

Report for: Action
Item Number: 6



Contains Confidential or Exempt Information	No – Part I
Title	Berkshire-wide Procurement Arrangements for the “ <i>Superfast Berkshire</i> ” Broadband Project
Responsible Officer(s)	Andrew Elkington, Head of Policy & Performance, 01628 796025
Contact officer, job title and phone number	Harjit Hunjan, Business and Community Partnerships Manager. 01628 686947
Member reporting	Cllr Bateson, Lead Member for Community Partnerships Performance
For Consideration By	Cabinet
Date to be Considered	21 February 2013
Implementation Date if Not Called In	21 February 2013
Affected Wards	All
Keywords/Index	<i>Superfast Berkshire Broadband</i>

Report Summary

1. The report deals with progressing the Thames Valley Superfast Broadband Project which aims to implement sustainable, future-proof improvements in broadband infrastructure across all six unitary authority districts by 2015.
2. It recommends:
 - a) That West Berkshire’s role as lead authority is formally recognised through the signing by all 6 Berkshire unitary authorities of the Berkshire Council’s Collaboration Agreement for the Delivery of the Superfast Broadband Berkshire Project (Annex1).
 - b) That in order to meet the tight timescales of the prescriptive framework procurement process, shown diagrammatically at Appendices A1 and A2, Cabinet delegate authority to the Royal Borough’s Managing Director and Head of Policy and Performance through the Superfast Berkshire Project Board to make decisions regarding the procurement and selection of Berkshire’s Broadband infrastructure provider on behalf of the Council.

If recommendations are adopted, how will residents benefit?

Benefits to residents and reasons why they will benefit	Dates by which residents can expect to notice a difference
1. The project will provide a number of economic, environmental and social benefits throughout	From 2015.

the Borough by delivering improved broadband facilities to many communities, especially rural communities, where normal market forces have not resulted in good broadband provision to residents.

2. The project will provide affordable broadband connectivity to be available to 100% of the Borough's residential and commercial properties with at least 90% of these having access to superfast broadband with the remaining 10% being able to access broadband at speeds of at least 2Mbit/s) by 2015.
3. Better access for residents to technology and broadband connectivity will improve the life chances of individuals and families educationally and socially, allowing people to lead more independent and fulfilled lives and support the transformation of public services for the benefit of local residents.
4. It is anticipated that this programme will benefit 5516 business and residential properties across the Borough.

1. Details of Recommendations

That Cabinet approves the following:

- 1) That West Berkshire Council as lead authority will lead, support and implement the proposed Superfast Broadband Project together with other authorities as set out in this report and in Berkshire's Local Broadband Plan.**
- 2) That the Council enters into the Collaboration Agreement with the lead authority and other Berkshire authorities in the terms of the draft agreement attached to this report (Appendix 3) which allows for the Superfast Berkshire Project Board to have delegated authority to make any necessary drafting, or other amendments to the terms of this agreement which are necessary to reach final agreement, but which do not materially affect the intent and substance of the agreement.**
- 3) That authority is delegated authority to the nominated Senior Officers (Royal Borough's Managing Director and Head of Policy and Performance) to represent the Council on the Superfast Berkshire Project Board.**
- 4) That the Superfast Berkshire Project Board carry out the procurement of a Broadband Solution for Berkshire from an approved provider under Broadband Delivery UK's (BDUK, the delivery arm for the Government) procurement framework.**
- 5) That authority is delegate to the Superfast Berkshire Project Board to enter into the Broadband Agreement with the successful broadband provider in the terms of the draft call off agreement under the BDUK framework attached to this report (Appendix 4) provided that the Project Board shall have delegated authority to make any necessary drafting or other amendments to the terms of the agreement which are necessary to**

reach final agreement but which do not materially affect the intent and substance of the agreement.

2. Reason for Recommendation(s) and Options Considered

Option	Comments
1. The Council approves a Berkshire Councils Collaboration Agreement for the Superfast Berkshire project (as detailed in Annex 1 of the report). Recommended	The recommendations detailed are required to meet the tight timescales of the prescriptive framework procurement process, shown diagrammatically at Appendices 1 and 2.
2. Take each milestone decision through the Executive/Cabinet of each of the 6 unitary councils.	There are a number of critical time-limited decisions and milestones during the pre-procurement and procurement phases of this project. If every decision needs to be approved by 6 Cabinets these milestone will be extremely difficult to achieve.
3. The Council does not approve the Berkshire Councils Collaboration Agreement for the Superfast Berkshire project	This will put at risk the procurement of a broadband solution for Berkshire from an approved provider to deliver the outcomes described in Berkshire's Local Broadband Plan and achieve the benefits for the Borough's residents through access to improved broadband facilities.

3. Key Implications.

Defined Outcomes	Unmet	Met	Exceeded	Significantly Exceeded	Date they should be delivered by
The Royal Borough agrees approval for the Berkshire Councils Collaboration Agreement for the Superfast Berkshire project (Annex 1 to this report)	The Royal Borough does not agree approval for the Berkshire Councils Collaboration Agreement.	The Royal Borough agrees approval for the Berkshire Councils Collaboration Agreement.	N/A.	N/A.	March 2013.
90% Borough's residential and commercial properties to have access to superfast broadband* with the	64% or more properties have access to Superfast Broadband by 2015 if left to market forces.	90% of properties have access to superfast broadband. 10% have	90% or more properties have access to superfast broadband. 10% or less	95% or more properties have access to superfast broadband. 5% or less	From 2015.

remaining 10% being able to access broadband at speeds of at least 2Mbit/s by 2015.		access to broadband speeds of at least 2Mbit/s.	have access to broadband speeds of at least 2Mbit/s.	have access to broadband speeds of at least 2Mbit/s.	
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* (24Mbit/s or above)

4. Financial Details

The Berkshire Councils Collaboration Agreement annexed to this report sets out the repayment schedule for each of the 6 unitary councils involved in the Superfast Berkshire Project.

The funding required by each unitary council reflects the estimated cost for implementing a technical solution within each area to achieve the defined project outcomes (90% Borough's residential and commercial properties to have access to superfast broadband* with the remaining 10% being able to access broadband at speeds of at least 2Mbit/s by 2015) and based on an assessment on those areas that are currently with limited or no broadband and that are covered in the three year investment plan of the current broadband providers.

a) Financial impact on the budget (mandatory)

The impact on Council Revenue for **2012/13**, **2013-14** and **2014-15** is summarised below

	Year 1 2012/13	Year 2 (2013/14)	Year 3 (2014/15)	Total
Capital	£141,985.67	£141,985.67	£141,985.67	£425,957
Revenue	£10,000	£15,000*	£15,000*	£40,000

* Additional contributions for years 2 and 3 are to be formally agreed at Berkshire Chief Executives Group in March 2013. A contribution of £50k (revenue) to support the costs of the project for year 2 & 3 will be made by the Thames Valley Enterprise Partnership to provide project management support required by the project both during the procurement and delivery stages including the monitoring the local take up of new broadband services.

5. Legal Implications

This report relates to a gap-funded, grant assisted project which is subject to European Commission State Aid rules. The procurement will be conducted within a national framework already established by Broadband Delivery UK (RBWM SLS advice to be added).

6. Value for Money

Although £2.91 Million of the total capital funding required for the project is being provided by the public sector, appropriate investment will be made by the private sector to achieve the total cost of the project of £6 Million. This will be secured through the procurement of a Broadband provider(s) to make investments required for upgrading the Broadband infrastructure including renewing or replacing Broadband Cabinets and the installation of fibre optic cabling.

The level of contribution made by each Local Authority is based on an assessment of both the existing level of Superfast Broad service currently available and the cost of upgrading the infrastructure to achieve the project objectives as detailed within the Berkshire Broadband Plan.

7. Sustainability Impact Appraisal

The widespread and growing deployment of flexible or home working by businesses is dependant on the availability of good broadband services wherever their employees live. Employees working from home will have an impact on reducing road congestion and can lower carbon emissions of businesses.

8. Risk Management

Risks	Uncontrolled Risk	Controls	Controlled Risk
Adequacy of budget to deliver the 90% superfast broadband target.	High	A formal risk register is being maintained as part of the project planning and monitored monthly Superfast Berkshire Project Board.	Medium
Capacity of the market to meet the Government's improvement timetable.	High	A formal risk register is being maintained as part of the project planning and monitored monthly Superfast Berkshire Project Board.	Medium
Potential delays to Berkshire's procurement timeline due to the need for decisions to be agreed across 6 separate Councils.	High	A formal risk register is being maintained as part of the project planning and monitored monthly Superfast Berkshire Project Board.	Medium

9. Links to Strategic Objectives

Residents First

- Support Children and Young People
- Encourage Healthy People and Lifestyles
- Work for safer and stronger communities

Value for Money

- Deliver Economic Services

- Improve the use of technology
- Invest in the future

Delivering Together

- Enhanced Customer Services
- Deliver Effective Services
- Strengthen Partnerships

Equipping Ourselves for the future

- Deliver effective services – by securing the involvement of local communities in delivering local services.

10. Equalities, Human Rights and Community Cohesion

At this stage of the programme an equalities impact assessment is not required. However due considerations to equalities will be made during the implementation stage.

11. Staffing/Workforce and Accommodation implications

There are no direct staffing, workforce implications arising from the report.

12. Property and Assets

None

13. Any other implications

None arising from the report

14. Consultation

Berkshire Chief Executives
 Berkshire Leaders
 Berkshire Parish Councils
 Berkshire Residents
 Thames Valley Berkshire Local Enterprise Partnership
 Berkshire Businesses

15. Timetable for Implementation

Cabinet Approval of the Berkshire Councils Collaboration Agreement	21 st February 2013
Superfast Berkshire Broadband Project schedule Project activity and milestones (Pre procurement)	Timetabled As in Appendix A1
Superfast Berkshire Broadband Project schedule Project activity and milestones (procurement)	Timetabled As in Appendix A2
Rollout broadband improvements across the county by 2015.	From July 2013

16. Appendices

Appendix 1 – Superfast Berkshire Project Schedule (Pre-procurement)

Appendix 2 – Superfast Berkshire Project Schedule (Procurement)

Appendix 3 – Berkshire Councils Broadband Collaboration Agreement

Appendix 4 – BDUK Call-off Agreement

17. Background Information

- 17.1** In March 2011 the Government formally announced its national superfast broadband programme which has the objective of "...stimulating private sector investment to deliver the best superfast broadband network in Europe together with increased coverage across the UK by 2015.". Specifically a target was set whereby at the conclusion of this programme 90% of UK premises would be able to receive superfast broadband (24Mbit/s or above) with the remaining 10% having access to standard broadband (2Mbit/s or above).
- 17.2** The programme is backed with £530 million of grant provided on a match funding basis. The allocation of this funding and the coordination of all projects within the programme are overseen by a new team set up with the Department for Culture Media and Sport (DCMS). This new body is called Broadband Delivery UK (BDUK).
- 17.3** BDUK originally designated 44 regions where this public funded market intervention was necessary. These regions were usually County Council areas, or Metropolitan Council areas. Berkshire region comprises the 6 Berkshire unitary authority districts namely Bracknell Forest, Reading, Royal Borough of Windsor & Maidenhead, Slough, West Berkshire and Wokingham. Berkshire's project will benefit up to 37,000 premises across the county.
- 17.4** Initially regions were invited to bid for funding by completing a Local Broadband Plan, setting out the demographics of their region and the benefits that would be derived from broadband improvements. In May 2011 four regions Devon & Somerset, Norfolk and Wiltshire were successful in their bids and were allocated a proportion of BDUK total grant funding.
- 17.5** It soon became apparent that this competitive bidding process was too cumbersome and slow for processing all 44 regions within the Government's programme timetable. So in August 2011 BDUK announced funding allocation for all 44 regions based on the known and planned broadband coverage of each. Berkshire's grant allocation was set at £1.43m in this process. Approval of these regional grants was dependant on two factors;
1. Each region, through its local authority (ies) agreeing to match fund the amount promised by BDUK.
 2. BDUK approval of the Thames Valley Local Broadband Plan.
- 17.6** Subsequently BDUK has created a national procurement framework, compliant with EU procurement and state aid rules, under which regions can procure a broadband solution for their area without needing to commit to a full EU tendering process from scratch. From an initial potential field of 9 suppliers there are 2 suppliers remaining within this framework, British Telecommunications Plc (BT) and Fujitsu Telecommunications Europe Ltd.

17.7. Activities Undertaken So Far and Progress Made

17.7.1 The table below provides a summary of activities, achievements and milestones completed to date on the Superfast Berkshire project.

