.2 any change to those elements of the Supplier Solution identified at paragraph [*] of Schedule 3.1 (Supplier Solution), **[Template Note: It is envisaged that Schedule 3.1 may identify parts of the Supplier Solution that the Authority and the Supplier agree can be changed by written agreement. To be considered by the Authority during the relevant Call Off Procedure]**

provided that each Party shall be responsible for its own costs and expenses incurred in connection with the agreement of such Contract Changes.

2. CHANGE REQUESTS

- 2.1 Subject to the remainder of this paragraph 2, either Party may issue a Change Request to the other Party at any time during the Term by completing Part 1 of the Change Form set out in the Appendix. Save where such a requirement would reasonably involve undue delay in progressing the Contract Change concerned, proposed Contract Changes should be subject to reasonable consideration through the governance arrangements provided under Schedule 6.1 (Governance) prior to issue of a Change Request.
- 2.2 If the Supplier issues a Change Request, it shall also provide a Change Impact Assessment (by completing Part 2 of the Change Form set out in the Appendix) to the Authority as soon as reasonably practicable but in any event within five (5) Working Days of the date of issuing the Change Request. The Supplier shall provide such further information and revised versions of each Change Request and/or Change Impact Assessment and within such timescales as the Authority may reasonably require.
- 2.3 Subject to paragraph 2.4, if the Authority issues a 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 Change Request (or if no date is specified within ten (10) Working Days of receipt of the Change Request).
- 2.4 If the Supplier considers (acting reasonably) that a Change Impact Assessment in respect of an Authority issued Change Request would require more than three (3) FTE Working Days of Supplier Personnel time to prepare, the Supplier shall instead (within five (5) Working Days of receipt of the Change Request) identify to the Authority in writing the cost and timescale for preparing and providing the corresponding Change Impact Assessment. If the Authority wishes to proceed with that Change Request:
- 2.4.1 it shall inform the Supplier in writing of this; and
 - 2.4.2 the Supplier shall provide the Change Impact Assessment in the timescale and at the cost of the Authority as identified above by the Supplier.

2.5 If the Supplier requires any reasonable clarification in relation to a Change Request before it can deliver a Change Impact Assessment, it shall as soon as reasonably practical notify the Authority and the Authority shall respond to the request for clarification as soon as is reasonably practicable (a corresponding extension of applicable timescales under this Schedule 6.2 shall apply in those circumstances).

3. **CHANGE IMPACT ASSESSMENT**

3.1 Each Change Impact Assessment shall include:

3.1.1 proposed drafting changes to this Contract, provided that any proposed change:

- (a) to any Milestone Payment (subject to Clause 31.1.2) shall be supported by equivalent financial information as that provided in respect of the existing Milestones;
- (b) shall take into account any proposed drafting changes set out in the Change Request where submitted by the Authority;

3.1.2 an assessment of the impact of the proposed Contract Change on:

- (a) the delivery and receipt of the Deployed Services;
- (b) the Supplier Solution;
- (c) the Supplier's ability to meet its other obligations under this Contract; and
- (d) any other matter requested by the Authority at the time of the assessment, or considered by the Supplier to be relevant;

3.1.3 details of how the proposed Contract Change will ensure compliance with any applicable Change in Law;

3.1.4 for the purpose of paragraph 7, an assessment of reasons why the proposed Contract Change should not reasonably be made to the Template Call Off Contract so as to apply to future broadband projects.

3.2 If the proposed Contract Change has no impact of the kind described in paragraph 3.1.2 the Supplier shall provide a statement of this fact in the Change Impact Assessment.

3.3 The Authority shall review each Change Impact Assessment and as soon as reasonably practicable shall respond to the Supplier in accordance with paragraph 4.

4. **AUTHORITY'S RIGHT OF APPROVAL**

4.1 The Authority shall review each Change Request and/or Change Impact Assessment and as soon as reasonably practicable shall do one of the following:

4.1.1 approve the proposed Contract Change, in which case the Parties shall follow the procedure set out in paragraph 4.2;

4.1.2 reject the Contract Change (providing reasons for the rejection), in which case it shall notify the Supplier of the rejection. The Authority shall not reject any proposed Contract Change to the extent the Contract Change is necessary for the Supplier or the Deployed Services to comply with any Change in Law;

4.1.3 require the Supplier to modify the 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 4.1 in respect of each modified Change Request and Change Impact Assessment and any subsequent version required by the Authority.

4.2 If the Authority approves a Contract Change pursuant to paragraph 4.1.1 and it has not been rejected by the Supplier in accordance with paragraph 5, it shall notify the Supplier and the Parties shall sign a Change Authorisation (by completing Part 3 of the Change Form set out in the Appendix) within three (3) Working Days. Upon the signature by both Parties, a Change Authorisation shall constitute a binding variation to this Contract.

4.3 Until such time as a Change Authorisation has been signed by both Parties in accordance with paragraph 4.2, unless the Parties (acting reasonably having regard to the nature of the proposed Contract Change) agree otherwise in writing, the Supplier shall continue to supply the Deployed Services in accordance with the existing terms of this Contract as if the proposed Contract Change did not apply.

5. **SUPPLIER'S RIGHT OF REJECTION**

5.1 The Supplier shall be entitled to reject a proposed Contract Change only if, following a Change Impact Assessment, the Supplier reasonably believes that the proposed Contract Change would:

5.1.1 require the Deployed Services to be performed in a way that infringes any Law; and/or

5.1.2 subject to paragraph 5.2, materially and adversely impacts:

(a) the Supplier's ability to fully deliver the Deployed Services; and/or

(b) the commercial risk profile underpinning the Deployed Services,

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 Contract Change,

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.

