



**Norfolk** County Council

# Invitation to Tender

NCCT41552

## ITT Part 1:

# Introduction and Instructions

Date: September **2018**

Version: V2

Status: Final



Department  
for Culture  
Media & Sport

**SUPERFAST  
BRITAIN**



# Table of Contents

1	Introduction	1
	1.1 Purpose	1
2	Background Information	1
	2.1 Strategic Ambitions	1
	2.2 Benefits from Broadband	2
	2.3 Major works and permit scheme	2
	2.4 Further Information	3
3	Guide to the Procurement Process	3
	3.1 Introduction	3
3.2	Conditions of Invitation (Qualification)	3
	3.3 Evaluation of Offers to Supply	5
	3.4 Procurement Timetable	6
4	Overarching Instructions for Acknowledgement and Completion of Tender	7
	4.1 Intention to Bid (or otherwise)	7
	4.2 Bid Communication	7
	4.3 Tender Responses	7
	4.4 Clarification	8
4.5	Abnormally Low Tenders	8
	4.6 Return of Tender documentation	8
	4.7 Bidder 'Code of Conduct' during procurements - Use of Existing Infrastructure	9
5	Legal Instructions	10
	5.1 Confidentiality	10
	5.2 Freedom of Information and the Environmental Information Regulations	10
	5.3 Publicity	11
	5.4 Transparency	11

5.5	Copyright	12
5.6	Canvassing and Anti-Bribery	12
5.7	Anti-Competitive Behaviour	13
5.8	The Bidder's Team	13
5.9	Bidding Costs	14
5.10	Conflicts of Interest	14
5.11	Provision of Further Information by Bidders Prior to Submitting a Tender	14
5.12	Local Body's Right to Reject a Tender and/or Disqualify a Bidder	15
5.13	Right to Cancel or Vary the Process	16
5.14	Governing Law	16
5.15	Specification of Standards	16
5.16	Disclaimer	16
5.17	Parent Company Guarantee / Performance Bond	17
Appendix 1:	Definitions	19
Appendix 2:	Data Room Access Information	22
Appendix 3:	Certificate of Non-Collusion	23
Appendix 4:	Code of Conduct - Use of Existing Infrastructure	24
Appendix 5:	Expression of Interest Form	31

# 1 Introduction

## 1.1 Purpose

1.1.1 The purpose of this ITT (Invitation to Tender) is to invite Bidders to submit tenders in response to the Local Body Requirements. For brevity, Norfolk County Council is referred to in this document as ‘the Local Body’.

1.1.2 This ITT has four parts:

- Part 1 – Introduction and Instructions;
- Part 2 – Requirements and Evaluation Strategy;
- Part 3 – Terms and Conditions of Contract;
- Part 4 – Instructions for Submission of Financial Information.

1.1.3 This Part 1 comprises:

- Background Information;
- Guide to the Procurement Process;
- Overarching Instructions for Acknowledgement and Completion of Tender;
- Legal Instructions;
- Definitions (Appendix 1);
- Data Room Access Information (Appendix 2);
- Certificate of Non-Collusion (Appendix 3);
- Code of Conduct (Appendix 4);
- Expression of Interest Form (Appendix 5).

# 2 Background Information

## 2.1 Strategic Ambitions

2.1.1 Better Broadband for Norfolk will provide broadband infrastructure across Norfolk that is capable of supporting the Local Body’s long-term aspirations:

- Building communities we can be proud of
- Installing infrastructure first
- Building new homes to help young people get on the housing ladder

- Developing the skills of our people through training and apprenticeships
- Nurturing our growing digital economy
- Making the most of our heritage, culture and environment

## 2.2 Benefits from Broadband

2.2.1 The economic benefits supported by access to NGA broadband infrastructure include:

- Enabling tele and home working with resulting reductions in travel costs and environmental impacts
- Productivity increases as a result of the Digital Economy
- Opportunities to transform public service delivery, and allow greater service integration
- Enablers to technology shifts e.g. Cloud computing and providing backhaul to enable enhanced mobile communications technology and consequently the Internet of Things

2.2.2 Children in rural areas are disadvantaged because they do not have access to broadband at home; this impacts both their ability to do homework and learn independently, but also deprives them of the social networking world that young people rely upon. Improved broadband will have significant impact on educational and wider well-being for children in rural communities.

2.2.3 Compared with the rest of England, the project area has a relatively elderly age profile with around 24% of the population aged 65 and over. Broadband services will play an increasingly important role in supporting older people by:

- Providing access to on-line services, shopping, banking etc.;
- Enabling people to stay in touch with family and friends helping to reduce social isolation;
- Supporting people to stay at home for longer by supporting the introduction of new health and Social Care services, such as, tele-medicine and tele-care.

## 2.3 Major works and permit scheme

2.3.1 Information on the Authority's approach to classification works and the type of permit required is dependent on the traffic management required, including:

- The sensitivity designation of the road e.g. major or tourist routes will carry a sensitivity indicating that no works are permitted (for example) in the summer months.
- Christmas/Religious Festival Embargo will not allow works in major towns or places of pilgrimage to take place at certain times of the year.

- No conflict with other works/diversion routes.

Permit schemes operated by it or on its behalf, including process and costs involved, can be found in the Data Room (see 2.4 below).

## 2.4 Further Information

- 2.4.1 Further information on Norfolk County Council's aspirations are available in the Local Body's "Caring for our County – A Vision for Norfolk in 2021" which is available in the Data Room, see Appendix 2 to this Part 1 for details on how to access the Data Room.
- 2.4.2 Bidders are obliged to seek any clarification they require regarding the information provided in the Data Room prior to submission of their proposals. It is, in any event, each Bidder's own responsibility to ensure it fully reviews and understands the information provided in the Data Room.

# 3 Guide to the Procurement Process

## 3.1 Introduction

- 3.1.1 The aim of this procurement process is to competitively select a Bidder to deliver the Project.

## 3.2 Conditions of Invitation (Qualification)

- 3.2.1 Tenders are invited for the supply of the goods or services specified or described in Part 2 of this ITT.
- 3.2.2 The Contract shall be subject to the Terms and Conditions of Contract set out in Part 3.
- 3.2.3 The Local Body does not bind itself to accept the lowest or any tender, and reserves the right to accept a tender either in whole or in part, for such item or items specified in this ITT, and for such place or places of delivery as it thinks fit, each item and establishment being for this purpose considered as tendered for separately.
- 3.2.4 The Local Body reserves the right, subject to relevant laws, and at any time, to reject any Tender Response and/or to terminate discussions with any of the Bidders.
- 3.2.5 This ITT together with any other information to be provided at any time within the procurement process has been and will be provided in the interests of assisting Bidders to develop their proposals. It is intended only as an explanation of the Local Body's requirements and is not as a representation to induce any Bidder to enter into any form of contract with the Local Body.
- 3.2.6 Accordingly information provided does not purport to be all-inclusive or to contain all the information that the prospective operator may require. Bidders and their advisers **must** take their own steps to verify information, which they use and **must** make an independent assessment of the opportunity described in this ITT after making such investigation and taking such professional advice as they deem necessary.