Date/Date Range	Activity or Milestone
May 2011	<ul style="list-style-type: none"> • West Berkshire Council agreed to act as Lead Authority in Berkshire, with their Head of ICT, Kevin Griffin coordinating the project: <ul style="list-style-type: none"> — Berkshire Broadband working group established with representation from each of the 6 Berkshire Unitary Authorities and the Thames Valley Berkshire LEP.
August 2011	Government announces regional funding allocations; Berkshire share being £1,430,000.
March 2012	<p>Berkshire Unitaries formally agree (at Berkshire Chief Executives' Group July 2012) their respective share of the £1.43m based on the estimated broadband improvement remedial costs in each district. The capital sums being as follows</p> <ul style="list-style-type: none"> • Bracknell Forest: £182,553 • Reading: £50,000* • Slough: £183,553 • Windsor & Maidenhead: £425,957 • Wokingham: £182,553 • West Berkshire: £456,383 <p>Total: £1, 479,999</p> <p>*Voluntary contribution towards the project as Reading's broadband coverage is already above BDUK's target.</p>
March 2012	All Berkshire Chief Executives write formally to West Berkshire Council (as lead authority) and BDUK to confirm that have set aside funding within their Capital programme for their respective share of the £1,430,000.
April 2012	Berkshire Local Broadband Plan approved by BDUK
18/05/2012	LEP obtains approval for £1,430,000 Growing Places Fund loan to provide up-front funding to enable Berkshire to start their procurement whilst spreading their Capital costs for this project over 3 years.
29/06/2012	BDUK procurement framework signed by 2 suppliers; <ol style="list-style-type: none"> 1. British Telecommunications Plc. (BT) 2. Fujitsu Telecommunications Europe Ltd.
15/11/2012	Berkshire receives BDUK B0 milestone approval and enters framework procurement pipeline on 19/11/2012
20/11/2012	European Commission approves state aid funding for UK broadband programme. Berkshire's pipeline entry date pushed back to 14/01/2012 due to 'congestion' in the procurement pipeline.

17.8. Future Activities and Decision Making Process

Berkshire re-entered the procurement pipeline on 14th January 2013, the Superfast Berkshire Project Board embarked on a prescriptive 28 week process culminating in a contract award with a broadband supplier in July 2013 to rollout broadband improvements across the county by 2015.

17.9 This procurement process, shown diagrammatically at Appendix A1 and A2, has a number of specific, critical, time-bound decision points which we need to meet, or else there is a risk of slipping behind others who are currently after Berkshire in the pipeline, potentially delaying Berkshire's broadband improvement process.

17.10 The Berkshire Councils Broadband Collaboration Agreement, annexed to this report, is designed to establish a scheme of delegation within each of the 6 Berkshire unitary councils whereby the majority of milestone decisions, as shown on the plan at Appendix 1 and 2, may be taken by the delegated officers at the Superfast Berkshire Project Board.

17.11. Key Reference Documents

1. The Berkshire Local Broadband Plan

18. Consultation

Name of consultee	Post held and Department	Date sent	Date received	See comments in paragraph:
Internal				
Cllr Burbage	Leader of the Council	25/01/13	25/01/13	Changes made
Cllr Bateson	Lead Member Community Partnerships	25/01/13	25/01/13	Comment made through out
Andrew Elkington	Head of Policy and Performance	15/01/13	15/01/13	
Andrew Brooker	Head of Finance	18/01/13	18/01/13	
Maria Lucas/Elaine Brown	Head of legal & SLS	23/01/13	18/01/13	
External				
Berkshire Chief Executives				

Report History

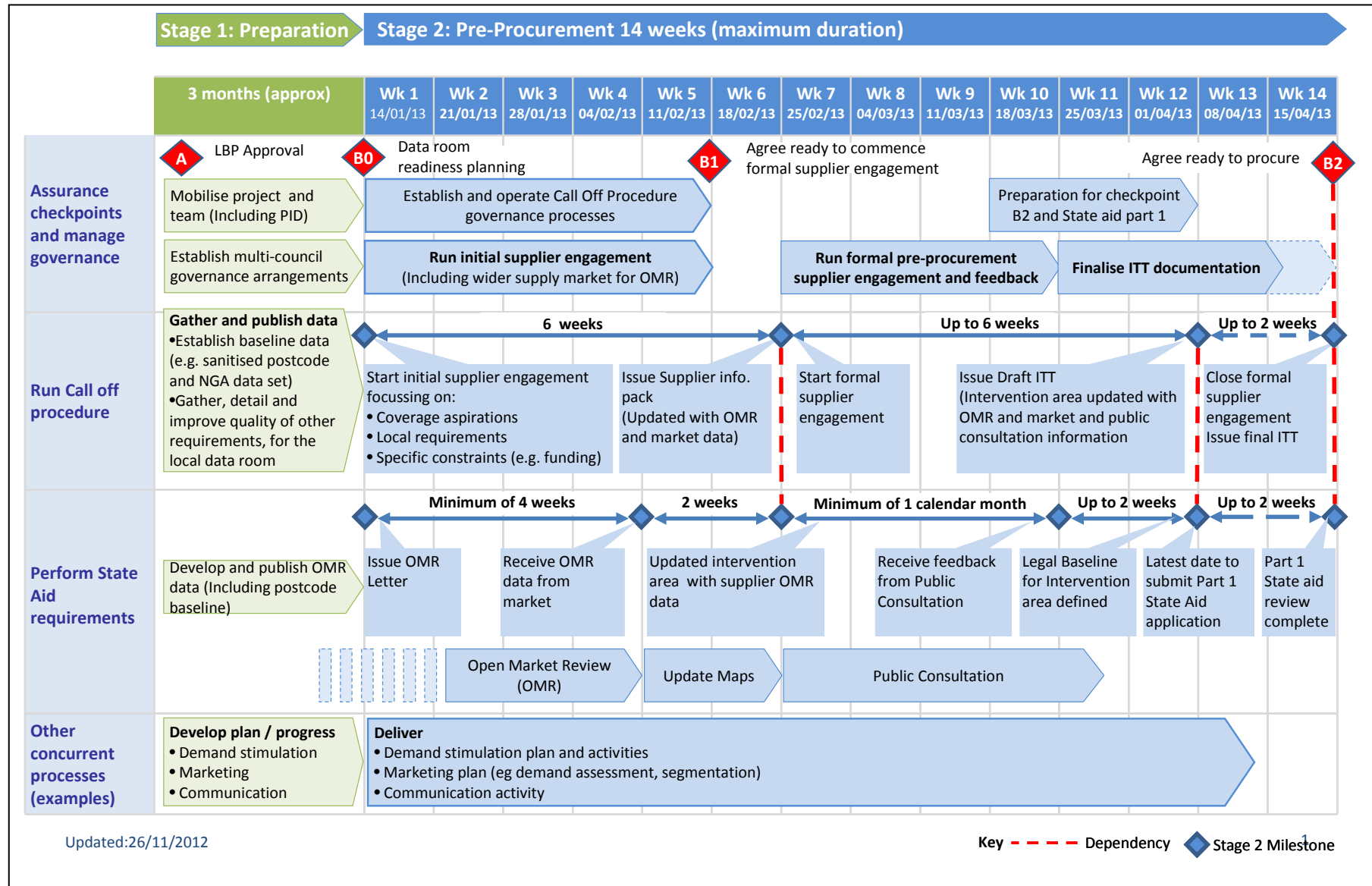
Decision type:	Urgency item?
For Decision	Yes

Full name of report author	Job title	Full contact no:
Harjit Hunjan	Business and Community Partnership	01628 682940

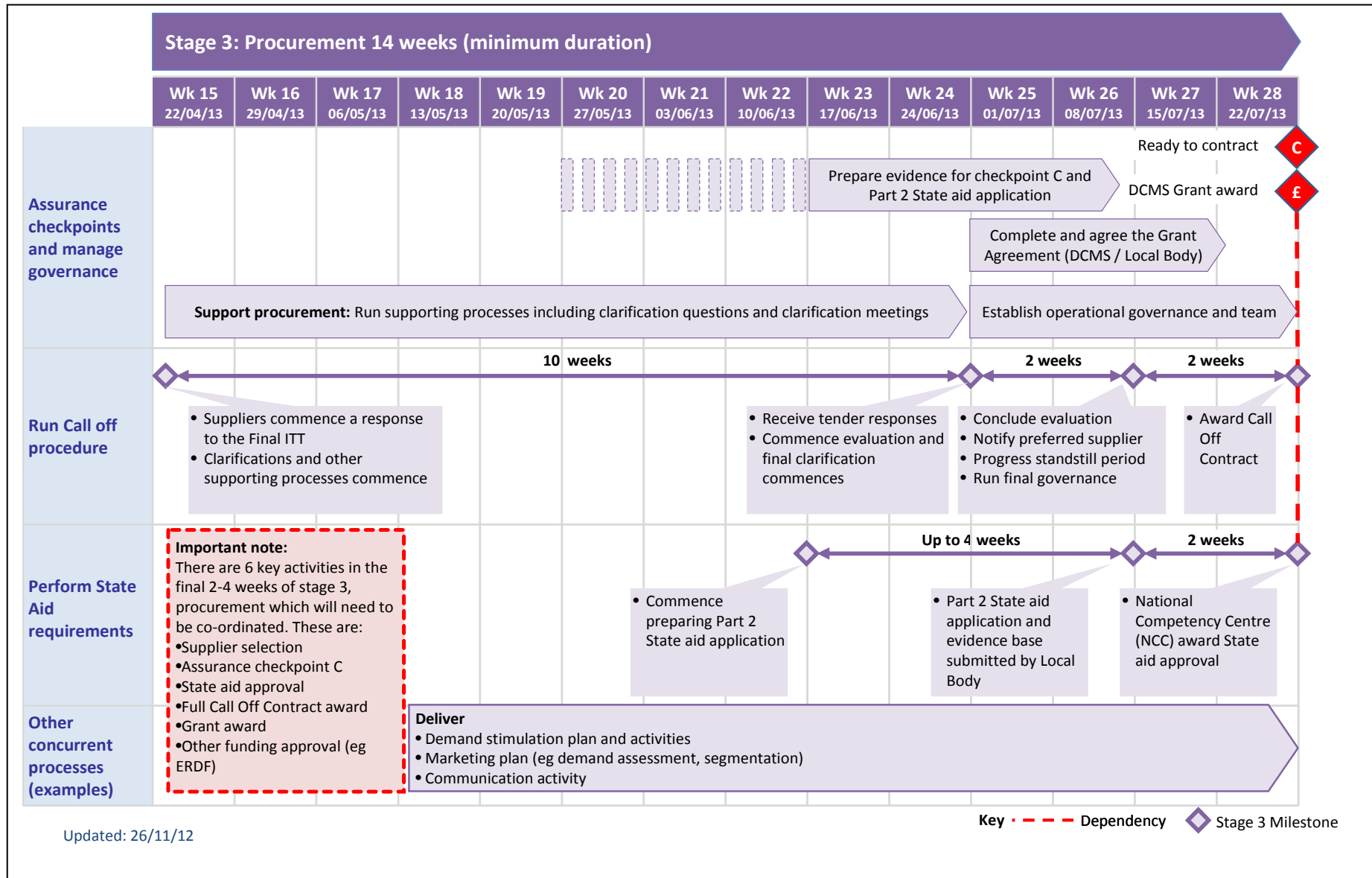
Schedule for writing and reviewing report

Stages in the life of the report (not all will apply)	Date to complete
1. Officer writes report (in consultation with Lead Member)	02/01/13
2. Report goes for review to head of service or DMT	15/01/13
3. To specialist departments: eg, legal, finance, HR (in parallel)	22/01/13
4. To lead member	24/01/13
5. To CMT	23/01/13
6. To the leader	24/01/13
7. To overview or scrutiny, if a cabinet report	31/01/13
8. To cabinet	21/02/13

Appendix 1 – Superfast Berkshire Project Schedule (Pre-procurement)



Appendix 2 – Superfast Berkshire Project Schedule (Procurement)



VERSION 0.4 (DRAFT) DATED: 17/01/2013

BERKSHIRE COUNCILS BROADBAND COLLABORATION AGREEMENT

FOR THE DELIVERY OF THE "SUPERFAST BERKSHIRE" PROJECT

BETWEEN

BRACKNELL FOREST COUNCIL

READING BOROUGH COUNCIL

ROYAL BOROUGH OF WINDSOR & MAIDENHEAD

SLOUGH BOROUGH COUNCIL

WEST BERKSHIRE DISTRICT COUNCIL

WOKINGHAM BOROUGH COUNCIL

THAMES VALLEY BERKSHIRE LOCAL ENTERPRISE PARTNERSHIP

THIS AGREEMENT is dated 17th December 2012

PARTIES

The Parties to this Agreement are:

- (1) **BRACKNELL FOREST COUNCIL** of Easthampstead House, Town Square, Bracknell, Berkshire RG12 1AQ
- (2) **READING BOROUGH COUNCIL** of Civic Centre, Reading, RG1 7AE
- (3) **ROYAL BOROUGH OF WINDSOR & MAIDENHEAD COUNCIL** of Town Hall, St Ives Road, Maidenhead, Berkshire SL6 1RF
- (4) **SLOUGH BOROUGH COUNCIL** of St Martin's Place, 51 Bath Road, Slough, Berkshire SL1 3UF
- (5) **WEST BERKSHIRE DISTRICT COUNCIL** of Council Offices, Market Street, Newbury, RG14 5LD
- (6) **WOKINGHAM BOROUGH COUNCIL** of Shute End, Wokingham, Berkshire RG40 1BN
- (7) **THAMES VALLEY BERKSHIRE LOCAL ENTERPRISE PARTNERSHIP LIMITED (TVB LEP) (Company Registration no. 07885051)** of Merlin House, Brunel Road, Theale, Berkshire RG7 4AB

Throughout this agreement parties 1-6 jointly referred to as the Authorities

1. BACKGROUND

- 1.1 The Authorities and TVB LEP have resolved to work together to ensure delivery of Berkshire's local broadband plan, hereafter referred to as the Superfast Berkshire Project, which aims to promote economic growth and residential benefit through access to faster broadband across their respective areas.
- 1.2 In furtherance of this aim the Authorities have a) identified certain amounts of money from within their own resources and b) been successful in applications to secure funding from Broadband Delivery U.K. to enable the Authorities to implement the broadband plan.
- 1.3 The Authorities and TVB LEP wish to record the basis on which they will collaborate with each other to achieve the successful delivery of Superfast Berkshire and this Agreement sets out:
- (a) the key objectives of the Project;
 - (b) the principles of collaboration;
 - (c) the governance structures the Authorities and TVB LEP will put in place and
 - (d) the respective roles and responsibilities the Authorities and TVB LEP will have during the Project.

