



Norfolk County Council

Broadband Delivery Framework

Call Off ITT Part 3:

Call Off Contract

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1 Call Off Contract

1.1 Terms of the Call Off Contract

1.1.1 The Call Off Contract shall, at the point of contract signature, comprise:

- a) The Template Call Off Contract, amended as detailed in the table at Appendix 1 to this Part 3 of the ITT; and
- b) Those additional materials required to complete corresponding Call Off Contract Schedules – including the Supplier Solution, Project Model, Key Personnel and Commercially Sensitive Information materials.

Appendix 1: Required Local Amendments to the Template Call-Off Contract

The table below summarises the amendments to the Template Call-Off Contract which have been included to reflect the local priorities and issues. The table below should be read in conjunction with the Template Call-Off contract.

CLAUSE / PARAGRAPH	TEMPLATE NOTE IN TEMPLATE CALL OFF CONTRACT	AMENDMENT PROPOSED BY LOCAL AUTHORITY
Terms and Conditions		
Parties' details		[Parties' details (full name, applicable registration/identification details) to be included as part of contract finalisation.]
Signature dates		[Signature dates to be inserted at time of signature.]
Dates in recitals		[Dates in recitals to be added as part of contract finalisation.]
Clause 2.1.1	Template Note: Authority to include any conditions precedent if required, e.g. legal opinion that the Guarantee (if required) is enforceable in the jurisdiction of the Parent Company, if based overseas. If there are no conditions precedent then the Clause 2 heading should be replaced with "NOT USED"	This clause will be marked "NOT USED"
Clause 10.2	Template Note: The Authority should consider whether any other general service requirements are needed, e.g. in relation to carbon emissions, night time working, visual impact of installations and provision of information to the public	No amendment required.
Clause 14	Template Note: If the Network is to be designed such that it can be isolated from the Supplier's wider infrastructure and business then for continuity of Deployed Service reasons, it may be appropriate for the Authority to have a right to take over (on a temporary basis) the performance of any or all of the Deployed Services itself or appoint a third party to do so in the following circumstances <i>[continued]</i>	This clause will be marked "NOT USED"

CLAUSE / PARAGRAPH	TEMPLATE NOTE IN TEMPLATE CALL OFF CONTRACT	AMENDMENT PROPOSED BY LOCAL AUTHORITY
Clause 24	Template Note: Schedule 5.4 (Additional Funding) contains guidance for Local Bodies should they wish to use non-DCMS third party funding in connection with a particular Call Off Contract. An operative provision may need to be included here which cross refers to Schedule 5.4, to the extent that additional third party funding is used. If non-DCMS third party funding is not used then the Clause 24 heading should be replaced with "NOT USED"	This clause will be marked "NOT USED"
Clause 28	Template Note: If a Guarantee is being provided in relation to a Call Off Contract, the Authority may decide that it is appropriate for the Parent Company and each Key Subcontractor (and not the Supplier) to be subject to the financial distress provisions below	No amendment required.
Clause 28.1	Template Note: If a Supplier does not have credit ratings, it may be appropriate for appropriate financial ratios to be used instead of D&B ratings. This clause may be Supplier specific, to the extent of specifying the applicable referenced agency/rating	[Credit rating details to be included as part of contract finalisation.]
Clause 29	Template Note: The Authority shall be entitled to require the provision of a Guarantee in relation to its Call Off Contract where the Authority considers a Guarantee is required due to the financial circumstances of the Supplier <i>[continued]</i>	This clause will be marked "NOT USED"
Clause 30	Template Note: The Authority shall be entitled to require the provision of a Performance Bond in relation to its Call Off Contract where the Authority considers a Performance Bond is required due to the financial circumstances of the Supplier <i>[continued]</i>	This clause will be marked "NOT USED"
Clause 31	Template Note: If the Authority elects to incorporate contingency arrangements in its Call Off Contract pursuant to paragraph 16 of Schedule 5.1 (Milestone Payments and Claims Procedure), then it may be appropriate for Clause 31 to be amended by adding recourse to these arrangements to the list of options above	No amendment required
Clause 43	Template Note: The appropriateness of the default Authority Assets provisions below will need to be reviewed within the specific context	Clause 43 to be deleted and replaced with the words