- 3.2.7 Neither the Local Body nor any of its directors, officers, employees or agents who now or at any time become concerned with the procurement process shall be considered to make or be deemed to have made any representation or warranty as to the adequacy, accuracy, reasonableness or completeness of the information contained in this ITT and any associated documents. However the Local Body does not exclude any liability that it may have for fraudulent misrepresentation or any other liability not capable of being excluded by law.
- 3.2.8 Neither the Local Body nor its professional advisors shall be liable for any loss or damage arising as a result of reliance on the information in this ITT and attachments, or any associated documents or other information subsequently or previously provided, nor for any expenses incurred by Bidders at any time. No third party has been or will be authorised to accept or agree to accept on behalf of the Local Body any such liability.
- 3.2.9 Bidders remain responsible for all costs and expenses incurred by them or by any third party acting under instructions from them in connection with their Tender Responses whether incurred directly by them or their advisors or subcontractors and regardless of whether such costs arise as a consequence direct or indirect of any amendments made to this ITT and/or other documents issued by the Local Body at any time. For the avoidance of doubt, the Local Body shall have no liability whatsoever to Bidders for the costs of any discussions or communications.
- 3.2.10 The information in this ITT and any associated documents is made available on condition that it is treated as confidential by the Bidders and is not disclosed, copied, reproduced, distributed or passed to any other person at any time except for the purpose of enabling a submission to be made. For example disclosure by a Bidder to its insurers and funders who are directly involved in the tender, provided they have each given an undertaking at the time of receipt of the relevant information (and for the benefit of the Local Body) to keep such information confidential.
- 3.2.11 Other than as specified above, Bidders shall not make any of the information referred to in paragraph 3.2.10 available to any other parties in any circumstances without the prior written consent of the Local Body nor use it for any purpose other than that for which it is intended.
- 3.2.12 Bidders shall be responsible for the confidentiality of their own information.
- 3.2.13 This ITT is the copyright of the Local Body or DCMS. Bidders shall not reproduce any of the ITT or any associated documents in any material form (including photocopying or storing it in any medium by electronic means) without the written permission of the Local Body, other than for use strictly for the purpose of preparing their Tender Responses. This ITT and any document at any time issued as supplemental to it are and shall remain the property of the Local Body and **must** be returned or destroyed upon demand.
- 3.2.14 Any Bidder who, in connection with this tender:
- 3.2.14.1 offers any inducement, fee or reward to any member or officer of the Local Body or any person acting as an advisor for the Local Body; or
  - 3.2.14.2 does anything which would constitute a breach of the Bribery Act 2010; or
  - 3.2.14.3 contacts any officer of the Local Body about any aspect of the tender, except as authorised by this ITT including (but without limitation) for the purposes of



discussing the possible transfer to the employment of the Bidder of such officer for the purpose of the Project or for soliciting information in connection with the Project,

will be disqualified from any further involvement in the procurement process (without prejudice to any other civil remedies available to the Local Body and without prejudice to any criminal liability, which such conduct by a Bidder may attract).

- 3.2.15 Bidders should advise the Local Body as soon as practicable in the event of a conflict of interest arising in respect of a Bidder's Tender Response. In such circumstances, the Local Body may require further information from Bidders but reserves the right to disqualify a Bidder from further involvement in the procurement process.
- 3.2.16 In the event of any inconsistency, this document and enclosures will take precedence over any documents previously issued by the Local Body in relation to this Project.
- 3.2.17 The laws of England and Wales shall apply to this ITT and the Tender Responses.
- 3.2.18 The Local Body reserves the right to disregard Tender Responses it considers as non-compliant unless exceptional extenuating circumstances prevail, of which the Local Body will be the final arbiter. The Local Body will reject any Tender Response that is:
  - 3.2.18.1 not in accordance with the conditions of invitation set out in this ITT and all other instructions issued by the Local Body during the procurement process; and/or
  - 3.2.18.2 received after the time specified in this ITT.
- 3.2.19 The Local Body reserves the right to:
  - 3.2.19.1 cancel the procurement process at any stage; and
  - 3.2.19.2 require a Bidder to clarify its submission in writing and/or provide additional information. (Failure to respond adequately may result in the Bidder being disqualified).

### **3.3 Evaluation of Offers to Supply**

- 3.3.1 All offers will be treated equally and assessed with transparency throughout the evaluation process. The successful offer will be that which achieves the highest score within a best value framework (optimum combination of whole-life costs and quality) in line with the Procurement Legislation award procedure of Most Economically Advantageous Tender (MEAT). A series of evaluation questions are contained at Part 2 Appendix 2 of this ITT which, together with the applicant's proposal, the tender pricing submitted and any subsequent post tender clarifications and presentation will provide the channel by which the Local Body will select the successful Supplier.
- 3.3.2 To ensure that the evaluation is objective a moderation process will be undertaken with the evaluation panel to discuss and agree overall single consensus score for each response where evaluated scores differ in relation to a Bidder's response to a question. If the evaluators cannot agree on a score for one or more responses, then the majority score will

be selected as the consensus score; the minority score(s) will be discounted along with the associated comments made in relation to the minority score(s).

*N.B.: All information conveyed within a Bidder's offer to supply will be relied upon as being true and accurate and can form a direct part of the Contract or be the subject of contractual commitments. If any of the information given within a Bidder's offer is subsequently identified as being inaccurate, this may exclude that organisation from further consideration pre contract award. In the event of such an eventuality post contract award, the Local Body reserves any right of termination and other remedies which may arise.*

## 3.4 Procurement Timetable

3.4.1 The following process and timescales apply:

Activity	Elapsed Time	Start Date 2018	End Date 2019
Issue of Contract Notice	1 day	23 <sup>rd</sup> July	23 <sup>rd</sup> July
Closing date for Expressions of Interest	4 weeks	23 <sup>rd</sup> July	17 <sup>th</sup> Aug
Bidders sign up to Code of Conduct	4 weeks	23 <sup>rd</sup> July	17 <sup>th</sup> Aug
Bidder access to the Data Room	8 weeks	23 <sup>rd</sup> July	12 <sup>th</sup> Oct
Clarification Question process	8 weeks	23 <sup>rd</sup> July	12 <sup>th</sup> Oct
Bidders prepare responses	12 weeks	23 <sup>rd</sup> July	12 <sup>th</sup> Oct
Bidders prepare bids following revised SCT from close of Expression of Interest period	8 weeks	17 <sup>th</sup> Sept	9 <sup>th</sup> Nov
Evaluate bidder response and clarify where required (extended one week due to Christmas)	8 weeks	10 <sup>th</sup> Nov	4 <sup>th</sup> Jan
Moderation session	1 day	12 <sup>th</sup> Dec	12 <sup>th</sup> Dec
Local Body initial governance (e.g. sign off evaluation and preferred bidder)	3 day	2 <sup>nd</sup>	4 <sup>th</sup> Jan
Bidders notified of evaluation outcome (e.g. preferred bidder announced)	1 day	4 <sup>th</sup> Jan	4 <sup>th</sup> Jan
Standstill period – see section 3.2.3 (reduced two week as no conflict with Christmas)	2 weeks	7 <sup>th</sup> Jan	18 <sup>th</sup> Jan
Contract finalisation/Due Diligence (reduced two week as no conflict with Christmas)	2 week	7 <sup>th</sup> Jan	18 <sup>th</sup> Jan
DCMS Approvals including State Aid and Funding	2 weeks	21 <sup>st</sup> Jan	1 <sup>st</sup> Feb
Local Body final governance (e.g. to sign off decision to award contract) and Contract Award	1 Day	4 <sup>th</sup> Jan	8 <sup>th</sup> Jan
Contract Signature	1 day	11 <sup>th</sup> Feb	15 <sup>th</sup> Feb

- 3.4.2 The Local Body reserves the right to amend this timetable at its absolute discretion.
- 3.4.3 Bidders are required to keep their Tender Responses valid for a period of 120 days from the close date of receipt of Tender Responses.

## 4 Overarching Instructions for Acknowledgement and Completion of Tender

### 4.1 Intention to Bid (or otherwise)

- 4.1.1 Bidders **must** provide an initial indication of whether or not they intend to submit a tender in response to this ITT by completing the Expression of Interest form found at Appendix 5 of this Part 1 to arrive no later than **17<sup>th</sup> August 2018** via the formal communication channel provided under section 4.2 below.
- 4.1.2 Bidders **must** provide the signed 'Code of Conduct' found under section 4.7 below of this Part 1 and submit the completed form, to arrive no later than **17<sup>th</sup> August 2018** via the formal communication channel provided under section 4.2 below.
- 4.1.3 Any Bidder subsequently intending to withdraw from this Tender process **MUST** promptly advise Karen O'Kane and confirm the decision via the formal communication approach provided under section 4.2 below.

