

**SCHEDULE 6.2**  
**CHANGE CONTROL PROCEDURE**

## VERSION CONTROL

VERSION NUMBER	DATE	COMMENT
0.1	27 July 2016	Preliminary draft template version made available for general comment
0.2	2 September 2016	Uplifted draft, following feedback, made available for final comment
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## SCHEDULE 6.2 – CHANGE CONTROL PROCEDURE

### 1. BACKGROUND

- 1.1 Subject to Clause 39.2, this Schedule 6.2 sets out the procedure for dealing with Contract Changes.
- 1.2 Changes to the Project Plan are not subject to the Change Control Procedure (unless such change would also involve a change to any other aspect of the Agreement) but are subject to the provisions of Schedule 4.1 (Implementation) paragraph 5, with each Party responsible for its own costs and expenses incurred in connection with the agreement of such changes to the Project Plan.

### 2. CHANGE REQUESTS

- 2.1 Subject to the remainder of this paragraph 2.1, either Party may issue a Change Request to the other Party at any time during the Term by completing Part 1 of the Change Form set out in the Appendix. Save where such a requirement would reasonably involve undue delay in progressing the Contract Change concerned, proposed Contract Changes (proposed by either Party) should be subject to reasonable consideration through the governance arrangements provided under Schedule 6.1 (Governance) prior to issue of a Change Request.
- 2.2 If the Grantee issues a Change Request, it shall also provide a Change Impact Assessment (by completing Part 2 of the Change Form set out in the Appendix) to the Welsh Ministers as soon as reasonably practicable but in any event within five (5) Working Days of the date of issuing the Change Request. The Grantee shall provide such further information and revised versions of each Change Request and/or Change Impact Assessment and within such timescales as the Welsh Ministers may reasonably require.
- 2.3 Subject to paragraph 2.4, if the Welsh Ministers issue a Change Request, the Grantee shall provide a corresponding Change Impact Assessment to the Welsh Ministers within ten (10) Working Days from receipt of the Change Request by the Grantee or such longer period as specified by the Welsh Ministers within the Change Request. If the Grantee requires any reasonable clarification in relation to a Change Request before it can deliver a Change Impact Assessment, it shall as soon as reasonably practical notify the Welsh Ministers and the Welsh Ministers shall respond to the request for clarification as soon as is reasonably practicable (a reasonable corresponding extension of applicable timescales under this Schedule 6.2 shall apply in those circumstances, which as a maximum shall be equivalent to the number of Working Days taken by the Welsh Ministers to respond to the clarification).
- 2.4 If the Grantee considers (acting reasonably) that a Change Impact Assessment in respect of a Welsh Ministers issued Change Request would require:
  - 2.4.1 more than five (5) FTE Working Days of Grantee Personnel time to prepare; and/or
  - 2.4.2 a longer period than that provided pursuant to paragraph 2.3 above,the Grantee shall (within five (5) Working Days of receipt of the Change Request) propose to the Welsh Ministers in writing:
  - 2.4.3 the reasonable cost for preparing and providing the corresponding Change Impact Assessment; and/or
  - 2.4.4 an extension of time reasonably required for provision of the Change Impact Assessment (which may not exceed an additional fifty (50) Working Days),

together with reasonable supporting explanation and data for the above proposals (in the absence of such supporting explanation and data, the timeframe for response under paragraph 2.3 above shall continue to apply). If, subject to any refinement of the Grantee's proposal under paragraph 2.4 above, the Welsh Ministers wish to proceed with that proposal:

