



**DATED SEPTEMBER 2013**

**(1) ISLE OF WIGHT COUNCIL**

**AND**

**(2) BRITISH TELECOMMUNICATIONS plc**

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**CONTRACT FOR THE PROVISION OF DEPLOYED  
SERVICES**

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PRELIMINARY

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**THIS CONTRACT** is made on September 2013

**BETWEEN:**

- (1) **ISLE OF WIGHT COUNCIL** of County Hall, High Street, Newport, Isle of Wight, PO30 1UD ("**Authority**"); and
- (2) **BRITISH TELECOMMUNICATIONS plc** a company registered in the United Kingdom with number 1800000 whose registered office is at 81 Newgate Street, London EC1A 7AJ ("**Supplier**").

**WHEREAS:**

- (A) On 29 June 2012 the Supplier was appointed to the Broadband Delivery Framework.
- (B) On 20 May 2013 the Authority issued to all Framework Suppliers its ITT in accordance with the Call Off Procedure set out in the Framework Agreement.
- (C) On 10 September 2013 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 **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 **NOT USED**

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.
- 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 **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 **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

28.1 During the Term the Supplier shall regularly monitor its own 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	BBB
	Moody's	Baa2

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 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 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 **NOT USED**
- 30 **NOT USED**
- 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.

## **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**

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**

### **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.

### **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

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.

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;

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 taking place.
- 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 Not used
- 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 caused by the Supplier's Default shall in no event exceed [REDACTED] in respect of any one event.
- 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 shall in no event exceed [REDACTED] 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 [REDACTED] 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**
- 58.1 The Supplier:
- a) shall maintain the Required Insurance in full force and effect at all times from the Effective Date until the Expiry Date;
  - b) shall not cancel the Required Insurance or make any material change thereto without the express written consent of the Authority; and
  - c) may change the insurers with whom the Required Insurance is held on annual basis, upon notice to the Authority at least 10 Working Days prior to any such change.
- 58.2 The Required Insurance shall be maintained on terms that are as favourable to those generally available to a prudent contractor in respect of risks insured in the international insurance market.
- 58.3 The Required Insurance shall be maintained with a securely funded and appropriately regulated insurance company.
- 58.4 The Supplier shall procure that nothing is done which would entitle the relevant insurer to cancel, rescind or suspend any Required Insurance or cover, or to treat any Required Insurance, cover or claim as avoided in whole or part. The Supplier shall use reasonable endeavours to notify the Authority (subject to third party confidentiality obligations) as soon as practicable when it becomes aware of any relevant fact, circumstance or matter which has caused, or is reasonably likely to provide grounds to the relevant insurer to give notice to cancel, rescind, suspend or avoid any Required Insurance or any cover or claim under any Required Insurance in whole or in part.
- 58.5 The Authority may purchase (if possible) any of the Required Insurance which the Supplier has failed to maintain in full force and effect pursuant to this Contract. The Authority may recover the premium and other costs incurred in doing so as a debt due from the Supplier.
- 58.6 The Supplier shall provide, on request, to the Authority:
- 58.6.1 Evidence of the existence of the Required Insurances in the form of insurance certificate(s) within five (5) Business Days of request by the Authority, and
  - 58.6.2 Not used.
- 58.7 Renewal certificates or cover notes in relation to any of the insurances required by clause 58.1 (Requirement to Maintain) shall be obtained as and when necessary and copies

(certified in a manner acceptable to the Authority) shall be forwarded to the Authority as soon as possible but in any event at least fifteen (15) Business Days after the renewal date.

**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 Not used;

61.1.4 Where an Insolvency Event occurs in respect of the Supplier;

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.

## **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 material part of the Network or 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 requirements for sharing of profits from such a disposal or the provision of a guarantee in a form satisfactory to the Authority from the parent company of the assignee or novatee).

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 Not used.

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
<p>Isle of Wight Council</p> <p>County Hall</p> <p>Newport</p> <p>Isle of Wight</p> <p>PO30 1UD</p> <p>For the attention of: Strategic Director, Economy and Environment</p> <p>Email: [REDACTED]</p>	<p>British Telecommunications plc</p> <p>PPC5</p> <p>81 Newgate Street</p> <p>London EC1A 7AJ</p> <p>For the attention of: [REDACTED] Head of the NGA Legal Team</p> <p>Fax: Party may add by notice</p> <p>Email: [REDACTED]</p> <p>With a copy to:</p> <p>Managing Director, Next Generation Access,</p> <p>British Telecommunications plc,</p> <p>PP B7H,</p> <p>BT Centre,</p> <p>81 Newgate Street,</p> <p>London,</p> <p>EC1A 7AJ.</p> <p>For the attention of: [REDACTED]</p> <p>Email: [REDACTED]</p>

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.

**IN WITNESS** of which the Parties have executed this as a Deed the day and year first above written

THE COMMON SEAL OF )  
**ISLE OF WIGHT COUNCIL** was )  
hereunto affixed in the presence of: )

Authorised Signatory

THE COMMON SEAL OF  
**BRITISH TELECOMMUNICATIONS PLC** affixed )  
to this Deed is authenticated by: -. )

Signature: .....

Name:

Position:

Date:

## Schedule 1

### Definitions

In this Contract the following words shall have the meanings set out below:

<b>Access Line Speed</b>	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;
<b>Achieve</b>	in relation to a Milestone, the Milestone Achievement Criteria for that Milestone have been satisfied and " <b>Achieved</b> " and " <b>Achievement</b> " shall be construed accordingly;
<b>Actual Additional Supplier Expenditure</b>	the actual Additional Supplier Expenditure incurred;
<b>Actual Qualifying Capital Expenditure</b>	the actual Qualifying Capital Expenditure incurred;
<b>Additional Service Revenue</b>	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);
<b>Additional Service Revenue Amount</b>	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;
<b>Additional Service Review Point</b>	(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');
<b>Additional Supplier Expenditure</b>	Qualifying Capital Expenditure which has not attracted a Subsidy Payment from any source;
<b>Affected Party</b>	the Party affected by a Force Majeure Event;
<b>Affiliate</b>	in relation to any person, any Holding Company or Subsidiary of that person or any Subsidiary of such Holding Company;
<b>Authority Assets</b>	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;

**Availability Matrix**

means the matrix set out in Appendix 3 (Availability Matrix) of Schedule 6.1 (Governance) which may from time to time impact on the Deployed Services;

**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);

<b>Bribery Act</b>	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;
<b>Broadband Delivery Framework</b>	the framework arrangement with the same name established by the Authority of certain appointed suppliers (including the Supplier);
<b>Call Off Procedure</b>	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;
<b>Case Summary</b>	a concise summary of a Party's case in a Dispute subjected to mediation;
<b>CEDR</b>	the Centre for Effective Dispute Resolution, International Dispute Resolution Centre, 70 Fleet Street, London, EC4Y 1EU;
<b>Change Authorisation</b>	Part 3 of the Change Form executed by the Parties in accordance with paragraph 4 of Schedule 6.2 (Change Control Procedure);
<b>Change Control Procedure</b>	the procedure set out in Schedule 6.2 (Change Control Procedure);
<b>Change Form</b>	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);
<b>Change Impact Assessment</b>	Part 2 of the Change Form completed by the Supplier in accordance with paragraphs 2 and 3 of Schedule 6.2 (Change Control Procedure);
<b>Change of Control</b>	a change in Control of the Supplier;
<b>Change Request</b>	Part 1 of the Change Form completed by a Party in accordance with paragraph 2 of Schedule 6.2 (Change Control Procedure);
<b>Change in Law</b>	any change in Law which impacts on the performance of the Deployed Services and which comes into force after the Effective Date;
<b>Claim</b>	any action, claim, demand or proceedings;
<b>Codes and Standards</b>	(a) all of the codes and standards listed in the Service



Requirements and/or the Supplier Solution;

- (b) all applicable codes of practice issued pursuant to the New Roads and Street Works Act 1991;
- (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;
- (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;
- (e) all applicable guidelines published by the International Commission on Non-Ionising Radiation Protection;
- (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),

as updated or amended from time to time;

**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;

<b>Contract</b>	the Clauses of this Contract together with the Schedules and Appendices to it and the terms set out in any executed Change Form;
<b>Contract Change</b>	any change to the terms of this Contract;
<b>Contracting Authority</b>	any contracting authority as defined in regulation 3 of the Public Contracts Regulations 2006 excluding the Authority;
<b>Control</b>	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 " <b>Controls</b> " and " <b>Controlled</b> " shall be interpreted accordingly;
<b>Conviction</b>	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);
<b>Cost Book</b>	the relevant sheets contained in, or referenced from, the Project Model which contain certain input cost data;
<b>Coverage Area</b>	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;
<b>CP</b>	means Communication Provider;
<b>Crown Body</b>	any department, office or agency of the Crown;
<b>Data Controller</b>	shall have the same meaning as set out in the DPA;
<b>Data Processor</b>	shall have the same meaning as set out in the DPA;
<b>Data Protection Legislation</b>	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;

<b>Data Subject</b>	shall have the same meaning as set out in the DPA;
<b>Default</b>	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;
<b>Delay</b>	any period of time by which the implementation of the Deployed Services is delayed by reference to the Implementation Plan;
<b>Demand Stimulation</b>	the stimulation of End User broadband demand and Take-up in accordance with the terms of this Contract;
<b>Deployed Services</b>	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;
<b>Dispute</b>	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;
<b>Dispute Resolution Procedure</b>	the procedure set out in Schedule 6.3 (Dispute Resolution Procedure);
<b>Dispute Resolution Timetable</b>	the Standard Dispute Resolution Timetable or the Expedited Dispute Resolution Timetable;
<b>DPA</b>	the Data Protection Act 1998, including all subordinate legislation enacted under or pursuant to that act;
<b>Due Diligence Information</b>	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);