### 4.2 Bid Communication

- 4.2.1 The Local Body is using a dedicated procurement portal for the purposes of exchanging bid communications (including issuing tender documentation and exchanging clarifications). The address for the procurement portal is <https://in-tendhost.co.uk/norfolkcc/asp/Home>.
- 4.2.2 The Local Body will respond to all reasonable clarifications as soon as possible via the procurement portal at <https://in-tendhost.co.uk/norfolkcc/asp/Home>.
- 4.2.3 From receipt of this ITT, Bidders **MUST** not communicate with (i) any member of the Local Body's team; (ii) DCMS (including BDUK); and/or (iii) any person acting as an advisor thereto, in relation to this ITT, other than using the communication route described above unless other communication routes for such purpose are notified in writing by the Local Body.

### 4.3 Tender Responses

- 4.3.1 ITT responses should be prepared in accordance with the instructions provided in Part 2 of this ITT.
- 4.3.2 All ITT responses shall be treated in accordance with the Procurement Legislation throughout the Tender process.
- 4.3.3 Bidders may submit bids either as an individual company or as part of a Consortium. Bidders are **NOT** allowed to submit bids as an individual company **AND** a Consortium or as part of more than one Consortium.

- 4.3.4 Not in use
- 4.3.5 Where a Bidder is proposing to subcontract any part of the service to be provided, this must clearly be stated in all cases. The Bidder will be expected to manage and control any subcontractor services included in their proposal and provide evidence of how this will be done.

## 4.4 Clarification

- 4.4.1 Clarification questions may be submitted by a Bidder between **23<sup>rd</sup> July and 12<sup>th</sup> October 2018**. All clarification questions must be communicated in accordance with section 4.2 above.
- 4.4.2 The Local Body shall provide clarification question responses within 5 working days of their receipt, save that if this timescale cannot be achieved in the circumstances the Local Body shall communicate this to the Bidder(s).
- 4.4.3 The Local Body may itself issue clarification questions to Bidders. These will be communicated in accordance with section 4.2 above.
- 4.4.4 The Bidder shall provide clarification question responses within 5 working days (or such other reasonable timescale as may be requested by the Local Body having regard to the stage in the procurement process and the urgency of the request) of their receipt, save that if this timescale cannot be achieved in the circumstances the Bidder shall communicate this to the Local Body.
- 4.4.5 Bidders should refer to section 5.1.3 regarding wider circulation of clarification questions and responses.
- 4.4.6 Not used.

## 4.5 Abnormally Low Tenders

- 4.5.1 Where the programme receives a tender which is abnormally low, in accordance with Regulation 69 of the Public Contracts Regulations 2015, it shall require the Bidder to explain in writing the price or cost proposed in the tendered provision of goods or services. The Programme shall assess the information provided by the Bidder and may reject the tender where the evidence supplied does not satisfactorily account for the low level of price or costs proposed.

## 4.6 Return of Tender documentation

- 4.6.1 In order to complete your electronic tender it must be downloaded to your system, completed and uploaded to the correct area of the Local Bodies procurement portal <https://in-tendhost.co.uk/norfolkcc.aspx/Home> in accordance with the return instructions and the stated deadline for submission of responses. Bidders should be aware that the Local Body is unable to open any tender submissions until after the specified closing date and time for the receipt of tenders.

**It is your responsibility to ensure that your bid is submitted prior to the closing date/time.**

**You should ensure that you leave enough time to upload and submit your bid.**

**Tenders submitted after the stated closing date and time will not be considered.**

- 4.6.2 All responses **must** be submitted electronically through the procurement portal at <https://intendhost.co.uk/norfolkcc/asp/Home>. Tenders which are, e-mailed, posted, faxed or hand delivered to the Local Body will not be considered<sup>1</sup>.
- 4.6.3 The full tender must be completed and returned in the published format. Failure to comply with this instruction may result in your tender submission being discounted.
- 4.6.4 Where forms require signing either by the Bidders or a third party i.e. a bank, Local Body, or insurance certificate, electronically completed versions are acceptable for tendering purposes, although fully signed hard copies of these forms will be required from Bidder(s) prior to the award of contract.

## **4.7 Bidder 'Code of Conduct' during procurements - Use of Existing Infrastructure**

- 4.7.1 In line with paragraph 78(f) of the 2013 Broadband Guidelines and paragraph 115 of the Commission Decision, there is a requirement for operators to offer information and access to other Bidders for infrastructure it operates in an intervention area, should the operator(s) wish to bid for a particular requirement. To meet this requirement, it is required that all Bidders sign up to a Code of Conduct. The Code of Conduct includes standards for:
    - 4.7.1.1 the level of detail of information that should be provided;
    - 4.7.1.2 the timeframes in which the information is to be provided;
    - 4.7.1.3 the acceptable terms of a non-disclosure agreement; and
    - 4.7.1.4 the obligations to make available infrastructure for use in other bids. BDUK will not require suppliers to provide additional forms of access to their existing network (unless required to do so as a regulatory requirement). Nevertheless, it is anticipated that the vast majority of the infrastructure in the intervention areas can be accessed using existing products (e.g. BT products required under 'Significant Market Power' regulations) or as a result of new legislation (e.g. legislation to implement *Directive 2014/61/EU on measures to reduce the cost of deploying high-speed electronic communications networks*).
  - 4.7.2 Where a Bidder does not meet the terms of the Code of Conduct, they will be excluded from this procurement, with the process for this being set out in the terms of the Code of Conduct. The bid process will be conducted to a timetable that allows sufficient time for Bidders to compile bids with information provided by other suppliers within the service levels indicated in the Code of Conduct, and allows for any non-compliance issues that impact other Bidders to be resolved efficiently.
  - 4.7.3 To meet this requirement, the Local Body will require that all Bidders agree to the terms of the 'Code of Conduct - Use of Existing Infrastructure'. Bidders: (i) must then adhere to the
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code in order to be considered in the procurement process; or (ii) provide a nil response confirming that they do not operate any infrastructure in the intervention area.

## 5 Legal Instructions

### 5.1 Confidentiality

- 5.1.1 Bidders are subject to the confidentiality obligations set out in the separate Non-Disclosure Agreement entered into between the Local Body and each Bidder as a condition of access to the Data Room.
- 5.1.2 The Local Body is subject to the duty of confidence set out in the Procurement Legislation in relation to information provided by Bidders. The Local Body may disclose documents relating to and/or detailing Bidders' proposals or tenders on a confidential basis (and take reasonable steps to ensure such confidentiality) to any member, director, officer, employee or agent of the Local Body, DCMS (including BDUK), or any person acting as an adviser for any of those parties.
- 5.1.3 The Local Body also reserves the right to disseminate information that is materially relevant to all Bidders, even if the information has only been requested by one Bidder. Should Bidders wish to avoid such disclosure (for example, on the basis that the request contains, or the likely response will contain, commercially confidential information or may give another Bidder a commercial advantage) the request must be clearly marked "In confidence – not to be circulated to other Bidders" and the Bidder must set out the reason or reasons for the request for non-disclosure to other Bidders. The Local Body shall act reasonably regarding the protection of commercially sensitive information relating to the Bidder subject to its duties under the Procurement Legislation, FOIA and EIR.