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	of any Authority Assets that may be used under a particular Call Off Contract	<i>"There are no relevant Authority Assets"</i>
Clause 45.1.2	Template Note: It may be appropriate for the licence to use Supplier IPR to extend beyond the Term, depending on the nature of the Supplier IPR in relation to particular Call Off Contracts	No amendment required.
Clause 49.3.1	Template Note: The Authority should accept a consultation obligation in respect of the Commercially Sensitive Information only if Schedule 3.2 can be agreed in a form which refers to a limited set of specific information that is genuinely commercially sensitive to the Supplier	No amendment required.
Clause 50.3	Template Note: The Authority should accept a consultation obligation in respect of the Commercially Sensitive Information only if Schedule 3.2 can be agreed in a form which refers to a limited set of specific information that is genuinely commercially sensitive to the Supplier	No amendment required.
Clause 50.6.2	Template Note: There may be a subset of particularly sensitive Commercially Sensitive Information which the Supplier may not want disclosed to another Local Body	No amendment required, the words in square brackets will be included. However, the Contractor is asked to particularly consider this sub-set distinction in the drafting of Schedule 3.2 (CSI) so that a workable level of information may be shared with the Council's funding partners (the Other Beneficiaries).
Clause 53.1	Template Note: Parent Company wording needed only if the Supplier is required to procure a Guarantee in relation to a particular Call Off Contract	Wording "[or the Parent Company]" to be deleted.
Clause 53.3	Template Note: Clause needed only if the Supplier is required to procure a Guarantee in relation to a particular Call Off Contract	This clause will be marked "NOT USED".
Clause 57.2.2	Template Note: Authority to consider the scope of potential Supplier liability for damage to Authority or third party property, and any potential loss that may be suffered (or liability that may be incurred) by the Authority as a consequence of such damage. <i>[continued]</i>	The figure of £10Million will be added here.

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<p>Clause 58</p>	<p>Template Note: The Authority should consider whether it requires the Supplier to maintain any specific types of insurance and, if so, the basis upon which such insurance should be maintained and the nature of any associated rights needed by the Authority (e.g. notice of insurance claims). The Authority should seek specialist insurance advice if it considers that specific insurance may be needed. If specific insurance is not required then the Clause 58 heading should be replaced with "NOT USED"</p>	<p>Clause 58 will be worded as follows:</p> <p><i>58.1 The Supplier shall maintain the Required Insurance in full force and effect at all times from the Effective Date until the Expiry Date;</i></p> <p><i>58.2 The Required Insurance shall be maintained on terms that are as favourable to those generally available to a prudent contractor in respect of risks insured in the international insurance market.</i></p> <p><i>58.3 The Required Insurance shall be maintained with an independently regulated insurance company of good financial standing properly licensed to underwrite the Required Insurance.</i></p> <p><i>58.4 The Supplier shall procure that nothing is done which would entitle the relevant insurer to cancel, rescind or suspend any Required Insurance or cover, or to treat any Required Insurance, cover or claim as avoided in whole or part. The Supplier shall use reasonable endeavours to notify the Authority (subject to third party confidentiality obligations) as soon as practicable when it becomes aware of any relevant fact, circumstance or matter which has caused, or is reasonably likely to provide grounds to, the relevant insurer to give notice to cancel, rescind, suspend or avoid any Required Insurance, or any cover or claim under any Required Insurance in whole or in part.</i></p> <p><i>58.5 The Authority may purchase (if possible) any of the Required Insurance which the Supplier has failed to maintain in full force and effect pursuant to this Agreement. The Authority may recover the premium and other costs incurred in doing so as a debt due from the Supplier.</i></p> <p><i>58.6 The Supplier will as soon as reasonably practicable, following the Authority's request, provide the Authority with a</i></p>