<b>End User</b>	a consumer or a business in the Coverage Area who/which uses any communications service offered on the Network by a Retail Service Provider;
<b>End User Premises</b>	the End User's home, community or business premises;
<b>Environmental Information Regulations</b>	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;
<b>Effective Date</b>	the date on which this Contract is signed by both Parties;
<b>Escalation Process</b>	the process for escalation during commercial negotiations in accordance with paragraph 3 of Schedule 6.3 (Dispute Resolution Procedure);
<b>Expedited Dispute Resolution Timetable</b>	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);
<b>Expiry Date</b>	<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> <ul style="list-style-type: none"><li>i 1 July 2022 being the calendar date 7 years from the planned Full Service Commencement Date</li><li>ii the date specified in (b) below;</li></ul> <p>(b) in respect of all other provisions of this Contract, the date that is 7 years from the Full Service Commencement Date;</p>
<b>Final Additional Service Claw Back Amount</b>	an amount calculated in accordance with paragraph 11.3 of Schedule 5.1 (Milestone Payments and Claims Procedure), which is refundable to the Authority;
<b>Final Take-up Claw Back Amount</b>	an amount calculated in accordance with paragraph 10.5 of Schedule 5.1 (Milestone Payments and Claims Procedure), which is refundable to the Authority;
<b>Financial Distress Event</b>	<p>the occurrence of one or more of the following events:</p> <ul style="list-style-type: none"><li>(a) the Supplier's or the relevant Key Subcontractor's credit or Dun &amp; Bradstreet rating (as applicable) drops one or more levels below the level set out in Clause 28.1;</li><li>(b) the Supplier or a Key Subcontractor issues a profits warning to a stock exchange or makes any other</li></ul>

public announcement about a material deterioration in its financial position or prospects;

- (c) there is a public investigation into improper financial accounting and reporting, suspected fraud and/or any other impropriety of the Supplier 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;

<b>Forecast Qualifying Capital Expenditure</b>	the Supplier's forecasted capital expenditure for this Contract as detailed in the Project Model;
<b>Framework Agreement</b>	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;
<b>Framework Authority</b>	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);
<b>Framework Supplier</b>	each supplier (including the Supplier) appointed by the Authority to the Broadband Delivery Framework;
<b>Full Service Commencement Date</b>	the date on which the M2 Milestone with ID M2 008 specified in the Implementation Plan has been Achieved;
<b>Funded Mobile Project</b>	any publically-funded mobile infrastructure project;
<b>General Change in Law</b>	a Change in Law that is not a Specific Change in Law;
<b>Good Industry Practice</b>	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;
<b>Handover Point</b>	a network interconnection point between different communications providers or a communications provider and an RSP;
<b>Holding Company</b>	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**

the occurrence of any of the following events (or any event analogous to any of the following events in a jurisdiction other than England and Wales) in relation to the Supplier (the "entity"):

- (a) passing a resolution for its winding up or a court of competent jurisdiction making an order for the entity to be wound up or dissolved or the entity being otherwise dissolved;
- (b) the appointment of a liquidator, administrator, administrative receiver or the making of an administration order in relation to the entity or an encumbrancer taking possession of or selling all or a material part of the entity's undertaking, assets, rights or revenue;
- (c) any proposal being made for a voluntary arrangement, a composition of debts or a scheme of arrangement to be approved whether under the Insolvency Act 1986 or the Companies Act 2006 or otherwise with all or a substantial majority of its creditors;
- (d) being unable or admitting its inability to pay its debts as they fall due or being capable of being deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 (but with the phrase "it is proved to the satisfaction of the court that" removed from section 123(2) of the Insolvency Act

1986);

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

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

- Intellectual Property 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 20 May 2013 (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:

- (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;

**Liaison Protocol**

means the protocol addressing the relationship between this Contract and the Authority's highways contract with Island Roads as set out in Appendix 2 to Schedule 6.1

**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/D11/Directorates/Localcouncils/AToZOfLocalCouncils/DG\\_A-Z\\_LG](http://webarchive.nationalarchives.gov.uk/20120604101819/http://direct.gov.uk/en/D11/Directorates/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;

<b>Loss</b>	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;
<b>M0 Milestone</b>	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);
<b>M1 Milestone</b>	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);
<b>M2 Milestone</b>	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);
<b>M3 Milestone</b>	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);
<b>Master Project Model</b>	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;
<b>Milestone</b>	each of the milestones set out in the Implementation Plan;
<b>Milestone Achievement Certificate</b>	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);
<b>Milestone Achievement</b>	the criteria for the Achievement of each Milestone type as

<b>Criteria</b>	specified in Appendix 1 of Schedule 4.1 (Implementation);
<b>Milestone Achievement Report</b>	a report provided by the Supplier in accordance with paragraph 6 of Schedule 4.1 (Implementation);
<b>Milestone Date</b>	each of the dates described as such in the table set out in Appendix 2 of Schedule 4.1 (Implementation);
<b>Milestone Payment</b>	each of the payments specified as such in Appendix 1 of Schedule 5.1 (Milestone Payments and Claims Procedure);
<b>Milestone Payment Claim</b>	the Supplier's claim for payment in respect of the Achievement of a Milestone;
<b>Mediator</b>	the independent third party appointed in accordance with paragraph 4.2 of Schedule 6.3 (Dispute Resolution Procedure);
<b>MPC</b>	Milestone Payment Claim;
<b>MPC Supporting Documentation</b>	the documentation described in paragraph 4 of Schedule 5.1 (Milestone Payments and Claims Procedure);
<b>Net Additional Service Revenue</b>	has the meaning given in paragraph 11.2 of Schedule 5.1 (Milestone Payments and Claims Procedure);
<b>Net Additional Take-up</b>	has the meaning given in paragraph 10.2 of Schedule 5.1 (Milestone Payments and Claims Procedure);
<b>Network</b>	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;
<b>Network Deployment</b>	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;
<b>Notice of Dispute</b>	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);
<b>Official Assurance Review</b>	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;
<b>Outturn Investment Ratio</b>	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;

**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;

**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** [REDACTED]

**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** each of the following constitutes a Prohibited Act:

- (a) to directly or indirectly offer, promise or give any person working for or engaged by the Authority a financial or other advantage to:

- 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:
  - 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**

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:

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;

**Project Model**

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;

**Project Period**

a defined period against which costs and revenues are set out in the Project Model – i.e. monthly/quarterly;

**Project Plan**

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);

**Project Specific IPR**

- (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
- (b) IPR arising as a result of the performance of the Supplier's obligations under this Contract;

**Project Unit Margin**

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;

**Project Wholesale Access Prices**

the wholesale access prices applicable to this Contract, as described in paragraph 2 of Schedule 5.2 (Wholesale Access Pricing);

**Qualifying Capital Expenditure**

- (a) the Permitted Expenditure;
- (b) other qualifying capital expenditure as may be defined in Schedule 5.4 (Additional Funding),

to the extent incurred by the Supplier in respect of the implementation of the Network;

**Reference Financial Model**

the Supplier's reference financial model set out in Schedule 4 (Reference Financial Model) of the Framework Agreement;

**Reference Supplier Solution**

the reference Supplier solution set out in Part A of Schedule 3.1 (Supplier Solution);

**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;

<b>Relief Event</b>	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;
<b>Relief Notice</b>	a notice provided by the Supplier in accordance with Clause 19.2;
<b>Remedial Plan</b>	a remedial plan agreed by the Parties in accordance with the Remedial Plan Process;
<b>Remedial Plan Process</b>	the remedial plan process described in Clause 38 and Schedule 6.5 (Remedial Plan Process);
<b>Request for Information</b>	has the meaning set out in the FOIA or any apparent request for information under the FOIA or the Environmental Information Regulations;
<b>Replacement Services</b>	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;
<b>Representative</b>	the Authority Representative or the Supplier Representative as the context requires;
<b>Retail Service Provider</b>	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;
<b>Required Insurance</b>	<div style="background-color: black; width: 50px; height: 15px; margin-bottom: 5px;"></div> <div style="background-color: black; width: 450px; height: 40px; margin-bottom: 5px;"></div> <div style="background-color: black; width: 450px; height: 40px; margin-bottom: 5px;"></div> <div style="background-color: black; width: 450px; height: 40px;"></div>
<b>RSP</b>	Retail Service Provider;
<b>Satellite Subcontract</b>	a Subcontract from time to time between the Supplier and a specialist satellite provider for the provision of relevant Deployed Services;
<b>Service Commencement</b>	the actual date on which the Supplier commences provision of a Deployed Service;

**Date**

**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 1 of the Supplier Solution;

**State Aid Terms** the terms set out in:

- (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;



<b>Subsidiary</b>	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);
<b>Subsidy Payments</b>	those UK or European Union public funding payments paid to the Supplier pursuant to this Contract;
<b>Superfast Broadband</b>	an Access Line Speed of over 24Mbps;
<b>Supplier Confidential Information</b>	any information provided by the Supplier (or its Subcontractors or Supplier Personnel) to the Authority 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 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;
<b>Supplier IPR</b>	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;
<b>Supplier Location</b>	any location at or from which the Supplier provides the Deployed Services (other than the Authority Premises);
<b>Supplier Personnel</b>	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;
<b>Supplier Representative</b>	the representative appointed by the Supplier in accordance with Clause 34.1;
<b>Supplier Solution</b>	the Supplier's solution to meet the Service Requirements set out in Schedule 3.1 (Supplier Solution);
<b>Survey Assumption</b>	a survey assumption specified in Appendix 3 of Schedule 5.1 (Milestone Payments and Claims Procedure);
<b>Take-up</b>	the adoption by any End User of retail services delivered on the Network in the Coverage Area;
<b>Take-up Reinvestment Amount</b>	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);

<b>Take-up Review Point</b>	(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  (b) the Expiry Date (being the 'final Take-up Review Point');
<b>Template Call Off Contract</b>	the template call off contract set out at Schedule 11 (Template Call Off Contract) of the Framework Agreement as updated from time to time;
<b>Term</b>	the period that this Contract is in force;
<b>Test</b>	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);
<b>Test Item</b>	an item or Deployed Service (or part of a Deployed Service) identified in the Test Strategy as being subject to Testing;
<b>Test Success Criteria</b>	the test success criteria for each Test as specified in the Test Strategy;
<b>Test Strategy</b>	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);
<b>Testing</b>	the performance of Tests in accordance with paragraph 7 of Schedule 4.1 (Implementation);
<b>VAT</b>	any value added tax;
<b>Wholesale Access Prices Benchmarking</b>	a benchmarking exercise as described in paragraph 3 of Schedule 5.2 (Wholesale Access Pricing);
<b>Wholesale Access Price Book</b>	the relevant sheets contained in, or referenced from, the Project Model which contain wholesale access pricing;
<b>Wholesale Access Products and Services</b>	the wholesale access products and services to be leased to Retail Service Providers as set out in the Wholesale Product Template;
<b>Wholesale Product Template</b>	the wholesale product template set out in the Supplier Solution;
<b>Working Day</b>	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

#### 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.

#### 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:

<b>Adds</b>	provision of additional services to an End User;
<b>ALA</b>	Active Line Access, as defined by NICC;
<b>Automated Retail Online Platform</b>	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;
<b>BSS</b>	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;
<b>Business Continuity Plan (BCP)</b>	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;
<b>Busy Hour Committed Rate</b>	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;
<b>Cabinet Office</b>	a department of the Government of the United Kingdom responsible for supporting the Prime Minister and Cabinet of the United Kingdom;
<b>Community Build and Benefit</b>	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;
<b>Community Concession</b>	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;
<b>Community Partnership</b>	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;
<b>Enterprise Network</b>	a private network designed to support corporate and SME organisations;
<b>IEEE</b>	the Institute of Electrical and Electronic Engineering;
<b>IETF</b>	the Internet Engineering Task Force;
<b>ISO</b>	the International Standards Organisation;
<b>ITU</b>	the International Telecommunication Union;
<b>Lead-to-Cash Process</b>	process which starts with a sales dialogue between a buyer and supplier which establishes that a product or service will meet the buyer's needs and ends when this need is fulfilled,

	the service is available to use and the supplier has been paid;
<b>MACD</b>	Moves, Adds, changes and disconnects;
<b>Mbps</b>	megabits per second;
<b>Minimum Access Requirements</b>	the minimum network access requirements specified at paragraph 4.4 of Schedule 2;
<b>Minimum Service Requirements</b>	the minimum service requirements as identified by the minimum service levels specified at paragraph 4.5 of Schedule 2;
<b>Moves</b>	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;
<b>National Competence Centre</b>	the national competence centre established by the UK in accordance with the Commission Decision;
<b>NCC</b>	National Competence Centre;
<b>NGA (Next Generation Access)</b>	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;
<b>NICC</b>	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;
<b>NICC ALA Specifications</b>	[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;
<b>NICC B2B Specifications</b>	[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

	<p>[5] ND 1430 B2B Designers and Developers Guide</p> <p>[6] ND 1507 NICC B2B Interface Framework Document</p> <p>[7] ND 1508 Trouble To Resolve (T2R) white paper proposal</p> <p>[8] ND 1509 B2B Trouble-To-Resolve (T2R) International Gap Analysis</p> <p>[9] ND 1510 Lead-To-Cash (L2C) White Paper Proposal</p> <p>[10] ND 1617 Automated Business to Business (B2B) Transactions: Architecture and Principles</p> <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>
<b>Ofcom</b>	the national regulatory authority for the telecommunication industries in the United Kingdom;
<b>Open Access</b>	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;
<b>OSS</b>	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;
<b>PSN or Public Sector Network</b>	a network to support Local Bodies which is compliant with CESG 2-2-2 assurance;
<b>Public Enterprise Network</b>	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;
<b>Service Level</b>	the service levels set out in paragraph 4.5 of Schedule 2;

<b>SOGE</b>	Sustainable operations on the Government Estate;
<b>Symmetrical</b>	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 Not used

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:

- (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 an 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 Authority Requirements for the Deployed Services**

There are no further Authority Requirements for the Deployed Services.

## **Schedule 3.3**

### **Key Sub-Contractors**

#### **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 there are no Key Subcontractors.

## 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
<b>Milestone Type 0: Survey and Detailed Design Completion</b>	<p>There shall be one Milestone M0 allocated to each Phase:</p> <p><u>Outcomes:</u></p> <ul style="list-style-type: none"> <li>(i) Completion of detailed Supplier Solution design;</li> <li>(ii) Completion of detailed implementation planning;</li> <li>(iii) Closure of Survey Assumptions,</li> </ul> <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"> <li>(a) confirmation of completion of the Post-Effective Date Surveys for this Milestone (as specified in the Project Plan);</li> <li>(b) output data from Post-Effective Date Surveys;</li> <li>(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"> <li>a. the Project Model;</li> <li>b. the Implementation Plan;</li> <li>c. the Project Plan;</li> <li>d. the Speed and Coverage Template,</li> </ul> </li> <li>(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.</li> </ul>
<b>Milestone Type 1: Network Build</b>	<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>

MILESTONE TYPE	MILESTONE ACHIEVEMENT CRITERIA
	<p><u>Supporting evidence:</u></p> <ul style="list-style-type: none"> <li>(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 sector subsidy requirements;</li> <li>(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;</li> <li>(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</li> <li>(d) Issued Milestone Achievement Certificate for the corresponding Milestone M0 for the corresponding Phase.</li> </ul>
<p><b>Milestone Type 2: Availability of Wholesale Access Products and Services</b></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> <ul style="list-style-type: none"> <li>(i) in the applicable part of the Coverage Area;</li> <li>(ii) against the specified minimum volume of End User Premises for that Milestone;</li> <li>(iii) at the specified Access Line Speed ranges within the Speed and Coverage Template,</li> </ul> <p>for the scope of this Milestone (as specified in the Implementation Plan) and in accordance with the Service Requirements. This shall include:</p> <ul style="list-style-type: none"> <li>(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;</li> <li>(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;</li> <li>(3) the Access Line Speed ranges for the End User Premises in (2) above</li> </ul>

MILESTONE TYPE	MILESTONE ACHIEVEMENT CRITERIA
	<p>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> <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><b>Milestone Type 3 End User Take Up</b></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>

<b>MILESTONE TYPE</b>	<b>MILESTONE ACHIEVEMENT CRITERIA</b>
	(b) identification of the corresponding Qualifying Capital Expenditure; and  (c) data demonstrating the Take-up concerned is consistent with its definition in Schedule 1 (Definitions).



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## 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:

<b>Role</b>		<b>Name (print)</b>	<b>Signature</b>	<b>Date</b>
Supplier Manager	Project			

##### **AUTHORITY**

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

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

Appendix 4

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## **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.

As at the Effective Date, there are no identified Authority Assets.

**APPENDIX**

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

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

## **Schedule 5.1**

### **Milestone Payments and Claim Procedures**

#### **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 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):

Isle of Wight Council  
County Hall  
High Street  
Newport  
Isle of Wight  
PO30 1UD

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)*
- 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 NOT USED**

## **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).

## Appendix 1 – Milestone Payments

Both Parties acknowledge that:

(a) at the Effective Date the Milestone Payments set out in this Appendix are forecasted costs assumed by the Supplier in the Supplier's Project Model and that the Supplier's Milestone Payment Claims shall be based on actual cost incurred capped at the corresponding Milestone Payment amount (noting (b) below with regard to adjustments to these Milestone Payment amounts). Consequently, a Milestone Payment Claim could be different to the associated Milestone Payment shown in this Appendix.

(b) if actual cost for a Milestone Payment is impacted or is anticipated to be impacted due to a:

- (i) Post Effective Date Survey completion taking into account the Survey Assumptions in accordance with the procedure set out in paragraph 15.2 of Schedule 5.1;
- (ii) Relief Event;
- (iii) Force Majeure Event;
- (iv) Specific Change in Law, or
- (v) The cost of Network Deployment to affected Premises exceeding or is likely to exceed the Premises Cap

then any adjustment to the Milestone Payments shall be dealt with in accordance with the mechanisms agreed under this Contract.

(c) Notwithstanding (b) above:

- (i) where actual costs incurred by the Supplier in a Milestone Payment Claim are in excess of the corresponding Milestone Payment due to one of the factors identified in (b), in circumstances where any adjustment to the Milestone Payments as noted in (b) above has not yet been formally agreed and payment for the corresponding Milestone Payment Claim is due, the Supplier shall still be entitled to be paid the then stated Milestone Payment with the Parties subsequently dealing with any adjustment to the Milestone Payment in accordance with the mechanisms agreed under this Contract;
- (ii) in particular where such excess is not significant, the Authority may (at its own discretion) decide to pay such additional excess actual costs incurred above the then stated Milestone Payment under the Milestone Payment Claim (with the Change Control Procedure being applied to record appropriate adjustments to take account of this after such payment);



(iii) where there are residual Milestone Payment sums remaining from previously paid Milestone Payment Claims for other areas of the Network Deployment (i.e. the Milestone Payment Claim was less than the specified Milestone Payment), then corresponding increases to Milestone Payments up to the amount of such residual sums:

- shall (if Network Deployment build has not taken place and the Authority would like such Network Deployment build to continue) be applied to address actual or potential excess costs required for the Network Deployment build related to circumstances covered under (b) (i) to (v) above; or
- may be applied by the Authority solely at its discretion to help address actual or potential excess costs in all other circumstances;

and

(iv) in the case of M0 Milestones, where there are residual M0 Milestone Payment sums remaining from an M0 Milestone Payment Claim (i.e. the Milestone Payment Claim was less than the specified Milestone Payment), such residual sums can be used to cover additional excess cost for other M0 Milestone Payment Claims with corresponding increases to the relevant M0 Milestone Payments up to the amount of such residual sums being applied by the Parties.

[REDACTED]

[REDACTED]

## Appendix 2 – Permitted Expenditure Categories

### FRAMEWORK AUTHORITY FUNDING

<p style="text-align: center;"><b>Permitted Expenditure under the Authority Capital Funding (not ERDF or local authority revenue funding)</b></p>	<p style="text-align: center;"><b>Expenditure not attracting the Authority Capital Funding</b></p>
<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><b>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</b></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</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><b>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</b></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>

Permitted Expenditure under the Authority Capital Funding (not ERDF or local authority revenue funding)	Expenditure not attracting the Authority Capital Funding
<p>layers)</p> <p>Infrastructure installation and assembly costs</p> <p>Cost of active electronics, data transport and 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>Professional fees directly attributable to bringing the broadband infrastructure into use (expenditure that will attract subsidy under Milestone 0)</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 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</p>

Permitted Expenditure under the Authority Capital Funding (not ERDF or local authority revenue funding)	Expenditure not attracting the Authority Capital Funding
	<p>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> <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>

**Appendix 3 – Survey Assumptions**

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)
█	[REDACTED]	[REDACTED]	[REDACTED]
█	[REDACTED]	[REDACTED]	[REDACTED]
█	[REDACTED]	[REDACTED]	[REDACTED]

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)
	[REDACTED]	[REDACTED]	
1	[REDACTED]	[REDACTED]	[REDACTED]
1	[REDACTED]	[REDACTED]	[REDACTED]
1	[REDACTED]	[REDACTED]	[REDACTED] rements.

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)
1	[REDACTED]	[REDACTED]	[REDACTED]
2	[REDACTED]	[REDACTED]	[REDACTED]
3	[REDACTED]	[REDACTED]	[REDACTED]
4	[REDACTED]	[REDACTED]	[REDACTED]



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)
	[REDACTED]	[REDACTED]	
■	[REDACTED]	[REDACTED]	[REDACTED]
■	[REDACTED]	[REDACTED]	[REDACTED]

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)
		<p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p>	
■	<p>[REDACTED]</p> <p>[REDACTED]</p>	<p>[REDACTED]</p>	<p>[REDACTED]</p>
■	<p>[REDACTED]</p>	<p>[REDACTED]</p>	<p>[REDACTED]</p>

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)
	<ul style="list-style-type: none"> <li>■ [REDACTED]</li> <li>■ [REDACTED]</li> <li>■ [REDACTED]</li> <li>■ [REDACTED]</li> <li>■ [REDACTED]</li> </ul> <p>[REDACTED]</p>		<p>[REDACTED]</p>

[REDACTED]

**Schedule 5.4**

**Not used**

## **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
Work-stream Review	<p>To review the progress of the Supplier's workstreams, These meetings will cover:</p> <ul style="list-style-type: none"> <li>• review of progress against planned activities</li> <li>• review of work-stream issues</li> <li>• review of changes to the Project Plan</li> <li>• review of Change Control requirements (subject to the Change Control Procedure)</li> </ul>	Weekly for the duration of the Network deployment	Weekly progress report	<p><b>Supplier:</b></p> <ul style="list-style-type: none"> <li>- BT Project Manager</li> <li>- Openreach Deployment Manager</li> </ul> <p><b>Authority:</b></p> <p>Authority Representative</p> <ul style="list-style-type: none"> <li>- Project Director</li> <li>- Project Manager</li> </ul>
Project Board	<p>To review the Supplier's detailed performance of the Contract. These meetings will cover:</p> <ul style="list-style-type: none"> <li>• Network build and commissioning (in particular, progress in Network Deployment)</li> <li>• Milestone Payments</li> <li>• operational performance (customer provisioning, technical performance and support)</li> <li>• RSP and end-customer take-up</li> <li>• use of SMEs on projects and approach to enabling opportunities for SMEs in the supply chain</li> <li>• review Network implementation issues and amendments to the Implementation Plan (subject to the Change Control Procedure)</li> <li>• review of other Contract Change proposals (subject to the Change Control Procedure)</li> </ul>	Monthly but changing to quarterly once the Network has been successfully implemented	Monthly programme summary report plus other reports as per Schedule 6.4 (Reports)	<p><b>Supplier:</b></p> <ul style="list-style-type: none"> <li>- BT Project Director</li> <li>- BT Project Manager</li> <li>- Openreach Deployment Manager</li> </ul> <p><b>Authority:</b></p> <p>Authority Representative</p> <ul style="list-style-type: none"> <li>- Project Director</li> <li>- Project Manager</li> <li>- Finance Manager</li> </ul>
Strategic Management Board	<p>To review the Supplier's overall performance. These meetings will cover:</p> <ul style="list-style-type: none"> <li>• reviewing the contribution the project is making to supporting Isle of Wight's strategic ambitions</li> <li>• contributing "Best Practice" knowledge including, technology, business, commercial and sales &amp; marketing, as appropriate to ensure the project meets its strategic objectives</li> <li>• overall financial management</li> <li>• overall performance against plan</li> </ul>	Quarterly	As per Schedule 6.4 (Reports)	<p><b>Supplier:</b></p> <ul style="list-style-type: none"> <li>- BT Project Director</li> <li>- BT NGA Project Sponsor</li> </ul> <p><b>Authority:</b></p> <p>Authority Representative</p> <ul style="list-style-type: none"> <li>-</li> <li>- Senior Responsible Officer (or Deputy)</li> <li>- Project Director</li> </ul>

Meeting	Purpose	Frequency	Reports / submissions	Membership
	<ul style="list-style-type: none"> <li>review major implementation issues and their resolution</li> </ul>			
PFI Deployment Review	<p>To review the Island Roads deployment programme to cover:</p> <ul style="list-style-type: none"> <li>Alignment of the Network Deployment Plan and Island Roads deployment</li> </ul>	Weekly moving to Monthly.	As required in accordance with the Liaison Protocol	<p><b>Supplier</b></p> <ul style="list-style-type: none"> <li>- BT Project Manager</li> <li>- Openreach Deployment Manager</li> </ul> <p><b>Authority</b></p> <ul style="list-style-type: none"> <li>- Project Manager</li> </ul> <p><b>Island Roads</b></p> <ul style="list-style-type: none"> <li>- Project Manager</li> </ul>

## Appendix 2

### Liaison Protocol

#### 1 BACKGROUND

- 1.1 The Parties acknowledge the benefits (so far as practicable) of aligning Network Deployment and the Implementation Plan under this Contract with the deployment plans from time to time under the Highways PFI Agreement between the Authority and Island Roads including:
- 1.1.1 minimisation of disruption to the Suppliers' and Island Roads' respective implementation plans and to highway users;
  - 1.1.2 cost savings where work undertaken under the Highways PFI Agreement can benefit Network Deployment and/or avoid duplication of work.
- 1.2 In order to promote collaborative working between the Supplier and Island Roads, the Authority will use reasonable endeavours to facilitate:
- 1.2.1 (subject to appropriate confidentiality arrangements under this Contract and the Highways PFI Agreement) the timely transfer of information between the Supplier and Island Roads to inform the Network Deployment plan and Island Roads' deployment plans;
  - 1.2.2 regular tri-partite liaison meetings throughout Network Deployment as set out in Schedule 6, Appendix 1;
  - 1.2.3 Co-location of Supplier and Island Roads deployment teams at St Christopher House, Daish Way, Newport, Isle of Wight PO30 5XJ.
- 1.3 For the avoidance of doubt, this Liaison Protocol is not intended to create a formal interface arrangement between this Contract and the Highways PFI Agreement and any proposals for changes to Island Roads' deployment plans require prior approval from the Authority.

#### 2 DEPLOYMENT REVIEW MEETINGS

- 2.1 The Authority shall facilitate weekly liaison meetings between the Authority, the Supplier and Island Roads during the Network Deployment period of the Contract and thereafter monthly meetings or as required by the parties.

#### 3 FUNCTIONS

- 3.1 The principal purpose of the liaison meetings will be:
- 3.1.1 to consider proposals for aligning the Network Deployment plan and the Island Roads' deployment plan;
  - 3.1.2 to identify any aspects of the Network Deployment which cannot be aligned with the Island Roads' deployment plan and which would, if implemented:
    - (a) cause the Authority practical or political difficulty (for example encourage the perception that the respective deployment plans are not aligned and the Supplier is digging up works recently completed by Island Roads); and/or



- (b) be in breach of the Availability Matrix; and/or
- (c) trigger a Relief Event under the Contract (subject to the provisions of clause 19 (Delay due to a Relief Event))

and to consider potential mitigation strategies.

3.1.3 to realise the benefits highlighted in paragraph 1.1 above.

**4 INFORMATION SHARING**

4.1 The Authority shall use reasonable endeavours to provide (or procure that Island Roads provides) the following information for the benefit of the Authority and the Supplier by the date specified below:

Information	Date
Details of annual roll out plans	November each year

4.2 The Supplier shall use reasonable endeavours to provide notice of future street works (as defined in the New Roads and Street Works Act 1991 (**NRSWA**)) to Island Roads within a reasonable period of time in advance of when such works are to be commenced and having regard to its obligations under Part III (Street Works in England and Wales) of the NRSWA or other relevant legislation.

**5 ADVISORY ROLE**

The role of the liaison meetings is to make recommendations to the Authority and the Supplier, which the Authority and the Supplier may accept or reject at their complete discretion Provided that the Supplier acknowledges and agrees that the Authority shall be entitled in the circumstances set out in paragraph 3.1.2 (above) to raise objections to a proposed course of action which in accordance with the provisions of Clause 19 (Delay due to a Relief Event) may constitute a Relief Event.

**6 REPRESENTATIVES**

The Parties intend that each of the Authority, the Supplier and Island Roads shall nominate one representative of appropriate seniority to attend liaison meetings together with a specified alternate representative. The Authority, the Supplier and Island Roads may appoint their representatives for the liaison meetings and remove those representatives and appoint replacements, by written notice delivered to the other at any time.

**7 CHAIRMAN**

The Chairman of the liaison meetings shall be nominated by the Authority, the Supplier and Island Roads alternately every six (6) months during the Network

Deployment period. In default of a nomination, the Chairman shall be nominated by the Authority.

**8 CONVENING OF MEETINGS**

Any of the Authority, the Supplier and/or Island Roads may convene a liaison meeting at any time.

**9 NOTICES OF MEETINGS**

Not less than two (2) Working Days' notice (identifying the agenda items to be discussed at the meeting) shall be given to convene a liaison meeting, except that in emergencies, a meeting may be called at any time on such notice as may be reasonable in the circumstances.

**10 MINUTES**

Minutes of all recommendations and decisions from liaison meetings shall be kept by the Authority and copies circulated promptly to the Supplier and Island Roads, normally within five (5) Working Days of the making of the recommendation or decision or the holding of the meeting.

## Appendix 3

### Availability Matrix

#### 1 Introduction

- 1.1 The Isle of Wight has comparatively limited diversionary routes compared to the mainland. Under the terms of the Highways PFI Contract, entered into between the Isle of Wight Council (the “Authority”) and Island Roads Services Limited (“IRS”) the parties agreed to include provisions which required IRS to manage road space availability and to achieve a balance between the needs of the Island’s travelling public, including tourists and the requirements for road closures to undertake their works (the “Availability Matrix”).
- 1.2 The Availability Matrix sets out when the highway network is available for Island Roads to upgrade, operate and maintain. The highway network has for the purposes of the Highways PFI Contract been divided into sections known as Monitoring Lengths, The availability of a Monitoring Length is dependent on the road hierarchy, rural or urban nature of the road, traffic sensitivity of the road, special events on the Island, season, public holiday periods, days of the week and peak and non-peak hours.
- 1.3 This document is a précis of the Availability Matrix which is provided for information and assistance.

#### 2 Format of the Availability Matrix

- 2.1 The Availability Matrix contains a number of individual matrices which apply to Monitoring Lengths and describe whether a Monitoring Length, is deemed available and can be worked on, whether there would be a deduction made under the Highways PFI Contract were works to be undertaken during that time and whether it is classed as non-working time.
- 2.2 The Base Case Summer Deduction Matrix (attachment 1) and Base Case Winter Deduction Matrix (attachment 2) apply for all Monitoring Lengths for the stipulated summer and winter periods.
- 2.3 Public Holidays Periods are identified in attachment 3 as unavailable and will incur a premium deduction. Public Holiday Periods are periods when the whole highway network is unavailable regardless of road hierarchy, rural or urban nature of the road, traffic sensitivity, special events on the Island, season, day of the week, peak and non-peak hours, and the relevant premium deduction overrides all others.
- 2.4 The maps titled, Traffic Sensitive GIS Layer Summer Weekday/Saturday/Sunday and Traffic Sensitive GIS Layer Winter Weekday/Saturday/Sunday detail Monitoring Lengths which are Traffic Sensitive.
- 2.5 The maps titled Category A Special Events GIS Layer for the Category A Special Events applies for the duration of the relevant Category A Special Event and overrides the various Traffic Sensitive GIS Layers.
- 2.6 For Monitoring Lengths not detailed in the Category A Special Events GIS Layer the relevant Base Case Summer Deduction Matrix or Base Case Winter Deduction Matrix or Traffic Sensitive Deduction Matrix apply.

2.7 For the avoidance of doubt the following is the order of precedence relating to the GIS layers mapping and the matrixes:

Priority	GIS Layer	Matrix
1	Category A Special Events	Premium Deduction Matrix
2	Traffic Sensitive GIS Layers Summer and Winter	Traffic Sensitive Deduction Matrix or Premium Deduction Matrix as appropriate
3		Base Case Winter Deduction Matrix/Base Case Summer Deduction Matrix

### 3 The Scope of the Availability Matrix

3.1 The Availability Matrix requirements apply to the availability of Monitoring Lengths during the term of the Highways PFI Contract, subject to the relevant provisions of the Highways PFI Contract. The Highways PFI Contract contains provisions which allow some works to be exempt from the Availability Matrix under certain circumstances. The following components are exempt from the Availability Matrix:

- Carriageway Treatments

Carriageway Treatments identified as Reconstruction or Strengthening (i.e. include the replacement of base and/or binder course), may be exempt from the application of the Availability Matrix, subject to Authority approval of the programme.

- Capital Schemes

The Capital Schemes detailed within the Highways PFI Contract are exempt from the application of the Availability Matrix, and a programme of works will need to be agreed with the Authority before work commencement.

- Winter Service

The Winter Service is exempt from the application of the Availability Matrix as this is addressed within the Highways PFI Contract.

- Traffic Sensitive Monitoring Lengths

For a Monitoring Length that has Traffic Sensitive restrictions of more than 12 hours a day for at least 5 days per week and in excess of the Base Case Summer Deduction Matrix Period the Service Provider has the option to provide the Authority with a programme of works. If a programme of works is subsequently approved by the Authority then such programmed work on such highway land will be exempt from the requirements of the Availability Matrix.

- Structure

Any works to a Structure requiring a partial or full lane closure exceeding 24 hours will require a programme of works to be agreed with the Authority prior to work commencement and when approved will be exempt from the requirements of the Availability Matrix.

- Drainage Schemes

The Drainage Schemes referred to in the Highways PFI Contract that require a partial or full lane closure exceeding 24 hours will require a programme of works to be agreed with the Authority before work commencement and when approved will be exempt from the restrictions of the Availability Matrix.

- Highway Emergencies, Civil Emergencies and Emergencies

Any Highway Emergency, Civil Emergency, or Emergency as defined in the Highways PFI Contract and associated remediation activities are exempt from the restrictions of the Availability Matrix.

- Reactive Maintenance

Category 1 Defects as detailed in the Highways PFI Contract are exempt from the restrictions of the Availability Matrix.

- Highways PFI Contract specification requirements

Any Adjustment Period detailed in the Highways PFI Contract being equal to or less than 1 day is exempt from the restrictions of the Availability Matrix.

- Relief Event under the Highways PFI Contract

On the occurrence of a Relief Event as detailed in the Highways PFI Contract and the undertaking of associated remediation activities, Island Roads are exempt from any restrictions imposed by the Availability Matrix in respect of the location affected by the Relief Event.

- Compensation Event under the Highways PFI Contract

On the occurrence of a Compensation Event Island Roads are exempt from any restrictions imposed by the Availability Matrix in respect of the location affected by the Compensation Event.

- Excusing Cause under the Highways PFI Contract

On the occurrence of an Excusing Cause Island Roads will be exempt from any restrictions imposed by the Availability Matrix in respect of the location affected by the Excusing Cause.

- Force Majeure Event under the Highways PFI Contract

On the occurrence of a Force Majeure Event and the undertaking of associated remediation activities Island Roads will be exempt from any restrictions imposed by the Availability Matrix in respect of the location affected by such Force Majeure event.

3.2 Only programmed works submitted in relation to items detailed in section 3.2 above are exempt from the requirements of the Availability Matrix.

#### 4 Rural/Urban Split

4.1 Monitoring Lengths have been split into Urban and Rural sections based on the speed limits detailed in the table below:

MPH	Rural/Urban
20	Urban
30	Urban
40	Urban
50	Rural
60*	Rural

\*Excluding Medina Way which is classified as Urban

#### 5 Island Roads Programmes

5.1 All of Island Roads programmes are to be provided in accordance with the Highways PFI Contract and the criteria below also must to be adhered to:

5.1.1 Diversionary routes should not be adversely affected by any Island Roads or Statutory Undertaker works.

5.1.2 Programmed works on Traffic Sensitive Monitoring Lengths should be scheduled to take place outside of the summer “tourist” period (01 May – 30 September).

5.1.3 No works or associated diversionary routes shall impact on any Category A Special Events or designated traffic route associated with the Category A Special Event.

5.1.4 Any overrun on the agreed programme will be subject to an overrun deduction and any overrun deduction will form part of an availability adjustment under the Highways PFI Contract.

#### 6 Availability Adjustment

6.1 Any Availability Adjustment (as defined in the Highways PFI Contract) incurred under the Availability Matrix will be dealt with under the provisions of the Highways PFI Contract.

6.2 An Availability Adjustment will be made up of Availability Deductions (as defined in the Highways PFI Contract). Availability Deductions will be made up of the deductions covered below and follow the order of precedence set out in the table below.

- 1 Premium Deduction
- 2 Traffic Sensitive Deduction
- 3 Base Case Winter Deduction Matrix or Base

Case Summer  
Deduction Matrix

- 6.3 All Availability Deductions are per Occurrence (as defined in the Highways PFI Contract), subject to indexation, and are detailed in the:
- Traffic Sensitive Deduction Matrix
  - Premium Deduction Matrix
  - Base Case Summer Deduction Matrix
  - Base Case Winter Deduction Matrix
- 6.4 Premium deductions are detailed in the Premium Deduction Matrix. Premium deductions are subject to indexation and are levied on Monitoring Lengths that are in the vicinity of ferry ports, have a strategic importance, and include Monitoring Lengths affected by Category A Special Events. Highway land affected by the premium deductions are detailed in the Traffic Sensitive GIS layer Summer Saturday/Traffic Sensitive GIS layer Winter Saturday/Traffic Sensitive GIS layer Summer Sunday/Traffic Sensitive GIS layer Winter Sunday/Traffic Sensitive GIS layer Summer Weekday/Traffic Sensitive GIS layer Winter Weekday and/or Category A Special Events GIS Layer. Premium deductions are also applicable during Public Holiday Periods.
- 6.5 Any mobile works/maintenance will be subject to the constraints of the Availability Matrix. However because of its mobile nature of works any deduction incurred under either the Base Case Summer Deduction Matrix/Base Case Winter Deduction Matrix and Traffic Sensitive Deduction Matrix will be at a maximum of capped at five individual Monitoring Lengths. Premium Deduction Occurrences will remain unlimited.
- 6.6 Where Island Roads works are carried out in Non-Working Time (as defined in the Highways PFI Contract) on roads that are not Traffic Sensitive then the relevant Non-Working Time deduction from the Base Case Summer Deduction Matrix or Base Case Winter Deduction Matrix applies.
- 6.7 Where Island Roads works are carried out in Non-Working Time on roads that are Traffic Sensitive then the relevant deduction detailed in the Traffic Sensitive Deduction Matrix applies per Occurrence.

Table 1 - Traffic Sensitive Deduction Matrix

Availability Matrix - Traffic Sensitive Deduction Matrix		
Hierarchy	Period Winter & Summer	Deduction
1	Weekdays	
1	Saturday	
1	Sunday	
2	Weekdays	
2	Saturday	

2	Sunday	
3	Weekdays	
3	Saturday	
3	Sunday	
4	Weekdays	
4	Saturday	
4	Sunday	
<b>Key</b>		
	<b>Availability Deduction</b>	

- Table 2 - Premium Deduction Matrix

Availability Matrix - Premium Deduction Matrix				
Hierarchy	Period Winter & Summer	Deduction	Public Holiday Periods	Deduction
1	Weekdays		Dates as identified in Attachment 3	
1	Saturday			
1	Sunday			
2	Weekdays			
2	Saturday			
2	Sunday			
3	Weekdays			
3	Saturday			
3	Sunday			
4	Weekdays			
4	Saturday			
4	Sunday			
<b>Key</b>				
	<b>Availability Deduction</b>			

## 7 Availability Matrix Components

7.1 The Availability Matrix has the following components:

- Base Case Summer Deduction Matrix (Attachment 1)
  - Gives the Deemed Available, Unavailable and Non-Working Time periods, including relevant deductions, for Monitoring Lengths for the period 01 May – 30 September. The Base Case Summer Deduction Matrix also applies for the School Easter Holiday period, which will be published annually Base Case Winter Deduction Matrix



- Gives the Deemed Available, Unavailable and Non-Working Time periods, including relevant deductions, for Monitoring Lengths for the period of the 01 October – 30 April.
- Traffic Sensitive Deduction Matrix (Table 1)
  - Applies to any Monitoring Length that is Deemed Traffic Sensitive by either the Traffic Sensitive GIS Layer Summer (Weekday/Saturday/Sunday) or Traffic Sensitive GIS Layer Winter (Weekday/Saturday/Sunday) and includes the relevant deductions for the Traffic Sensitive periods.
- Premium Deduction Matrix (Table 2)
  - Applies to those Monitoring Lengths defined as Premium in the Traffic Sensitive GIS Layer Summer (Weekday, Saturday, Sunday) and Traffic Sensitive GIS Layer Winter (Weekday, Saturday, Sunday) and Monitoring Lengths affected by a Category A Special Event in the Category A Special Events GIS Layer and contains the relevant deductions. The Premium Deduction Matrix also applies during Public Holiday Periods.
- Traffic Sensitive GIS Layer Summer (Weekday, Saturday, Sunday)
  - GIS layer of the Traffic Sensitive Monitoring Lengths on the Project Network for the period 01 May – 30 September for weekdays, Saturday and Sunday to be used in conjunction with the Traffic Sensitive Deduction Matrix. Outside of Traffic Sensitive times detailed in the GIS layer, the Base Case Summer Matrix applies. The Base Case Summer Deduction Matrix also applies for the School Easter Holiday period.
- Traffic Sensitive GIS Layer Winter (Weekday, Saturday, Sunday)
  - GIS layer of the Traffic Sensitive Monitoring Lengths on the Project Network for the period 01 October – 30 April for weekdays, Saturday and Sunday to be used in conjunction with the Traffic Sensitive Deduction Matrix. Outside of Traffic Sensitive times detailed in the GIS layer the Base Case Winter Deduction Matrix applies.
- Category A Special Events GIS Layer
  - Category A Special Events, detailed in the Contract, have a GIS layer detailing the Traffic Sensitive Monitoring Lengths for the three specific events. The GIS layer does not contain the details of roads that will require traffic management.
- Speed Limit GIS Layers
  - Detail the speed limits for the Isle of Wight Project Network.

## **8 Traffic Sensitivity Criteria**

8.1 The Traffic Sensitivity of a road has been defined by the following criteria:

- 8.1.1 Traffic flow am – Monitoring Lengths that have a traffic flow of more than 250 vehicles per lane, per hour
- 8.1.2 Tourist destinations – summer period (01 May – 30 September) highway land in the close vicinity of tourist attractions and the main tourist routes
- 8.1.3 Commercial – parts of the highway network that in the peak or off peak season provide access to and from commercial properties that would be adversely affected by traffic restrictions
- 8.1.4 Limited diversionary routes – where the highway network has limited diversionary routes
- 8.1.5 Ferry ports – highways network in close vicinity to ferry ports
- 8.1.6 Commuter routes – linked to traffic flow AM data.

ATTACHMENT 1

Availability Matrix - Base Case Summer Deduction Matrix								
Hierarchy	Period	Location	Period	00:00:00 - 06:30:00	06:30:01 - 08:59:59	09:00:00 - 15:30:00	15:30:01 - 17:59:59	18:00:00- 24:00:00
1	Summer	Urban	Weekdays	Deemed Available		Deemed Available		Deemed Available
Hierarchy	Period	Location	Period	00:00:00 - 06:30:00	06:30:01 - 09:59:59	10:00:00 - 15:30:00	15:30:01 - 17:59:59	18:00:00- 24:00:00
1	Summer	Urban	Saturday	Deemed Available	Deemed Available		Deemed Available	Deemed Available
1	Summer	Urban	Sunday	Deemed Available	Deemed Available	Deemed Available	Deemed Available	Deemed Available
Hierarchy	Period	Location	Period	00:00:00 - 06:30:00	06:30:01 - 08:59:59	09:00:00 - 15:30:00	15:30:01 - 17:59:59	18:00:00- 24:00:00
1	Summer	Rural	Weekdays	Deemed Available		Deemed Available		Deemed Available
Hierarchy	Period	Location	Period	00:00:00 - 06:30:00	06:30:01 - 09:59:59	10:00:00 - 15:30:00	15:30:01 - 17:59:59	18:00:00- 24:00:00
1	Summer	Rural	Saturday	Deemed Available	Deemed Available		Deemed Available	Deemed Available
1	Summer	Rural	Sunday	Deemed Available	Deemed Available	Deemed Available	Deemed Available	Deemed Available
Hierarchy	Period	Location	Period	00:00:00 - 06:30:00	06:30:01 - 08:59:59	09:00:00 - 15:30:00	15:30:01 - 17:59:59	18:00:00- 24:00:00
2	Summer	Urban	Weekdays	Deemed Available		Deemed Available		Deemed Available
Hierarchy	Period	Location	Period	00:00:00 - 06:30:00	06:30:01 - 09:59:59	10:00:00 - 15:30:00	15:30:01 - 17:59:59	18:00:00- 24:00:00
2	Summer	Urban	Saturday	Deemed Available	Deemed Available		Deemed Available	Deemed Available
2	Summer	Urban	Sunday	Deemed Available	Deemed Available	Deemed Available	Deemed Available	Deemed Available
Hierarchy	Period	Location	Period	00:00:00 - 06:30:00	06:30:01 - 08:59:59	09:00:00 - 15:30:00	15:30:01 - 17:59:59	18:00:00- 24:00:00
2	Summer	Rural	Weekdays	Deemed Available		Deemed Available		Deemed Available
Hierarchy	Period	Location	Period	00:00:00 - 06:30:00	06:30:01 - 09:59:59	10:00:00 - 15:30:00	15:30:01 - 17:59:59	18:00:00- 24:00:00
2	Summer	Rural	Saturday	Deemed Available	Deemed Available		Deemed Available	Deemed Available
2	Summer	Rural	Sunday	Deemed Available	Deemed Available	Deemed Available	Deemed Available	Deemed Available
Hierarchy	Period	Location	Period	00:00:00 - 06:30:00	06:30:01 - 08:59:59	09:00:00 - 15:30:00	15:30:01 - 17:59:59	18:00:00- 24:00:00
3	Summer	Urban	Weekdays	Non-Working Time	Deemed Available	Deemed Available	Deemed Available	Non-Working Time
3	Summer	Urban	Saturday	Non-Working Time	Deemed Available	Deemed Available	Deemed Available	Non-Working Time

3	Summer	Urban	Sunday	Non-Working Time	Deemed Available	Deemed Available	Deemed Available	Non-Working Time	
3	Summer	Rural	Weekdays	Deemed Available	Deemed Available	Deemed Available	Deemed Available	Deemed Available	
3	Summer	Rural	Saturday	Deemed Available	Deemed Available	Deemed Available	Deemed Available	Deemed Available	
3	Summer	Rural	Sunday	Deemed Available	Deemed Available	Deemed Available	Deemed Available	Deemed Available	
4	Summer	Urban	Weekdays	Non-Working Time	Deemed Available	Deemed Available	Deemed Available	Non-Working Time	
4	Summer	Urban	Saturday	Non-Working Time	Deemed Available	Deemed Available	Deemed Available	Non-Working Time	
4	Summer	Urban	Sunday	Non-Working Time	Deemed Available	Deemed Available	Deemed Available	Non-Working Time	
4	Summer	Rural	Weekdays	Deemed Available	Deemed Available	Deemed Available	Deemed Available	Deemed Available	
4	Summer	Rural	Saturday	Deemed Available	Deemed Available	Deemed Available	Deemed Available	Deemed Available	
4	Summer	Rural	Sunday	Deemed Available	Deemed Available	Deemed Available	Deemed Available	Deemed Available	
<b>Key</b>									
				Deemed Available					
				Availability Deduction					
				Non Working Time					

ATTACHMENT 2

Availability Matrix - Base Case Winter Deduction Matrix								
Hierarchy	Period	Location	Period	00:00:00 - 06:30:00	06:30:01 - 08:59:59	09:00:00 - 15:30:00	15:30:01 - 17:59:59	18:00:00- 24:00:00
1	Winter	Urban	Weekdays	Deemed Available		Deemed Available		Deemed Available
1	Winter	Urban	Saturday	Deemed Available	Deemed Available	Deemed Available	Deemed Available	Deemed Available
1	Winter	Urban	Sunday	Deemed Available	Deemed Available	Deemed Available	Deemed Available	Deemed Available

1	Winter	Rural	Weekdays	Deemed Available		Deemed Available		Deemed Available
1	Winter	Rural	Saturday	Deemed Available	Deemed Available	Deemed Available	Deemed Available	Deemed Available
1	Winter	Rural	Sunday	Deemed Available	Deemed Available	Deemed Available	Deemed Available	Deemed Available
2	Winter	Urban	Weekdays	Deemed Available		Deemed Available		Deemed Available
2	Winter	Urban	Saturday	Deemed Available	Deemed Available	Deemed Available	Deemed Available	Deemed Available
2	Winter	Urban	Sunday	Deemed Available	Deemed Available	Deemed Available	Deemed Available	Deemed Available
2	Winter	Rural	Weekdays	Deemed Available		Deemed Available		Deemed Available
2	Winter	Rural	Saturday	Deemed Available	Deemed Available	Deemed Available	Deemed Available	Deemed Available
2	Winter	Rural	Sunday	Deemed Available	Deemed Available	Deemed Available	Deemed Available	Deemed Available
3	Winter	Urban	Weekdays	Non-Working Time	Deemed Available	Deemed Available	Deemed Available	Non-Working Time
3	Winter	Urban	Saturday	Non-Working Time	Deemed Available	Deemed Available	Deemed Available	Non-Working Time
3	Winter	Urban	Sunday	Non-Working Time	Deemed Available	Deemed Available	Deemed Available	Non-Working Time
3	Winter	Rural	Weekdays	Deemed Available	Deemed Available	Deemed Available	Deemed Available	Deemed Available
3	Winter	Rural	Saturday	Deemed Available	Deemed Available	Deemed Available	Deemed Available	Deemed Available
3	Winter	Rural	Sunday	Deemed Available	Deemed Available	Deemed Available	Deemed Available	Deemed Available

								Available
4	Winter	Urban	Weekdays	Non-Working Time	Deemed Available	Deemed Available	Deemed Available	Non-Working Time
4	Winter	Urban	Saturday	Non-Working Time	Deemed Available	Deemed Available	Deemed Available	Non-Working Time
4	Winter	Urban	Sunday	Non-Working Time	Deemed Available	Deemed Available	Deemed Available	Non-Working Time
4	Winter	Rural	Weekdays	Deemed Available	Deemed Available	Deemed Available	Deemed Available	Deemed Available
4	Winter	Rural	Saturday	Deemed Available	Deemed Available	Deemed Available	Deemed Available	Deemed Available
4	Winter	Rural	Sunday	Deemed Available	Deemed Available	Deemed Available	Deemed Available	Deemed Available
<b>Key</b>								
			<b>Deemed Available</b>					
			<b>Availability Deduction</b>					
			<b>Non-Working Time</b>					

ATTACHMENT 3





Availability Matrix - Public Holiday Periods																	
Hierarchy	Period	Location	Period	2013	2014	2015	2016	2017	2018	2019	2020	2021	2022	2023	2024	2025	All Times
1 to 4	Summer & Winter	Urban/Rural	<b>New Year's Day</b>		Jan-01	Jan-01	Jan-01	Jan-02	Jan-01	Jan-01	Jan-01	Jan-01	Jan-03	Jan-02	Jan-01	Jan-01	Unavailable
1 to 4	Summer & Winter	Urban/Rural	Saturday				Jan-02					Jan-02	Jan-01				Unavailable
1 to 4	Summer & Winter	Urban/Rural	Sunday				Jan-03	Jan-01				Jan-03	Jan-02	Jan-01			Unavailable
1 to 4	Summer & Winter	Urban/Rural	<b>Good Friday</b>	Mar-29	Apr-18	Apr-03	Mar-25	April 14	Mar-30	Apr-19	Apr-10	Apr-02	Apr-15	Apr-7	Mar-29	Apr-18	Unavailable
1 to 4	Summer & Winter	Urban/Rural	Saturday	Mar-30	Apr-19	Apr-04	Mar-26	Apr-15	Mar-31	Apr-20	Apr-11	Apr-03	Apr-16	Apr-8	Mar-30	Apr-19	Unavailable
1 to 4	Summer & Winter	Urban/Rural	Sunday	Mar-31	Apr-20	Apr-05	Mar-27	Apr-16	Apr-01	Apr-21	Apr-12	Apr-04	Apr-17	Apr-9	Mar-31	Apr-20	Unavailable
1 to 4	Summer & Winter	Urban/Rural	<b>Easter Monday</b>	Apr-01	Apr-21	Apr-06	Mar-28	Apr-17	Apr-02	Apr-22	Apr-13	Apr-05	Apr-18	Apr-10	Apr-01	Apr-21	Unavailable
1 to 4	Summer & Winter	Urban/Rural	Saturday	May-04	May-03	May-02	Apr-30	Apr-29	May-05	May-04	May-02	May-01	Apr-30	Apr-29	May-04	May-03	Unavailable
1 to 4	Summer & Winter	Urban/Rural	Sunday	May-05	May-04	May-03	May-01	Apr-30	May-06	May-05	May-03	May-02	May-01	Apr-30	May-05	May-04	Unavailable
1 to 4	Summer & Winter	Urban/Rural	<b>Early May Bank Holiday</b>	May-06	May-05	May-04	May-02	May-01	May-07	May-06	May-04	May-03	May-02	May-01	May-06	May-05	Unavailable
1 to 4	Summer & Winter	Urban/Rural	Saturday	May-25	May-24	May-23	May-28	May-27	May-26	May-25	May-23	May-29	May-28	May-27	May-25	May-24	Unavailable
1 to 4	Summer & Winter	Urban/Rural	Sunday	May-26	May-25	May-24	May-29	May-28	May-27	May-26	May-24	May-30	May-29	May-28	May-26	May-25	Unavailable
1 to 4	Summer & Winter	Urban/Rural	<b>Spring Bank Holiday</b>	May-27	May-26	May-25	May-30	May-29	May-28	May-27	May-25	May-31	May-30	May-29	May-27	May-26	Unavailable
1 to 4	Summer & Winter	Urban/Rural	Saturday	Aug-24	Aug-23	Aug-29	Aug-27	Aug-26	Aug-25	Aug-24	Aug-29	Aug-28	Aug-27	Aug-26	Aug-24	Aug-23	Unavailable
1 to 4	Summer & Winter	Urban/Rural	Sunday	Aug-25	Aug-24	Aug-30	Aug-28	Aug-27	Aug-26	Aug-25	Aug-30	Aug-29	Aug-28	Aug-27	Aug-25	Aug-24	Unavailable
1 to 4	Summer & Winter	Urban/Rural	<b>Summer Bank Holiday</b>	Aug-26	Aug-25	Aug-31	Aug-29	Aug-28	Aug-27	Aug-26	Aug-31	Aug-30	Aug-29	Aug-28	Aug-26	Aug-25	Unavailable
1 to 4	Summer & Winter	Urban/Rural	Saturday				Dec-24	Dec-23				Dec-25	Dec-24	Dec-23			Unavailable
1 to 4	Summer & Winter	Urban/Rural	Sunday				Dec-25	Dec-24				Dec-26	Dec-25	Dec-24			Unavailable
1 to 4	Summer & Winter	Urban/Rural	<b>Christmas Day</b>	Dec-25	Dec-25	Dec-25	Dec-27	Dec-25	Dec-25	Dec-25	Dec-25	Dec-27	Dec-27	Dec-25	Dec-25	Dec-25	Unavailable
1 to 4	Summer & Winter	Urban/Rural	<b>Boxing Day</b>	Dec-26	Dec-26	Dec-28	Dec-26	Dec-26	Dec-26	Dec-26	Dec-26	Dec-28	Dec-28	Dec-26	Dec-26	Dec-26	Unavailable
1 to 4	Summer & Winter	Urban/Rural	Saturday	Dec-28	Dec-27	Dec-26		Dec-30	Dec-29	Dec-28	Dec-26			Dec-30	Dec-28	Dec-27	Unavailable
1 to 4	Summer & Winter	Urban/Rural	Sunday	Dec-29	Dec-28	Dec-27		Dec-31	Dec-30	Dec-29	Dec-27			Dec-31	Dec-29	Dec-28	Unavailable

1 to 4	Summer & Winter	Urban/Rural	Saturday				Dec-31						Dec-31				Unavailable
<b>Key</b>			Christmas Day falls on: Wed Thur Fri Sun Mon Tue Wed Fri Sat Sun Mon Wed Thur														
			Deemed Available														
			Availability Deduction														
			Non Working Time														
			Unavailable														

Availability Matrix - Public Holiday Periods																	
Hierarchy	Period	Location	Period	2026	2027	2028	2029	2030	2031	2032	2033	2034	2035	2036	2037	2038	All Times
1 to 4	Summer & Winter	Urban/Rural	<b>New Year's Day</b>	Jan-01	Jan-01	Jan-03	Jan-01	Jan-01	Jan-01	Jan-01	Jan-03	Jan-02	Jan-01	Jan-01	Jan-01	Jan-01	Unavailable
1 to 4	Summer & Winter	Urban/Rural	Saturday		Jan-02	Jan-01					Jan-01					Jan-02	Unavailable
1 to 4	Summer & Winter	Urban/Rural	Sunday		Jan-03	Jan-02					Jan-02	Jan-01				Jan-03	Unavailable
1 to 4	Summer & Winter	Urban/Rural	<b>Good Friday</b>	Apr-03	Mar-26	April 14	Mar-30	Apr-19	Apr-11	Mar-26	Apr-15	Apr-07	Mar-23	Apr-11	Apr-03		Unavailable
1 to 4	Summer & Winter	Urban/Rural	Saturday	Apr-04	Mar-27	Apr-15	Mar-31	Apr-20	Apr-12	Mar-27	Apr-16	Apr-08	Mar-24	Apr-12	Apr-04		Unavailable
1 to 4	Summer & Winter	Urban/Rural	Sunday	Apr-05	Mar-28	Apr-16	Apr-01	Apr-21	Apr-13	Mar-28	Apr-17	Apr-09	Mar-25	Apr-13	Apr-05		Unavailable
1 to 4	Summer & Winter	Urban/Rural	<b>Easter Monday</b>	Apr-6	Mar-29	Apr-17	Apr-02	Apr-21	Apr-14	Mar-29	Apr-18	Apr-10	Mar-26	Apr-14	Apr-06		Unavailable
1 to 4	Summer & Winter	Urban/Rural	Saturday	May-02	May-01	Apr-29	May-05	May-04	May-03	May-01	Apr-30	Apr-29	May-05	May-03	May-02		Unavailable
1 to 4	Summer & Winter	Urban/Rural	Sunday	May-03	May-02	Apr-30	May-06	May-05	May-04	May-02	May-01	Apr-30	May-06	May-04	May-03		Unavailable
1 to 4	Summer & Winter	Urban/Rural	<b>Early May Bank Holiday</b>	May-04	May-03	May-01	May-07	May-06	May-05	May-03	May-02	May-01	May-07	May-05	May-04		Unavailable
1 to 4	Summer & Winter	Urban/Rural	Saturday	May-23	May-29	May-27	May-26	May-25	May-24	May-29	May-28	May-27	May-26	May-24	May-23		Unavailable
1 to 4	Summer & Winter	Urban/Rural	Sunday	May-24	May-30	May-28	May-27	May-26	May-25	May-30	May-29	May-28	May-27	May-25	May-24		Unavailable
1 to 4	Summer & Winter	Urban/Rural	<b>Spring Bank Holiday</b>	May-25	May-31	May-29	May-28	May-27	May-26	May-31	May-30	May-29	May-28	May-26	May-25		Unavailable
1 to 4	Summer & Winter	Urban/Rural	Saturday	Aug-29	Aug-28	Aug-26	Aug-25	Aug-24	Aug-23	Aug-28	Aug-27	Aug-26	Aug-25	Aug-23	Aug-29		Unavailable
1 to 4	Summer & Winter	Urban/Rural	Sunday	Aug-30	Aug-29	Aug-27	Aug-26	Aug-25	Aug-24	Aug-29	Aug-28	Aug-27	Aug-26	Aug-24	Aug-30		Unavailable
1 to 4	Summer & Winter	Urban/Rural	<b>Summer Bank Holiday</b>	Aug-31	Aug-30	Aug-28	Aug-27	Aug-26	Aug-25	Aug-30	Aug-29	Aug-28	Aug-27	Aug-25	Aug-31		Unavailable
1 to 4	Summer & Winter	Urban/Rural	Saturday		Dec-25	Dec-23				Dec-25	Dec-24	Dec-23					Unavailable
1 to 4	Summer & Winter	Urban/Rural	Sunday		Dec-26	Dec-24				Dec-26	Dec-25	Dec-24					Unavailable
1 to 4	Summer & Winter	Urban/Rural	<b>Christmas Day</b>	Dec-25	Dec-27	Dec-25	Dec-25	Dec-25	Dec-25	Dec-27	Dec-27	Dec-25	Dec-25	Dec-25	Dec-25		Unavailable
1 to 4	Summer & Winter	Urban/Rural	<b>Boxing Day</b>	Dec-28	Dec-28	Dec-26	Dec-26	Dec-26	Dec-26	Dec-28	Dec-26	Dec-26	Dec-26	Dec-26	Dec-28		Unavailable
1 to 4	Summer & Winter	Urban/Rural	Saturday	Dec-26		Dec-30	Dec-29	Dec-28	Dec-27			Dec-30	Dec-29	Dec-27	Dec-26		Unavailable
1 to 4	Summer & Winter	Urban/Rural	Sunday	Dec-27		Dec-31	Dec-30	Dec-29	Dec-28			Dec-31	Dec-30	Dec-28	Dec-27		Unavailable



1 to 4 Summer & Winter Urban/Rural Saturday Dec-31 Unavailable

Key	Christmas Day falls on:	Fri	Sat	Mon	Tue	Wed	Thur	Sat	Sun	Mon	Tue	Thur	Fri
	<b>Deemed Available</b>												
	<b>Availability Deduction</b>												
	<b>Non Working Time</b>												
	<b>Unavailable</b>												

## Availability Matrix Maps

The Availability Matrix Maps are attached as an embedded document and included on the CD-Rom appearing at Appendix 1 (Project Model) of Schedule 5.3 (The Project Model) and initialled by the Parties by way of identification.



Availability Matrix  
Maps\_PSEC\_2500286

## 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 not used,

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.

## Appendix – Change Form

### Part 1: Change Request

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

## Part 2: Change Impact Assessment

CHANGE IMPACT ASSESSMENT	
<b>CONTRACT NO:</b>	<i>[Please state]</i>
<b>CHANGE NO:</b>	<i>[Please state]</i>
<b>SUPPLIER'S CHANGE IMPACT ASSESSMENT:</b> <i>[Please refer to paragraphs 2 and 3 of Schedule 6.2 (Change Control Procedure)]</i>	
<b>SUBMITTED TO:</b>	<i>[Please state]</i>
<b>SUPPLIER:</b>	<i>[Please state]</i>
<b>SIGNED:</b>	
<b>NAME:</b>	<i>[Please state]</i>
<b>DATE:</b>	<i>[Please state]</i>



**Part 3: Change Authorisation**

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

## 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 litigation if either Party seeks urgent injunctive relief.

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	Managing Director, Isle of Wight Council	BT Group Project Lead
Level 2	Director of Economy and Environment, Isle of Wight	BT Group Project Sponsor

- 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 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 **NOT USED**

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 6.5

### 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**

**Not Used**