### 5.2 Freedom of Information and the Environmental Information Regulations

- 5.2.1 The Local Body is subject to the requirements of the Audit Commission Act 1998, the Freedom of Information Act 2000 (FOIA) and the Environmental Information Regulations 2004 (EIR), the subordinate legislation made under FOIA/EIR and any guidance and/or codes of practice issued (from time to time) in relation to such legislation.
- 5.2.2 Bidders are advised that documentation provided by them in response to this ITT and other documentation supplied by them in connection with this procurement may be the subject of a request for information under the FOIA or the EIR.
- 5.2.3 Bidders are required to specify (with reasons) any information contained in their proposals or tenders which they regard as falling within any of the exemptions from disclosure specified under FOIA/EIR including information provided in confidence. Bidders are required to state which provisions of FOIA/EIR apply to the information identified above.
- 5.2.4 Bidders are to make sure any information that is considered commercially confidential is clearly marked as such. The front page of the document must be clearly marked "*In confidence – not to be circulated*" (and any document, submission or each relevant page of the document must also be marked "commercially confidential"). Information marked as

confidential should be limited to that which is genuinely confidential and which may be exempted from disclosure under FOIA/EIR. Bidders are to be aware that any document, submission, proposal or tender that indicates that all of the information provided in it is confidential, without a clear and substantive justification, is unlikely to be acceptable to the Local Body. Bidders are to also be aware that even where information is identified as confidential and/or commercially sensitive the Local Body may be required to disclose such information in accordance with FOIA or the EIR.

- 5.2.5 If the Local Body receives a request under FOIA or the EIR for the release of information which has been provided by a Bidder, the Local Body shall consult with the relevant Bidder to inform its decisions regarding any exemptions as they may relate to the Bid Financial Model (being the detailed populated financial spreadsheets submitted in response to Part 4 of this ITT and including any subsequent iterations of that detailed bid financial model) submitted by a Bidder to the Local Body in the course of this procurement but otherwise use reasonable endeavours to consult with the relevant Bidder as soon as practicable where it considers that the requested information may include exempt information relating to that Bidder. Where the Local Body consults with the Bidder, the Bidder must respond to the Local Body's requests within 3 working days (unless otherwise agreed by the Local Body), in order that the Local Body may comply with its obligation to answer the request within the relevant time limit.
- 5.2.6 The Local Body shall be responsible for determining, at its absolute discretion, whether such exemption is to apply and Bidders agree to comply with any such decision taken by the Local Body.
- 5.2.7 The Local Body shall not be liable for any loss, damage, harm or other detriment however caused arising from any disclosure of information under FOIA, the EIR or other legislation governing access to information (including guidance notes and codes of practice issued by the Information Commissioner).
- 5.2.8 Bidders are recommended to take their own independent legal advice regarding the effect of the FOIA and the EIR.

## **5.3 Publicity**

- 5.3.1 No Bidder will undertake (or permit to be undertaken) at any time, any publicity activities with any section of the media in relation to the ITT Documents, this procurement process or the Project or any data coming from the Project without the prior written agreement of the Local Body (including as to the content of any such publicity). In this section the meaning of the word 'media' shall include radio, television, print, newspapers, trade and specialist press, the internet, email or mobile content accessible by the public at large and representative of such media.

## **5.4 Transparency**

- 5.4.1 Bidders are to be aware that the Local Body may comply with the Government's Transparency Agenda by publishing procurement documentation and contracts on appropriate publically accessible websites. The procurement documents, the fact that the Bidder has submitted a bid and the text of any Contract awarded may therefore be published

(subject to possible redactions at the Local Body's discretion, relating to information which is exempt from disclosure under the FOIA and the EIR).

## 5.5 Copyright

- 5.5.1 Bidders are reminded that the copyright in the ITT Documents is vested in the Local Body and/or DCMS. Bidders shall not reproduce in any material form (including photocopying or storing it in any medium by electronic means), any of these documents without written permission of the Local Body other than for use strictly for the purpose of preparing proposals.
- 5.5.2 All information supplied by or on behalf of the Local Body, including any software, electronic media or data relating to the Project, must be returned on demand, without any copies being retained.
- 5.5.3 Should a Bidder (i) decide not to submit a tender or to discontinue its participation in the procurement process; or (ii) not be awarded the corresponding Contract, all documents and other material supplied by or on behalf of the Local Body, together with all such copies thereof as may have been taken, shall be returned to the Local Body immediately and all electronic data supplied by or on behalf of the Local Body shall be immediately permanently deleted from the Bidder's storage devices and from the storage devices of any other persons to whom the Bidder may have passed the same (whether or not permitted by the Local Body). Nothing in this paragraph shall require the return or destruction of such electronic or other records as are required to be retained to fulfil a legal, regulatory or professional obligation.

## 5.6 Canvassing and Anti-Bribery

- 5.6.1 The Local Body reserves the right to disqualify from this tender process (without prejudice to any other civil remedies available to the Local Body and without prejudice to any criminal liability which such conduct by a Bidder may attract) any Bidder who, in connection with this ITT:
  - 5.6.1.1 offers any inducement, fee or reward to any member, director, officer, employee or agent of DCMS (including BDUK) or the Local Body or any person acting as an adviser for the Local Body or DCMS (including BDUK) in connection with this ITT;
  - 5.6.1.2 does anything which would constitute a breach of the applicable anti-bribery legislation or Section 117(2) of the Local Government Act 1972;
  - 5.6.1.3 directly or indirectly obtains or attempts to obtain information from any member, director, officer, employee or agent of the Local Body or DCMS (including BDUK) or any person acting as an adviser for the Local Body or DCMS (including BDUK) save in accordance with the ITT Documents;
  - 5.6.1.4 canvasses any member, director, officer, employee or agent of the Local Body or DCMS (including BDUK) or any person acting as an adviser for the Local Body or DCMS (including BDUK) in connection with this ITT;
  - 5.6.1.5 contacts any member, director, officer, employee or agent of the Local Body or DCMS (including BDUK) or any person acting as an adviser for the Local Body or



DCMS (including BDUK) prior to the conclusion of this procurement process about any specific aspect of the ITT Documents in a manner not permitted by the ITT Documents (including without limitation contact for the purposes of discussing the possible transfer to the employment of the Bidder of such officer or other employee).

- 5.6.2 The Local Body reserves the right to disqualify (without prejudice to any other civil remedies available to the Local Body and without prejudice to any criminal liability which such conduct by a Bidder may attract) any Bidder who, in connection with this ITT:
- 5.6.2.1 fixes or adjusts the amounts stated in its proposal or tender by or in accordance with any agreement or arrangement with any other person (save for legitimate agreements and/or arrangements with a member of its own consortium or supply chain, professional advisors, proposed subcontractors and/or proposed consultants necessary for the purposes of preparing the bid or submission) (other than a member of its own consortium or supply chain);
  - 5.6.2.2 enters into any agreement or arrangement with any other Bidder to the effect that he shall refrain from submitting a proposal or tender or as to the amount of any proposal or tender to be submitted;
  - 5.6.2.3 causes or induces any person to enter any agreement or arrangement referred to above or to inform the Bidder of the amount or approximate amount of any rival proposal or tender;
  - 5.6.2.4 communicates to any person, other than with the written consent of the Local Body or DCMS (including BDUK), the amount or approximate amount of their proposal or tender (except where such disclosure is made in confidence in order to obtain quotations necessary for the preparation of a proposal or tender).

## **5.7 Anti-Competitive Behaviour**

- 5.7.1 In order to create a level playing field for Bidders, the Local Body may require evidence from Bidders that their arrangements are not anti-competitive. The Local Body reserves the right to require Bidders to comply with any reasonable measures which may be needed to verify that no anti-competitive arrangements are in place.
- 5.7.2 Any evidence of any anti-competitive behaviour could result in Bidders being disqualified from the procurement process.
- 5.7.3 The above requirements are supplementary to the requirement to provide a Certificate of Non-collusion, a copy of which is provided at Appendix 3.