IT IS HEREBY AGREED AS FOLLOWS: -

2. INTERPRETATION

- 2.1 In this Agreement unless the Context otherwise requires the following expressions have the following meanings:-

“Agreement” means this agreement comprising of the terms and conditions together with the schedules attached hereto.

“Area” means the administrative areas of Bracknell Forest Council, Reading Borough Council, Royal Borough of Windsor & Maidenhead Council, Slough Borough Council, West Berkshire District Council and Wokingham Borough Council.

“Authorities” means parties 1-6 named at the beginning of this agreement and “Authority” shall mean any one of the authorities as the context dictates.

“Bidders” mean those economic entities who have been appointed to the Department of Culture Media and Sport Broadband Delivery Framework and who are eligible to bid in the Call Off process.

“BDUK” means Broadband Delivery UK.

“BDUK Funding” means a sum in the region of £1,430,000 awarded to the Authorities towards the delivery of the Project.

“BDUK Funding Agreement” means the agreement entered into by the Lead Authority with BDUK to secure the BDUK Funding for Authorities Area.

“Broadband Agreement” means the agreement between the Provider and each Authority resulting from the Procurement Phase for the delivery of broadband provision across each of the Authority Areas.

“Change in Law” means a change in Law which comes into effect from the Commencement Date

“Contract Award Group” has the meaning given it in schedule D2

“Project Board” shall comprise the Officers, Members and Contractors as set out in clause 8 and shall have the overall responsibility for ensuring the Project is delivered.

“Commencement Date” means the date that this agreement is executed by the Authorities.

“Delivery and Service Phase” means the period from the commencement of the Broadband Agreement until its completion.

“Framework Agreement” the framework agreement dated 29th June 2012 executed by the Department of Culture, Media and Sport and the broadband service providers (British Telecommunications Plc and Fujitsu Telecommunications Europe Ltd) from which the Provider will be selected and with whom the Broadband Agreement will be entered into.

“Law” means any applicable Act of Parliament, subordinate legislation within the meaning of Section 21(1) of the Interpretation Act 1978, exercise of the royal prerogative, enforceable community right within the meaning of Section 2 of the European Communities Act 1972, regulatory policy, guidance or industry code, judgment of a relevant court of law.

“Lead Authority” means West Berkshire District Council which the Authorities have agreed shall lead on the Project.

“Local Broadband Plan” means the Berkshire Local Broadband Plan submitted by the Lead Authority on behalf of Authorities that has been accepted by BDUK as the basis of the award of BDUK Funding.

“Loss and Losses” include any loss and liability directly suffered by the Authorities or any of them together with any damage expense liability or costs reasonably incurred in contesting any claim to liability and quantifying such loss and liability.

“Preferred Bidder” means the Bidder selected by the Contract Awarding Group as preferred bidder.

“Procurement Phase” means that phase of the Project for the selection of the Preferred Bidder.

“The Project” means the shared objective of the Authorities to deliver and sustain the Superfast Berkshire Project.

“Project Cost Sharing Scheme” means the principles and arrangements set out in Schedule A for determining the allocation of costs and any income arising from the Procurement Phase and the Delivery and Service Phase.

“Project Manager” means the person appointed for the overall coordination and effective delivery of The Project.

“Provider” means the entity which after the mini-competition run under the terms of the Framework Agreement enters into a contract with the Lead Authority to deliver broadband services into the Areas.

“Working Day” means Monday to Friday 8.00 – 4.30 pm excluding Christmas, Good Friday, Easter and Bank Holidays

- 2.2 Reference to any statute or statutory provision includes a reference to that statute or statutory provision as amended, extended or re-enacted from time to time.

3. TERM

- 3.1 This Agreement shall come into effect on the Commencement Date and shall continue in force in respect of the Authorities until the expiry of the Delivery and Service Phase unless terminated earlier in accordance with the terms of this agreement.
- 3.2 If the Authorities consider it expedient to do so this Agreement may be reviewed and the Agreement amended or a supplementary agreement

entered into so it more accurately reflects each Authority's obligations, liabilities and commitments during the Delivery and Service Phase.

4 GENERAL PRINCIPLES OF COLLABORATION

- 4.1 The Agreement has been entered into by the Authorities and the TVB LEP to establish and effect provisions for the performance of the Project and to clarify the Authorities' responsibilities in respect thereof and to each other.
- 4.2 The Authorities and the TVB LEP will work together in good faith and in an open and cooperative and collaborative manner for the duration of the Agreement. The Authorities' members and officers will work together in the spirit of mutual trust in order to procure the successful implementation of the Project.
- 4.3 The Authorities and the TVB LEP shall use all reasonable endeavours to ensure that their respective members and officers who are involved in the Project shall at all times act in the best interests of the Project.

5 STATUS OF THE AGREEMENT

- 5.1 The Authorities and the TVB LEP agree that the Agreement shall take the form of a legally binding relationship and the mutual commitments between them created by the Agreement shall from the Commencement Date be construed accordingly.

6 OFFICERS

- 6.1 Where appropriate the Authorities agreed that they will make such of their officers available as necessary for the purposes of implementing the Project to undertake such duties as are reasonably required by the Project Board.
- 6.2 When working on the Project such officers shall act under the direction of the Project Manager.

7 INVOICING AND PAYMENTS

- 7.1 Each of the Authorities is liable for and only for its share of the project costs as set out in Schedules A1 and A2
- 7.3 The Lead Authority will invoice each authority for payments due in accordance with schedules A1 and A2

8 THE PROJECT MANAGER AND THE PROJECT BOARD

- 8.1 The Project Board and Project Manager shall have assigned to them the functions set out in schedules C and D respectively.
- 8.2 The Project Board shall consist of
 - 8.2.1 The Project Sponsor from the Lead Authority
 - 8.2.2 The Superfast Berkshire Project Manager, based at the Lead Authority
 - 8.2.3 The Procurement Lead from Slough Borough Council
 - 8.2.4 The Business Director from the Thames Valley Berkshire LEP
 - 8.2.5 A designated senior officers/Member from each of the 6 Berkshire unitary councils with delegated authority from respective Executive/Cabinet to make decision required during the Project on behalf of their authority.
 - 8.2.6 Specialist officers as required eg legal advisors, commercial/financial advisors, technical advisors.
 - 8.2.6 Representatives from the Contractor (At the appropriate stage of the project)
- 8.3 The governance structure is shown diagrammatically at Schedule D1.
- 8.4 The governance arrangements for the operation of the Project Board shall be as set out in Schedules D1, D2 and D3.

9 LIABILITIES IMMUNITY AND INDEMNITY

9.1 Member and Officer Liability

9.1.1 When working as a member of the Project Board the members shall be deemed to be representing their own Authority even when the particular matter under consideration relates to or also relates to another Authority.

9.1.2 Both members and officers shall be treated as falling within the statutory immunity provided by section 265 of the Public Health Act 1875.

9.2 Indemnities of the other Authorities to the Lead Authority in respect of the Procurement Process.

9.2.1 The Lead Authority is managing the procurement process with assistance from Slough Borough Council in respect of the appointment of the Broadband Provider (by way of a mini-competition run under the BDUK Framework Agreement). The deployment region stated in the procurement specification will be for one contiguous area consisting of the Areas of Bracknell Forest Council, Reading Borough Council, Royal Borough of Windsor and Maidenhead, Slough Borough Council, West Berkshire Council and Wokingham Borough Council but the Broadband Agreement will be between the Lead Authority and the Broadband Provider.

9.2.2 The other Authorities shall indemnify the Lead Authority in such proportions as are set out in Schedule A1 against all Losses incurred by West Berkshire Council arising out of its management of the procurement processes conducted under the Public Contracts Regulations 2006 or otherwise.

9.2.3 The indemnity provided under clause 9.2.2 on the part of the Authorities shall not extend to Losses incurred by reason of gross misconduct, fraud, persistent breach of law or duty on Lead Authority part or any act or omission by the Lead Authority which is contrary to proper local government law or practice.

9.3 Indemnities of the Authorities in respect of the Broadband Agreement

9.3.1 The Lead Authority shall indemnify the other Authorities for any Losses arising and incurred by them as a result of the Lead Authority's failure in its capacity as the contracting authority to comply with the terms of the Broadband Agreement.

- 9.3.2 The other Authorities shall use their reasonable endeavours to assist the Lead Authority in complying with its obligations under the Broadband Agreement so as to ensure the delivery of the Project.
- 9.3.3 The other Authorities shall indemnify the Lead Authority against and/or contribute and pay any Losses in such proportions as are set out in Schedule A1 which may arise despite the Lead Authority properly performing or discharging its role as Lead Authority under this Agreement and the Broadband Agreement, in accordance with the authority given to it by or pursuant to this Agreement save that the Lead Authority shall not take any decision to incur the burden of additional costs to the other Authorities without seeking their approval first .
- 9.3.4 The indemnity provided under clause 9.3.3 shall not extend to any Losses incurred by reason of gross negligence, gross misconduct, fraud, persistent breach of duty or law on the Lead Authority's part or any act or omission by the Lead Authority which is contrary to proper local government practice or local government law.

9.4 General Indemnity of the Authorities

- 9.4.1 Where with the consent of the Project Board any Authority undertakes any task in relation to the Project then the other Authorities (including the Lead Authority) shall indemnify that Authority against and/or contribute and pay any Losses in such proportions as are set out in Schedule A1 which may arise despite that Authority properly performing or discharging such tasks as have been allocated to it.
- 9.4.2 The indemnity provided under clause 9.4.1 shall not extend to any losses incurred by reason of gross negligence, gross misconduct, fraud, persistent breach of duty or law on the task performing Authority's part.
- 9.4.3 Each Authority will indemnify the others against any claim, demand for payment, cost or any other liability asserted or made by the Provider that arises out of work or service delivery done in the Authority's Area.

10 LEAD AUTHORITY

- 10.1 The Lead Authority shall act on behalf of the Authorities in directing the Project. In particular it shall
- 10.1.1 Carry out the functions set out in Schedule B1 to this Agreement
- 10.1.2 In its capacity either as the contracting party to the Broadband Agreement ensure compliance with their terms and conditions and

carry out the obligations under them so as not to jeopardise the Project or the funding of the Project.

10.1.5 The Lead Authority shall act under the direction of the Project Board.

11 INTELLECTUAL PROPERTY

11.1 Subject to agreement to the contrary in the Broadband Agreement all rights to intellectual property in any material created by or on behalf of the Project shall be owned by the Authority that created them save where IP rights are created jointly in which case they will be owned jointly between the Authorities.

11.2 Each Authority warrants that any intellectual property created by its officers for the purposes of the Project will not infringe any third parties intellectual property rights.

12 COST ALLOCATION

12.1 Subject to the indemnities given in clause 9 the Authorities shall contribute towards the costs of the Project costs in the amounts set out in Schedules A1 and A2 of the Agreement.

13 ESCALATION

13.1 If any Authority has any issues, concerns or complaints about the Project or the Agreement that Authority shall notify all the other Authorities concerned and the matter will be referred to the Project Board. If the matter is unable to be resolved at the Project Board it may be dealt with under the Dispute Resolution Procedure set out in clause 20.

13.2 If any Authority receives any formal inquiry, complaint or claim from a third party (including but not limited to, requests for information under the Freedom of Information Act 2000 (FOIA) or the Environmental Information Regulations 2004 (EIR)) in relation to the substantive Project, the matter shall be promptly referred to the Project Board (or its nominated representative). No action shall be taken in response to any inquiry, complaint or claim without the prior approval of the Project Board (or its nominated representatives) provided that in seeking that approval, no Authority is prevented from complying with its obligations regarding statutory time limits under the relevant legislation (e.g. FOIA).

13.3 For the avoidance of doubt, approaches (whether written or otherwise) made to an authority and relating specifically to implementation in that authority area (and not substantive Project issues) shall be responded to by that authority through its own processes and not referred to the Project Board.

14 TERMINATION

- 14.1 This Agreement shall begin on the Commencement Date and shall expire upon the completion of the Delivery and Service Phase.
- 14.2 An Authority may serve notice on the Project Board as provided for in paragraph 15.4.

