



DATED

.....

(1) SURREY COUNTY COUNCIL

AND

(2) BRITISH TELECOMMUNICATIONS PLC

CONTRACT NO.

.....

**CONTRACT FOR THE PROVISION OF DEPLOYED
SERVICES**

Table of contents

Clause heading and number

Page number

1.	DEFINITIONS AND INTERPRETATION	1
2.	CONDITION PRECEDENT	2
3.	ORDER OF PRECEDENCE	3
4.	NOT USED.....	3
5.	DUE DILIGENCE	3
6.	PROVISION OF THE NETWORK.....	4
7.	NOT USED.....	5
8.	SERVICE REQUIREMENTS AND SUPPLIER SOLUTION.....	5
9.	OTHER BENEFICIARIES	5
10.	GENERAL PERFORMANCE STANDARDS	6
11.	CODES AND STANDARDS.....	7
12.	CONSENTS	7
13.	COMPLIANCE WITH AND CHANGES IN LAW	7
14.	STEP-IN RIGHTS.....	8
15.	IMPLEMENTATION PLAN	11
16.	MILESTONES	11
17.	DELAY – GENERAL PROVISIONS	11
18.	DELAY DUE TO SUPPLIER DEFAULT	11
19.	DELAY DUE TO A RELIEF EVENT	12
20.	MILESTONE PAYMENTS AND INVOICING	13
21.	WHOLESALE ACCESS PRICES.....	13
22.	PROJECT MODEL.....	13
23.	STATE AID	13
24.	NOT USED.....	14
25.	NO INDEXATION.....	14
26.	TAX	14
27.	NOT USED.....	15
28.	FINANCIAL DISTRESS.....	15
29.	NOT USED.....	15
30.	NOT USED.....	16
31.	SUPPLIER COSTS BORNE BY THE AUTHORITY	16
32.	SUBCONTRACTORS	16
33.	SMALL AND MEDIUM SIZED ENTERPRISES	17
34.	REPRESENTATIVES	17
35.	GOVERNANCE.....	18
36.	AUDITS	18
37.	REPORTS AND RECORDS	19
38.	REMEDIAL PLAN PROCESS.....	19

39.	CHANGE CONTROL	20
40.	DISPUTES	20
41.	SUPPLIER PERSONNEL	20
42.	NOT USED	22
43.	AUTHORITY ASSETS	22
44.	INTELLECTUAL PROPERTY RIGHTS.....	23
45.	LICENCE GRANTED BY THE SUPPLIER	23
46.	LICENCE GRANTED BY THE AUTHORITY	24
47.	AUTHORITY DATA	24
48.	PROTECTION OF PERSONAL DATA.....	24
49.	FREEDOM OF INFORMATION	25
50.	CONFIDENTIALITY	26
51.	PROHIBITED ACTS AND PREVENTION OF BRIBERY	28
52.	CONFLICTS OF INTEREST	28
53.	CHANGE OF CONTROL	28
54.	WARRANTIES	29
55.	THIRD PARTY IPR INDEMNITY	30
56.	HANDLING OF INDEMNIFIED CLAIMS	30
57.	LIMITATIONS ON LIABILITY	31
58.	INSURANCE	32
59.	FORCE MAJEURE.....	33
60.	TERM OF THIS CONTRACT	34
61.	TERMINATION FOR SUPPLIER DEFAULT	34
62.	TERMINATION FOR AUTHORITY DEFAULT	35
63.	TERMINATION DUE TO FORCE MAJEURE	35
64.	PARTIAL TERMINATION	35
65.	CONSEQUENCES OF TERMINATION OR EXPIRY	35
66.	ASSIGNMENT AND NOVATION	37
67.	WAIVER AND CUMULATIVE REMEDIES	38
68.	RELATIONSHIP OF THE PARTIES	38
69.	PUBLICITY AND BRANDING	38
70.	SEVERANCE	38
71.	FURTHER ASSURANCES	38
72.	ENTIRE AGREEMENT	38
73.	THIRD PARTY RIGHTS.....	39
74.	NOTICES	39
75.	AUTHORITY POWERS.....	40
76.	GOVERNING LAW AND JURISDICTION.....	40