5.2 Paragraph 5.1.2 shall not permit the Supplier to reject any proposed Contract Change to the extent the Contract Change is necessary for the Authority to comply with any change in Law (recognising that in respect of Specific Changes in Law, reasonable commercial terms shall be agreed by the Parties in order to account for such change).

6. **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 6.2. If the Parties agree in writing that such circumstances apply in relation to a proposed Contract Change then the Parties shall agree an accelerated timetable for the steps described in this Schedule 6.2 in order to effect the Contract Change.

7. **CHANGES TO THE TEMPLATE CALL OFF CONTRACT**

In respect of each Contract Change the Parties shall, as part of the finalisation of the relevant Change Form, consider whether it would be beneficial for future call off

contracts using the Call Off Procedure if the Contract Change be made to the Template Call Off Contract (with appropriate changes as necessary to reflect the incorporation into the Template Call Off Contract) and, if the Parties agree, the Supplier shall raise a change request for consideration by the Framework Authority in accordance with the change control procedure under the Framework Agreement.

8. **COSTS**

8.1 Subject to:

8.1.1 those costs for preparation of a Change Impact Assessment payable by the Authority pursuant to paragraph 2.4; and

8.1.2 paragraph 8.2,

each Party shall be responsible for its own costs and expenses incurred in compliance with this Schedule 6.2 including the preparation and assessment of all Change Forms.

8.2 Without prejudice to any right a Party may have to recover costs incurred in respect of an Indemnified Claim, a Party's reasonable costs incurred in respect of any use of this Change Control Procedure as a result of any Default by the other Party shall be paid for by the Party in Default.

9. **EXECUTION OF CHANGE AUTHORISATIONS**

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

[Template Note: The Authority should remove the square brackets in the above provision if it wishes to have the option for Change Authorisations to be signed in the manner described]

APPENDIX – CHANGE FORM

PART 1: CHANGE REQUEST

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

CHANGE IMPACT ASSESSMENT	
CONTRACT NO:	<i>[Please state]</i>
CHANGE NO:	<i>[Please state]</i>
SUPPLIER'S CHANGE IMPACT ASSESSMENT: <i>[Please refer to paragraphs 2 and 3 of Schedule 6.2 (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

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>

SCHEDULE 6.3
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

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SCHEDULE 6.3 – DISPUTE RESOLUTION PROCEDURE

1. BACKGROUND

This Schedule 6.3 sets out the Dispute Resolution Procedure for the purpose of this Contract.

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 (with a copy provided to the Framework Authority).

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, 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 Contract 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, the Parties shall seek to resolve Disputes firstly by commercial negotiation (in accordance with paragraph 3), then by mediation (in accordance with paragraph 4) and lastly, subject to Paragraph 4.11, by recourse to [arbitration (in accordance with paragraph 5) or] litigation if either Party seeks urgent injunctive relief. **[Template Note: Text in square brackets in this paragraph (and associated square bracketed arbitration text elsewhere in this Schedule) to be removed if the Authority does not include arbitration]**

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, 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	[•]	[•]

[Template Note: The Authority should specify appropriate levels for the Escalation Process in the Call Off Contract issued with the ITT]

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 Contract 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 conducted in the spirit) that would equate to the conduct of commercial negotiations in accordance with this paragraph 3, that Party shall serve a written notice to that effect and the Parties shall proceed to mediation in accordance with paragraph 4.

4. **MEDIATION**

4.1 In the event that a Dispute between the Parties cannot be resolved by commercial negotiation in accordance with paragraph 3 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 Parties shall use all reasonable endeavours to ensure that 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 Parties shall ensure that 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 The parties shall ensure that 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 Parties shall procure that the Mediator shall be responsible for sending a copy of each Party's Case Summary and supporting documents (pursuant to paragraph 4.7.1) 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.

4.8.2 The Parties shall procure that 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 Contract. 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 or the timetable is otherwise extended by operation of paragraph 4.8.1. The Parties shall procure that 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 [or arbitration] 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 The Parties shall ensure that 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 have been admissible or disclosable in any such proceedings but for its use in the mediation.

4.12.3 Paragraphs 4.12.1 and 4.12.2 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 Neither Party 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 Parties shall procure that the Mediator and CEDR shall not voluntarily act in any such capacity without the written agreement of 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. **[ARBITRATION]**

5.1 [The Parties may at any time before court proceedings are commenced agree that the Dispute should be referred to arbitration in accordance with the provisions of paragraph 5.4.

- 5.2 Before the Supplier may commence any court proceedings it shall serve written notice on the Authority of its intention and the Authority shall have 15 Working Days from receipt of the Supplier's notice in which to reply requesting the Dispute be referred to arbitration in accordance with the provisions in paragraph 5.4.
- 5.3 In its notice to the Authority pursuant to paragraph 5.2, the Supplier may request that the Dispute is referred to arbitration, to which the Authority may, in its sole discretion consent. **[Template Note: The Authority may consider amending these provisions so that arbitration is compulsory in order to maintain protection under the New York Convention for Enforcement. Appropriate dispute resolution guidance should be sought on this point]**
- 5.4 If a Dispute is referred to arbitration the Parties shall comply with the following provisions:
- 5.4.1 the arbitration shall be governed by the provisions of the Arbitration Act 1996 and the LCIA procedural rules in force at the Effective Date shall be applied;
 - 5.4.2 the decision of the arbitrator shall be binding on the Parties (in the absence of any material failure by the arbitrator to comply with the LCIA procedural rules);
 - 5.4.3 subject to paragraph 5.4.4, the tribunal shall consist of a sole arbitrator to be agreed by the Parties and in the event that the Parties fail to agree the appointment of the arbitrator within ten (10) Working Days or, if the person appointed is unable or unwilling to act, as appointed by the LCIA;
 - 5.4.4 if the Dispute is of a complex nature, the Parties may agree, or the Authority at its sole discretion may direct, that the tribunal shall consist of three (3) arbitrators, to be agreed by the Parties and in the event that the Parties fail to agree the appointment of the arbitrators within ten (10) Working Days or, if the persons appointed are unable or unwilling to act, as appointed by the LCIA;
 - 5.4.5 the seat of the arbitration shall be England;
 - 5.4.6 the language of the arbitration shall be English; and
 - 5.4.7 the arbitration proceedings shall take place in London or other location in England as determined by the Authority.]