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		<p><i>certificate of insurance, containing all relevant information of its insurance cover to verify its compliance with this Clause 58.</i></p> <p>A new definition will be added to Schedule 1</p> <p><i>“Required Insurance” means public liability insurance to a minimum cover of £10 million for any single claim;</i></p>
Clause 61.1.3	Template Note: The Longstop Date concept should be used by the Authority only to the extent there are timing constraints or dependencies on the availability of funding for the Achievement of relevant Milestones	This clause will be used. The only Longstop Date will be associated with the Milestone that will trigger expenditure of the New Anglia Local Enterprise Partnership Limited (LEP) funding. This funding needs to be spent by 31 st March 2016.
Clause 61.1.4	Template Note: Guarantor wording needed only if the Supplier is required to procure a Guarantee in relation to a particular Call Off Contract	The words in square brackets “[and/or the Guarantor]” shall be deleted.
Clause 65.3	Template Note: If the Network and the Deployed Services will be designed such that they can be taken over by another operator, then the drafting will need to provide for any necessary exit arrangements including (e.g.) the procurement of a replacement supplier, the maintenance of asset registers, the acquisition of assets and the ongoing use of Supplier IPR. The presumption is that in most cases this will not be possible and so standard exit drafting (supporting by an exit schedule) has not been included <i>[continued]</i>	No amendment required.
Clause 66.1	Template Note: Authority to consider if specific conditions need to be stipulated in respect of any potential excess profits arising from the sale of the Network by the Supplier	The second sentence of clause 66.1 to read as follows: “.....or delayed). In circumstances where the Authority gives its prior written consent it may stipulate certain conditions of such consent (such as reasonable requirements for sharing of profits, at such level as the Parties shall use their respective reasonable endeavours to agree is reasonable from such a disposal or the provision of a guarantee

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		substantially in a form satisfactory to the Authority from the parent company of the assignee or novatee).
Clause 74.1		References to service by fax to be deleted. Supplier and Authority details for contract notices to be populated as part of contract finalisation. For the Authority, these details will be: Programme Director, Better Broadband for Norfolk, Norfolk County Council, County Hall, Martineau Lane, Norwich, NR1 2DH, email betterbroadbandfornorfolkproject@norfolk.gov.uk
Clause 76	Template Note: This Contract will need to be amended where applicable if it is to be governed by Scottish or Northern Irish law	No amendment required.
Schedule 1 – Definitions		
“Expiry Date”	Template Note: This should be expressed here at the Effective Date as a calendar date fixed at [7] years from the planned Full Service Commencement Date (which the Supplier may replicate in the Project Plan for clarity) Template Note: This needs to be a minimum period of 7 years to comply with State aid guidance	[the blank date to be completed on finalisation based on Full Service Commencement Date as per Implementation Plan plus seven years as per template note]
“Full Service Commencement Date”		Definition to read “the date on which the final M2 Milestone specified in the Implementation Plan has been Achieved”
“Guarantee”		Definition to be deleted
“Insolvency Event”	Template Note: Parent Company wording in square brackets needed only if a Guarantee is required	Wording in square brackets to be deleted.
“ITT”		[Date of ITT issue to be added]
“Longstop Date”	Template Note: See Clause 61.1.3 and the associated Template Note	This definition is to be used (see note on clause 61.1.3)
“Other”	Template Note: Authority to list any other local bodies it may be	The following shall be specified:

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Beneficiary	contracting on behalf of	North Norfolk District Council Broadband District Council South Norfolk District Council Breckland District Council Kings Lynn and West Norfolk Borough Council New Anglia Local Enterprise Partnership Limited
"Parent Company"	Template Note: Definition needed only if a Guarantee is required	Definition to be deleted
"Performance Bond"	Template Note: Definition needed only if a Performance Bond is required	Definition to be deleted
"Premise cap"	[Template Note: Local Bodies should agree an appropriate £ cap with the Supplier during the mini-competition, which would be triggered only by the most expensive premises in the Coverage Area. Local Bodies are encouraged to discuss with the Supplier how the cap level applied has sufficient cost headroom to ensure the cap would be applied only in only exceptional cases]	To be specified as £1,700
"Speed and Coverage Template"		[appendix number reference to be added]
Schedule 2 – Service Requirements		
2.3.3	Template Note: 2.3.3 [community solutions to the following communities in the Coverage Area: (a) [•] [Template Note: If applicable, to reflect to the community requirements in the Authority's ITT]	2.3.3 will be marked not used

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Schedule 3.1 – Supplier Solution		
Para 2	<p>Template Note: The Supplier Solution once agreed with the Authority during the relevant Call Off Procedure will be appended here. The Supplier will use its Reference Supplier Solution set out in the Framework Agreement as the basis for development of the Supplier Solution during the Call Off Procedure, in accordance with Schedule 3 (Reference Supplier Solution) of the Framework Agreement</p> <p>Template Note: The Speed and Coverage Template, comprising part of the Supplier Solution, is agreed during the relevant Call Off Procedure <i>[continued]</i></p>	[To be populated from tender materials, subject to contract finalisation.]
Schedule 3.2 –Commercially Sensitive Information		
Para 2	Template Note: This should be a list of specific items/categories of information which the Supplier considers to be of a commercially sensitive nature relating to the Supplier, its IPR or its business. General and/or vague statements should not be accepted by the Authority	[To be populated from tender materials, subject to contract finalisation.]
Schedule 3.3 – Key Sub-contractors		
Para 2		[To be populated from tender materials, subject to contract finalisation.]
Schedule 3.4 – Key Personnel		
Appendix		[To be populated from tender materials, subject to contract finalisation.]
Schedule 4.1 – Implementation		
Appendix 2	Template Note: The Implementation Plan is to be developed as part of the Call Off Procedure and included here. This should identify the Phases (including the relevant start and end dates), Milestones (including their scope), Milestone Dates, any applicable Longstop Dates and other key high level data	[To be populated from tender materials, subject to contract finalisation.]

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	Template Note: Reference to the initial Project Plan to be inserted	
Appendix 4	Template Note: To be developed by the Supplier and agreed by the Parties as part of the Call Off Procedure and inserted/referenced here	[To be populated from tender materials, subject to contract finalisation.]
Schedule 4.2 – Authority Assets		
Appendix 1	Template Note: If any assets are to be fully transferred to the Supplier, this may be dealt with in a separate asset transfer agreement	Schedule 4.2 to be marked NOT USED
Schedule 4.3 – Relief events		
Appendix		[To be populated from tender materials, subject to contract finalisation.]
Schedule 5.1 – Milestone payments and claims		
Para 1.2	Template Note: This paragraph 1.2 can be removed if non-DCMS third party funding is not used	This paragraph will be marked NOT USED
Para 3.5		<p>The following details to be added:</p> <p>Programme Director, Better Broadband for Norfolk, Norfolk County Council, County Hall, Martineau Lane, Norwich, NR1 2DH, email betterbroadbandfornorfolkproject@norfolk.gov.uk</p>
Para 10.3	<p>Template Note: DCMS advises Local Bodies to consider whether their project is likely to have a high level of subsidy payment relative to the Supplier investment, and that in greater-than-expected Take-up scenarios, the resultant low proportion of profits deriving from additional Take-up that would be retained by the Supplier (as calculated for this limb of the claw-back formula) may not cover the additional capital investment necessary to serve these End Users</p> <p><i>[continued]</i></p>	This paragraph will be used unamended.

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Para 14	Template Note: If, during the Call-Off process, a Local Body wishes to agree a 'stretch-target' against the Take-up assumptions set out by a Supplier in its originally bid Project Model (in order to achieve higher levels of overall investment), a mechanism would also be included to enable sharing of associated increased risk <i>[continued]</i>	This paragraph will be marked NOT USED
Para 16	Template Note: A Local Body may incorporate contingency arrangements in its Call-Off – i.e. an identified contingency sum (to be funded by the respective Parties on an agreed and specified basis) for funding any additional cost exposure arising from application of the Survey Assumptions. The detail of those contingency arrangements would be identified in the applicable Call-Off ITT and set out in the awarded Call Off Contract Schedule 5.1.	This paragraph will be marked NOT USED
Appendix 1	Template Note: The Milestone Payments included in this Appendix must be consistent with the following and with Schedule 4.1 Appendix 1 <i>[continued]</i>	[to be populated from tender response]
Appendix 2	Template Note: The table below reflects general guidance only. For the Call-Off concerned a specific list of expenditure items comprising Permitted Expenditure must be included in this Appendix <i>[continued]</i>	We do not intend to amend the standard wording.
Appendix 3		[To be populated from tender materials, subject to contract finalisation.]
Schedule 5.2 – Wholesale Access Pricing		
Schedule 5.3 – Project Model		
Appendix 1	Template Note: The Supplier must provide a statement on its Project Model. This statement must be signed by a suitably qualified finance representative or the external auditor of the Supplier	[to be added on contract finalisation]
Schedule 5.4 – Additional funding		

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Para 2	Template Note: This template Call Off Contract deals only with the impact of funding provided by DCMS and the Authority. If the Authority obtains additional grant funds from other sources, then any additional contract terms which may be required as a consequence of the provision of such funding should be set out in this Schedule. This should include details of the relevant permitted expenditure for the purposes of the definition of Qualifying Capital Expenditure. Please see below for further guidance <i>[continued]</i>	This Schedule will be marked NOT USED
Schedule 6.1 – Governance		
Appendix 1	See " <i>[To be inserted]</i> " in table Template Note: The table of governance meetings outlined above are the baseline for a Call- Off Contract. However, the Authority may require amendments to these arrangements	Please see draft Appendix One below  Appendix one.doc
Schedule 6.2 – Change Control Procedure		
Para 1.2.2	Template Note: It is envisaged that Schedule 3.1 may identify parts of the Supplier Solution that the Authority and the Supplier agree can be changed by written agreement. To be considered by the Authority during the relevant Call Off Procedure	Paragraph 1.2.2 to be marked NOT USED
Schedule 6.3 Dispute Resolution Procedure		
Para 2.4	Template Note: Text in square brackets in this paragraph (and associated square bracketed arbitration text elsewhere in this Schedule) to be removed if the Authority does not include arbitration	[Wording in square brackets to be retained]
Para 3.3	Template Note: The Authority should specify appropriate levels for the Escalation Process in the Call Off Contract issued with the ITT	For the Authority to be specified as Level 1 – Programme Director

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		Level 2 – Managing Director. For the Supplier, to be confirmed during contract finalisation.
Para 5		No amendment required (Arbitration to be retained).
Para 5.3	Template Note: The Authority may consider amending these provisions so that arbitration is compulsory in order to maintain protection under the New York Convention for Enforcement. Appropriate dispute resolution guidance should be sought on this point	No amendment required
Schedule 6.4 Reports		
Para 2: Report C9	Template Note: The benefit and economic impact information to be reported should be further identified above in respect of the specific Call-Off	C9 line to be marked NOT USED
Schedule 6.5 Remedial Plan Process		
		No amendment required
Schedule 7 Form of Guarantee		
	Template Note: This Schedule will be used only if the Authority requires the provision of a Guarantee in relation to a particular Call Off Contract	Schedule to be marked NOT USED