SCHEDULES TO THIS CONTRACT

1. DEFINITIONS
2. SERVICE REQUIREMENTS
3. SUPPLIER MATTERS
 - 3.1 SUPPLIER SOLUTION
 - 3.2 COMMERCIALLY SENSITIVE INFORMATION
 - 3.3 KEY SUBCONTRACTORS
 - 3.4 KEY PERSONNEL
4. IMPLEMENTATION
 - 4.1 IMPLEMENTATION
 - 4.2 AUTHORITY ASSETS
 - 4.3 RELIEF EVENTS
5. FINANCIAL MATTERS
 - 5.1 MILESTONE PAYMENTS AND CLAIMS PROCEDURE
 - 5.2 WHOLESALE ACCESS PRICING
 - 5.3 THE PROJECT MODEL
 - 5.4 ADDITIONAL FUNDING
6. GOVERNANCE AND KEY PROCEDURES
 - 6.1 GOVERNANCE
 - 6.2 CHANGE CONTROL PROCEDURE
 - 6.3 DISPUTE RESOLUTION PROCEDURE
 - 6.4 REPORTS
 - 6.5 REMEDIAL PLAN PROCESS
7. NOT USED

BETWEEN:

- (1) **SURREY COUNTY COUNCIL** of County Hall, Penrhyn Road, Kingston Upon Thames, KT1 2DN ("**Authority**"); and
- (2) **BRITISH TELECOMMUNICATIONS PLC** a company registered in England Wales with number 1800000 whose registered office is at 81 Newgate Street London EC1A 7AJ ("**Supplier**").

WHEREAS:

- (A) The Authority advertised in the Official Journal of the European Union on 14 July 2011 (reference 2011/S 133-221270) its requirement for the supply of Superfast Broadband Services to End User Premises within the County of Surrey and on 2 May 2012 issued an invitation to tender in relation to such requirements;
- (B) On 25 July 2012 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.
- (C) 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, unless the context otherwise requires:
 - 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;
 - 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, 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. CONDITION PRECEDENT

The rights and obligations of each Party under this Agreement shall have no force or effect unless the following conditions have been fulfilled:

- (a) the Authority has received the State Aid Approval and has provided a copy of the same to the Supplier by notice ("Authority's Notice").
 - (b) the Supplier has notified its approval of the State Aid Approval in accordance with this clause.
- 2.1** Upon receipt of the State Aid Approval by the Supplier, the Supplier shall be entitled to provide to the Authority its comments on the same which the Authority shall discuss with the Supplier. In the event that the State Aid Approval is acceptable to the Supplier, the Supplier shall so confirm in writing to the Authority within 20 Working Days of receipt of the Authority's Notice.
- 2.2** The Authority acknowledges that the following items are examples of requirements on suppliers of broadband networks forming conditions of the State Aid Terms which are unlikely to be acceptable to the Supplier:
- 2.2.1 dark fibre unbundling;
 - 2.2.2 extension of PIA to non-broadband services; and
 - 2.2.3 any additional Wholesale Access obligation(s) which are currently not provided for by regulation.

2.3 If the condition referred to in Clause 2(a) above is not completely fulfilled by 1 October 2012 then:

2.3.1 any dates in the Agreement which relate to the Supplier's rights, obligations and liabilities in connection with the Deployed Services shall except in the case of the Implementation Commencement Date automatically move forward in direct proportion to the period beyond 1 October 2012 by which the condition is completely fulfilled; and

2.3.2 the Authority shall take all reasonable steps to ensure that the maximum grant funding is and remains available for any revised dates and shall advise the Supplier promptly as soon as it becomes aware of any risk that the grant funding will be reduced.

2.4 If the condition referred to in Clause 2(a) above is not satisfied within 6 months of the date of signature of this Agreement then, unless the Parties agree to specify a further period, the Agreement will terminate without any liability on the part of either Party.

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 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,
- 5.1.5 made its own enquiries to satisfy itself as to the accuracy and completeness of the Due Diligence Information.
- 5.2** 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** 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** Not used
- 5.6** 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 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, Clauses 15 to 18 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 Not Used.

8.3 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;

8.4 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 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;

(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 provision of, or failure to provide, the Services 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;
- 10.1.4 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; and
- 10.1.5 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; and
- 10.2.2 wherever reasonably practicable, in accordance with all reasonable 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.

10.2.3 at all times performed having due regard to Good Industry Practices and Codes and Standards, Law and any and all planning or other necessary Consents.

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:

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 mobile telecommunication provider appointed under a Funded Mobile Project in relation to the Deployment Services and/or the delivery of services pursuant to that Funded Mobile Project.