- 2.4.5 they shall inform the Grantee in writing;
  - 2.4.6 the Grantee shall provide the Change Impact Assessment within the timescale determined in accordance with this paragraph 2.4;
  - 2.4.7 the Welsh Ministers shall be liable to pay the reasonable additional cost indicated by the Grantee (being the incremental cost beyond five (5) FTE Working Days of Grantee Personnel time), subject to provision of reasonable supporting evidence of the incurrence of those costs.
- 2.5 The Grantee acknowledges and agrees that, without prejudice to any other right or remedy the Welsh Ministers may have for failure by the Grantee to comply with the timeframe requirements in this paragraph 2, any failure to provide a Change Impact Assessment to the Welsh Ministers (consistent with the requirements of paragraph 3 below) within twenty (20) Working Days from the date of delivery for the Change Impact Assessment determined in accordance with this paragraph 2 shall constitute a material breach by the Grantee.
- 2.6 The following principles also apply to the above processes:
- 2.6.1 the Welsh Ministers must act reasonably in the frequency of Change Request submissions, including seeking to avoid iterative submission of a number of separate Change Requests concerning the same subject matter where reasonably practical and taking reasonable account of any Programme Authority Change Requests that may at the time be in the process of being implemented across the Broadband Delivery Programme;
  - 2.6.2 the Grantee shall not be entitled to recover the costs identified in accordance with paragraph 2.4 above in the event that the Change Request concerns the deployment of additional or enhanced Network coverage.
- 3. CHANGE IMPACT ASSESSMENT**
- 3.1 Each Change Impact Assessment shall include:
- 3.1.1 a descriptive summary of the proposed Contract Change;
  - 3.1.2 proposed drafting changes to this Agreement necessary to give effect to the Change (including any and all corresponding changes to the Speed and Coverage Template, Implementation Plan, Project Plan, Milestone Payments table and the Project Model), provided that the Grantee shall take into account any proposed drafting changes set out in the Change Request where submitted by the Welsh Ministers (the Contract Change should reflect these proposals of the Welsh Ministers, save to the extent it would be unreasonable to require use of the drafting concerned);
  - 3.1.3 details of the impact of the proposed Contract Change on:
    - (a) the delivery and receipt of the Deployed Services;
    - (b) the Grantee Solution;
    - (c) the Grantee's ability to meet its other obligations under this Agreement; and

- (d) any other matter requested by the Welsh Ministers at the time of the assessment, or considered by the Grantee to be relevant;
- 3.1.4 details of how the proposed Contract Change will ensure compliance with any applicable Change in Law;
- 3.1.5 a reasonable level of justification and evidence for these Changes and the above noted impact, including sufficient supporting detail to enable Welsh Ministers assessment. In the case of changes to the Grantee Solution, this must include:
  - (a) detailed supporting financial information covering any changes to Milestone Payments, Grantee NGA Network Build Investment and any other aspect of the Project Model;
  - (b) identification of changes in numbers, build classification and/or Speed Categories for End User Premises;

at least equivalent to that which would be provided as part of the Milestone M0 review process described in paragraph 8 of Schedule 4.1 (Implementation);
- 3.2 If the proposed Contract Change has no impact of the kind described in paragraph 3.1.3 above the Grantee shall provide a statement of this fact in the Change Impact Assessment.
- 3.3 The Welsh Ministers shall review each Change Impact Assessment and as soon as reasonably practicable shall respond to the Grantee in accordance with paragraph 4 below. The Grantee must comply with reasonable requests for further clarification in respect of the Change Impact Assessment if requested by the Welsh Ministers.
- 4. **WELSH MINISTERS'S RIGHT OF APPROVAL**
- 4.1 The Welsh Ministers shall review each Change Request and/or Change Impact Assessment and as soon as reasonably practicable shall do one of the following:
  - 4.1.1 approve the proposed Contract Change, in which case the Parties shall follow the procedure set out in paragraph 4.2 below;
  - 4.1.2 reject the Contract Change (providing reasons for the rejection), in which case it shall notify the Grantee of the rejection. The Welsh Ministers shall not reject any proposed Contract Change to the extent the Contract Change is necessary for the Grantee or the Deployed Services to comply with any Change in Law;
  - 4.1.3 require the Grantee to modify the Change Request and/or Change Impact Assessment in which case the Grantee shall, as soon as practicable, submit a modified proposal for consideration by the Welsh Ministers which takes the Welsh Ministers' comments into account. The Welsh Ministers shall have the approval rights set out in this paragraph 4.1 in respect of each modified Change Request and Change Impact Assessment and any subsequent version required by the Welsh Ministers.
- 4.2 If the Welsh Ministers approve a Contract Change pursuant to paragraph 4.1.1 above and it has not been rejected by the Grantee in accordance with paragraph 5 below, the Welsh Ministers shall notify the Grantee and the Parties shall sign a Change Authorisation (by completing Part 3 of the Change Form set out in the Appendix to this Schedule 6.2) within three (3) Working Days. Upon signature by both Parties, a Change Authorisation shall constitute a binding variation to this Agreement.

4.3 Until such time as a Change Authorisation has been signed by both Parties in accordance with paragraph 4.2 above, unless the Parties (acting reasonably having regard to the nature of the proposed Contract Change) agree otherwise in writing and subject to paragraph 5.3 below, the Grantee shall continue to supply the Deployed Services in accordance with the existing terms of this Agreement as if the proposed Contract Change did not apply.