15 WITHDRAWAL

- 15.1 Each Authority acknowledges that the withdrawal of it from the Project and this Agreement is likely to have consequences for the delivery of the Project and that additional costs may be incurred by other Authorities and that such withdrawal could result in the Project being delivered late or not being delivered at all.
- 15.2 The costs of withdrawal during the Procurement Phases may include but are not limited to
- a) the cost of undertaking a new procurement exercise
 - b) the cost of the remaining parties seeking additional funding
 - c) the costs arising from the possible breach of the Broadband Agreement or any of them
 - d) claims from Bidders in respect of wasted procurement costs
 - e) costs arising from the delayed rollout of the Project
- 15.3 The costs of withdrawal during the Delivery and Service Phase of the Project may include but are not limited to
- a) any claim which the other parties to the Broadband Agreement may have against the Lead Authority as a result of the Lead Authority being unable to comply with the Broadband Agreement or any of them
 - b) the cost arising in the procurement of new contracts or negotiating new contracts with the Broadband Provider or other contractors.
- 15.4 Any Authority may withdraw from this Agreement by giving three months written notice to the Project Board during the Procurement Phase and twelve months written notice during the Delivery and Service Phase.

- 15.5 Each Authority agrees that in the event that it gives notice of withdrawal to the others it will indemnify the others against any Losses which the remaining Authorities may suffer as a result of its withdrawal from the Agreement

16 CONSEQUENCES OF WITHDRAWAL OR TERMINATION

- 16.1 Where this Agreement is terminated under Clause 14.2 or an Authority withdraws under clause 15.4
- 16.1.1 The Agreement shall continue in force in respect of any financial liabilities which have or may arise out of the performance of the Agreement or the Project
- 16.1.2 The Agreement shall remain in force in respect of any liability of any Authority to indemnify the others under any provision of this Agreement and
- 16.1.3 The procedures as set out in clause 20 of the Agreement shall remain in force in respect of any other matters arising from the performance of or withdrawal or termination of any Authority under this agreement.
- 16.2 Where an Authority withdraws from this Agreement it shall not be entitled to any reimbursement of its contributions as set out in Schedules A1 and A2

17 WITHDRAWAL OR REDUCTION OF FUNDING OR CHANGE IN LAW

- 17.1 The Authorities acknowledge that the arrangements set out in this Agreement are designed to facilitate the delivery of the Project by the application of BDUK Funding and other funding. If such funding proves not to be available or proves to be less than anticipated by the Authorities or as a consequence of any Change in Law, it is no longer possible to complete the Project the Authorities shall work together to develop alternative proposals so as to achieve, as far as possible within the financial or legal constraints, agreed aspects of the Project.
- 17.2 If, following the best endeavours of the Authorities it is not possible to develop alternative proposals all Authorities shall be entitled to withdraw from this agreement without further consequences (save for any existing claims or indemnities arising from this Agreement the Broadband Agreements or otherwise but for the avoidance of doubt excluding claims under clause 15.5) and this Agreement shall terminate. For the avoidance of doubt any contributions made by any of the Authorities will not be refunded save for those contributions that have been committed but which remain unallocated by the Project Board or Lead Authority, at the date of termination.

18 CONFIDENTIAL INFORMATION

- 18.1 Subject to clause 19 the Authorities shall at all times use reasonable endeavours to keep confidential (and procure that their respective employees, agents, consultants and sub contractors shall keep confidential) all Confidential Information concerning the Project or the business or affairs of the other Authorities which may now or at any other time be in their possession and shall not disclose it without the consent of the Authority to whom the information relates.
- 18.2 For the purposes of the Agreement “ Confidential Information “ means information imparted to any Authority, their employees ,consultants or sub contractors (“the Receiving Party”) which was imparted to the Receiving Party on the basis that it is to be kept confidential or would by its nature normally be regarded as being confidential or to the knowledge of the Receiving Party was obtained by the other Authorities on the basis that it would be kept confidential or is of commercial value in relation to the Project but shall not include any information which is for the time being in the public domain otherwise than by reason of its wrongful disclosure by the Receiving Party.
- 18.3 Each Authority shall indemnify and keep indemnified the other Authorities against all Losses incurred by the others in respect of any breach of this Clause by an Authority disclosing Confidential Information.

This clause shall survive the termination of this Agreement

19 FREEDOM OF INFORMATION ACT 2000 (“FOIA”) AND ENVIRONMENTAL INFORMATION REGULATIONS 2004 (“EIR”)

- 19.1 Each Authority acknowledges that they are all subject to the requirements of FOIA and the EIR and each Authority shall provide reasonable assistance and cooperation (at their own expense) so as to enable each of the other Authorities to comply with these information disclosure obligations.
- 19.2 Where an Authority receives a request for information under FOIA or EIR which relates to this Agreement or the Project it shall circulate it as soon as possible and in any event within five days of receipt to the other Authorities and shall use all reasonable endeavours to consult with the others prior to any disclosure.
- 19.3 Each Authority acknowledges that where an Authority has received a request for information that Authority is responsible for determining in its absolute discretion whether such information is exempt from disclosure under the FOIA or the EIR (the “Receiving Authority”) and the Receiving Authority may disclose such information without consulting the other Authorities or following consultation and having taken the other Authorities’ views into account.

20 DISPUTE RESOLUTION

- 20.1 If having failed to resolve any dispute under clause 13 the Authorities will attempt to settle the dispute by mediation in accordance with the Centre for Dispute Resolution (“CEDR”) Model Mediation Procedure.
- 20.2 To initiate any mediation any Authority may give notice in writing to the other Authorities requesting mediation of the dispute and shall send a copy to CEDR. The Authorities shall cooperate with any person appointed as mediator and provide him with such information and other assistance as he shall require and will pay his costs as he shall determine.

21 SEVERANCE

If any condition, provision or clause of this Agreement shall become or be declared by any court of competent jurisdiction to be void, invalid, illegal or unenforceable in any way, such invalidity or unenforceability shall not impair or affect any other provision all of which shall remain in full force and effect.

22 ENTIRE AGREEMENT

This Agreement constitutes the entire agreement and understanding between the Authorities and the TVB LEP and supersedes any previous agreement or understanding between the Authorities relating to the subject matter of the Agreement.

23 WAIVER

- 23.1 The failure to exercise or delay the exercising of any right or remedy provided by this Agreement or by law does not constitute a waiver of such right or remedies or a waiver of any other rights or remedies.
- 23.2 A waiver of a breach of any of the terms of the Agreement or of a default under the Agreement does not constitute a waiver of any other breach or default and shall not affect the terms of the Agreement.
- 23.3 A waiver of a breach of any of the terms of the Agreement or of a default under the Agreement will not prevent an Authority from subsequently requiring compliance with the waived obligation.

24 GENERAL

- 23.1 Nothing contained or implied herein shall prejudice or affect the Authorities' rights and power, duties and obligations in the exercise of their functions as local authorities and /or in any other capacity and all rights, powers, discretions, duties and obligations of the Authorities under all Laws may at all times be fully and effectively exercised as if the Authorities were not party to this agreement and as if this Agreement had not been made.
- 23.2 No Authority shall represent themselves as being an agent, partner or employee of any other Authority except to the extent specified by this Agreement.
- 23.3 The Agreement shall be covered by the law of England and shall be subject to the jurisdiction of the Courts of England and Wales.
- 24.4 This Agreement is personal to the Authorities and no Authority shall assign, transfer or purport to assign or transfer to any other person any of its rights or sub contract any of its obligations under it.
- 24.5 No person other than the Authorities shall be entitled to enforce any of the terms of this Agreement under the Contracts (Rights of Third Parties) Act 1999.
- 24.6 Any notices required or permitted to be given by one Authority to any of the other Authorities shall be in writing and addressed to the Chief Executive of the other Authority at their principal office.

IN WITNESS whereof this Agreement has been executed as a deed the day and year first before written

<p>Executed as a Deed by the Lead Authority by affixing</p> <p>THE COMMON SEAL of WEST BERKSHIRE DISTRICT COUNCIL and authenticated by</p> <p>Authorised signatory</p>	
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<p>Executed as a Deed by the Bracknell Forest Council by affixing</p> <p>THE COMMON SEAL of BRACKNELL FOREST COUNCIL and authenticated by</p> <p>Authorised signatory</p>	
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<p>Executed as a Deed by the Reading Borough Council by affixing</p> <p>THE COMMON SEAL of READING BOROUGH COUNCIL and authenticated by</p> <p>Authorised signatory</p>	
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<p>Executed as a Deed by the Royal Borough of Windsor & Maidenhead by affixing</p> <p>THE COMMON SEAL of Royal Borough of Windsor & Maidenhead and authenticated by</p> <p>Authorised signatory</p>	
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Appendix 3 Berkshire Councils Broadband Collaboration Agreement

Executed as a Deed by the Slough Borough Council by affixing THE COMMON SEAL of Slough Borough Council and authenticated by Authorised signatory	
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Executed as a Deed by the Wokingham Borough Council by affixing THE COMMON SEAL of Wokingham Borough Council and authenticated by Authorised signatory	
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Executed as a deed by the THAMES VALLEY BERKSHIRE LOCAL ENTERPRISE PARTNERSHIP LIMITED acting by 2 Directors or a Director and Company Secretary: Director: Director/Company Secretary:	
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SCHEDULE A1 – PROJECT COST SHARING SCHEME (CAPITAL)

The authorities shall commit the following Capital funding at the times and in the circumstances indicated below;

Capital Funding (To be spent on procuring Berkshire's Superfast Broadband solution through BDUK procurement framework)						
Authority	Payment Amount (Payment Date)			Total		Payment to;
	2012/13 (31/03/2013)	2013/14 (31/03/2014)	2014/15 (31/03/15)	£	Proportion	
Bracknell Forest Council	£60,851.00	£60,851.00	£60,851.00	£182,553	12.3%	Lead Authority
Reading Borough Council	£16,666.67	£16,666.67	£16,666.67	£50,000	3.4%	Lead Authority
Royal Borough of Windsor & Maidenhead	£141,985.67	£141,985.67	£141,985.67	£425,957	28.8%	Lead Authority
Slough Borough Council	£60,851.00	£60,851.00	£60,851.00	£182,553	12.3%	Lead Authority
West Berkshire Council	£152,127.67	£152,127.67	£152,127.67	£456,383	30.8%	Superfast Berkshire Capital Cost Centre
Wokingham Borough Council	£60,851.00	£60,851.00	£60,851.00	£182,553	12.3%	Lead Authority
Totals:	£493,333	£493,333	£493,333	£1,479,999	100%	
West Berkshire Council	£493,333	£493,333	£493,333	£1,479,999		Growing Places Fund (loan) via the TVB LEP

SCHEDULE A2 - PROJECT COST SHARING SCHEME (REVENUE)

The authorities shall commit the following revenue funding at the times and in the circumstances indicated below;

Revenue Funding (To be spent on project delivery activities)						
Authority	Payment Amount per Phase [Payment Date]					Payment to;
	Pre-Procurement [31/10/2012]	Procurement [31/03/2013]	Rollout Cost (Est)		Total (Est)	
			Year 1 [30/06/13]	Year 2 [01/04/14]		
Bracknell Forest Council	£10,000	£0	£15,000	£15,000	£40,000	Lead Authority
Reading Borough Council	£10,000	£0	£15,000	£15,000	£40,000	Lead Authority
Royal Borough of Windsor & Maidenhead	£10,000	£0	£15,000	£15,000	£40,000	Lead Authority
Slough Borough Council	£10,000	£0	£15,000	£15,000	£40,000	Lead Authority
West Berkshire Council	£10,000	£0	£15,000	£15,000	£40,000	Superfast Berkshire CC
Wokingham Borough Council	£10,000	£0	£15,000	£15,000	£40,000	Lead Authority
Thames Valley Berkshire	£50,000				£50,000	
Match Funding overprovision		£50,000			£50,000	
Totals:	£110,000	£50,000	£90,000	£90,000	£340,000	

After completion of the Framework Agreement, the Authorities through the Project Board, will determine the necessary resources to deliver the Project and finalise and agree the contributions or staffing resourcing to be paid or provided by each Authority to West Berkshire Council to undertake its function as Lead Authority.

Appendix 3 Berkshire Councils Broadband Collaboration Agreement

Any cost of the resourcing determined to be required will be divided between the Authorities in the equal proportions. Any financial contributions shall be paid quarterly in arrears to West Berkshire Council acting as Lead Authority. Contributions shall become payable on receipt of a valid invoice from the Lead Authority. Above these contribution payments no Authority shall have any further liability to make any payment in connection with this agreement save in respect of any indemnities given in clause 9, 18 or otherwise.