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, 20.2 and 31, 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

14.1 The Authority may take action in respect of the Suppliers' performance of the Demand Management services under this clause in the following circumstances:

14.1.1 there is a Default entitling the Authority to terminate in accordance with clause 61 (Termination for Supplier Default);

14.1.2 there is a Default by the Supplier that is materially preventing or materially delaying the performance of the Demand Management services;

14.1.3 Not Used;

14.1.4 a Force Majeure Event occurs which materially prevents or materially delays the performance of the Demand Management services;

14.1.5 where the Supplier is not in breach of its obligations under this Agreement but the Authority considers that the circumstances constitute an emergency;

14.1.6 where a Regulatory Body has advised the Authority that the exercise by the Authority of its rights under this clause is necessary;

14.1.7 because a serious risk exists to the health or safety of persons, property or the environment;

14.1.8 to discharge a statutory duty; and/or

14.1.9 on the occurrence of an Insolvency Event in respect of the Supplier.

Action To Be Taken Prior To Exercise Of The Right Of Step-in

14.2 Before the Authority exercises its right of step-in under this clause 14 it shall permit the Supplier the opportunity to demonstrate to the Authority's reasonable satisfaction within ten (10) Working Days that the Supplier is still able to provide the Demand Management services in accordance with the terms of this Agreement and/or remedy the circumstances giving rise to the right to step-in without the requirement for the Authority to take action.

14.3 If the Authority is not satisfied with the Supplier's demonstration pursuant to clause 14.2, the Authority may:

- 14.3.1 where the Authority considers it expedient to do so, require the Supplier by notice in writing to take those steps that the Authority considers necessary or expedient to mitigate or rectify the state of affairs giving rising to the Authority's right to step-in;
 - 14.3.2 appoint any person to work with the Supplier in performing all or a part of the Demand Management services (including those provided by any Subcontractor); or
 - 14.3.3 take the steps that the Authority considers appropriate to ensure the performance of all or part of the Demand Management services (including those provided by any Subcontractor).
- 14.4** The Supplier shall co-operate fully and in good faith with the Authority, or any other person appointed in respect of clause 14.3.2, and shall adopt any reasonable methodology in providing the Demand Management services recommended by the Authority or that person.

Exercise of the Right of Step-in

- 14.5** If the Supplier:
- 14.5.1 fails to confirm within 10 Working Days of a notice served pursuant to clause 14.3.1 that it is willing to comply with that notice; or
 - 14.5.2 fails to work with a person appointed in accordance with clause 14.3.2; or
 - 14.5.3 fails to take the steps notified to it by the Authority pursuant to clause 14.3.3, then the Authority may take action under this clause either through itself or with the assistance of third party Suppliers, provided that the Supplier may require any third parties to comply with a confidentiality undertaking equivalent to clause 50 (Confidentiality).
- 14.6** If the Authority takes action pursuant to clause 14.5, the Authority shall serve notice ("**Step-in Notice**") on the Supplier. The Step-in Notice shall set out the following:
- 14.6.1 the action the Authority wishes to take and in particular the element(s) of the Demand Management services it wishes to control;
 - 14.6.2 the reason for and the objective of taking the action and whether the Authority reasonably believes that the primary cause of the action is due to the Supplier's Default;
 - 14.6.3 the date it wishes to commence the action;
 - 14.6.4 the time period which it believes will be necessary for the action;
 - 14.6.5 whether the Authority will require access to the Supplier's premises and/or the Supplier Location;
 - 14.6.6 to the extent practicable, the effect on the Supplier and its obligations to provide the Demand Management services during the period the action is being taken.
- 14.7** Following service of a Step-in Notice, the Authority shall:
- 14.7.1 take the action set out in the Step-in Notice and any consequential additional action as it reasonably believes is necessary to achieve (together, the "**Required Action**");