## 5. GRANTEE'S RIGHT OF REJECTION

5.1 The Grantee shall be entitled to reject a proposed Contract Change only if, following a Change Impact Assessment, the Grantee reasonably believes that the proposed Contract Change would:

5.1.1 require the Deployed Services to be performed in a way that infringes any Law; and/or

5.1.2 subject to paragraph 5.2 below, materially and adversely impact:

(a) the Grantee's ability to fully deliver the Deployed Services; and/or

(b) the commercial and/or financial risk profile underpinning the Deployed Services,

provided the Grantee can demonstrate and evidence in writing to the reasonable satisfaction of the Welsh Ministers that such impact cannot be addressed by the Parties as part of the relevant Contract Change,

in which case the Grantee shall provide written notice to the Welsh Ministers which sets out the Grantee's rationale and supporting information for its proposed rejection.

5.2 Paragraph 5.1.2 above shall not permit the Grantee to reject any proposed Contract Change to the extent the Contract Change is necessary for the Welsh Ministers to comply with any Change in Law (recognising that in respect of Specific Changes in Law, reasonable commercial terms shall be agreed by the Parties in order to account for such change).

5.3 The Grantee shall not, in any event and without limitation to paragraph 5.2 above, be entitled to reject any Welsh Ministers proposed Contract Change directing de-scoping of any part of the Network, provided that the de-scoping arises in respect of another operator's verified (such verification taking place between the Welsh Ministers and Programme Authority, applying a reasonably comparable standard of verification to that applied when classifying the original ITT intervention area applicable for the Project, with confirmation being provided to the Grantee by the Welsh Ministers that this verification process has been conducted) coverage plans and/or to ensure compliance with Law.

5.4 If the circumstances of de-scoping described in paragraph 5.3 above apply, the Parties shall work together to ensure the Deployed Services, Speed and Coverage Template, Milestone Payments table, Project Model and other relevant Agreement components are correspondingly amended to reasonably reflect the de-scoping (including ensuring the Grantee is compensated for any wasted or stranded costs of the Grantee which would result from the de-scoping, on a basis consistent with the principles set out in paragraph 5.6 below). Where a Welsh Ministers Change Request directs a de-scope of part of the Network, if required by the Welsh Ministers the Grantee shall as soon as reasonably practical (in any event within five (5) Working Days or such longer period (as agreed in writing between the Parties, such consent not to be unreasonably withheld) save solely in respect of those close-down activities necessary to be performed for health and safety purposes, to physically secure and protect the Network sub-components concerned or otherwise to ensure compliance

with Law), cease any work in progress and not commence any further Network Deployment in respect of the corresponding part of the Network being de-scoped.

5.5 It is acknowledged that:

- 5.5.1 a requirement to cease work pursuant to paragraphs 5.3 and 5.4 above represents a Relief Event but solely in respect of that part of the Deployed Services which cease due to this direction and to the extent of any resulting interference such de-scoping might have on other Network build activities;
- 5.5.2 the de-scoped part of the Network shall be removed from the scope of the corresponding Milestone(s) and the Grantee shall be entitled to claim Achievement of the remaining scope of the Milestone(s) provided and once the remaining scope and associated requirements of the Milestone(s) have been satisfied in accordance with the terms of this Agreement;
- 5.5.3 the Welsh Ministers shall reasonably consult with the Grantee to consider whether the funding represented by any reduction in Milestone Payments due to the de-scoping could be used to otherwise extend coverage under this Agreement. Any such extension of coverage would be subject to the Parties reaching agreement in accordance with the Change Control Procedure and subject to the Welsh Ministers obtaining the prior approval of the Programme Authority to proceed (and that, inter alia, this will involve consideration of compliance with the requirements of the Commission Decision).

5.6 Where a de-scoping is required pursuant to the above provisions of this paragraph 5, as part of the corresponding Contract Change the following cost principles shall be applied regarding the Grantee recovering wasted or stranded costs arising from that de-scoping:

- 5.6.1 As a result of another operator's coverage plans (save where also falling within paragraph 5.6.2) – the Welsh Ministers shall pay the Grantee's wasted or stranded costs;
- 5.6.2 To ensure compliance with Law – responsibility for wasted or stranded costs shall be allocated between the Parties on an equivalent basis to cost responsibility for Changes in Law as provided under Clause 13.