The Authorities acknowledge and agree:

1. that their contributions (financial or officer's time) shall not be ring fenced to any particular project, area or part of the Project and that the decision of the Project Board as to how these contributions are to be spent shall be final .
2. that their contributions are **not** conditional on
 - a. the achievement of any proportion of superfast or improved connectivity in any particular area
 - b. a proportion of premises in any particular area receiving either superfast or improved connectivity
 - c. a definitive number of businesses in any particular area being supported or trained
 - d. one area being "rolled out" before another
 - e. any Authority receiving funding to deliver a particular part of the Project in a particular area

SCHEDULE B1

ROLE OF THE LEAD AUTHORITY

The Lead Authority in conjunction with the Authorities will;

1. Oversee the implementation of the Procurement Phase and rollout
2. Ensure compliance with the terms of the Broadband Agreement
3. If necessary, enforce the terms of the Broadband Agreement
4. Monitor and evaluate the processes and the outcomes of the Procurement
5. Carry out project management during all phases of the Project including development, procurement, delivery and operation
6. Report as required to BDUK

SCHEDULE B2

ROLE OF THE THAMES VALLEY BERKSHIRE LEP (TVB LEP)

The TVB LEP in conjunction with the Authorities will:

1. Oversee the use of the Growing Places (capital and revenue) funds allocated to the Project
2. Ensure compliance with the use of Growing Places funds (capital)
3. Ensure that the Growing Places funds allocated are recovered according to the repayment schedule
4. Communicate on progress with the Project to Berkshire's business stakeholders
5. Nominate a representative to the Project Board, Steering Group and Contract Awarding Group

SCHEDULE C

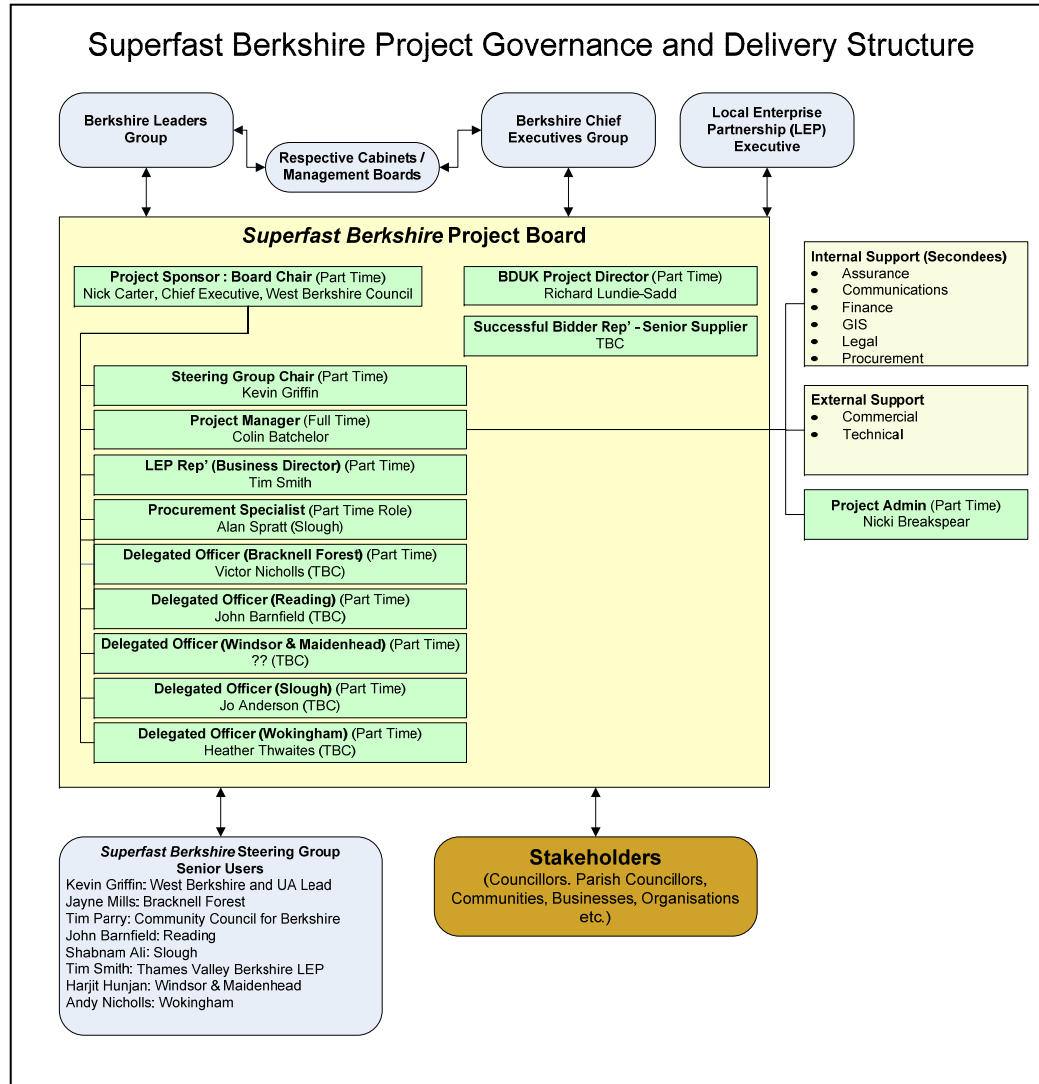
FUNCTIONS OF THE PROJECT MANAGER

The Project Manager is responsible for the overall coordination of the Project ensuring that the Project is delivered effectively and on time throughout the Procurement Phase and through to the Delivery and Service Phase. In particular he shall:-

- Be responsible for the overall coordination and delivery of the Project through the Project delivery team
- Be the principal advisor on the Project to the Project Board, the Authorities' Cabinet Members, Senior Officers and others as required.
- Work with each Authority's designated Steering Group member to co-ordinate delivery in each Area.
- Be responsible for all aspects of the Project including budgets, selection and supervision of external consultants
- Provide formal and informal written and verbal reports to the Project Board, the Authorities and Officers of the Authorities
- Manage and communicate major Project risks
- Manage stakeholder involvement and expectations
- Ensure the Project complies with contracting, procurement and financial regulations

Carry out any other duties that are relevant to the scope and purpose of the role as delegated by the Project Board.

SCHEDULE D1 - GOVERNANCE ARRANGEMENTS – PROJECT BOARD



The **Project Board** will:-

1. Provide project direction:

- Agree the project scope and any changes to scope;
- Provide overall direction for the project team;
- Authorise any major changes to project deliverables or timescales;
- Address and resolve tensions between objectives.

2. Oversee project management:

- Ensure that the required resources are committed for the project team;
- Ensure project plans are in place;
- Ensure risk management plans are in place;
- Sign off each stage of the project.

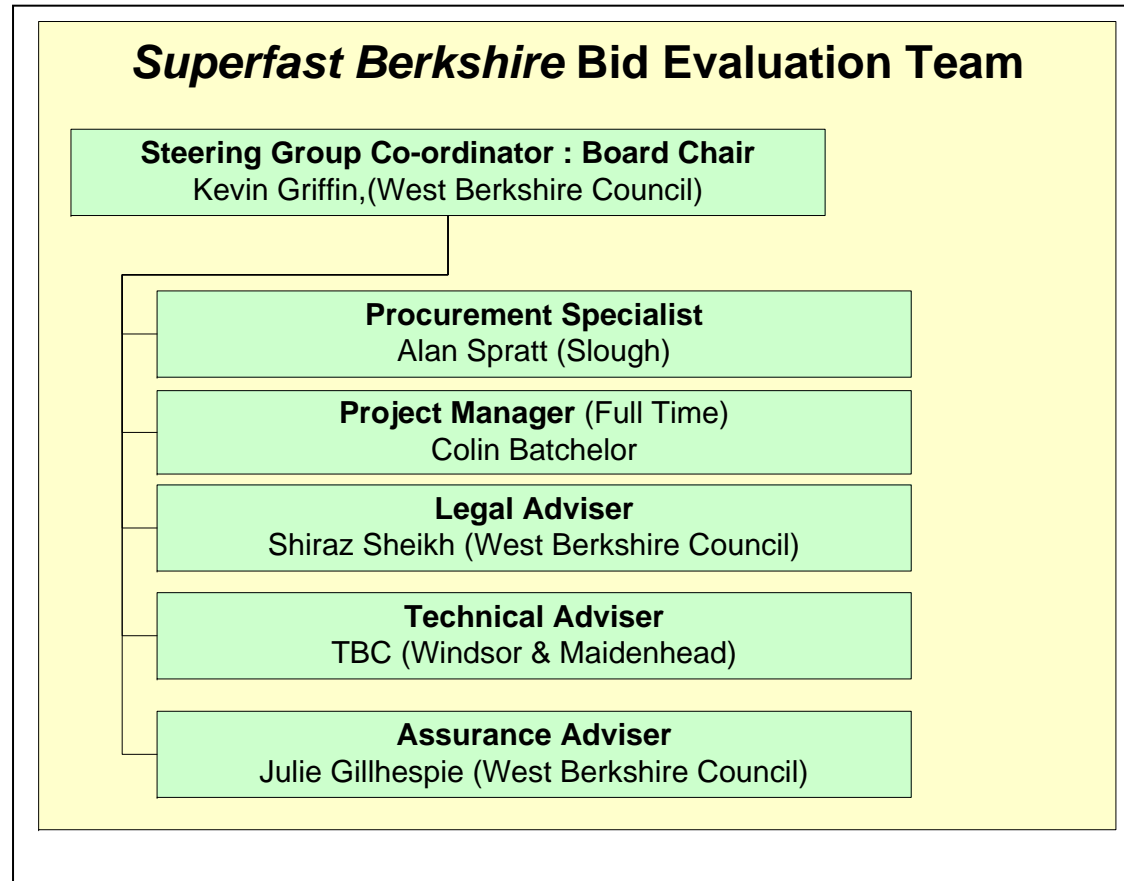
3. Oversee project planning and funding:

- Oversee development of a Local Broadband Plan setting out the overall priorities for the project;
- Ensure engagement with local communities and business to encourage/harness interest in the project;
- Identify where it is possible to leverage in the value of existing or planned investments in infrastructure;
- Identify and secure funding to support the project;
- Ensure action is taken as needed to manage any planning issues or barriers to delivery of the project.

4. Oversee procurement and State Aid compliance:

- Oversee sourcing ,including procurement for a private sector provider for broadband infrastructure;
- Approve the invitation to tender specification and assessment criteria and be actively involved in the procurement process;
- Ensure the project is developed within State Aid rules and that State Aid approval is given for the project;

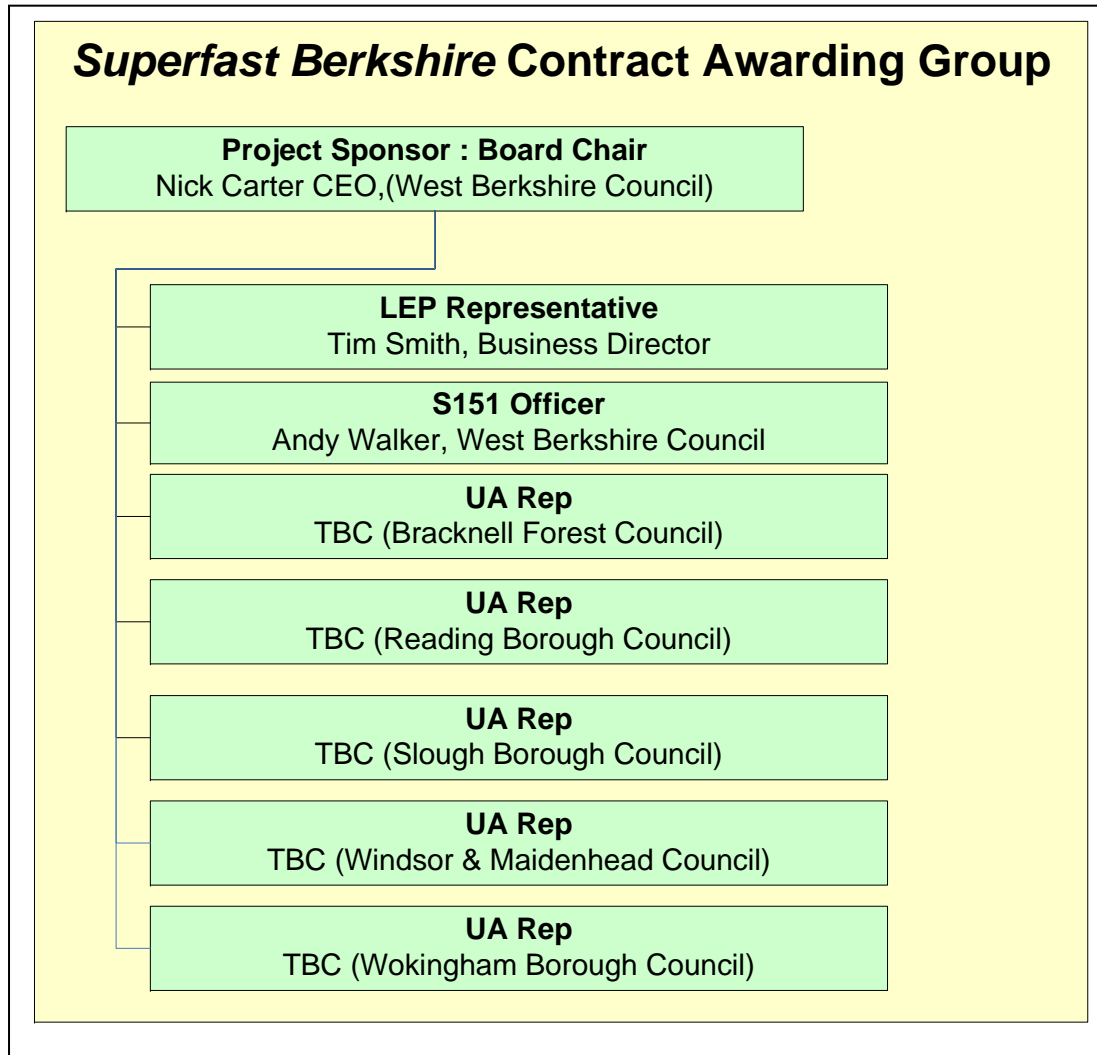
SCHEDULE D2 - GOVERNANCE ARRANGEMENTS – BID EVALUATION TEAM



The **Bid Evaluation Team** will ;

1. Request, receive and evaluate tenders in accordance with the Public Contract Regulations (2006) and general good practice ensuring that the minimum service requirements of each of the Authorities is fully met.
2. Forward its evaluation report and recommendation to the Contract Awarding Group.