- 14.7.2 keep records of the Required Action taken and provide information about the Required Action to the Supplier;
 - 14.7.3 co-operate wherever reasonable with the Supplier in order to enable the Supplier to continue to provide any Deployed Services in relation to which the Authority is not assuming control; and
 - 14.7.4 act reasonably in mitigating the cost that the Supplier will incur as a result of the exercise of the Authority's rights under this clause 14.
- 14.8** For so long as and to the extent that the Required Action is continuing, then:
- 14.8.1 the Supplier shall not be obliged to provide the Demand Management services to the extent that they are the subject of the Required Action;
 - 14.8.2 subject to clause 14.9, the Authority shall pay to the Supplier the relevant Milestone Payments after the deduction of the Authority's costs of taking the Required Action.
- 14.9** If the Required Action results in:
- 14.9.1 the degradation of any Deployed Services not subject to the Required Action; or
 - 14.9.2 the non-Achievement of a Milestone,
- beyond that which would have been the case had the Authority not taken the Required Action, then the Supplier shall be entitled to an agreed adjustment of the relevant Milestone Payment, provided that the Supplier can demonstrate to the reasonable satisfaction of the Authority that the Required Action has led to the degradation or non-Achievement.
- 14.10** Before ceasing to exercise its step in rights under this clause the Authority shall deliver a written notice to the Supplier ("**Step-Out Notice**"), specifying:
- 14.10.1 the Required Action it has actually taken; and
 - 14.10.2 the date on which the Authority plans to end the Required Action ("**Step-Out Date**") subject to the Authority being satisfied with the Supplier's ability to resume the provision of the Demand Management services and the Supplier's plan developed in accordance with clause 14.11.
- 14.11** The Supplier shall, following receipt of a Step-Out Notice and not less than 20 Working Days prior to the Step-Out Date, develop for the Authority's approval a draft plan ("**Step-Out Plan**") relating to the resumption by the Supplier of the Demand Management services, including any action the Supplier proposes to take to ensure that the affected Services satisfy the requirements of this Agreement.
- 14.12** If the Authority does not approve the draft Step-Out Plan, the Authority shall inform the Supplier of its reasons for not approving it. The Supplier shall then revise the draft Step-Out Plan taking those reasons into account and shall re-submit the revised plan to the Authority for the Authority's approval. The Authority shall not withhold or delay its approval of the draft Step-Out Plan unnecessarily.
- 14.13** The Supplier shall bear its own costs in connection with any step-in by the Authority under this clause 14.

IMPLEMENTATION

15. **IMPLEMENTATION PLAN**

The Supplier shall implement the Deployed Services in accordance with the Implementation Plan, which shall be maintained in accordance with Schedule 4.1 (Implementation).

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 5 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 Regardless of the cause of the Delay, the Supplier shall use all reasonable endeavours to eliminate or mitigate the consequences of the Delay.

18. **DELAY DUE TO SUPPLIER DEFAULT**

18.1 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 a 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 Partial Milestone Achievement Certificate conditional on 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 Partial Milestone Achievement Certificate in respect of a 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 Dates;

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

- 18.4.3 any Milestone Payment associated with the relevant Milestone shall be payable in accordance with paragraph 4 of Schedule 5.1 (Milestone Payments and Claims Procedure).

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 and 19.4 and provided the Supplier has complied with Clause 19.2 and used all 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 Implementation Plan without affecting any Milestone, Milestone Date or Milestone Achievement Criteria then the Parties shall use reasonable endeavours to agree a change to the Implementation Plan in accordance with paragraph 4.3 of Schedule 4.1 (Implementation) without recourse to the Change Control Procedure.

19.7 Following receipt of a Relief Notice, where the consequences of a Relief Event 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 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 Broadband 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 the Parties shall deal with the effect on this Contract of the repayment of the unlawful State aid in accordance with the Change Control Procedure.

24. NOT USED

25. NO INDEXATION

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

26. TAX

26.1 The Milestone Payments are stated exclusive of VAT.

26.2 Not Used.

27. NOT USED

28. FINANCIAL DISTRESS

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	BBB

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 on 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 shall not be unreasonably withheld or delayed).

28.5 Following approval of any Financial Distress Event Remedial Plan pursuant to Clause

28.6 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).

28.7 The Authority's rights set out in this Clause 28 shall be without prejudice to the Authority's termination rights set out in Clause 61.

29. NOT USED

30. **NOT USED**

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

31.1 Where the terms of this Contract expressly provide that any increased costs incurred by the Supplier in performing the Deployed Services shall be borne by the Authority (in full or in part) or otherwise that the matter is to be addressed in accordance with this Clause 31, unless expressly provided otherwise in this Contract the Parties shall use their respective reasonable endeavours to agree (using the Change Control Procedure where applicable) the application of one or more of the following options shall in respect of any such costs:

31.1.1 the Parties shall agree that the increased costs incurred by the Supplier in performing the Deployed Services can be absorbed within the existing Milestone Payment arrangements, for example where the Supplier has incurred less cost in other areas of the Implementation;

31.1.2 the Parties shall agree amendments to the Service Requirements, the Supplier Solution and/or (subject to Clause 20.2) any other term of this Contract;

31.1.3 the Parties shall agree that the Supplier shall bear the increased costs incurred by the Supplier in performing the Deployed Services; and/or

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

SUBCONTRACTING AND SUPPLY CHAIN RIGHTS

32. **SUBCONTRACTORS**

32.1 The Supplier shall not subcontract any Key Service without the Authority's prior written consent, which shall not be unreasonably withheld or delayed. In providing its consent pursuant to this Clause 32.1, the Authority may impose such conditions as the Authority reasonably considers appropriate including a requirement that certain terms and conditions from this Contract are flowed down to the relevant Key Subcontract.