## **5.8 The Bidder's Team**

- 5.8.1 The members of the Bidder's Team, and the principal relationships between the team members, may be changed in relation to this procurement process only with the prior consent of the Local Body, and subject to any replacement team member being satisfactorily pre-qualified by the Local Body. The Local Body reserves the right to take this into account when determining whether or not to continue with the evaluation of a tender, and whether or not to award the Contract to a Bidder, where there has been a change in the ownership

of the Bidder prohibited by the Contract or any members of the Bidder's Team (direct or indirect) or a change in the principal relationships between the team members. For the avoidance of doubt, this section does not concern changes in bid team personnel (i.e. individuals), unless the individual is a sole trader comprising part of the Bidder's Team – rather, it concerns changes at the Bidder's Team corporate/organisation level.

## **5.9 Bidding Costs**

- 5.9.1 Bidders are solely responsible for their costs and expenses incurred in connection with the preparation and submission of proposals or tenders and all future stages of this procurement process.
- 5.9.2 Neither the Local Body or DCMS (including BDUK) nor any of their representatives or advisers of those parties will be liable in any way to any Bidder or any other person for any costs or expenses incurred by any Bidder or any related party in connection with this procurement process, whether or not the procurement proceeds.

## **5.10 Conflicts of Interest**

- 5.10.1 The Local Body is concerned to avoid conflicts of interest. In particular but without limitation, the Local Body may consider a conflict of interest as arising where:
  - 5.10.1.1 a subcontractor or advisor put forward by one Bidder is the same firm, company or a member of the same group of companies as that put forward by another Bidder;
  - 5.10.1.2 a subcontractor or advisor is currently advising or has previously advised the Local Body at any time in any capacity in respect of the Project.

Bidders are to note that the Local Body reserves the right to disqualify Bidders where there is an actual or potential conflict of interest. Bidders are therefore advised to review carefully the prior or current involvement of the Bidder including Subcontractors, consortium members and each and any of their advisers with the Local Body or DCMS (including BDUK), its members, officers, employees, agents and advisers and to contact the Local Body in accordance with section 4.2 above (notwithstanding when the conflict is identified) prior to submission of any tender response to discuss actual or potential conflicts they have identified.

- 5.10.2 Failure to declare such conflicts and/or failure to address such conflicts to the reasonable satisfaction of the Local Body could result in a Bidder being disqualified.

## **5.11 Provision of Further Information by Bidders Prior to Submitting a Tender**

- 5.11.1 The Local Body is relying on the information provided by Bidders in the tender (including but not limited to information concerning the Bidder's Team and structure) for award of a Contract.
- 5.11.2 If, at any time during this procurement process, after submission of tender, there are any changes to the information referred to in section 5.11.1, the Bidder must advise the Local

Body as soon as practicable. The Local Body reserves the right to remove the Bidder from this tender process if the changes impact on its evaluation in this procurement process.

- 5.11.3 There are certain commercial requirements to be detailed as part of a Bidder response to this ITT (for instance regarding financial reports, parental guarantees and insurance cover). These will be reviewed as part of the due diligence period before any Contract award. If, at any time during this procurement process there are any changes to the same, the Bidder must advise the Local Body as soon as practicable. The Local Body reserves the right to remove the Bidder from this tender process if the changes impact on its evaluation in this procurement process.
- 5.11.4 The Local Body reserves the right to require Bidders to confirm that their tender information remains accurate at all future stages of this procurement process in order to confirm that Bidders remain qualified and to take the appropriate action if that is no longer the case.

## **5.12 Local Body's Right to Reject a Tender and/or Disqualify a Bidder**

- 5.12.1 In addition to its rights set out in the other provisions of this section 5, the Local Body reserves the right to reject a proposal or tender and/or disqualify a Bidder where:
- 5.12.1.1 a tender is submitted late, is completed incorrectly, is materially incomplete, is submitted in any other format other than using the approach provided in section 4.2 of this Part 1 or fails to meet the Local Body's submission requirements which have been notified to Bidders;
  - 5.12.1.2 the Bidder and/or members of the Bidder's Team fall within any ground for exclusion set out in Article 57 of Directive 2014/24/EC and/or Regulation 57 of the Public Contracts Regulations 2015 and/or Regulation 58 of the Public Contracts (Scotland) Regulations 2015 at any stage during the procurement process;
  - 5.12.1.3 the Bidder and/or members of the Bidder's Team are guilty of material misrepresentation or false statement in relation to its tender and/or the process;
  - 5.12.1.4 the Bidder and/or members of the Bidder's Team contravene any of the terms and conditions of this ITT;
  - 5.12.1.5 there is a material change in identity, control, financial standing or other factors impacting on the selection and/or evaluation process affecting the Bidder and/or members of the Bidder's Team (including but not limited to a change in the Bidder's Team from the members who completed the Tender Response);
  - 5.12.1.6 the Bidder introduces a material change to any commitment or statement contained in any previous submission at any stage of the procurement process for example in an answer to a clarification question;
  - 5.12.1.7 the Bidder breaches the terms of the Non Disclosure Agreement referred to at section 5.1 above;

- 5.12.1.8 the Bidder breaches the terms and conditions of use for the communication approach provided under section 4.2 of this Part 1 or any supplementary terms and rules of use for the Data Room;
- 5.12.2 The disqualification of a Bidder will not prejudice any other civil remedy available to the Local Body and will not prejudice any criminal liability that such conduct by a Bidder may attract.

## **5.13 Right to Cancel or Vary the Process**

- 5.13.1 The Local Body reserves the right at any time:
  - 5.13.1.1 not to consider proposals or tenders other than those submitted in accordance with the terms of the ITT;
  - 5.13.1.2 to cancel or withdraw from the procurement process at any stage at no cost or liability to itself;
  - 5.13.1.3 to issue or make available amendments or modifications to the ITT Documents during this procurement process;
  - 5.13.1.4 to amend the terms and conditions of this tender process;
  - 5.13.1.5 to alter the timetable of any aspect of this procurement including any award of the Contract;
  - 5.13.1.6 not to award the Contract as a result of this procurement process and provides no commitment that any Contract will be entered into;
  - 5.13.1.7 to require a Bidder and/or members of the Bidder to clarify their submission in writing and/or provide additional information (failure to respond adequately may result in a Bidder being disqualified).

## **5.14 Governing Law**

- 5.14.1 All tender discussions with Bidders will be conducted, and all documents, proposals and tenders will be prepared, in the English language. The procurement process and any contract arising will be subject to English law and the exclusive jurisdiction of the English courts.

## **5.15 Specification of Standards**

- 5.15.1 Where reference is made to an International, European or British Standard then a Bidder may propose an equivalent to any of these, provided that its proposal offers equivalent guarantees of safety, suitability and fitness for purpose to those specified.

## **5.16 Disclaimer**

- 5.16.1 Whilst prepared in good faith, the ITT Documents are intended only as a background explanation of Local Body activities and plans.