SCHEDULE D2 - GOVERNANCE ARRANGEMENTS – CONTRACT AWARDING GROUP



- The **Contract Awarding Group** will ;
1. receive the Bid Evaluation Team’s report and recommendation.
 2. arrive at its decision through consensus with the Chair of the Group declaring the successful tenderer, with the full agreement of all members of the Contract Awarding Group.

The **Project Board** will monitor and ensure that the Project is delivered in accordance with the Local Broadband Plan.

The **Project Team** will meet monthly and the **Project Manager** will prepare reports for the Project Board to consider at its regular meetings.

The Project Team will:

1. Meet at least monthly and at such other times as may be necessary for the effective implementation of the Project.
2. Produce notices and records of its meetings which shall be distributed by the Secretary.
3. Take and consider reports from and shall include such matters and reports as may be submitted by:-
 - 3.1 Any member of the Project Board
 - 3.2 the Authorities' Highways officers, planning officers and other relevant stakeholders
 - 3.3 The Project Manager
4. The Project Manager shall produce a record of all the proceedings of the Operational Group
5. In addition to members of the Project Board the following persons shall be entitled to attend and speak at meetings of the Project Board :-
 - 5.1 A Statutory Officer of an Area
 - 5.2 Any advisor or consultant involved in the Project
 - 5.3 Any Member, official, officer or employee of the Authorities that are not represented on the Project Board.
 - 5.4 Any Contractor to the Broadband Agreement
 - 5.5 Representatives of local business and community groups.

Appendix 3 Berkshire Councils Broadband Collaboration Agreement

6. It is the intention of the Project Board that any decision made by it should be made by consensus. Where it has not been possible to reach a consensus a vote will be taken.

Voting rights shall be as follows:-

Bracknell Forest Council

Lead Officer on Project Board, Victor Nicholls, Assistant Chief Executive

Reading Borough Council

Lead Officer on Project Board, John Barnfield, ICT Technology & Services Manager

Royal Borough of Windsor & Maidenhead Council

Lead Officer/Member on Project Board, TBC

Slough Borough Council

Lead Officer on Project Board, Jo Anderson

West Berkshire Council:

Nick Carter, Chief Executive – Project Sponsor

Wokingham Borough Council

Lead Officer on Project Board, Heather Thwaites, Strategic Director

Thames Valley Berkshire Local Enterprise Partnership

Tim Smith, Business Director

[AUTHORITY LOGO]

DATED [•]

(1) [NAME OF AUTHORITY]

AND

(2) [NAME OF SUPPLIER]

CONTRACT NO. [•]

CONTRACT FOR THE PROVISION OF DEPLOYED
SERVICES

VERSION CONTROL

VERSION	DATE	COMMENT
1.0	29 June 2012	Executed Version

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7. FORM OF GUARANTEE

THIS CONTRACT is made on [•]

BETWEEN:

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

WHEREAS:

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

IT IS AGREED as follows:

PRELIMINARY

1. DEFINITIONS AND INTERPRETATION

- 1.1 In this Contract the definitions set out in Schedule 1 (Definitions) shall apply.
- 1.2 In this Contract:
 - 1.2.1 the singular includes the plural and vice versa;
 - 1.2.2 reference to a gender includes the other gender and the neuter;
 - 1.2.3 any phrase introduced by the words "including", "includes", "in particular", "for example" or similar, shall be construed as illustrative and without limitation to the generality of the related general words;
 - 1.2.4 references to any person shall include natural persons and partnerships, firms and other incorporated bodies and all other legal persons of whatever kind and however constituted and their successors and permitted assigns or transferees;
 - 1.2.5 references to any statute, enactment, order, regulation, instrument, code, standard or other similar instrument shall be construed as a reference to the statute, enactment, order, regulation, instrument (including any EU instrument), code, standard, or other similar instrument as amended, replaced, consolidated or re-enacted;
 - 1.2.6 headings are included in this Contract for ease of reference only and shall not affect the interpretation or construction of this Contract;

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

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

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

PROVISION OF THE DEPLOYED SERVICES

6. PROVISION OF THE NETWORK

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

7. NOT USED

8. SERVICE REQUIREMENTS AND SUPPLIER SOLUTION

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

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

8.1.2 are supplied in accordance with the Supplier Solution.

8.2 Subject to Clause 5.5:

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

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

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

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

9. **OTHER BENEFICIARIES**

9.1 The Parties agree that:

9.1.1 each Other Beneficiary shall:

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

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

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

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

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

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

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

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

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

10. GENERAL PERFORMANCE STANDARDS

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

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

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

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

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

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

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

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

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

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

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

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

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

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

11. **CODES AND STANDARDS**

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

12. **CONSENTS**

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

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

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

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

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

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

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

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

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

IMPLEMENTATION

15. **IMPLEMENTATION PLAN AND PROJECT PLAN**

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

16. **MILESTONES**

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

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

17. DELAY – GENERAL PROVISIONS

17.1 If the Supplier becomes aware that it will not (or is unlikely to) Achieve any Milestone by the Milestone Date it shall as soon as is practicable notify the Authority of the fact of the Delay and summarise the reasons for it.

17.2 The Supplier shall (without prejudice to the Authority's rights and remedies under this Contract):

17.2.1 in respect of Delay caused by the Supplier's Default, use all reasonable endeavours: and

17.2.2 in respect of all other Delay, use reasonable endeavours,

to eliminate or mitigate the consequences of the Delay.

18. DELAY DUE TO SUPPLIER DEFAULT

18.1 Unless agreed otherwise by the Parties in writing, the Supplier shall submit a draft Remedial Plan in accordance with Clause 38 where due to any Default by the Supplier:

18.1.1 it becomes aware that it will not Achieve a Milestone by the associated Milestone Date; and/or

18.1.2 it has failed to Achieve a Milestone by the associated Milestone Date.

18.2 Each draft Remedial Plan provided pursuant to Clause 18.1 shall identify the issues arising out of the Delay and the steps that the Supplier proposes to take to Achieve the Milestone in accordance with the terms of this Contract.

18.3 If an M1 Milestone is not Achieved by the associated Milestone Date due (in whole or in part) to any Default by the Supplier, the Authority may at its discretion (without waiving any rights in relation to the other options or rights under or in relation to this Contract) elect to:

18.3.1 issue a Milestone Achievement Certificate conditional on the remediation of the issue in accordance with an agreed Remedial Plan; and/or

18.3.2 escalate the matter in accordance with the Escalation Process;

18.4 Where the Authority issues a conditional Milestone Achievement Certificate in respect of a M1 Milestone in accordance with Clause 18.3.1:

18.4.1 the Authority shall be entitled to revise the failed Milestone Date and any subsequent Milestone Date;

18.4.2 the Supplier shall be entitled to commence the performance of any work required to Achieve the subsequent M2 Milestone; and

18.4.3 unless the Authority agrees otherwise in writing, any Milestone Payment associated with the relevant M1 Milestone shall not be payable until the remediation of the issue in accordance with the agreed Remedial Plan.

19. DELAY DUE TO A RELIEF EVENT

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

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

FINANCIAL MATTERS

20. MILESTONE PAYMENTS AND INVOICING

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

21. WHOLESALE ACCESS PRICES

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

22. PROJECT MODEL

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

23. STATE AID

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

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

24. **[ADDITIONAL FUNDING]**

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

25. **NO INDEXATION**

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

26. **TAX**

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

27. **NOT USED**

28. **FINANCIAL DISTRESS**

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

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

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

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

28.2 The Supplier shall promptly notify (or shall procure that its auditors promptly notify) the Authority in writing following the occurrence of a Financial Distress Event (and in any event ensure that such notification is made within ten (10) Working Days of the date on which the Supplier first becomes aware of the Financial Distress Event).

28.3 In the event that the Authority reasonably believes that the Financial Distress Event could adversely impact the performance of this Contract and/or the security of public subsidy already granted (or to be granted) pursuant to this Contract, at the request of the Authority the Supplier shall:

- 28.3.1 (and shall procure that the relevant Key Subcontractors shall) meet with the Authority as soon as practicable to review the effect of the Financial Distress Event on the continued performance of this Contract and/or the security of public subsidy already granted (or to be granted) pursuant to this Contract;
- 28.3.2 as soon as practicable and in any event within ten (10) Working Days (taking into account any discussions and any representations made pursuant to Clause 28.3.1), provide a draft Financial Distress Event Remedial Plan for approval by the Authority explaining how the Supplier and/or relevant Key Subcontractor will remedy the potential adverse impact of the Financial Distress Event on the continued performance of this Contract and/or the security of public subsidy already granted (or to be granted) pursuant to this Contract; and
- 28.3.3 provide such financial information as the Authority may reasonably require to support Clause 28.3.2.
- 28.4 The Supplier shall incorporate any reasonable comments provided by the Authority on the draft Financial Distress Event Remedial Plan and provide such number of revised drafts as may reasonably be required until the Authority has approved the Financial Distress Event Remedial Plan (which approval shall not be unreasonably withheld or delayed).
- 28.5 Following approval of any Financial Distress Event Remedial Plan pursuant to Clause 28.4, the Supplier shall implement the plan in accordance with its terms and review the plan on a regular basis and assess whether it remains adequate and up to date so as to ensure the continued performance of this Contract and/or the security of public subsidy already granted (or to be granted).
- 28.6 The Authority's rights set out in this Clause 28 shall be without prejudice to the Authority's termination rights set out in Clause 61.
29. **[GUARANTEE]**
- [Template Note: The Authority shall be entitled to require the provision of a Guarantee in relation to its Call Off Contract where the Authority considers a Guarantee is required due to the financial circumstances of the Supplier. If a Guarantee is required and the Parent Company is based overseas, the Authority should consider whether a legal opinion from a law firm from the overseas jurisdiction as to the enforceability of the Guarantee in that jurisdiction is required. If a legal opinion is required the Contract will need to be amended to provide for this. If a Guarantee is not required then the Clause 29 heading should be replaced with "NOT USED"]**
- 29.1 [On or before the execution of this Contract the Supplier shall procure that the Parent Company shall execute and deliver to the Authority an original copy of the Guarantee.
- 29.2 Nothing in the Guarantee shall in any way affect or diminish the obligations of the Supplier under this Contract which shall be required to be complied with in full.]

30. **[PERFORMANCE BOND]**

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

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

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

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

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

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

SUBCONTRACTING AND SUPPLY CHAIN RIGHTS

32. SUBCONTRACTORS

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

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

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

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

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

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

33. **SMALL AND MEDIUM SIZED ENTERPRISES**

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

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

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

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

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

GOVERNANCE AND KEY PROCEDURES

34. **REPRESENTATIVES**

34.1 The Authority shall appoint an Authority Representative and the Supplier shall appoint a Supplier Representative who shall have the authority to act on behalf of the

respective Party on the matters pursuant to this Contract. Either Party may, by prior written notice to the other Party, revoke or amend the authority of its Representative or appoint a new or an alternate Representative.

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

35. **GOVERNANCE**

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

36. **AUDIT**

36.1 If an audit is imposed on the Authority and/or this Contract by any Regulatory Body at any time during the Term and the 12 month period following the Term the provisions set out in this Clause 36 shall apply.

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

36.3 There shall be no restriction on the frequency of such audits and the Authority shall use reasonable endeavours to procure that the relevant Regulatory Body (or where applicable its agents or representatives) shall endeavour, but shall not be obliged, to provide at least 15 Working Days notice of the intention to conduct such audit.

36.4 The Authority shall use reasonable endeavours to procure that the conduct of any such audit does not unreasonably disrupt the Supplier or delay the performance of this Contract.

36.5 Subject to Clauses 36.6 and 50, the Supplier shall provide the relevant Regulatory Body (and/or its agents or representatives) with all such reasonable co-operation and assistance as is reasonably necessary in relation to any such audit, including provision of:

36.5.1 such relevant information requested by the relevant Regulatory Body (and/or its agents or representatives) within the scope of the audit imposed by the Regulatory Body (provided that the Authority shall use reasonable endeavours to procure that the Regulatory Body shall limit the scope of any audit to the information provided or maintained pursuant to Clause 37 and the verification of such information, with the Supplier acknowledging that the relevant powers of the Regulatory Body cannot be fettered and that the Regulatory Body may request additional information pursuant to this Clause 36.5.1); and

36.5.2 reasonable access to any site controlled by the Supplier or any Key Subcontractor (including any Network implementation or maintenance works conducted pursuant to this Contract) and/or reasonable access to Supplier Personnel, in each case where the scope of the relevant audit cannot be satisfied by the provision of the information provided pursuant to Clause 36.5.1.

