

## Norfolk Table of amendments to Call-off Contract for Part 3 ITT

**29 June 2012 – Final**

**Notes:**

1. The purpose of this document is to provide a ready reference guide to the amendments Norfolk has made to the template Call off Terms and Conditions.
2. A full set of the draft terms and conditions documents are attached. These show all amendments from the template document tracked for ease of reference. These are taken from the drafts released to bidders on the 21 June 2012, and that form part of the Framework Agreement

Clause/ Paragraph	Template Note	Proposed amendment	Link to ITT /notes
Parties details		Add Norfolk County Council's name and address, and Logo as appropriate.	N/a
2.1	[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 will be marked "Not Used"	N/a
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 is proposed here, the template note is deleted	N/a
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	No amendment is proposed here. This clause will be marked [not used]	N/a

	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 [continued]		
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]. If additional funding is brought in via change control then the additional terms will be introduced via that process when they are known.	n/a
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]	This amendment will not be made. The template note is deleted	n/a
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]	Drafting note to be added Table to be populated on contract finalisation	n/a
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	A Parent Company Guarantee will only be required and clause 29 will only be used in the event there is a change of the information provided in the pre-qualification questionnaire	N/a

	<p>considers a Guarantee is required due to the financial circumstances of the Supplier. If a Guarantee is required and the Parent Company is based overseas, the Authority should consider whether a legal opinion from a law firm from the overseas jurisdiction as to the enforceability of the Guarantee in that jurisdiction is required. If a legal opinion is required the Contract will need to be amended to provide for this. If a Guarantee is not required then the Clause 29 heading should be replaced with "Not Used"]</p>	<p>and this requires a parent company guarantee be given. Otherwise clause 29 will be marked "[Not used]"</p>	
30	<p>[Template Note: The Authority shall be entitled to require the provision of a Performance Bond in relation to its Call Off Contract where the Authority considers a Performance Bond is required due to the financial circumstances of the Supplier. If a Performance Bond is not required then the Clause 30 heading should be replaced with "Not Used"]</p>	<p>A Performance Bond will only be required and clause 30 will only be used in the event there is a change of the information provided in the pre-qualification questionnaire and this requires a performance bond be given. Otherwise clause 30 will be marked "[Not used]"</p>	n/a
31	<p>[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]</p>	<p>There will be no contingency arrangements. The template note is deleted.</p>	n/a
43	<p>[Template Note: The appropriateness of the default Authority Assets provisions below will need</p>	<p>There are no relevant authority assets. A clause has been included to this effect and the remainder of the template</p>	N/a

	to be reviewed within the specific context of any Authority Assets that may be used under a particular Call Off Contract]	drafting deleted.	
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 amendments, the template note has been deleted.	N/a
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 amendments but the template note will be retained and amended to start “The Authority will only accept a consultation obligation.....”	n/a
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 amendments but the template note will be retained and amended to start “The Authority will only accept a consultation obligation.....”	n/a
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 amendments, the text in square brackets will be retained. The template note is retained for reference at this stage.	n/a
53	[Template Note: Parent Company wording needed only if the Supplier is required to procure a Guarantee in relation to a particular Call Off Contract]	The template note will be retained to note the minor changes required depending on whether there is a PCG	n/a

53.3	[Template Note: Clause needed only if the Supplier is required to procure a Guarantee in relation to a particular Call Off Contract]	The template note will be retained to note the minor changes required depending on whether there is a PCG	
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. For example, the Supplier may cause damage to third party property during Network Deployment, where the third party attempts to bring a claim against the Authority in relation to such damage. In this example, the Authority would wish to be made whole for any loss arising]	The extent of this limitation of liability for property damage is £10 million	n/a
58.	[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	It is presently only considered that public liability insurance will be required, to £10M. The draft clause 58 is at annex one.	n/a

	replaced with "Not Used"]		
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 additional drafting will not be included	n/a
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 template note will be retained to note the minor changes required depending on whether there is a PCG, as per drafting note to clause 29	n/a
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. If detailed exit arrangements are needed on this issue, the drafting above will need to be amended in the context of the specific Call Off Contract – in most instances this is anticipated as unlikely]	No amendments, the template note has been deleted	n/a
66.1	[Template Note: Authority to consider if specific conditions need to be stipulated in respect of any potential excess	It is proposed to amend clause 66.1 to read: “The Supplier shall not assign, novate or otherwise dispose of or create any trust in relation to	n/a