The Parties shall specify within the Contract Change the overall maximum amount of wasted or stranded costs payable by the Welsh Ministers. The Grantee may only claim such wasted or stranded costs:

- 5.6.3 provided the costs were incurred within the parameters of paragraph 5.4 above;
- 5.6.4 where they are evidenced on the same basis as Milestone Payment Claims; and
- 5.6.5 provided the Grantee has used its reasonable endeavours to mitigate such costs.

6. **FAST-TRACK CHANGES**

The Parties acknowledge that in order to ensure operational efficiency there may be circumstances where it is desirable to expedite the processes set out in this Schedule 6.2. If the Parties agree in writing that such circumstances apply in relation to a proposed Contract Change then the Parties shall agree an accelerated timetable for the steps described in this Schedule 6.2 in order to affect the Contract Change.

7. **COSTS**

7.1 Subject to:

7.1.1 those costs for preparation of a Change Impact Assessment payable by the Welsh Ministers pursuant to paragraph 2.4 above (which is itself subject to paragraph 2.6.2 above); and

7.1.2 paragraph 7.2 below,

each Party shall be responsible for its own costs and expenses incurred in compliance with this Schedule 6.2 including the preparation and assessment of all Change Forms.

7.2 Without prejudice to any right a Party may have to recover costs incurred in respect of an Indemnified Claim, a Party's reasonable costs incurred in respect of any use of this Change Control Procedure as a result of any Default by the other Party shall be paid for by the Party in Default.

8. **EXECUTION OF CHANGE AUTHORISATIONS**

The Parties acknowledge that Change Authorisations may be signed in any number of counterparts. Such signature shall be effective when the signing Party delivers its signed Change Authorisation to the other Party by email in scanned PDF format or by hand, post or fax.

9. **PROGRAMME RELATED CHANGES**

From time to time the Welsh Ministers may raise a Programme Level Change Request at the request of the Programme Authority. The Parties shall manage the Programme Level Change Request through the process set out above.

**APPENDIX – CHANGE FORM**

**PART 1: CHANGE REQUEST**

CHANGE REQUEST	
<b>AGREEMENT NO:</b>	<i>[Please state]</i>
<b>CHANGE NO:</b>	<i>[Please state]</i>
<b>DESCRIPTION OF THE PROPOSED CHANGE:</b> <i>[Please state]</i>	
<b>FAST-TRACK PROPOSED IN RELATION TO CHANGE?</b>	<i>[Yes/No]</i>
<b>PRELIMINARY CHANGE ASSESSMENT TO BE PROVIDED?</b>	<i>[Yes/No]</i>
<b>PROPOSED DATE FOR CHANGE:</b>	<i>[Please state]</i>
<b>SUBMITTED TO:</b>	<i>[Please state]</i>
<b>REQUESTING PARTY:</b>	<i>[Please state]</i>
<b>SIGNED:</b>	
<b>NAME:</b>	<i>[Please state]</i>
<b>DATE:</b>	<i>[Please state]</i>

**PART 2: CHANGE IMPACT ASSESSMENT**

CHANGE IMPACT ASSESSMENT	
<b>AGREEMENT NO:</b>	<i>[Please state]</i>
<b>CHANGE NO:</b>	<i>[Please state]</i>
<b>GRANTEE'S CHANGE IMPACT ASSESSMENT:</b> <i>[Please refer to paragraphs 2 and 3 of Schedule 6.2 (Change Control Procedure)]</i>	
<b>SUBMITTED TO:</b>	<i>[Please state]</i>
<b>GRANTEE:</b>	<i>[Please state]</i>
<b>SIGNED:</b>	
<b>NAME:</b>	<i>[Please state]</i>
<b>DATE:</b>	<i>[Please state]</i>

**PART 3: CHANGE AUTHORISATION**

CHANGE AUTHORISATION	
<b>AGREEMENT NO:</b>	<i>[Please state]</i>
<b>CHANGE NO:</b>	<i>[Please state]</i>
<b>ON BEHALF OF THE GRANTEE</b>	
<b>SIGNED:</b>	
<b>NAME:</b>	<i>[Please state]</i>
<b>DATE:</b>	<i>[Please state]</i>
<b>ON BEHALF OF THE WELSH MINISTERS</b>	
<b>SIGNED:</b>	
<b>NAME:</b>	<i>[Please state]</i>
<b>DATE:</b>	<i>[Please state]</i>