- 5.16.2 The ITT Documents do not purport to be all inclusive or to contain all of the information that a Bidder may require.
- 5.16.3 Any persons considering making a decision to enter into contractual relationships with the Local Body following receipt of the ITT Documents is to make their own investigations and their own independent assessment of the Local Body and their requirements for the Project and is to seek their own professional financial and legal advice.
- 5.16.4 Neither the Local Body or DCMS (including BDUK) or their advisers, or the directors, officers, members, partners, employees, other staff, agents or advisers of any such body or person:
- 5.16.4.1 makes any representation or warranty (express or implied) as to the accuracy, reasonableness or completeness of the ITT Documents;
  - 5.16.4.2 accepts any responsibility for the information contained in the ITT Documents or for its fairness, accuracy or completeness;
  - 5.16.4.3 shall be liable for any loss or damage (other than in respect of losses that cannot be excluded by law including fraudulent misrepresentation) arising as a result of reliance on such information or any subsequent communication.
- 5.16.5 The subject matter of these ITT Documents and the procurement process as a whole shall only have contractual effect when it is contained in the express terms of an executed Contract. No statement or matter contained in these ITT Documents or made or undertaken as part of this procurement process is intended or shall be taken or implied as having contractual effect or as constituting a contract, agreement, warranty or representation between the Council or any other party.
- 5.16.6 Nothing in the ITT Documents is, or is to be, relied upon as a commitment or a representation as to the Local Body's ultimate decision in relation to the Project. The publication of the ITT Documents in no way commits the Local Body or DCMS (including BDUK) to award any contract or pursue any tender process for the Project.
- 5.16.7 The Local Body reserves the right to vary or change all or any part of the basis of the procurement process at any time or not to proceed with the procurement at all.

## **5.17 Parent Company Guarantee / Performance Bond**

- 5.17.1 Where in accordance with regulation 63 of the Public Contract Regulations 2015, the bidder relies on other entities to meet any minimum requirements of economic and financial standing or professional and technical ability, then the Local Body reserves the right during the procurement process, in its absolute discretion, to require a Bidder's parent company (or other guarantor, if approved by the Local Body) to provide additional security by way of a parent company guarantee (in the form set out in Schedule 7 of the Contract) and/or a performance bond. If such security is not forthcoming or is provided in a form other than the form specified by the Local Body, the Local Body reserves the right to reject the relevant Bidder. Bidders should note that drafting has been inserted into the Contract to allow for

the provision of a parent company guarantee and/or performance bond in the event the Local Body exercises its rights set out in this paragraph 5.17.1. Local Body shall consider whether a parent company guarantee and/or a performance bond is required in the circumstances, taking into account any limitation in evidence of financial sustainability due to recent trading history or other material concern arising from the financial assessment performed as part of the ITT process.

# Appendix 1

## Definitions

### A1.1 Definitions Table

A1.1.1 For the purpose of this ITT the following terms and their meanings shall apply:

<b>Broadband Guidelines 2013</b>	<a href="http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2013:025:0001:0026:EN:PDF">http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2013:025:0001:0026:EN:PDF</a>
<b>Bidder</b>	a Supplier that is the recipient of this ITT unless the context of the use of this term in this ITT otherwise demands;
<b>Bidder's Team</b>	the (corporate/organisational level) team bidding for the Project, including where the Bidder is: (i) a sole organisation (ii) a consortium member (iii) a prime contractor, the prime contractor and each Subcontractor (iv) a partnership, each member of the partnership (v) an incorporated company, the incorporated company (vi) a co-operative
<b>Busy Hour Committed Rate</b>	the applicable minimum Service Frame (as defined by NICC ND 1030) throughput rate that each Retail Service Provider shall be able to obtain on a wholesale basis and make available to End User Premises for at least 90% of the time during the busiest (i.e. highest total traffic load) three (3) hours of each day during the Term;
<b>Bid Financial Model</b>	this will comprise the detailed populated financial spreadsheets submitted in response to Part 4 of this ITT, which shall become the Project Model (as defined in Schedule 1 of the Contract) upon signature of a corresponding Contract.
<b>Commission Decision</b>	the decision from the European Commission approving an aid scheme (as defined in Council Regulation (EC) 2015/1589) with reference number C(2016) 3208, available at: <a href="http://ec.europa.eu/competition/state_aid/cases/263954/263954_1760328_135_4.pdf">http://ec.europa.eu/competition/state_aid/cases/263954/263954_1760328_135_4.pdf</a>
<b>Contract</b>	a contract for the deployment of broadband access and related services, made between the Local Body and a Supplier pursuant to this ITT;
<b>Code of Conduct</b>	the code of conduct set out in Appendix 4 of Part 1 of this ITT;
<b>Data Room</b>	the data room made available to Bidders as described in Appendix 2 of Part 1 of this ITT;
<b>ITT</b>	this invitation to tender, including all the ITT Documents;
<b>ITT Documents</b>	all Parts and Appendices, all associated tender documentation, guidance, clarifications, project documentation and information issued or made available by the Local Body and/or its advisers as part of this procurement process;
<b>Key-Subcontractor</b>	has the meaning set out in Schedule 1 of the Contract;

<b>Local Body</b>	The Norfolk County Council;
<b>Local Body Requirements</b>	the requirements of the Local Body for its Project, as identified in Part 2 of this ITT and further detailed in the wider ITT Documentation;
<b>Network</b>	the electronic communications network from any Handover Point to all End User termination points as specified for the Deployed Services, which is a Solution Component and which shall be constructed, rolled out, installed, commissioned, deployed and operated by the Supplier in accordance with this Contract;
<b>NGA (Next Generation Access)</b>	networks that have the following characteristics: (i) deliver services reliably at a very high speed per subscriber through optical (or equivalent technology) backhaul sufficiently close to user premises to guarantee the actual delivery of the very high speed; (ii) support a variety of advanced digital services including converged all-IP services; and (iii) have substantially higher upload speeds (compared to basic broadband networks). In this context NGA broadband networks must be capable of delivering access line speeds of at least 30 Mbps;
<b>NGA Intervention Area</b>	the collection of premises identified in Part 2, which are in scope for NGA Network intervention as part of the Solution;
<b>Out of Scope Premises</b>	the premises defined in Part 2, which are out of scope for intervention as part of the Solution;
<b>Overall Geographic Area</b>	the area defined in section 1.4.2 of Part 2;
<b>Procurement Legislation</b>	Directive 2014/24/EC of the European Parliament and of the Council and Council Directive 89/665/EEC of the European Parliament and of the European Council (as amended by Directive 2007/66/EC and Directive 2014/23/EU) or any legislation implementing either or both of them;
<b>Project</b>	the local broadband project to be delivered pursuant to this ITT;
<b>Solution</b>	the Bidder's solution, to the Local Body Requirements, proposed (or to be proposed) pursuant to this ITT;
<b>Speed and Coverage Template</b>	the spreadsheet to be completed by Bidders, set out at Appendix 3 to Part 2 to this ITT;
<b>Subcontractor</b>	has the meaning set out in Schedule 1 of the Contract;
<b>Supplier</b>	the Bidder to which the Contract, if awarded, is awarded by the Local Body;
<b>Tender Response</b>	the tender to be submitted by each Bidder in response to this ITT.

## A1.2 Interpretation Rule

### A1.2.1 In the ITT Documents:

- A1.2.1.1 any definitions set out in Schedule 1 of the Contract shall, for the purposes of the Contract content in Part 3 of this ITT, take precedence over the above meanings;
- A1.2.1.2 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;



A1.2.1.3 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.

## Appendix 2

### Data Room Access Information

## A2

### A2.1 Introduction

#### A2.1.1 Purpose of this Document

A2.1.1.1 The Local Body is making a Data Room available as part of the procurement process.

A2.1.1.2 The Bidders' attention is specifically drawn to Clause 5 of the Contract concerning this due diligence Information and section A2.2 below concerning changes to the content of the Data Room.

### A2.2 Data Room Access and Restrictions

#### A2.2.1 Access to Data Room

A2.2.1.1 The Data Room can be accessed by Bidders subject to the terms of the Non-Disclosure Agreement entered into between the Bidder and the Local Body, and this ITT.

#### A2.2.2 Data Room Content

A2.2.2.1 Please refer to the index contained within the Data Room for a full list of the information supplied within the Data Room.

A2.2.2.2 The content of the Data Room may change over time.

#### A2.2.3 Restrictions

A2.2.3.1 Each Bidder must, for the avoidance of doubt, adhere to the terms of the Non-Disclosure Agreement and this ITT in respect of the Data Room content.