32.2 At the Effective Date the Authority has consented to the engagement of the Key Subcontractors listed in Schedule 3.3 (Key Subcontractors). The Supplier shall provide to the Authority copies of any draft or final Key Subcontracts if required by Authority from time to time.

32.3 The Supplier shall ensure that a provision is included in each Key Subcontract requiring the Key Subcontractor to:

32.3.1 promptly notify the Supplier and the Authority in writing of a Key Subcontractor Financial Distress Event or any fact, circumstance or matter which could cause a Key Subcontractor Financial Distress Event (and in any event, provide such notification within ten (10) Working Days of the date on which the Key Subcontractor first becomes aware of the Key Subcontractor Financial Distress Event or the fact, circumstance or matter which could cause the Key Subcontractor Financial Distress Event); and

32.3.2 co-operate with the Supplier and the Authority in order to give full effect to the provisions of Clauses 28.3 to 28.5, including meeting with the Supplier and the Authority to discuss and review the effect of the Key Subcontractor Financial Distress Event on the

continued performance and delivery of the Deployed Services and/or the security of public subsidy already granted (or to be granted) pursuant to this Contract, and contributing to and complying with the Financial Distress Event Remedial Plan.

- 32.4** The Supplier shall not terminate or materially amend any Key Subcontract to the extent this could adversely affect the Supplier's compliance with its obligations under this Contract, or change the identity of any Key Subcontractor, without the Authority's prior written consent, which shall not be unreasonably withheld or delayed. This provision shall not apply to restrict amendments to Key Subcontracts to the extent these represent changes which ordinarily occur in the normal course of business.
- 32.5** At the Effective Date the Supplier undertakes that it has not entered into (and shall not enter into at any time during the Term) any form of exclusivity arrangement with any Subcontractor that would be detrimental to the level of competition for any other broadband project that may be procured by the Authority or other Local Body.
- 32.6** The Authority shall have the right to require the Supplier to cease to use any Subcontractor in connection with this Contract where the Subcontractor's failure has led to material Default of this Contract by the Supplier.

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 (including SMEs) commercial, financial and technical terms and conditions that are:
 - (a) where appropriate, no more onerous than the relevant terms and conditions set out in this Contract; and
 - (b) where appropriate and proportionate to the nature, size and capacity of a proposed Subcontractor and having regard to the services to be subcontracted, less onerous than the relevant terms and conditions set out in this Contract.
- 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).
- 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. AUDITS

36.1 Subject to Clause 36.7, not more than twice in any 12 month period during, and for a period of 12 months following the Term, the Authority, the Framework Authority and/or the Department for Communities and Local Government may (or may appoint a third party to) conduct an audit in accordance with this Clause 36:

36.1.1 for the purposes of reviewing and confirming compliance with the terms of this Contract (including with respect to Qualifying Capital Expenditure);

36.1.2 in connection with the Authority's accounts; and/or

36.1.3 to carry out an 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,

with the date of such audit to be agreed with the Supplier (such agreement not to be unreasonably withheld or delayed).

36.2 The Authority shall use reasonable endeavours to ensure that the conduct of each audit does not unreasonably disrupt the Supplier or delay the performance of this Contract.

36.3 Subject to the Authority's obligations of confidentiality and Clause 36.4, the Supplier shall provide the Authority (and/or its agents or representatives) with all such reasonable co-operation and assistance as is reasonably necessary in relation to each audit, including provision of:

36.3.1 such relevant information requested by the Authority within the permitted scope of the audit;

36.3.2 reasonable access to any sites 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 36.3.1.

36.4 The Parties agree that:

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

36.4.2 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 Authority in advance of the relevant inspection.

36.5 Subject to Clause 36.7, the Authority shall provide at least 15 Working Days' notice of its intention to conduct an audit.

36.6 The Parties agree that they shall bear their own respective costs and expenses incurred in respect of compliance with their obligations under this Clause 36, unless the audit identifies a material Default by the Supplier, in which case the Supplier shall reimburse the Authority for such part of the Authority's reasonable costs incurred in the course of the audit as is proportionate to the material Default identified.

36.7 Where:

36.7.1 an audit is imposed on the Authority by a Regulatory Body, the audit shall be carried out by the Authority or the relevant Regulatory Body (or their respective agents or representatives) in accordance with this Clause 36; and/or

36.7.2 as a consequence of any audit carried out pursuant to this Clause 36 the Authority or, where applicable, the relevant Regulatory Body (or their respective agents or representatives) reasonably considers that a re-audit is required, such re-audit may be carried out in accordance with this Clause 36,

save that there shall be no restriction on the frequency of such audits and the Authority or, where applicable, the relevant Regulatory Body (or their respective 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 (or, where applicable, re-audit) pursuant to this Clause 36.7.

37. REPORTS AND RECORDS

37.1 The Supplier shall produce and provide to the Authority the reports set out in Schedule 6.4 (Reports) along with such reasonable additional ad hoc reports concerning the operation of this Contract as the Authority may reasonably require from time to time.

37.2 The Supplier shall keep and maintain until seven (7) years after the termination or expiry of this Contract or such longer period if required by Law:

37.2.1 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

37.2.2 such other reasonable and complete records concerning the provision of the Deployed Services and the operation of this Contract as may reasonably be required in accordance with Good Industry Practice (which the Supplier shall provide to the Authority upon reasonable request).

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, the Remedial Plan Process shall apply where either: the Supplier commits a material Default and such Default is capable of remedy, or the Remedial Plan Process is stated to 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 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 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.

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, EQUIPMENT 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 Relevant Convictions

41.2.1 The Supplier shall ensure that no person who discloses that he has a Relevant Conviction, or who is found by the Supplier to have any Relevant Conviction (whether as a result of a police check or through the Criminal Records Bureau procedures or otherwise), is employed or engaged in the provision of any part of the Deployed Services without the Authority's prior and express written consent (which shall not be unreasonably withheld or delayed).

41.2.2 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 agreed otherwise by the Authority in writing):

(a) carry out a policy check with the Criminal Records Bureau or other relevant government department;

- (b) conduct thorough questioning regarding any Relevant Convictions; and
- (c) ensure a police check and such other checks as may be carried out through the Criminal Records Bureau are completed,

and the Supplier shall not (and shall ensure that a Subcontractor shall not) engage or continue to employ in the provision of the Deployed Services any person who has a Relevant Conviction or what would reasonably be regarded as an inappropriate record.

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 (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 (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 (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 in compliance with a proper and adequate security policy which the Supplier shall employ in the provision of the Deployed Services.

42. **NOT USED**

43. AUTHORITY ASSETS

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

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

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

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

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

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

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

43.4.4 not move any Authority Asset from any location without the Authority's prior written consent (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, encumbrance, 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
- 43.4.12 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:
 - (a) notify the Authority if the Authority Assets need to be maintained and/or repaired; and
 - (b) permit the Authority and/or its contractors to enter the relevant Supplier Locations in response to the notification under Clause 43.4.12(a) 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, 46 and 55, 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 for such period agreed between the parties after 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 to the extent necessary for the purpose of:
 - 45.1.1 receiving and benefiting from the Deployed Services, the Authority's rights and the Supplier's obligations provided under this Contract;
 - 45.1.2 the Authority performing its responsibilities:

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

46. LICENCE GRANTED BY THE AUTHORITY

46.1 Subject to Clause 50 the Authority grants to the Supplier a royalty-free, non-exclusive, non-transferable licence to copy, distribute or otherwise use (and for the Supplier to permit its Subcontractors to copy, distribute or otherwise use) the Authority IPR and the Authority Data, solely to the extent necessary for the performance of the Supplier's obligations under this Contract.

46.2 Upon the termination or expiry of this Contract, the licence referred to in Clause 46.1 shall terminate automatically and the Supplier shall deliver to the Authority all Authority

IPR and Authority Data in accordance with Clause 65.2. If upon the expiry of this Contract the Supplier reasonably considers that it requires an ongoing licence to use any Authority IPR and/or Authority Data then the grant of any such ongoing licence shall be at the sole discretion of the Authority and shall be subject to the Authority's written agreement to commercially acceptable ongoing licence terms.