	profits arising from the sale of the Network by the Supplier]	<u>any material part of the Network or in relation to</u> 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 ( <u>such as requirements for sharing of profits from such a disposal or the provision of a guarantee substantially in the form of the Guarantee in a form satisfactory to the Authority from the parent company of the assignee or novatee</u> )”	
74.1		Supplier and Authority contact details for notices to be populated. Authority will be “Programme Director, Better Broadband for Norfolk, Norfolk County Council, County Hall, Martineau Lane, Norwich, NR1 2DH, fax, email betterbroadbandfornorfolkproject@norfolk.gov.uk	
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, the template note has been deleted	n/a
<b>Schedule 1 – definitions</b>			
“Commission Decision”		Populate with reference number	n/a
“Compliance Matrix”		Reference appendix number of Schedule 3.1	n/a
“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	To be populated as per drafting note with the minimum seven year period  The dates quoted subject to any amendment required to comply with Commission Decision	n/a

	years to comply with State aid guidance]		
“Framework Agreement”		Date to be added	n/a
“Full Service Commencement Date”		ID to be added from Implementation Plan	n/a
“Guarantee”		This definition will only be used in the event there is a change of the information provided in the pre-qualification questionnaire and this requires a parent company guarantee be given.	n/a
“Insolvency Event”	[Template Note: Parent Company wording in square brackets needed only if a Guarantee is required]	The words in square brackets will only be used in the event there is a change of the information provided in the pre-qualification questionnaire and this requires a parent company guarantee be given	n/a
“ITT”		To be amended to reflect actual ITT issue date	n/a
“Longstop Date”	[Template Note: See Clause 61.1.3 and the associated Template Note]	This definition will not be used	
“Other Beneficiary”	[Template Note: Authority to list any other local bodies it may be contracting on behalf of];	None to be specified	n/a
“Milestone Date”		Definition to be amended to refer to Appendix two instead of Appendix one	n/a
“Parent Company” and “Performance Bond”	[Template Note: Definition needed only if a Guarantee is required]  [Template Note: Definition needed only if a Performance Bond is required]	these definitions will only be used in the event there is a change of the information provided in the pre-qualification questionnaire and this requires a PCG or performance bond be given	n/a
“Required Insurance”	New definition (see clause 58)	“means public liability insurance to a minimum cover of £10 million for any single claim”	n/a
“Working Day”		Remove words in square brackets	n/a
	<b>Schedule 2 – Service Requirements</b>		
	Template Note: The Service Requirements will be appended here as the Contract is finalised during the relevant Call	We will issue the schedule based on the pro-forma Service Requirements as set out in Schedule 2 of the Framework Agreement. A	See ITT Part 2, paragraph 3.6.5 for Wholesale Access



	<p>Off Procedure. The Authority will supplement the Baseline Service Requirements set out in the Framework Agreement to suit its local requirement in accordance with the Call Off Procedure and the amended version will be discussed with the Framework Suppliers during the Call Off Procedure</p>	<p>comparison version from Schedule 2 of the Framework Agreement (Baseline Service Requirements) is provided</p>	<p>Product Template</p>
	<p><b>Schedule 3.1 – Suppliers Solution</b></p>		
	<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>Supplier solution to be appended, as set out in tender, and any clarification to it.</p>	<p>See ITT Part 2, paragraph 3.6.6 for Compliance Matrix</p>
	<p>[Template Note: The Speed and Coverage Template, comprising part of the Supplier Solution, is agreed during the relevant Call Off Procedure. The agreed Speed and Coverage Template should (with regard to structure and content level) be substantially equivalent to that template with file reference [•] dated [•], as exchanged by the parties on or about signature of the Framework Agreement (the "Toolkit SCT"). This Toolkit SCT captures certain principles (which are subject to the final sentence of this template</p>	<p>No substantive amendments have been made to the Speed and Coverage Template issued with this ITT</p>	<p>n/a</p>

	<p>note) as follows:</p> <p>The contractual commitments with regard to speed and coverage are specified at a Phase or Milestone level; and</p> <p>A more detailed view shall also be provided by a bidding Supplier as part of the Call-Off Procedure at (i) postcode sector ('4 digit' postcode) level; or (ii) the Lower Super Output Area (LSOA) level (if a Local Body provides a postcode to LSOA mapping) or comparable aggregation level where Local Body can demonstrate this is reasonably required for stakeholder governance (if Local Body can provide appropriate postcode mapping). However, this level of data will not be contractually committed under the Call-Off Contract.</p> <p>Should a Local Body wish to depart from any aspect of the structure and content level set out in the Toolkit SCT this would need to be addressed as part of the operation of the Call-Off Procedure. The impact of such departure(s) on the solutions offered would need to be considered as part of that procedure.</p>		
	<p><b>Schedule 3.2 – Commercially sensitive information</b></p>		
	<p>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</p>	<p>To be populated from Tender</p>	<p>See ITT Part 2, paragraph 3.16</p>

	by the Authority		
	<b>Schedule 3.3 – Key Sub-contractors</b>		
		Table to be populated from tender	See ITT Part 2, paragraph 3.2.1
	<b>Schedule 3.4 – Key Personnel</b>		
		Table to be populated from tender	See ITT Part 2, paragraph 3.2.1
	<b>Schedule 4.1 – Implementation</b>		
		Number of working days in square brackets to be as drafted	n/a
Appendices	<p>[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]</p> <p>[Template Note: Reference to the initial Project Plan to be inserted]</p> <p>[Template Note: To be developed by the Supplier and agreed by the Parties as part of the Call Off Procedure and inserted/referenced here]</p>	Appendices two and four to be populated from the ITT	<p>Appendix two, Implementation Plan and Project Plan, see ITT Part 2, paragraph 3.9.1</p> <p>Appendix four – Test Strategy, see ITT Part 2, paragraph 3.9.3</p>
	<b>Schedule 4.2 – Authorities Assets</b>		
	[Template Note: If any assets are to be fully transferred to the Supplier, this may be dealt with in a separate asset transfer agreement]	There are none applicable. This schedule will not be used	n/a
	<b>Schedule 4.3 – Relief events</b>		
		Table to be completed from	See ITT Part

		tender	2, paragraph 3.9.4
	<b>Schedule 5.1 – Milestone payments and claims</b>		
Para 1.2		Paragraph 1.2 to be deleted as no non DCMS funding used.	n/a
Appendix one	[Template note: The Milestone Payments included in this Appendix must be consistent with the following and with Schedule 4.1 Appendix 1]	The table in Appendix One will be populated with the amounts of the public sector funding (as specified in ITT Part 2, paragraph 2.5.2) attributable to each Milestone. These will be allocated to Milestones on the range of permissible percentage split as specified in ITT Part 2, paragraph 2.5.6	
Appendix two	[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.	These are unamended	n/a
Appendix three		The Survey Assumptions in Appendix 3 will be populated from the tender	See ITT Part 2, paragraph 3.5.4
Para 10	[Template Note: DCMS advises Local Bodies to consider whether their project is likely to have a high level of subsidy payment relative to the Supplier investment, and that in greater-than-expected Take-up scenarios, the resultant low proportion of profits deriving from additional Take-up that would be retained by the Supplier (as calculated for this limb of the claw-back formula) may not cover the additional capital investment necessary to serve these End Users. Consequently the level of non subsidy investment required could detrimentally impact upon	No amendment is made, the wording in square brackets is retained. The template note has been deleted	n/a

	<p>the Supplier's incentive to achieve additional Take-up on the Network.</p> <p>In such circumstances, and recommending the Local Body should seek supporting evidence from Suppliers making this case, the Local Body should consider adjusting the element of the claw-back formula identified using square brackets above to ensure the Supplier is able to retain a minimum proportion (i.e. a 'floor' for the Project Investment Ratio) of the additional profit where the Project Investment Ratio would otherwise drive a lower proportion. For example, a Local Body may agree with the Supplier (after considering its supporting evidence) that the Project Investment Ratio used in the claw-back formula would be a minimum of 20%, or alternatively agree a tiered approach where the floor Project Investment Ratio increases dependent on the level of Take-up above the forecast.]</p>		
Para 14	<p>Template Note: If, during the Call-Off process, a Local Body wishes to agree a 'stretch-target' against the Take-up assumptions set out by a Supplier in its originally bid Project Model (in order to achieve higher levels of overall investment), a mechanism would also be included to enable sharing of associated increased risk. The following principles are</p>	<p>This paragraph will be marked ["Not Used"]</p>	<p>n/a</p>

	provided for consideration in respect of the Call-Off concerned but it is recognised this is an area that would be refined at the Call-Off level.		
	<p>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.</p>	There are no contingency arrangements and paragraph 16 has been deleted	
	<b>Schedule 5.2 – Wholesale Access Pricing</b>		
		No amendments	
	<b>Schedule 5.3 – Project Model</b>		
	[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]	No amendments	See ITT Part 2, paragraph 3.4.5
	<b>Schedule 5.4 – Additional funding</b>		
	[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	It is not anticipated to include this Schedule except as a placeholder, but these terms may be required if additional funding is introduced via change control	N/a

	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]		
	<b>Schedule 6.1 Governance</b>		
	[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 annex two	n/a
	<b>Schedule 6.2 – Change control procedure</b>		
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	It is not anticipated that any parts will be so specified. Paragraph 1.2.2 has been deleted.	
	<b>Schedule 6.3 Dispute Resolution</b>		
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]	Arbitration will be included, so this text will not be removed	n/a
3.3	[Template Note: The Authority should specify appropriate levels for the Escalation Process in the Call Off Contract issued with the ITT]	Level one: Programme Director Level two: Chief Executive For both parties  Level 2 to be confirmed with Supplier on Contract Finalisation	n/a
5.3	[Template Note: The Authority may consider amending these provisions so that arbitration is compulsory in order to maintain protection under the New	We are not proposing to amend these provisions as suggested in this template note	n/a

	York Convention for Enforcement. Appropriate dispute resolution guidance should be sought on this point]		
	<b>Schedule 6.4 Reports</b>		
C9	<p>[Template Note: The benefit and economic impact information to be reported should be further identified above in respect of the specific Call-Off]</p> <p>[Template Note: The table of reports outlined above are the baseline reports to be provided by the Supplier. However, the Authority may require amended versions of the baseline reports or additional reports to be provided by the Supplier]</p>	There will be no additional requirements	n/a
	<b>Schedule 6.5 Remedial plan process</b>		
		There are no amendments	n/a
	<b>Schedule 7 Form of guarantee</b>		
	[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]	Will not be used unless a PCG is required	n/a



Annex one – draft clause 58

Add to Schedule 1 definition “Required Insurance” means public liability insurance to a minimum cover of £10 million for any single claim

- 58.1 The Supplier:
- (a) shall maintain the Required Insurance in full force and effect at all times from the Effective Date until the Expiry Date;
  - (b) shall not cancel the Required Insurance or make any material change thereto without the express written consent of the Authority;  
and
  - (c) may change the insurers with whom the Required Insurance is held on annual basis, upon notice to the Authority at least 10 Working Days prior to any such change.
- 58.2 The Required Insurance shall be maintained on terms that are as favourable to those generally available to a prudent contractor in respect of risks insured in the international insurance market.
- 58.3 The Required Insurance shall be maintained with a reputable insurance company.
- 58.4 The Supplier shall procure that nothing is done which would entitle the relevant insurer to cancel, rescind or suspend any Required Insurance or cover, or to treat any Required Insurance, cover or claim as avoided in whole or part. The Supplier shall use reasonable endeavours to notify the Authority (subject to third party confidentiality obligations) as soon as practicable when it becomes aware of any relevant fact, circumstance or matter which has caused, or is reasonably likely to provide grounds to, the relevant insurer to give notice to cancel, rescind, suspend or avoid any Required Insurance, or any cover or claim under any Required Insurance in whole or in part.
- 58.5 The Authority may purchase (if possible) any of the Required Insurance which the Supplier has failed to maintain in full force and effect pursuant to this Agreement. The Authority may recover the premium and other costs incurred in doing so as a debt due from the Supplier.

- 58.6 The Authority may from time to time submit a request in writing to the Supplier, demanding evidence of the existence of the Required Insurance, copies of all policy terms, and evidence of the timely payment of premiums (confirmation in the form of a broker's letter), and the Supplier shall provide all such evidence within five Working Days of such written request.
- 58.7 The Supplier shall procure that each Key Subcontractor shall take out and maintain the Required Insurance and procure the compliance by each Key Subcontractor with each of the obligations in clauses 58.1 to 58.6 above in respect of such Required Insurance

Annex two

Schedule 6.1 Appendix one



Annex two