A2.2.3.2 Furthermore, the following supplementary restrictions and conditions apply in respect of the content of the Data Room: None

#### A2.2.4 Reliance on Content of Data Room

A2.2.4.1 The Bidders are referred to Clause 5 of the Contract concerning reliance on the content of the Data Room.

No representation or warranty is made concerning the completeness or accuracy of the Data Room, save to the extent expressly set out in the Contract.

## Appendix 3

### Certificate of Non-Collusion

#### Certificate of Non-Collusion

The Bidder must sign and return to the Local Body the following Certificate of Non-Collusion:

We the undersigned do hereby certify that:-

- (a) Our tender is bona fide and intended to be competitive and we have not fixed or adjusted the amount of the tender by or in accordance with any agreement or arrangement with any other person;
- (b) We have not indicated to any person other than the person calling for the tender amount or approximate amount of the proposed tender except where the disclosure in confidence of the approximate amount of the tender was necessary to obtain insurance premium or other quotations necessarily required for the preparation of the tender;
- (c) We shall have not entered into any agreement or arrangement with any other person that they shall refrain from tendering or asked the amount of any tender to be submitted;
- (d) We have not offered to pay or give any sum of money or valuable consideration directly or indirectly to any person for doing or having done or causing or having caused to be done in relation to any other tender or proposed tender for the said work any act or thing of the nature specified and described above;
- (e) We further undertake that we will not do any of the acts mentioned in (b), (c) and (d) above before the hour and date specified for the return of the tender.

For and on behalf of: .....

Signed:.....

Position held:.....

*(Duly authorised agent of the Bidder)*

## Appendix 4

# Code of Conduct – Use of Existing Infrastructure

### Introduction

1. The 2013 Broadband Guidelines require that *“Any operator which owns or controls infrastructure (irrespective of whether it is actually used) in the intervention area and which wishes to participate in the tender, should fulfil the following conditions: (i) to inform the aid granting authority and the NRA about that infrastructure during the public consultation; (ii) to provide all relevant information to other bidders at a point in time which would allow the latter to include such infrastructure in their bid.”*
2. To meet this requirement, all Bidders must either agree to and comply with this Code of Conduct in respect of their corresponding infrastructure; or confirm that they have no infrastructure in the intervention area.

### **(A) Infrastructure required to be made available**

3. All Bidders must grant access to the relevant infrastructure in accordance with the requirements of the *Communications (Access to Infrastructure) Regulations 2016*, which implement Directive 2014/61/EU.
4. These require infrastructure operators to agree to provide access to physical infrastructure on fair and reasonable terms, except insofar as the request is unreasonable (based on objective, transparent and proportionate grounds).
5. Bidders should refer to Ofcom's Guidance under the Communications (Access to Infrastructure) Regulations 2016 for further information.  
[https://www.ofcom.org.uk/data/assets/pdf\\_file/0025/95191/Guidance-under-the-Communications-Access-to-Infrastructure-Regulations-2016.pdf](https://www.ofcom.org.uk/data/assets/pdf_file/0025/95191/Guidance-under-the-Communications-Access-to-Infrastructure-Regulations-2016.pdf)
6. Where a Bidder has been determined by Ofcom to have Significant Market Power, any regulatory remedies will continue to apply such that other Bidders who do not own or control the regulated passive assets could request access. This includes access to ducts and poles in the form of BT's Physical Infrastructure Access (PIA) product.
7. Before providing access to infrastructure, the operator may apply a reasonable accreditation process in respect of the access seeker. Bidders will not need to be accredited to access information on the infrastructure or to submit a related bid (BDUK would, however, advise them to investigate any relevant accreditation processes and timescales in the preparation of their bids).
8. Information must be provided for all relevant infrastructure that a Bidder owns or controls (irrespective of whether it is actually used) in the intervention area (as identified in the Invitation to Tender (ITT)).

**(B) The level of detail of information that should be provided**

9. By agreeing to this Code of Conduct, Bidders undertake to list the types of infrastructure they own or control in the intervention area (to include masts, poles and ducts). Where access products relating to the infrastructure exist, the terms of reference for those access products must also be made available.
10. When a Bidder submits a request for information to another Bidder, the recipient of this request must make available: (1) geographic data that includes point locations for masts and poles and route data for ducts; (2) the capacity available where accurately known<sup>2</sup>; and (3) the rental costs. The level of detail must be equivalent to the “existing plant utility location” prints that utilities apply for when undertaking road construction.<sup>3</sup>
11. For that detailed information, a Bidder can charge a fee towards the genuine resource cost of compiling that information for the intervention area. Where a Bidder charges such a fee, it must be capped at £500 per intervention area per bidder.

**(C) The timeframes in which the information is to be provided**

12. At least six weeks before the deadline for ITT responses, implementing bodies must publish a list of all the Bidders who have agreed to this Code of Conduct. This may be done through a Pre-Qualification Questionnaire, or through an Expression of Interest process.
13. A Bidder has up to ten (10) days from publication of the Bidder list to indicate to any other Bidder to whom that Bidder could potentially wish to submit an access request, that: (1) they intend to request information on the infrastructure to inform the development of the Bidder’s proposed solution; and (2) the type of infrastructure that they could seek access to. On receipt of this notification, the recipient can start to develop terms of reference for access products where these do not already exist.
14. Where an initial indication of interest has been received from a Bidder in accordance with paragraph 13 above, the recipient must respond to any follow-up specific request for information from the relevant Bidder within a maximum of ten (10) working days of the request. The information that must be provided is as set out in paragraph 10.
15. If a Bidder had not submitted an indication of interest within the first 10 days (as outlined in paragraph 13) to the operator concerned, the recipient has a maximum of twenty (20) working days to respond to any request for information.
16. Alternatively, Bidders with infrastructure in the intervention area may choose to publish or otherwise make available information on the available infrastructure in advance. For example, they could provide the maps to the implementing body, who would host them in a data room (i.e. a secure extranet site that all Bidders could access). Another possibility for standardising information requests is for infrastructure operators to identify areas where

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<sup>2</sup> BDUK notes that not all infrastructure owners maintain records on infrastructure capacity and/or cannot offer assurances to access seekers about available capacity without physical surveys.

<sup>3</sup> BSI’s Publicly Available Standard 128: <http://www.pas128.co.uk/>

they own infrastructure on sites such as [linesearchbeforeudig.co.uk](http://linesearchbeforeudig.co.uk) and - if all of the relevant information is there - to direct enquirers to the site.

**(D) The acceptable terms of a non-disclosure agreement (NDA)**

17. The recipient of a request may require the Bidder to sign a NDA.
18. Template NDA text is provided at Annex A. Bidders will need to attach their NDA to their signed Code of Conduct. The National Competence Centre (NCC) will need to check any non-template NDA to verify that it is non-prejudicial and otherwise consistent with the aims and intent of the Code of Conduct.

**(E) Non-Compliance with the Code of Conduct**

19. Where a Bidder does not comply with this Code of Conduct in respect of relevant infrastructure, it will be excluded from the corresponding procurement.
20. A Bidder can notify the NCC at [stateaidforbroadband@culture.gov.uk](mailto:stateaidforbroadband@culture.gov.uk) if it believes another Bidder has breached the Code of Conduct.
21. Within 5 days of receiving the complaint, the NCC will attempt to resolve the case through arbitration (after consultation with Ofcom, if necessary.)
22. Where possible, the NCC will seek to resolve the case without the bidder being disqualified from a tender process. However, if a resolution cannot be reached through the arbitration process, the NCC would advise the implementing body that the Bidder's actions would likely result in them being considered non-compliant with State aid rules (the 2016 Commission Decision and the 2013 Broadband Guidelines).