47. AUTHORITY DATA

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

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

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

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

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

48. PROTECTION OF PERSONAL DATA

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

48.2 The Party that is the Data Processor shall:

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

- 48.2.2 Process the Personal Data only to the extent, and in such manner, as is necessary for the performance of this Contract or as is required by Law or any Regulatory Body;
- 48.2.3 implement appropriate technical and organisational measures to protect the Personal Data against unauthorised or unlawful processing and against accidental loss, destruction, damage, alteration or disclosure. These measures shall be appropriate to the harm which might result from any unauthorised or unlawful Processing, accidental loss, destruction or damage to the Personal Data and having regard to the nature of the Personal Data which is to be protected;
- 48.2.4 notify the other Party (within five (5) Working Days) if it receives:
 - (a) a request from a Data Subject to have access to that person's Personal Data; or
 - (b) a complaint or request relating to the other Party's obligations under the Data Protection Legislation;
- 48.2.5 provide the other Party with such cooperation and assistance as is reasonably necessary in relation to any complaint or request made, including by:
 - (a) providing the other Party with full details of the complaint or request;
 - (b) complying with a data access request within the relevant timescales set out in the Data Protection Legislation and in accordance with the other Party's reasonable instructions;
 - (c) providing the other Party with any Personal Data it holds in relation to a Data Subject (within the reasonable timescales required by the other Party); and
 - (d) providing the other Party with any reasonable additional information requested by the other Party;
- 48.2.6 not Process or otherwise transfer any Personal Data outside the European Economic Area without the other Party's prior written consent. As part of the provision of any such consent the other Party shall be entitled to impose any additional terms relating to the transfer and use of any Personal Data outside the European Economic Area.

48.3 Each Party shall comply with its applicable obligations under the Data Protection Legislation and shall not perform its obligations under this Contract in such a way as to cause the other Party to breach any of its applicable obligations under the Data Protection Legislation.

49. FREEDOM OF INFORMATION

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

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

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

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

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

49.3 The Authority:

49.3.1 shall consult with the Supplier to inform its decisions regarding any exemptions as they may relate to any Commercially Sensitive Information; and

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

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

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

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

50. CONFIDENTIALITY

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

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

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

50.2 This Clause 50 shall not apply to the extent that:

50.2.1 such disclosure is a requirement of Law placed upon the Party making the disclosure, including any requirements for disclosure under the FOIA or the Environmental Information Regulations pursuant to Clause 49;

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

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

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

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

- 50.3** Notwithstanding any other term of this Contract, the Supplier gives its consent for the Authority to publish this Contract in its entirety (but with any information which is exempt from disclosure in accordance with the provisions of the FOIA redacted), as this Contract may have been varied at the relevant time, to the general public. The Supplier shall assist and cooperate with the Authority to enable the Authority to publish this Contract. For the purpose of this Clause 50.3 the Authority shall consult with the Supplier to inform its decision regarding any FOIA exemptions relating to the Commercially Sensitive Information but the Authority shall have the final decision in its absolute discretion.
- 50.4** The Supplier may only disclose the Authority Confidential Information to the Subcontractors and Supplier Personnel who are directly involved in the performance of this Contract and who need to know the information for such purpose.
- 50.5** The Supplier shall ensure that Authority Confidential Information is used only for the purposes of this Contract.
- 50.6** Nothing in this Contract shall prevent the Authority from disclosing the Supplier Confidential Information:
- 50.6.1 to any Crown Body where such disclosure is in connection with this Contract. All such Crown Bodies receiving such Confidential Information shall be entitled to further disclose the Confidential Information to other Crown Bodies where such disclosure is in connection with this Contract on the basis that the information is confidential and is not to be disclosed to any other third party;
 - 50.6.2 to any other Local Body where such disclosure is in connection with this Contract, provided that the Authority shall not be permitted to disclose to any other Local Body the subset of Commercially Sensitive Information identified in Schedule 3.2 (Commercially Sensitive Information) as being not for disclosure to other Local Bodies;
 - 50.6.3 to any consultant, supplier or other person engaged by the Authority in relation to this Contract or any person conducting an Official Assurance Review;
 - 50.6.4 for the purpose of the examination and certification of the Authority's accounts; or
 - 50.6.5 for any examination pursuant to Section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which the Authority has used its resources.
- 50.7** The Authority shall ensure that any body or individual to whom the Supplier Confidential Information is disclosed pursuant to Clause 50.6 is made aware of the Authority's obligations of confidentiality 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, use all reasonable endeavours to 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 pecuniary or personal interests of the Supplier and the duties owed to the Authority under this Contract of which it becomes aware.

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

53. CHANGE OF CONTROL

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

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

53.3 Not Used

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

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

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

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

- (a) national security or the level of threat of criminal activity;
- (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 necessary rights in and to the IPR or any other materials made available by the Supplier and/or the Subcontractors to the Authority 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;
 - 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 (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 (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:
- 56.4.1 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;
 - 56.4.2 any such action by the Indemnifying Party does not have an adverse effect on the performance of this Contract or the Indemnified Party;
 - 56.4.3 there is no additional cost to the Indemnified Party; and
 - 56.4.4 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 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, shall be unlimited;

57.3

57.4 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:

57.5

57.6 Subject to Clauses 57.1 and 57.5, neither Party will be liable to the other Party for:

- 57.6.1 any indirect, special or consequential loss or damage; or
- 57.6.2 any loss of profits, turnover, business opportunities or damage to goodwill (whether direct or indirect).
- 57.7 Subject to Clause 57.2, the Authority may, amongst other things, recover as a direct loss:
 - 57.7.1 any additional operational and/or administrative costs and expenses arising from the Supplier's Default;
 - 57.7.2 any wasted expenditure or charges rendered unnecessary and/or incurred by the Authority arising from the Supplier's Default; and
 - 57.7.3 the additional cost of procuring Replacement Services for the remainder of the Term.
- 57.8 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.
- 57.9 Nothing in this Clause 57 shall act to reduce or affect a Party's general duty to mitigate its loss.

58. **INSURANCE**

- 58.1 The Supplier shall maintain the Required Insurances in full force and effect at all times during the Term until the date which is six years following the end of the Term.
- 58.2 Nothing in this Contract shall oblige the Supplier to take out or maintain insurance or insurance cover which is unavailable in the insurance market with reputable insurers.
- 58.3 The Required Insurances shall be maintained on terms that are as favourable to those generally available to a prudent Supplier in respect of risks insured in the international insurance market.
- 58.4 The Required Insurances shall be maintained with a reputable insurance company.
- 58.5 The Supplier shall procure that nothing is done which would entitle the relevant insurer to cancel, rescind or suspend any of the Required Insurances or cover, or to treat any of the Required Insurances, cover or claim as avoided in whole or part. The Supplier shall use reasonable endeavours to notify the Authority (subject to third party confidentiality obligations) as soon as practicable when it becomes aware of any relevant fact, circumstance or matter which has caused, or is reasonably likely to provide grounds to, the relevant insurer to give notice to cancel, rescind, suspend or avoid any Insurance, or any cover or claim under any Insurance in whole or in part.
- 58.6 The Authority may purchase (if possible) any of the Required Insurances or equivalent protection which the Supplier has failed to maintain in full force and effect pursuant to this Contract, provided that the Authority has given the Supplier at least 30 days notice of its intention to do so and the opportunity to rectify the failure. The Authority may recover the premium and other costs incurred in doing so as a debt due from the Supplier.
- 58.7 On request from the Authority, the Supplier shall, not more than 10 Working Days after the Effective Date, and within 15 Working Days after the renewal of every Insurance, forward a letter from its insurance brokers who arranged the Required

Insurances confirming the validity of and timely payment of premiums in respect of the Required Insurances.

58.8 Required Insurances:

Class	Minimum Sum Insured
Public Liability	£ 10 million
Employers Liability	£ 10 million
Professional Indemnity	£ 5 million

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 4.8 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;

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

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

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 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 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; and

(d) the Supplier shall pay to the Authority all amounts standing to the credit of the Investment Fund;

- (e) the Parties shall consult with the European Commission and the Secretary of State for Culture, Olympics, Media and Sport acting through the Department for Culture, Media and Sport (or any successor body) 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);

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 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 Secretary of State for Culture, Olympics, Media and Sport acting through the Department for Culture, Media and Sport (or any successor body) 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);

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 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 Secretary of State for Culture, Olympics, Media and Sport acting through the Department for Culture, Media and Sport (or any successor body) 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);

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; and paragraphs 4.10, 4.11, 5.4 and 7 of Schedule 5.1 (Milestone Payments and Claims Procedure).

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 a form satisfactory to the Authority from the parent company of the assignee or novatee).

66.2 The Authority may:

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

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 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 (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 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
Programme Director Superfast Broadband Project Surrey County Council County Hall Penrhyn Road Kingston upon Thames Surrey KT1 2DN	Programme Manager BDUK Surrey BT Centre 81 Newgate Street London EC1A 7AJ

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 the following notices only, 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.

SIGNED BY the parties on the date first appearing above to indicate their agreement to the above terms

EXECUTION PAGE

Executed and delivered as a deed by affixing the
common seal of **SURREY COUNTY COUNCIL**

COMMON SEAL

In the presence of :

.....
(Authorised Signatory)

.....(Signature)

.....(Date)

Executed and delivered as a deed by affixing the
common seal of **BRITISH
TELECOMMUNICATIONS PLC**

COMMON SEAL

In the presence of :

.....
(Director)

.....(Signature)

.....(Date)