36.6 The Parties agree that:

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

36.6.2 where the inspection at any site controlled by the Supplier is required, such inspection shall be subject to the Supplier's then current standard security policies to the extent notified to the relevant Regulatory Body (or where applicable its agents or representatives) in advance of the relevant inspection.

36.7 The Supplier shall bear its own costs and expenses incurred in respect of compliance with this Clause 36, unless and to the extent such costs and expenses are recoverable as Qualifying Capital Expenditure pursuant to Schedule 5.1 (Milestone Payments and Claims Procedure).

36.8 The Authority shall procure that the relevant Regulatory Body (and where applicable its agents and representatives) shall bear its own costs and expenses incurred in respect of compliance with this Clause 36.

36.9 Where as a consequence of any audit carried out pursuant to this Clause 36 the relevant Regulatory Body (or its agents or representatives) reasonably considers that a re-audit is required, then such re-audit may be carried out in accordance with this Clause 36.

37. **REPORTS AND RECORDS**

37.1 The Supplier shall produce and provide to the Authority the reports set out in Schedule 6.4 (Reports) and such other reports as are expressly set out in this Contract, along with such reasonable additional ad hoc reports concerning the operation of this Contract as the Authority may reasonably require from time to time. Where the preparation of any ad hoc report requested by the Authority pursuant to this Clause 37.1 shall impose a material burden on the Supplier's resources, the Supplier shall notify the Authority and the Parties shall (prior to the Supplier actioning the request) promptly discuss the issue and agree in writing a reasonable resolution (including using the Change Control Procedure where applicable).

37.2 The Supplier shall keep and maintain:

37.2.1 for the duration of the Term; and

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

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

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

38. **REMEDIAL PLAN PROCESS**

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

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

39. CHANGE CONTROL

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

39.2 Subject to Clause 39.3, if and to the extent that the Wholesale Access Products and Services incorporate (expressly in this Contract or by reference) any regulated published list prices, regulated terms and/or other regulated items then such prices, terms and/or other items shall be maintained by the Supplier in accordance with the Supplier's normal business practice and not in accordance with the Change Control Procedure, provided that:

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

39.2.2 to the extent that such prices, terms and/or other items are expressly included in this Contract, the Parties shall document a variation to the relevant term of this Contract in writing.

39.3 Where any change to the regulated published list prices, regulated terms and/or other regulated items referred to in Clause 39.2 affects any relevant compliance statement set out in the Compliance Matrix or any other provision in this Contract, the Supplier shall promptly notify the Authority and the Parties shall use their respective reasonable endeavours to address the matter using the Change Control Procedure.

40. DISPUTES

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

PERSONNEL, PREMISES AND ASSETS

41. SUPPLIER PERSONNEL

41.1 General

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

41.2 Convictions

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

- (a) carry out appropriate checks in accordance with Good Industry Practice in relation to Convictions (including conducting a Criminal Records Bureau check where to conduct such a check would be consistent with Good Industry Practice); and
 - (b) conduct such questioning and investigation as is reasonable regarding any Convictions, where the above required checks reveal a Conviction.
- 41.2.2 The Supplier shall not (and shall ensure that a Subcontractor shall not) engage or continue to utilise in the provision of those Deployed Services involving or which are likely to involve access to children, vulnerable persons, or other members of the public to whom the Authority owes a special duty of care, any member of the Supplier Personnel whose Conviction means it would reasonably be regarded as inappropriate for them to be conducting such activity.
- 41.2.3 For the purpose of this Clause 41.2, references to "access" shall not include incidental access to members of the public due to Network Deployment on or about a public highway.

41.3 **Key Personnel**

- 41.3.1 The Parties have agreed to the appointment of the Key Personnel as at the Effective Date. The Supplier shall obtain the prior written consent of the Authority (such consent not to be unreasonably withheld or delayed, but without prejudice to the Supplier needing to take any action as may reasonably be required in accordance with its employment procedures) before any member of the Key Personnel is removed or replaced from their corresponding role during the Term, and, where possible, at least three (3) months' written notice shall be provided by the Supplier of its intention to replace any member of Key Personnel from their corresponding role.
- 41.3.2 The Supplier acknowledges that the Key Personnel are essential to the proper provision of the Deployed Services. The Supplier shall ensure that the role of any Key Personnel is not vacant for any longer than ten (10) Working Days and that any replacement shall be as or more qualified and experienced as the previous incumbent of such role to carry out the tasks assigned to the role of the member of Key Personnel whom he or she has replaced.
- 41.3.3 The Supplier shall ensure that each of the Key Personnel shall work for such a period of time in the performance of the Deployed Services that is commensurate with and sufficient to perform the obligation of that person's role (which shall be at least for the expected duration of the role set out in Schedule 3.4 (Key Personnel)), unless the Authority otherwise gives its prior written consent (such consent not to be unreasonably withheld or delayed). To the extent that it can do so without disregarding its statutory obligations, the Supplier shall take such steps as are reasonably necessary to ensure that it retains the services of all the Key Personnel.
- 41.3.4 The Authority may identify any of the roles performed by Supplier Personnel as Key Personnel for agreement by the Supplier (such agreement not to be unreasonably withheld or delayed), who will then be included on the list of Key Personnel by the Supplier in accordance with the Change Control Procedure. The Authority may also require the Supplier to remove any member of the Key Personnel that the Authority considers in any respect unsatisfactory and the Supplier shall take such action as may reasonably be required in accordance with its employment procedures.

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

41.4 **Supplier Personnel Security**

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

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

42. **NOT USED**

43. **AUTHORITY ASSETS**

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

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

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

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

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

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

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

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

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

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

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

INTELLECTUAL PROPERTY, DATA AND CONFIDENTIALITY

44. INTELLECTUAL PROPERTY RIGHTS

- 44.1 Save as expressly set out in Clauses 45 and 46, a Party shall not by virtue of this Contract acquire any right, title or interest in or to the IPR of the other Party or that other Party's licensors.
- 44.2 Where either Party (and in the case of the Supplier, its Subcontractors, Affiliates and/or Supplier Personnel) acquires, by operation of Law, title to IPR that is inconsistent with Clause 44.1, that Party shall, as soon as reasonably practicable, assign (or procure that as soon as reasonably practicable its relevant Affiliate, Subcontractor or relevant Supplier Personnel, assigns) in writing such IPR as that Party has acquired to the other Party (or, at the direction of the other Party, to such other person as the other Party may nominate from time to time) and execute and deliver all such other documents as may be necessary to perfect such title and enable the relevant Party to enjoy the full benefits of ownership of the relevant IPR.

45. LICENCE GRANTED BY THE SUPPLIER

- 45.1 For the duration of the Term and subject to Clause 50 the Supplier grants to the Authority a royalty free, non-exclusive, non-transferable licence to copy or otherwise use (and for the Authority to distribute to or permit its agents, consultants, professional advisers, other Crown Bodies and each Local Body to copy or otherwise use to the

extent permitted under Clause 50) the Supplier IPR contained in any information, document, specification, drawing, plan or other material supplied or otherwise made available to the Authority by the Supplier or any Subcontractor (or their respective Affiliates), to the extent necessary for the purpose of:

- 45.1.1 receiving and benefiting from the Deployed Services, the Authority's rights and the Supplier's obligations provided under this Contract;
- 45.1.2 the Authority performing its responsibilities:
 - (a) under this Contract;
 - (b) in connection with the Broadband Delivery Framework; and/or
 - (c) in connection with the exercise of its business or function in relation to this Contract.

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

46. LICENCE GRANTED BY THE AUTHORITY

- 46.1 Subject to Clause 50, the Authority grants to the Supplier a royalty-free, non-exclusive, non-transferable licence to copy, distribute or otherwise use (and for the Supplier to permit its Subcontractors to copy, distribute or otherwise use) (i) the Authority IPR contained in any information, document, specification, drawing, plan or other material supplied or made available by the Authority to the Supplier; and (ii) the Authority Data, solely to the extent necessary for the performance of the Supplier's obligations under this Contract.
- 46.2 Upon the termination or expiry of this Contract, the licence referred to in Clause 46.1 shall terminate automatically and the Supplier shall deliver to the Authority all Authority IPR and Authority Data in accordance with Clause 65.2. If upon the expiry of this Contract the Supplier reasonably considers that it requires an ongoing licence to use any Authority IPR and/or Authority Data then the grant of any such ongoing licence shall be at the sole discretion of the Authority and shall be subject to the Authority's written agreement to commercially acceptable ongoing licence terms.

47. AUTHORITY DATA

- 47.1 The Supplier shall not delete or remove any proprietary notices contained within or relating to the Authority Data.
- 47.2 The Supplier shall not store, copy, disclose, or use the Authority Data except as necessary for the performance by the Supplier of its obligations under this Contract or as otherwise expressly authorised in writing by the Authority.
- 47.3 To the extent that Authority Data is held and/or processed by the Supplier, the Supplier shall at its cost supply that Authority Data to the Authority when reasonably requested by the Authority in the format reasonably specified by the Authority.
- 47.4 The Supplier shall take responsibility for preserving the integrity of Authority Data and preventing the corruption or loss of Authority Data as is reasonable in accordance with Good Industry Practice and taking into account the sensitivity of any such Authority Data.
- 47.5 If at any time the Supplier suspects or has reason to believe that Authority Data has or may become corrupted, lost or sufficiently degraded in any way for any reason, then the Supplier shall notify the Authority as soon as practicable.

48. **PROTECTION OF PERSONAL DATA**

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

48.2 The Party that is the Data Processor shall:

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

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

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

48.2.4 notify the other Party (within five (5) Working Days) if it receives:

(a) a request from a Data Subject to have access to that person's Personal Data; or

(b) a complaint or request relating to the other Party's obligations under the Data Protection Legislation;

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

(a) providing the other Party with full details of the complaint or request;

(b) complying with a data access request within the relevant timescales set out in the Data Protection Legislation and in accordance with the other Party's reasonable instructions;

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

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

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

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

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

49. **FREEDOM OF INFORMATION**

49.1 The Supplier acknowledges that the Authority is subject to the requirements of the FOIA and the Environmental Information Regulations and shall assist and cooperate with the Authority to the extent reasonably necessary to enable the Authority to comply with its Information disclosure obligations.

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

49.2.1 transfer to the Authority any Request for Information that it receives as soon as practicable and in any event within three (3) Working Days of receiving a Request for Information;

49.2.2 provide the Authority with a copy of all Information in its possession, or power in the form that the Authority requires within five (5) Working Days (or such other period as the Authority may specify) of the Authority's request; and

49.2.3 provide all necessary assistance as reasonably requested by the Authority to enable the Authority to respond to the Request for Information within the time for compliance set out in section 10 of the FOIA or regulation 5 of the Environmental Information Regulations.

49.3 The Authority:

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

49.3.2 may consult with the Supplier to inform its decisions regarding any other exemptions,

but the Authority shall be responsible for determining in its absolute discretion and notwithstanding any other provision in this Contract or any other agreement whether the Commercially Sensitive Information and/or any other Information is exempt from disclosure in accordance with the provisions of the FOIA or the Environmental Information Regulations.

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

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

50. **CONFIDENTIALITY**

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

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

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

- 50.6.3 to any consultant, supplier or other person engaged by the Authority in relation to this Contract or any person conducting an Official Assurance Review;
 - 50.6.4 for the purpose of the examination and certification of the Authority's accounts; or
 - 50.6.5 for any examination pursuant to Section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which the Authority has used its resources.
- 50.7 The Authority shall ensure that any body or individual to whom the Supplier Confidential Information is disclosed pursuant to Clause 50.6 is made aware of the Authority's obligations of confidentiality (including the commitment set out in Clause 49.3 to consult in respect of disclosure of Commercially Sensitive Information) under this Contract and the Authority shall:
- 50.7.1 in respect of disclosure to any body or individual that is part of the Crown, any Regulatory Body and/or any Local Body, use reasonable endeavours to ensure that any such body or individual to whom such disclosure is made complies with similar obligations of confidentiality;
 - 50.7.2 in respect of disclosure to any other body or individual, ensure that any such body or individual to whom such disclosure is made complies with similar obligations of confidentiality.
- 50.8 Nothing in this Clause 50 shall prevent either Party from using any techniques, ideas or know-how gained during the performance of this Contract in the course of its normal business to the extent that this use does not result in a disclosure of the other Party's Confidential Information or an infringement of IPR.
- 50.9 The Parties acknowledge that a material Default of this Clause 50 may cause irreparable harm to the disclosing Party, for which monetary damages would be inadequate, and injunctive relief may be sought for a material Default of this Clause 50.
- 51. PROHIBITED ACTS AND PREVENTION OF BRIBERY**
- 51.1 Each Party:
- 51.1.1 shall not in connection with this Contract commit a Prohibited Act;
 - 51.1.2 warrants, represents and undertakes that it is not aware of any financial or other advantage being given to any person working for or engaged by the other Party, or that an agreement has been reached to that effect, in connection with the execution of this Contract, excluding any arrangement of which full details have been disclosed in writing to the other Party before execution of this Contract.
- 51.2 Each Party shall, if requested, provide the other Party with any reasonable assistance to enable the other Party to perform any activity required by any relevant government or agency in any relevant jurisdiction for the purpose of compliance with the Bribery Act.
- 51.3 The Supplier shall have an anti-bribery policy (which shall be disclosed to the Authority) in place throughout the Term with aim of preventing any Subcontractor or Supplier Personnel from committing a Prohibited Act and shall enforce it where necessary.