6. URGENT RELIEF

Nothing in this Schedule 6.3 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 6.3 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 6.3 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 6.3 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 6.3	30 Working Days	20 Working Days
Maximum duration of mediation meeting in accordance with paragraph 4.8.4 of this Schedule 6.3	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 6.3	Ten (10) Working Days	Five (5) Working Days

SCHEDULE 6.4
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

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SCHEDULE 6.4 – REPORTS

1. BACKGROUND

This Schedule 6.4 contains details of the reports that shall be provided by the Supplier in accordance with Clause 37.

2. REPORTS

ID	Report Name	Description	Frequency and Coverage Period	Start Date (provision of first report)	Primary Recipients
C1	Build & Roll-Out Report	Report providing detail for the Coverage Area on: <ul style="list-style-type: none"> - Coverage achieved against plan - Details of survey work undertaken - Local authority planning requests - Implementation progress report (including details of superfast and standard broadband geographic coverage achieved against plan) - ‘Snagging’ report – highlight any significant issues with Network Deployment - Milestone testing and achievement - Summary of design or implementation changes during period 	Quarterly	First quarter end (i.e. three (3) months) after Effective Date	Authority
C2	Build Forecast report (3 month build plan)	Report identifying the key Network survey, build, commission, test, launch and operate activities that are planned in the next three (3) months, cross-referenced to the Project Plan	Monthly	One month after Effective Date	Authority
C3	Customer report	Report that identifies: <ul style="list-style-type: none"> - “Retail-Ready” Wholesale Access Products and Services availability (by town/village, post code, Street and house ID) - Names of RSPs offering retail services - Wholesale Access Products and Services - Total new active wholesale connections - Total cancelling wholesale connections - 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 	Quarterly	From Achievement of Milestone 2 (Availability of Wholesale Access Products and Services)	Authority

		<ul style="list-style-type: none"> • Split by RSP (subject to any applicable regulatory constraint) - Average End User product pricing (this data provided only once per annum in this C3 report) 			
C4	Marketing Report	<p>Report that identifies:</p> <ul style="list-style-type: none"> - Marketing activities undertaken within the reporting period, and planned marketing activities for next three (3) months - PR generated (e.g. press clippings, broadcast/internet media coverage) - Effectiveness of marketing activities (e.g. AVE - advertising value equivalent; effectiveness of marketing - judge in terms of reach, opportunities to view and CPR - cost per reply / sale; customer survey, brand recognition) 	Quarterly	First quarter end after Effective Date	Authority
C5	SLA Report	<p>Report that identifies:</p> <ul style="list-style-type: none"> - Aggregated across the Coverage Area, actual: <ul style="list-style-type: none"> • Access Line Speed in both directions measured at the wholesale level • Busy Hour Committed Rate available to RSPs - Performance against Schedule 2 (Service Requirements) network ordering, installation, availability and support Service Level requirements 	Quarterly	From Achievement of Milestone 2 (Availability of Wholesale Access Products and Services)	Authority
C6	Financial Report	<p>Report to demonstrate:</p> <ul style="list-style-type: none"> - Supplier expenditure, broken down by types of Solution Component in the quarter (with a cumulative summary) - Subsidy Payments claimed in the quarter (with a cumulative summary) - A summary of any commercial revenue earned in the quarter (with a cumulative summary) - Additional Supplier Expenditure for the purpose of the Authority calculation of Investment Ratios (as defined in Schedule 5.1) in the quarter (with a cumulative summary) - A summary of movements in the Investment Fund in the quarter (as defined in Schedule 5.1) - A list summary of evidence, in accordance with Schedule 5.1, 	Quarterly	Claim for first Milestone Payment	Authority & Framework Authority

		provided by the Supplier to support claims for Subsidy Payments in the quarter			
C7	State aid Report	<ul style="list-style-type: none"> - State aid leverage (i.e. % of project funding coming from state aided sources) - “Asset Re-use” information (i.e. where existing assets are being leveraged) 	One-off report covering entirety of implementation	On achievement of final M2 type Milestone	Authority & Framework Authority
C8	SME Inclusion	<p>Report to monitor SME supply chain inclusion:</p> <ul style="list-style-type: none"> - identification of SMEs within the project supply chain - % of <i>total contract value</i> flowing down to SMEs in the supply chain - % of <i>allocated public funds</i> flowing down to SMEs in the supply chain - number of new sub-contractor opportunities arising in previous quarter, and where these were advertised (e.g. “Contracts Finder” website) 	Quarterly	First quarter end after Effective Date	Authority
C9	Benefits Report	<p>Report to:</p> <ul style="list-style-type: none"> - track benefits of Superfast Broadband to local community; and - provide information to support economic impact assessment analysis. <p>[Template Note: The benefit and economic impact information to be reported should be further identified above in respect of the specific Call-Off]</p>	[Quarterly]	First quarter end after Effective Date	Authority
C10	Project Accounts	Copy of the Project Accounts with an accompanying short narrative report in accordance with Schedule 5.1	Annual	First anniversary of the Effective Date	Authority

[Template Note: The table of reports outlined above are the baseline reports to be provided by the Supplier. However, the Authority may require amended versions of the baseline reports or additional reports to be provided by the Supplier]

SCHEDULE 6.5
REMEDIAL PLAN PROCESS

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

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SCHEDULE 6.5 – REMEDIAL PLAN PROCESS

1. BACKGROUND

This Schedule 6.5 sets out the Remedial Plan Process which the Supplier shall comply with in accordance with Clause 38.

2. REMEDIAL PLAN PROCESS

2.1 General

2.1.1 If:

- (a) the Supplier is required to comply with the Remedial Plan Process in accordance with the terms of this Contract; and
- (b) a Remedial Plan has not yet been agreed by the Parties in accordance with this Schedule 6.5,

then to the extent that any problems which have triggered the Remedial Plan Process may (in the reasonable opinion of the Authority) have a material impact upon the Authority, the Supplier shall upon reasonable notice provided by the Authority advise the Authority of the status of the remedial efforts being undertaken with respect to such problems.

2.2 Remedial Plan

2.2.1 The Supplier shall provide the Authority with a draft Remedial Plan without delay (even, where relevant, if the Supplier disputes whether or not it has committed a Default) and in any event no later than five (5) Working Days (or such other period as the Parties may agree):

- (a) where this Contract requires service of a notice, after the notice provided by the Authority requiring the Supplier to initiate the Remedial Plan Process; or
- (b) after the relevant circumstance giving rise to the Supplier's obligation to comply with the Remedial Plan Process has occurred.

2.2.2 The Supplier shall ensure that each Remedial Plan:

- (a) specifies the steps that the Supplier proposes to take to remedy or to avoid the relevant Default (including actions and timings); and
- (b) is in sufficient detail for it to be properly evaluated by the Authority.

2.2.3 If the Authority considers that a draft Remedial Plan provided by the Supplier under paragraph 2.2.1 is:

- (a) insufficiently detailed to be properly evaluated;
- (b) will take too long to complete; and/or
- (c) will not remedy the relevant Default or address sufficiently the issues it is aimed at addressing,

the Authority may at its sole discretion either agree a further time period for the development and agreement of the Remedial Plan or escalate any issues with the draft Remedial Plan using the Dispute Resolution Procedure. Where the Authority agrees a further time period for the development and

agreement of the Remedial Plan, the Supplier shall within the relevant time period produce such revised drafts of the Remedial Plan as the Authority may require and shall take into account in the Remedial Plan any reasonable comments by the Authority, so as to address the issues set out in paragraphs 2.2.3(a), (b) and/or (c) (as applicable).

2.2.4 The Supplier shall comply with a Remedial Plan following its agreement by the Parties.

2.2.5 The Supplier shall provide to the Authority, in accordance with the relevant timescales agreed in each Remedial Plan:

- (a) regular updates on the implementation of the Remedial Plan; and
- (b) evidence, either documentary or demonstrative as the Authority may reasonably require, of the implementation of the Remedial Plan.

2.3 **Failure to Agree or Implement Remedial Plan**

2.3.1 If the Remedial Plan cannot be agreed (each Party acting reasonably) within the relevant time period agreed or by operation of the Dispute Resolution Procedure under paragraph 2.2.3, the Authority may elect to end the Remedial Plan Process at the end of the relevant time period or the Dispute Resolution Procedure (as applicable) and serve notice to terminate this Contract in accordance with Clause 61.1.1(b) and this Contract shall terminate on the date specified by the Authority in the termination notice.

2.3.2 If a Remedial Plan is agreed between the Parties but the Supplier fails to implement the Remedial Plan in accordance with its terms then the Authority may, at its sole discretion:

- (a) give the Supplier a further opportunity to resume full implementation of the Remedial Plan (in accordance with such timescales as the Authority may reasonably require); or
- (b) escalate any issues arising out of the failure to implement the Remedial Plan using the Dispute Resolution Procedure.

2.3.3 If the reasons for the Supplier's failure to implement the Remedial Plan have not been resolved despite the use of the Dispute Resolution Procedure in accordance with paragraphs 2.2.3 or 2.3.2, and the Supplier has not otherwise remedied the Default which gave rise to the Remedial Plan then the Authority may serve notice to terminate this Contract in accordance with Clause 61.1.1(b) and this Contract shall terminate on the date specified by the Authority in that notice.

2.4 **No Obligation to Follow Remedial Plan Process**

2.4.1 The Authority shall not be obliged to follow the Remedial Plan Process (and the relevant Default shall be deemed irremediable) where a Default giving rise to compliance with the Remedial Plan Process in accordance with this Contract arises if:

- (a) a Remedial Plan has previously been implemented in respect of the relevant Default but the Supplier failed to remedy the Default by those means; or

- (b) there is an occurrence of substantially the same Default within a period of three (3) months following the completion of any previous Remedial Plan.

SCHEDULE 7
FORM OF GUARANTEE

[Template Note: This Schedule will be used only if the Authority requires the provision of a Guarantee in relation to a particular 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. Unchanged as against version 1.0

SCHEDULE 7 – FORM OF GUARANTEE

1. BACKGROUND

This Schedule 7 sets out the form of the Guarantee that the Supplier shall procure in accordance with Clause 29.

APPENDIX – FORM OF GUARANTEE

[Insert the name of the Guarantor]

in favour of

[Insert the name of the Beneficiary]

DEED OF GUARANTEE

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THIS DEED OF GUARANTEE is made the day of 201[]

BETWEEN:

- (1) *[Insert the name of the Guarantor]* [a company incorporated in England and Wales with number *[insert number]* whose registered office is at *[insert details of the Guarantor's registered office here]*] [a company incorporated under the laws of *[insert country]*, registered in *[insert country]* with number *[insert number]* at *[insert place of registration]*, whose principal office is at *[insert office details]*] ("**Guarantor**"); in favour of
- (2) *[Insert the name of the Authority]* ("**Beneficiary**")

WHEREAS:

- (A) *[Insert the name of the Supplier]* ("**Supplier**") [a company incorporated in England and Wales with number *[insert number]* whose registered office is at *[insert details of the Supplier's registered office here]*] [a company incorporated under the laws of *[insert country]*, registered in *[insert country]* with number *[insert number]* at *[insert place of registration]*, whose principal office is at *[insert office details]*] and the Beneficiary are party to the Guaranteed Agreement.
- (B) It is a condition of the Beneficiary entering into the Guaranteed Agreement that the Guarantor executes and delivers this Deed of Guarantee to the Beneficiary.
- (C) The Guarantor has agreed, in consideration of the Beneficiary entering into the Guaranteed Agreement with the Supplier, to guarantee the due performance by the Supplier of all of the Supplier's obligations under the Guaranteed Agreement.
- (D) It is the intention of the parties that this document be executed and take effect as a deed.

Now in consideration of the Beneficiary entering into the Guaranteed Agreement, the Guarantor hereby agrees with the Beneficiary as follows:

1. **DEFINITIONS AND INTERPRETATION**

In this Deed of Guarantee:

- 1.1 unless defined elsewhere in this Deed of Guarantee or the context requires otherwise, defined terms shall have the same meaning as they have for the purposes of the Guaranteed Agreement;
- 1.2 the words and phrases below shall have the following meanings:
 - 1.2.1 "**Dissolution**" includes the bankruptcy, insolvency, liquidation, amalgamation, reconstruction, reorganisation, administrative or other receivership, administration, voluntary arrangement, informal compromise with creditors or dissolution of that person and any equivalent or analogous proceeding by whatever name known and in whatever jurisdiction;
 - 1.2.2 "**Guaranteed Agreement**" means the agreement under which the Supplier will provide to the Beneficiary with broadband and related services made between the Beneficiary and the Supplier on []; and
 - 1.2.3 "**Guaranteed Obligations**" means all obligations of the Supplier to the Beneficiary under the Guaranteed Agreement together with all obligations owed by the Supplier to the Beneficiary that are supplemental to, incurred under, ancillary to or calculated by reference to the Guaranteed Agreement.

- 1.3 references to this Deed of Guarantee and any provisions of this Deed of Guarantee or to any other document or agreement (including to the Guaranteed Agreement) are to be construed as references to this Deed of Guarantee, those provisions or that document or agreement in force for the time being and as amended, varied, supplemented, substituted or novated from time to time;
- 1.4 unless the context otherwise requires, words importing the singular are to include the plural and vice versa;
- 1.5 references to a person are to be construed to include that person's assignees or transferees or successors in title, whether direct or indirect;
- 1.6 the words "other" and "otherwise" are not to be construed as confining the meaning of any following words to the class of thing previously stated where a wider construction is possible;
- 1.7 unless the context otherwise requires, reference to a gender includes the other gender and the neuter;
- 1.8 unless the context otherwise requires, references to an Act of Parliament, statutory provision or statutory instrument include a reference to that Act of Parliament, statutory provision or statutory instrument as amended, extended or re-enacted from time to time and to any regulations made under it;
- 1.9 unless the context otherwise requires, 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;
- 1.10 references to clauses and schedules are, unless otherwise provided, references to clauses of and schedules to this Deed of Guarantee; and
- 1.11 references to liability are to include any liability whether actual, contingent, present or future.

2. **GUARANTEE AND INDEMNITY**

- 2.1 The Guarantor irrevocably and unconditionally guarantees and undertakes to the Beneficiary to procure that the Supplier duly and punctually performs all of the Guaranteed Obligations now or hereafter due, owing or incurred by the Supplier to the Beneficiary.
- 2.2 The Guarantor irrevocably and unconditionally undertakes upon demand to pay to the Beneficiary all monies and liabilities which are now or at any time hereafter shall have become payable by the Supplier to the Beneficiary under the Guaranteed Agreement or in respect of the Guaranteed Obligations.
- 2.3 If at any time the Supplier shall fail to perform any of the Guaranteed Obligations, the Guarantor, as primary obligor, irrevocably and unconditionally undertakes to the Beneficiary that immediately, upon first demand by the Beneficiary it shall, at the cost and expense of the Guarantor:
- 2.3.1 fully, punctually and specifically perform such Guaranteed Obligations as if it were itself a direct and primary obligor to the Beneficiary in respect of the Guaranteed Obligations and liable as if the Guaranteed Agreement had been entered into directly by the Guarantor and the Beneficiary; and
- 2.3.2 indemnify and keep the Beneficiary indemnified against all losses, damages, costs and expenses (including VAT thereon, and including, without limitation, all court costs and all legal fees together with any disbursements,) of whatever nature which may result or which the Beneficiary may suffer, incur or sustain arising in any way whatsoever out of a failure by the Supplier to perform the Guaranteed Obligations save that, subject to the other provisions of this Deed of Guarantee,

this shall not be construed as imposing greater obligations or liabilities on the Guarantor than are purported to be imposed on the Supplier under the Guaranteed Agreement.

- 2.4 As a separate and independent obligation, the Guarantor irrevocably and unconditionally undertakes to indemnify and keep the Beneficiary indemnified on demand against all losses, damages, costs and expenses (including VAT thereon, and including, without limitation, all legal costs and expenses), of whatever nature, whether arising under statute, contract or at common law, which the Beneficiary may suffer or incur if any of the Guaranteed Obligations is or becomes void, voidable, ineffective, unenforceable, invalid or illegal as if the obligation guaranteed had not become void, voidable, ineffective, unenforceable, invalid or illegal provided that the Guarantor's liability shall be no greater than the Supplier's liability would have been if the Guaranteed Obligation had not become void, voidable, ineffective, unenforceable, invalid or illegal.

3. **OBLIGATION TO ENTER INTO A NEW CONTRACT**

If the Guaranteed Agreement is terminated for any reason, whether by the Beneficiary or the Supplier, or if the Guaranteed Agreement is disclaimed by a liquidator (or an analogous event in any other jurisdiction) of the Supplier or the obligations of the Supplier are declared to be void or voidable for any reason, then the Guarantor will, at the request of the Beneficiary, enter into a contract with the Beneficiary in terms mutatis mutandis the same as the Guaranteed Agreement and the obligations of the Guarantor under such substitute agreement shall be the same as if the Guarantor had been original obligor under the Guaranteed Agreement or under an agreement entered into on the same terms and at the same time as the Guaranteed Agreement with the Beneficiary.

4. **DEMANDS AND NOTICES**

- 4.1 Any demand or notice served by the Beneficiary on the Guarantor under this Deed of Guarantee shall be in writing, addressed to:

Guarantor	Beneficiary
[Address of the Guarantor in England and Wales]	[Address of the Beneficiary in England and Wales]
[Facsimile Number]	[Facsimile Number]
[E-mail]	[E-mail]
[For the Attention of]	[For the Attention of]

or such other address in England and Wales or facsimile number as either party has from time to time notified to the other in writing in accordance with the terms of this Deed of Guarantee as being an address or facsimile number for the receipt of such demands or notices.

- 4.2 Any notice or demand served on the Guarantor or the Beneficiary under this Deed of Guarantee shall be deemed to have been served:

- 4.2.1 if delivered by hand, at the time of delivery; or
- 4.2.2 if posted, at 10.00 a.m. on the second Working Day after it was put into the post; or
- 4.2.3 if sent by facsimile, at the time of despatch, if despatched before 5.00 p.m. on any Working Day, and in any other case at 10.00 a.m. on the next Working Day; or

- 4.2.4 if sent by e-mail, at the time that the e-mail 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 within twenty four (24) hours of transmission a hard copy of the e-mail is sent by one of the means contemplated under Clauses 4.2.1, 4.2.2, or 4.2.3 to the other party.
- 4.3 In proving service of a notice or demand on the Guarantor or the Beneficiary it shall be sufficient to prove that delivery was made, or that the envelope containing the notice or demand was properly addressed and posted as a prepaid first class recorded delivery letter to the address previously notified, or that the facsimile or e-mail message was properly addressed and sent to the fax number or e-mail address previously notified, as the case may be.
- 4.4 Any notice purported to be served on the Beneficiary under this Deed of Guarantee shall only be valid when received in writing by the Beneficiary.
5. **BENEFICIARY'S PROTECTIONS**
- 5.1 The Guarantor shall not be discharged or released from this Deed of Guarantee by any arrangement made between the Supplier and the Beneficiary (whether or not such arrangement is made with or without the assent of the Guarantor) or by any amendment to or termination of the Guaranteed Agreement or by any forbearance or indulgence whether as to payment, time, performance or otherwise granted by the Beneficiary in relation thereto (whether or not such amendment, termination, forbearance or indulgence is made with or without the assent of the Guarantor) or by the Beneficiary doing (or omitting to do) any other matter or thing which but for this provision might exonerate the Guarantor.
- 5.2 This Deed of Guarantee shall be a continuing security for the Guaranteed Obligations and accordingly:
- 5.2.1 it shall not be discharged by any partial performance (except to the extent of such partial performance) by the Supplier of the Guaranteed Obligations or by any omission or delay on the part of the Beneficiary in exercising its rights under this Deed of Guarantee;
- 5.2.2 it shall not be affected by any Dissolution, change in status, function, control or ownership, or other incapacity, of the Supplier, the Beneficiary, the Guarantor or any other person;
- 5.2.3 if, for any reason, any of the Guaranteed Obligations shall prove to have been or shall become invalid, void, voidable, ineffective or unenforceable against the Supplier for any reason whatsoever, the Guarantor shall nevertheless be liable in respect of such Guaranteed Obligation or liability as if the same were fully valid and enforceable and the Guarantor were principal debtor in respect thereof;
- 5.2.4 it shall not be discharged by:
- (a) the taking, holding, failure to take or hold, varying, realisation, non-enforcement, non-perfection or release by the Beneficiary or any other person of any other guarantee and/or indemnity or any security for any of the Guaranteed Obligations; or
 - (b) any lack of or limitation on the borrowing or other powers of the Supplier or the absence of authority of any person purporting to act on behalf of the Supplier in respect of the Guaranteed Obligations; or
 - (c) any change in the constitution of the Supplier; or
 - (d) any amalgamation, merger or reconstruction that may be effected by the Beneficiary with any other person or any sale or transfer of the whole or

any part of the undertaking and assets of the Beneficiary to any other person; or

- (e) the existence of any claim, set-off or other rights which the Guarantor may have at any time against the Supplier, or the Beneficiary, whether in connection with the Guaranteed Agreement or otherwise; or
- (f) the granting by the Beneficiary to the Supplier of any other financial accommodation or the withdrawal or restriction by the Supplier of any financial accommodation, or the absence of any notice to the Guarantor of any such granting, withdrawal or restriction; or
- (g) any arrangement or compromise entered into by the Beneficiary with the Supplier or any other person; or
- (h) any other thing done or omitted or neglected to be done by the Beneficiary or any other dealing, fact, matter or thing which, but for this provision, might operate to exonerate or discharge the Guarantor from, or otherwise prejudice or affect, any of the Guarantor's obligations under this Deed of Guarantee.

5.2.5 the rights of the Beneficiary against the Guarantor under this Deed of Guarantee are in addition to, shall not be affected by and shall not prejudice, any other security, guarantee, indemnity or other rights or remedies available to the Beneficiary.

5.3 The Beneficiary shall be entitled to exercise its rights and to make demands on the Guarantor under this Deed of Guarantee as often as it wishes and the making of a demand (whether effective, partial or defective) in respect of the breach or non performance by the Supplier of any Guaranteed Obligation shall not preclude the Beneficiary from making a further demand in respect of the same or some other default in respect of the same Guaranteed Obligation.

5.4 The Beneficiary shall not be obliged before taking steps to enforce this Deed of Guarantee against the Guarantor to obtain judgment against the Supplier or the Guarantor or any third party in any court, or to make or file any claim in a bankruptcy, liquidation or administration of the Supplier or any third party, or to take any action whatsoever against the Supplier or the Guarantor or any third party or to resort to any other security or guarantee or other means of payment. No action (or inaction) by the Beneficiary in respect of any such security, guarantee or other means of payment shall prejudice or affect the liability of the Guarantor hereunder.

5.5 The Beneficiary's rights under this Deed of Guarantee are cumulative and not exclusive of any rights provided by law and may be exercised from time to time and as often as the Beneficiary deems expedient.

5.6 Any waiver by the Beneficiary of any terms of this Deed of Guarantee, or of any Guaranteed Obligations shall only be effective if given in writing and then only for the purpose and upon the terms and conditions, if any, on which it is given.

5.7 Any release, discharge or settlement between the Guarantor and the Beneficiary shall be conditional upon no security, disposition or payment to the Beneficiary by the Guarantor or any other person being void, set aside or ordered to be refunded pursuant to any enactment or law relating to liquidation, administration or insolvency or for any other reason whatsoever and if such condition shall not be fulfilled the Beneficiary shall be entitled to enforce this Deed of Guarantee subsequently as if such release, discharge or settlement had not occurred and any such payment had not been made. The Beneficiary shall be entitled to retain this security after as well as before the payment, discharge or satisfaction of all monies, obligations and liabilities that are or may become due owing or incurred to the Beneficiary from the Guarantor for such period as the Beneficiary may determine.

5.8 The Guarantor hereby:

5.8.1 unconditionally consents and agrees that, without notice to or further assent from the Guarantor, the time for the Supplier's performance of or compliance with any term, covenant or agreement on its part to be performed or observed under the Guaranteed Agreement may be extended, or such performance or compliance consented to, all in such manner and upon such terms as the Beneficiary and Supplier may agree to in writing; and

5.8.2 authorises the Supplier and the Beneficiary to make any written addendum, amendment or variation to the Guaranteed Agreement, the due and punctual performance of which addendum, amendment or variation shall be likewise guaranteed by the Guarantor in accordance with the terms of this Deed of Guarantee. In all other respects the obligations of the Guarantor hereby shall not be affected by any such addendum, amendment or variation to the Guaranteed Agreement.

6. RIGHTS OF SUBROGATION

6.1 The Guarantor shall, at any time when there is any default in the performance of any of the Guaranteed Obligations by the Supplier and/or any default by the Guarantor in the performance of any of its obligations under this Deed of Guarantee, exercise any rights it may have:

6.1.1 of subrogation and indemnity;

6.1.2 to take the benefit of, share in or enforce any security or other guarantee or indemnity for the Supplier's obligations;

6.1.3 of counterclaim, set-off, lien or otherwise; and/or

6.1.4 to prove in the liquidation or insolvency of the Supplier,

only in accordance with the Beneficiary's written instructions and shall hold any amount recovered as a result of the exercise of such rights on trust for the Beneficiary and pay the same to the Beneficiary on first demand. The Guarantor hereby acknowledges that it has not taken any security from the Supplier and agrees not to do so until Beneficiary receives all moneys payable hereunder and will hold any security taken in breach of this clause on trust for the Beneficiary.

7. REPRESENTATIONS AND WARRANTIES

The Guarantor hereby represents and warrants to the Beneficiary that:

7.1 the Guarantor is duly incorporated and is a validly existing company under the laws of its place of incorporation, has the capacity to sue or be sued in its own name and has power to carry on its business as now being conducted and to own its property and other assets;

7.2 the Guarantor has full power and authority to execute, deliver and perform its obligations under this Deed of Guarantee and no limitation on the powers of the Guarantor will be exceeded as a result of the Guarantor entering into this Deed of Guarantee;

7.3 the execution and delivery by the Guarantor of this Deed of Guarantee and the performance by the Guarantor of its obligations under this Deed of Guarantee including, without limitation entry into and performance of a contract pursuant to clause 3 have been duly authorised by all necessary corporate action and do not contravene or conflict with:

7.3.1 the Guarantor's memorandum and articles of association or other equivalent constitutional documents;

- 7.3.2 any existing law, statute, rule or regulation or any judgment, decree or permit to which the Guarantor is subject; or
- 7.3.3 the terms of any agreement or other document to which the Guarantor is a party or which is binding upon it or any of its assets;
- 7.4 all governmental and other authorisations, approvals, licences and consents, required or desirable, to enable it lawfully to enter into, exercise its rights and comply with its obligations under this Deed of Guarantee, and to make this Deed of Guarantee admissible in evidence in its jurisdiction of incorporation, have been obtained or effected and are in full force and effect;
- 7.5 this Deed of Guarantee is the legal valid and binding obligation of the Guarantor and is enforceable against the Guarantor in accordance with its terms; and
- 7.6 no Dissolution applies to it or has been undertaken or threatened in relation to it.

8. **PAYMENTS AND SET-OFF**

- 8.1 All sums payable by the Guarantor under this Deed of Guarantee shall be paid without any set-off, lien or counterclaim, deduction or withholding, howsoever arising (including, without limitation, any amounts in respect of deduction or withholding in respect of tax), except for those required by law, and if any deduction or withholding must be made by law, the Guarantor will pay that additional amount which is necessary to ensure that the Beneficiary receives a net amount equal to the full amount which it would have received if the payment had been made without the deduction or withholding.
- 8.2 The Guarantor shall pay interest on any amount due under this Deed of Guarantee from the day after the date on which payment was due up to and including the date of payment in full (as well after as before any judgment) calculated from day to day at a rate per annum equal to [4%] above the base rate of the Bank of England from time to time in force.
- 8.3 The Guarantor will reimburse the Beneficiary for all legal and other costs, negotiation, amendment (including VAT or stamp duty, registration or other similar taxes) incurred by the Beneficiary in connection with the preservation of rights under or enforcement of this Deed of Guarantee.
- 8.4 Any amount payable under this Deed of Guarantee is payable in sterling.

9. **GUARANTOR'S ACKNOWLEDGEMENT**

The Guarantor warrants, acknowledges and confirms to the Beneficiary that it has not entered into this Deed of Guarantee in reliance upon, nor has it been induced to enter into this Deed of Guarantee by any representation, warranty or undertaking made by or on behalf of the Beneficiary (whether express or implied and whether pursuant to statute or otherwise) which is not set out in this Deed of Guarantee.

10. **ASSIGNMENT**

The Beneficiary shall be entitled to assign or transfer the benefit of this Deed of Guarantee at any time to any person without the consent of the Guarantor being required and any such assignment or transfer shall not release the Guarantor from its liability under this Guarantee.

11. **SEVERANCE**

If any provision of this Deed of Guarantee is held invalid, illegal or unenforceable for any reason by any court of competent jurisdiction, such provision shall be severed and the remainder of the provisions hereof shall continue in full force and effect as if this Deed of Guarantee had been executed with the invalid, illegal or unenforceable provision eliminated.

12. **THIRD PARTY RIGHTS**

A person who is not a party to this Deed of Guarantee shall have no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Deed of Guarantee. This clause does not affect any right or remedy of any person which exists or is available otherwise than pursuant to that Act.

13. **GOVERNING LAW**

13.1 This Deed of Guarantee shall be governed by and construed in all respects in accordance with English law.

13.2 The Guarantor irrevocably agrees for the benefit of the Beneficiary that the courts of England shall have jurisdiction to hear and determine any suit, action or proceedings and to settle any dispute which may arise out of or in connection with this Deed of Guarantee and for such purposes hereby irrevocably submits to the jurisdiction of such courts.

13.3 Nothing contained in this clause shall limit the rights of the Beneficiary to take proceedings against the Guarantor in any other court of competent jurisdiction, nor shall the taking of any such proceedings in one or more jurisdictions preclude the taking of proceedings in any other jurisdiction, whether concurrently or not (unless precluded by applicable law).

13.4 The Guarantor irrevocably waives any objection which it may have now or in the future to the courts of England being nominated for the purpose of this clause on the ground of venue or otherwise and agrees not to claim that any such court is not a convenient or appropriate forum.

13.5 ***[Provision dealing with the appointment of English process agent by a non English incorporated Guarantor]*** [The Guarantor hereby irrevocably designates, appoints and empowers [the Supplier] ***[a suitable alternative to be agreed if the Supplier's registered office is not in England or Wales]*** either at its registered office or on facsimile number ***[insert fax no.]*** from time to time to act as its authorised agent to receive notices, demands, service of process and any other legal summons in England and Wales for the purposes of any legal action or proceeding brought or to be brought by the Beneficiary in respect of this Deed of Guarantee. The Guarantor hereby irrevocably consents to the service of notices and demands, service of process or any other legal summons served in such way.]

IN WITNESS whereof the Guarantor has caused this instrument to be executed and delivered as a Deed the day and year first before written.

[EXECUTED as a Deed by)

Insert name of the Guarantor] acting by [***Insert/print names]***

Director

Director/Secretary]

OR

[SIGNED as a Deed)
)
(but not delivered until dated) by)
)

in the presence of:

Signature of witness:

Name of witness:

Address:

Occupation:]