**(F) Non-Bidders**

23. Bidders could request information about existing physical infrastructure that may be relevant to their bid from non-bidders under the Communications (Access to Infrastructure) Regulations 2016. BDUK encourages *all* infrastructure operators, regardless of whether they are bidders, to meet the standards outlined in this document.

Agreed for and on behalf of [insert organisation name]

By \_\_\_\_\_

Name \_\_\_\_\_

Position \_\_\_\_\_

Authorised signatory with the delegated authority of [*insert organisation name*]

## ANNEX A - TEMPLATE NON DISCLOSURE AGREEMENT TEXT

IT IS AGREED as follows:

### 1. DEFINITIONS

1.1 In this Agreement unless the context otherwise requires the following words shall have the following meanings:

<b>Agreement</b>	means this non-disclosure agreement;
<b>Broadband Procurement</b>	Better Broadband for Norfolk;
<b>Confidential Information</b>	means the information, in whatever medium or form (including information conveyed in writing, orally, visually or electronically), whether belonging to the Discloser or a third party (other than the Recipient), which is directly or indirectly disclosed to the Recipient or any of its representatives by any agent or employee of the Discloser, or a third party owner at the Discloser's direction, in connection with the Purpose;
<b>Discloser</b>	means the Party by whom or on whose behalf the Confidential Information is disclosed;
<b>Party</b>	means a party to this Agreement;
<b>Purpose</b>	means (i) the provision and use of information on physical infrastructure; and (ii) any subsequent access and use of such physical infrastructure, to achieve the aims and intent of the Code of Conduct entered into by the Parties as part of the Invitation to Tender process relating to the Broadband Procurement; and
<b>Recipient</b>	means the Party which receives the relevant Confidential Information from the Discloser.

1.2 In this confidentiality undertaking, unless the context otherwise requires:

- 1.2.1 the singular shall include the plural and vice versa and one gender shall include the other;
- 1.2.2 a reference to any legislation shall include a reference to such legislation as amended, extended, consolidated or re-enacted from time to time;
- 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; and

- 1.2.4 references to Clauses shall, unless otherwise expressly provided, mean references to clauses in this Agreement.

## 2. CONFIDENTIALITY UNDERTAKINGS

- 2.1 In consideration of the Parties signing and agreeing to the terms of this Agreement and agreeing to disclose Confidential Information, the Recipient undertakes to the Discloser that, with respect to any and all Confidential Information disclosed to the Recipient or to any person on behalf of the Recipient by the Discloser or by any person on behalf of the Discloser, the Recipient shall:
  - 2.1.1 treat all Confidential Information as completely and strictly confidential and keep it in safe and secure custody (as is appropriate depending upon the form in which such information is recorded and stored and the nature of the Confidential Information);
  - 2.1.2 not disclose, copy, reproduce, publish or distribute the Confidential Information (or any part thereof) to any person save to the extent expressly permitted under this Agreement or otherwise authorised by the Discloser in writing;
  - 2.1.3 respect the Discloser's proprietary rights in the Confidential Information and maintain the Confidential Information as the Discloser's property;
  - 2.1.4 use the Confidential Information solely and exclusively for the Purpose;
  - 2.1.5 inform the other Party immediately upon becoming aware or suspecting any unauthorised access, copying, use or disclosure in any form of Confidential Information; and
  - 2.1.6 not post any Confidential Information on any internet platform save to the extent expressly permitted under this Agreement or otherwise authorised by the Discloser in writing.
- 2.2 Clause 2.1 shall not, or shall cease to, apply to the extent that any Confidential Information:
  - 2.2.1 is or becomes generally known or available to the public (other than as a direct or indirect result of a disclosure in breach of this Agreement or any confidentiality undertaking given by any other person);
  - 2.2.2 is already known to the Recipient prior to disclosure by the Discloser or any other person on behalf of the Discloser and such prior knowledge can be evidenced by the written records of the Recipient;
  - 2.2.3 is or becomes known to the Recipient by disclosure from a third party (other than where such disclosure is itself subject to an obligation of confidentiality);
  - 2.2.4 is not required to be treated as Confidential Information, as expressly confirmed by the Discloser in writing; or



- 2.2.5 is required to be disclosed by any applicable law, governmental or regulatory authority, provided that the confidentiality obligations shall only be waived to the extent of the disclosure so required and provided further that where reasonably practicable and lawful, the Recipient shall:
- (a) promptly (and where reasonably practicable, in advance) notify the Discloser of the required disclosure and upon the Discloser's request, provide such information as may be reasonably required by the Discloser to understand the basis and implications of such required disclosure; and
  - (b) upon the Discloser's request, provide such co-operation as may be reasonable in the circumstances taking into account the basis, manner, scope and timing of such required disclosure to challenge the basis or mitigate the implications of such required disclosure.
- 2.3 Each Party shall be entitled to disclose Confidential Information to the local body operating the Broadband Procurement and the Department of Culture, Media and Sport (DCMS), provided such disclosure is connection with the Broadband Procurement and/or the role of DCMS in overseeing and supporting that and related procurements.
- 2.4 Each Party shall be entitled to disclose Confidential Information to its professional advisors (including consultants) to the extent necessary to enable it to take advice with respect to the relevant Purpose and/or to enforce its rights or obligations under this Agreement. The Recipient shall procure that any such professional advisor to whom Confidential Information is disclosed complies with the obligations of confidentiality and the terms and conditions of this Agreement as if such professional advisor were receiving such Confidential Information as a Recipient hereunder.
- 2.5 Except with the Discloser's prior written consent, and without prejudice to the Recipient's other obligations in this Agreement, the Recipient shall not disclose information the Discloser has identified as confidential to one line of business in the Discloser's organisation to employees, agents or contractors employed within the Discloser's organisation unless the Recipient knows that they are employed within or by the same line of business in the Discloser's organisation.

### 3. **THIRD PARTY RIGHTS**

Nothing in this Agreement shall confer on any third party any benefits under the provisions of the Contracts (Rights of Third Parties) Act 1999. This does not affect any Party's rights or remedies, or the rights of any other person, which may exist or are available other than by virtue of that Act.

4. **WAIVER AND INVALIDITY**

4.1 A waiver by any Party of any breach of, or default in, any term or condition of this Agreement shall not constitute a waiver of or any assent to any succeeding breach of, or default in, the same or any other term or condition.

4.2 If any provision of this Agreement is held to be invalid, illegal or unenforceable for any reason by any court of competent jurisdiction, such provision shall be severed and the remainder of the provisions will continue in full force and effect as if the relevant provision had been deleted.

5. **ENTIRE AGREEMENT**

This Agreement constitutes the entire agreement and understanding between the Parties in respect of the matters contained within this Agreement. Each Party acknowledges and agrees that it does not rely on and shall not have any remedy in respect of any statement, representation, warranty or undertaking other than as expressly set out in this Agreement, provided that nothing in this Agreement shall operate to exclude any liability for fraud.

6. **VARIATION**

This Agreement may only be amended or varied by agreement of the Parties in writing.

7. **COUNTERPARTS**

This Agreement may be executed in any number of counterparts, each of which, when executed and delivered, will be an original, and all the counterparts together will constitute one and the same instrument.

8. **GOVERNING LAW AND JURISDICTION**

This Agreement shall be governed by and construed in accordance with English law and the Parties irrevocably submit to the exclusive jurisdiction of the English courts in relation to any matters arising out of or in connection with this Agreement.

# Appendix 5

## Expression of Interest Form

In response to the ITT with ref:

**Bidders must provide an initial indication of whether or not they intend to submit a tender in response to this ITT by 17<sup>th</sup> August 2018 via the formal communication channel provided and as described within Part 1 of the Invitation to Tender under section 4.2.**

Provider:

**Contact details:**

Name:

Address:

Email:

This form is an expression of interest only; the full details of the project and the desired outcomes have been provided in the Invitation to Tender.