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

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

52. CONFLICTS OF INTEREST

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

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

53. CHANGE OF CONTROL

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

53.2 Subject to Clauses 53.4 and 53.5, the Authority shall be entitled to terminate this Contract in accordance with Clause 61.1.1(b) where there is a Change of Control to which the Authority objects, except where the Authority has given its prior written consent to the particular Change of Control (such consent not to be unreasonably withheld or delayed), which subsequently takes place as proposed.

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

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

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

- (a) the Authority would not have contracted with at the Effective Date (for example, where the entity would not have met the ITT evaluation criteria);
- (b) has materially failed to deliver services to the Authority to the standards required in any contract with the Authority or any other Local Body; and/or
- (c) takes a stance on matters relating to corporate social responsibility (including environmental sustainability) which is inconsistent with the policies of the UK government; and/or

53.4.2 the Change of Control might or would adversely affect or prejudice:

- (a) national security or the level of threat of criminal activity; and/or

(b) the operations, reputation or good standing of the Authority.

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

WARRANTIES, INDEMNITIES, LIABILITY AND FORCE MAJEURE

54. **WARRANTIES**

54.1 Each Party warrants, represents and undertakes that:

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

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

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

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

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

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

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

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

54.2.4 as at the Effective Date all statements and representations (subject to any relevant caveats and assumptions provided by the Supplier in writing at the time) in the Supplier's responses to the ITT are to the best of its knowledge, information and belief, complete, true and accurate and that it will advise the Authority of any fact, matter or circumstance of which it may become aware which would render any such statement or representation to be materially false or misleading;

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

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

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

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

55. THIRD PARTY IPR INDEMNITY

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

55.2 The Supplier shall indemnify the Authority against all third party claims, demands, actions, costs (including legal fees and royalties), expenses, losses or damages arising from or incurred by reason of any infringement or alleged infringement (including the defence of such alleged infringement) arising due to the use of Supplier IPR in accordance with the provisions of this Contract.

55.3 The Authority shall indemnify the Supplier against all third party claims, demands, actions, costs (including legal fees and royalties), expenses, losses or damages arising from or incurred by reason of any infringement or alleged infringement (including the defence of such alleged infringement) arising due to the use of Authority IPR in accordance with the provisions of this Contract.

56. HANDLING OF INDEMNIFIED CLAIMS

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

56.2 In respect of each Indemnified Claim, subject to Clause 56.3 the Indemnifying Party shall be entitled to defend the Indemnified Claim (acting diligently, using competent counsel and in such a way as not to bring the reputation of the Indemnified Party into disrepute) provided that (i) the Indemnifying Party consults with the Indemnified Party and keeps the Indemnified Party fully informed with respect to the Indemnified Claim; (ii) the Indemnifying Party shall not settle, admit fault or compromise the Indemnified Claim without the Indemnified Party's prior written consent (such consent not to be unreasonably withheld or delayed); and (iii) the Indemnified Party shall (at the Indemnifying Party's cost) provide such reasonable assistance as required by the Indemnifying Party.

56.3 Where the Supplier is the Indemnifying Party, the Authority may elect (following reasonable consultation with the Supplier) to defend the Indemnified Claim itself (acting diligently and using competent counsel) with the Supplier (at the Supplier's own cost) providing such reasonable assistance as required by the Authority if the Authority considers that sole control of the Indemnified Claim by the Supplier may place at risk or adversely affect (i) national security or the threat of criminal activity; and/or (ii) the operations, reputation or good standing of the Authority.

56.4 The Indemnified Party shall not settle, admit fault or compromise any Indemnified Claim without the Indemnifying Party's prior written consent (such consent not to be unreasonably withheld or delayed).

56.5 If an Indemnified Claim is made or the Indemnifying Party anticipates that an Indemnified Claim might be made, the Indemnifying Party may, at its own expense and reasonable discretion, procure the necessary rights or otherwise replace or modify the items or activities concerned to enable the Indemnified Party the right to continue using the relevant item or to otherwise properly permit the continuance of the activity which is the subject of the Indemnified Claim, provided that in each instance:

56.5.1 the performance and/or quality of the replacement item or activity concerned shall be at least equivalent to the performance and/or quality of the original item or activity;

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

57. **LIMITATIONS ON LIABILITY**

57.1 Neither Party limits its liability for:

- 57.1.1 death or personal injury caused by its negligence, or that of its employees, agents or Subcontractors (as applicable);
- 57.1.2 fraud or fraudulent misrepresentation by it or its employees;
- 57.1.3 breach of any obligation as to title implied by section 12 of the Sale of Goods Act 1979 or section 2 of the Supply of Goods and Services Act 1982; or
- 57.1.4 any other matter for which it would be unlawful for either Party to exclude or limit or attempt to exclude or limit its liability.

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

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

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

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

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

58. **[INSURANCE]**

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

59. **FORCE MAJEURE**

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

- 59.2.4 an event or circumstance attributable to the Supplier's or any Subcontractor's wilful act, neglect or failure to take reasonable precautions against the relevant event; or
- 59.2.5 an event or circumstance where its effect is such that a prudent provider of services similar to the Deployed Services, operating to the standards required by this Contract, would have foreseen and prevented or avoided the consequences of such event or circumstance.
- 59.3 The Affected Party shall as soon as is practicable give the other Party written notice of the Force Majeure Event. Following the occurrence of a Force Majeure Event the Parties shall use their respective reasonable endeavours to prevent and mitigate the effects of any delay and the Supplier shall during the period which the effects of a Force Majeure Event are subsisting take such reasonable steps as are necessary in accordance with Good Industry Practice to overcome or minimise the consequences of the Force Majeure Event.
- 59.4 The Affected Party shall notify the other Party as soon as practicable after the Force Majeure Event ceases or no longer causes the Affected Party to be unable to comply with its obligations under this Contract. Following such notification, this Contract shall continue to be performed on the terms existing immediately before the occurrence of the Force Majeure Event unless agreed otherwise by the Parties.
- 59.5 Nothing in this Clause 59 shall prevent either Party from performing any of its obligations set out in this Contract that are not affected by the relevant Force Majeure Event.
- 59.6 To the extent that the consequences of a Force Majeure Event can be addressed by a change to the Project Plan without impacting upon the Implementation Plan, then the Parties shall use their respective reasonable endeavours to agree a change to the Project Plan in accordance with paragraph 5.8 of Schedule 4.1 (Implementation) without recourse to the Change Control Procedure.
- 59.7 To the extent that the consequences of a Force Majeure Event:
- 59.7.1 materially adversely affect (or are likely to materially adversely affect) the performance of the Deployed Services for a sustained and indeterminate period;
- 59.7.2 have been mitigated by the Supplier in accordance with Good Industry Practice pursuant to Clause 59.3; and
- 59.7.3 cannot be addressed solely by a change to the Project Plan without recourse to the Change Control Procedure in accordance with Clause 59.6,
- then subject to Clause 59.1 the Parties may elect to use their respective reasonable endeavours to address the consequences of the Force Majeure Event in accordance with the Change Control Procedure, provided that unless the Parties agree otherwise in writing the Parties shall in respect of the agreement of any such change adhere to the principle that each Party shall bear its own costs incurred in dealing with a Force Majeure Event.

TERM AND TERMINATION

60. TERM OF THIS CONTRACT

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

61. TERMINATION FOR SUPPLIER DEFAULT

61.1 The Authority may terminate this Contract without penalty by written notice to the Supplier (where such notice shall specify the date of termination being the date of notice or later) upon the occurrence of one or more of the following events:

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

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

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

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

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

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

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

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

62. TERMINATION FOR AUTHORITY DEFAULT

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

63. TERMINATION DUE TO FORCE MAJEURE

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

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

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

64. PARTIAL TERMINATION

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

65. CONSEQUENCES OF TERMINATION OR EXPIRY

65.1 Following the service of notice terminating this Contract by:

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

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

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

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

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

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

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

65.2 Upon termination or expiry of this Contract:

- 65.2.1 the Supplier shall cease to use any Authority IPR and Authority Data and, at the direction of the Authority:
 - (a) shall provide the Authority with a complete and uncorrupted version of the relevant Authority IPR and Authority Data in electronic form in a format and on media as reasonably requested by the Authority; and

- (b) on the earlier of the receipt of the Authority's written instructions or the date of expiry or termination, shall destroy (subject to any constraints of Law) all copies of the relevant Authority IPR and Authority Data remaining in its possession or control;

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

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

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

MISCELLANEOUS

66. ASSIGNMENT AND NOVATION

66.1 The Supplier shall not assign, novate or otherwise dispose of or create any trust in relation to any or all of its rights and obligations under this Contract without the prior written consent of the Authority (which in respect of a proposed assignment, novation or disposal to an Affiliate only, shall not be unreasonably withheld or delayed). In circumstances where the Authority gives its prior written consent it may stipulate certain conditions of such consent (such as the provision of a guarantee substantially [in the form of the Guarantee] [in a form satisfactory to the Authority] from the parent company of the assignee or novatee). **[Template Note: Authority to consider if specific conditions need to be stipulated in respect of any potential excess profits arising from the sale of the Network by the Supplier]**

66.2 The Authority may:

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

66.2.2 novate this Contract to any other body (including any private sector body) which substantially performs any of the functions that previously had been performed by the Authority in connection with the scope of this Contract (including where applicable the payment of Milestone Payments), provided that where any such body is a competitor of the Supplier in respect of the Supplier's primary business or function within the UK such novation shall be subject to the prior written consent of the Supplier (such consent not to be unreasonably withheld or delayed).

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

67. **WAIVER AND CUMULATIVE REMEDIES**

67.1 The rights and remedies provided by this Contract may be waived only in writing by the relevant Representative in a manner that expressly states that a waiver is intended, and such waiver shall only be operative with regard to the specific circumstances referred to.

67.2 Unless a right or remedy of a Party is expressed to be an exclusive right or remedy, the exercise of it by that Party is without prejudice to that Party's other rights and remedies. Any failure to exercise or any delay in exercising a right or remedy by either Party shall not constitute a waiver of that right or remedy or of any other rights or remedies.

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

68. **RELATIONSHIP OF THE PARTIES**

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

69. **PUBLICITY AND BRANDING**

69.1 Neither Party shall:

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

69.1.2 use the other Party's name or brand in any promotion or marketing or announcement of orders,

without the prior written consent of the other Party, which shall not be unreasonably withheld or delayed.

70. **SEVERANCE**

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

71. **FURTHER ASSURANCES**

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

72. **ENTIRE AGREEMENT**

72.1 This Contract, together with the documents referred to in it (save for the ITT, which is referred to in this Contract solely for the purpose of the recitals to this Contract and Clauses 53.4.1(a) and 54.2.4) and/or attached to it, constitutes the entire agreement and understanding between the Parties in respect of the matters dealt with in it and supersedes any previous agreement between the Parties in relation to such matters notwithstanding the terms of any previous agreement or arrangement expressed to survive termination.

72.2 Each Party acknowledges and agrees that in entering into this Contract and the documents referred to in it and/or attached to it, it does not rely on, and shall have no remedy in respect of, any statement, representation, warranty or undertaking (whether negligently or innocently made) other than as expressly set out or referred to in this Contract.

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

73. THIRD PARTY RIGHTS

73.1 Except as provided in Clauses 9 and 73.2, nothing in this Contract shall be deemed to grant any rights or benefits to any person other than the Parties, or entitle any third party to enforce any term or condition of this Contract.

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

74. NOTICES

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

Authority	Supplier
[Address to be inserted]	[Address to be inserted]
For the attention of: [•]	For the attention of: [•]
Fax: [•]	Fax: [•]
Email: [•]	Email: [•]

74.2 A notice shall be deemed to have been received:

74.2.1 if delivered personally, at the time of delivery;

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

74.2.3 in the case of fax, on the day of transmission if sent before 16:00 hours of any Working Day and otherwise at 09:00 hours on the next Working Day and provided that, at the time of transmission of a fax, an error-free transmission report has been received by the sender; and

74.2.4 in the case of email, at the time that the email enters the Information System of the intended recipient provided that no error message indicating failure to deliver has been received by the sender and provided further that, in relation to any notice provided under Clauses 1 to 76 of this Contract, within 24 hours of transmission a hard copy of the email signed by or on behalf of the person giving it is delivered by hand or sent by facsimile, pre-paid first class post, recorded delivery or registered post to the intended recipient.

74.3 In proving service, it shall be sufficient to prove that the envelope containing the notice was addressed to the relevant Party at its address previously notified for the receipt of

notices (or as otherwise notified by that Party) and delivered either to that address or into the custody of the postal authorities as pre-paid first class post, recorded delivery, registered post or airmail letter, or that the notice was transmitted by fax to the fax number of the relevant Party at its fax number previously notified for the receipt of notices (or as otherwise notified by that Party).

75. AUTHORITY POWERS

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

76. GOVERNING LAW AND JURISDICTION

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

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

EXECUTION

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

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

Signature:

Signature:

Name:

Name:

Position:

Position:

Date:

Date: