

Wholesale Services Framework Agreement

This Agreement is dated 20[]

Parties

- (1) **FIBRUS NETWORKS LTD** incorporated and registered in Northern Ireland with company number NI612703 whose registered office is at Lanyon Plaza, West Tower, 8 Lanyon Pl, Belfast BT1 3LP (**Fibrus Networks**); and
- (2) [NAME~ incorporated~ Co number~ RO address] (**Retail Service Provider**)

Background

- (a) As part of its public funding commitments, Fibrus Networks, an FTTP broadband network operator, is able to provide the Services as part of a wholesale access offering to the Retail Service Provider.
- (b) The Retail Service Provider is an internet service provider that wishes to use the Services for its own end-customers (but not otherwise) under this framework agreement (**Framework Agreement**).
- (c) When the Retail Service Provider requests Services from Fibrus Networks, and Fibrus Networks is able to provide such services, the parties may enter into separate Orders in accordance with this Framework Agreement.

Operative Provisions

1. DEFINITIONS

1.1 **Charges:** the charges set out in the [Wholesale Price List](#) from time to time, or as otherwise specified in the Order payable by the Retail Service Provider for the supply of the Services by Fibrus Networks.

1.2 **Services,** relating to “White Premises”:

- (a) [Ethernet Access Services](#)
- (b) [Infrastructure Access](#);
- (c) [Dark Fibre Infrastructure Access](#)
- (d) [Passive Infrastructure Services](#)
- (e) [Installation Services](#); and
- (f) Any agreed Non-standard Services.

1.3 **Business Day:** a day other than a Saturday, Sunday or public holiday on which banks are open for business generally.

1.4 **Excused Outage:** any outage or unavailability of any part of the Network associated with or caused by:

- (a) Planned Maintenance;
- (b) by any 3rd party infrastructure provider – e.g., core, backhaul and PIA – or other 3rd parties (except those third parties sub-contracted by Fibrus Networks to perform the Services (or any part);
- (c) Retail Service Provider Default in clause 8.5; or
- (d) by any other situation listed in the [Service Level Agreement](#).

1.5 **Intellectual Property Rights:** patents, rights to inventions, copyright and related rights, moral rights, trademarks and service marks, business names and domain

names, rights in get-up and trade dress, goodwill and the right to sue for passing off or unfair competition, rights in designs, rights in computer software, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how [and trade secrets]) and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world.

1.6 **Network:** Fibrus Network’s broadband infrastructure in Northern Ireland for ultrafast full fibre to the home or premises (FTTP).

1.7 **Non-standard Services:** non-standard and/or bespoke Services required by the Retail Service Provider.

1.8 **Order:** a call-off order placed under this Framework Agreement for the provision of Services by Fibrus Networks to the Retail Service Provider, in accordance with clause 4.

1.9 **Operator Wholesale Gateway (or OWG):** the Fibrus Networks Retail Service Provider order management portal where the Retail Service Provider can check for released to sales properties, using address data for Fibrus Networks full fibre broadband availability, and against which the Retail Service Provider can request the provision of Ethernet Access Services from Fibrus Networks created through an Order.

1.10 **Outage:** a continuous or interrupted period of time (whether or not scheduled) when the Network, or a portion thereof, is unavailable, interrupted or materially degraded for a period of at least one hour.

1.11 **Planned Maintenance:** such preventative, routine or scheduled maintenance work, including tests and adjustments, as Fibrus Networks may consider necessary for the Network to be maintained in efficient working order.

1.12 **Right to Use:** the Retail Service Provider’s right to use the constituent part or segment of the Fibrus Networks’ Network infrastructure identified in the applicable Order in offering its services to its own end-customers.

1.13 **Service Level Agreement:** the Fibrus Networks the [Service Level Agreement](#) from time to time, which contains details about support, maintenance and service levels.

1.14 **Service Delivery Point:** the Retail Service Provider's end-customer premises that are to be connect to the Network.

2. BASIS OF CONTRACT

2.1 This Framework Agreement governs the overall relationship of the parties in relation to the Services that may be provided by Fibrus Networks to the Retail Service Provider under separate Orders, and consists of:

- (a) the Services; and
- (b) the [Wholesale Price List](#) (for all Services),

and incorporates by reference the current versions from time to time of all documents cited in this Framework Agreement and which are available at <https://hyperfastqb.com/wholesale-partners>.

2.2 Together these documents embody the entire legal and contractual relationship between the parties relating to the subject matter of this Framework Agreement and any Orders.

2.3 This Framework Agreement applies to all Services to the exclusion of any other terms, conditions and/or warranties that the Retail Service Provider seeks to impose or incorporate, or which are implied by law, trade, custom, practice or course of dealing.

2.4 The Retail Service Provider acknowledges that it has not relied on any statement, promise, representation, assurance or warranty made or given by or on behalf of Fibrus Networks which is not set out in this Framework Agreement.

2.5 This Agreement shall not prevent Fibrus Networks from entering into similar agreements with third parties.

3. COMMENCEMENT & DURATION

Framework Agreement

3.1 This Framework Agreement shall commence on the stated dated of execution and shall continue, unless terminated earlier in accordance with clause 13, for a period of 5 years.

Orders

3.2 Each Order shall come into force on the date it becomes legally binding.

3.3 Each Order shall, unless terminated earlier in accordance with clause 13, continue for the contract term stated in the [Wholesale Price List](#) or in the applicable Order.

3.4 The Retail Service Provider shall give written notice to Fibrus Networks, on or before expiry of the then current term, to renew the Order, which terms will need to be agreed in writing per clause 4 for the Order to be legally binding and have legal effect.

4. ORDER PROCESS

4.1 The Retail Service Provider shall be entitled during the term of this Framework Agreement to time to request in writing the provision of any or all of the Services from Fibrus Networks.

Passive Services

4.2 In the case of **Passive Services** (Access – passive infrastructure, dark fibre infrastructure & cabinet infrastructure), within 10 Business Days of receipt of a written request from the Retail Service Provider, Fibrus Networks shall:

- (a) either notify the Retail Service Provider that it is not able to provide the requested Services; or
- (b) complete the Fibrus Network's Order and submit it to the Retail Service Provider for its written approval.

4.3 An Order shall not enter into force, be legally binding or have any other effect unless:

- (a) the Order has been signed by the authorised representatives of both parties to it; and
- (b) at the date the Order is signed, notice to terminate this Framework Agreement has not been served by either party.

4.4 Each Order for Passive Services:

- (a) shall be entered into by the Retail Service Provider and Fibrus Networks; and
- (b) forms a separate contract between its signatories.

Active Services

4.5 In the case of **Active Services** (Ethernet Access Services) all Retail Service Provider requests for the provision of Active Services for its end-customers must be submitted, and Orders will be created, managed and fulfilled, through the Operator Wholesale Gateway (OWG), accessed by the Retail Service Provider using a unique Wholesale Partner identifier.

4.6 OWG generated Orders shall not enter into force, be legally binding or have any other effect unless:

- (a) the Order in question has been both confirmed, and the Service Delivery Point installation has similarly been booked, on the OWG system; and
- (b) at the date the Order is confirmed, notice to terminate this Framework Agreement has not been served by either party.

4.7 All Orders for Active Services:

- (a) shall be entered into by the Retail Service Provider and Fibrus Networks; and
- (b) together will constitute a single contract under this Framework Agreement between its signatories (by virtue of a continuous supply nature of the Order for Active Services).

General

4.8 On an Order coming into force in clause 3.2, Fibrus Networks will grant (and be deemed to have granted) the Retail Service Provider rights in the applicable Right to Use during the term of the Order.

4.9 For the avoidance of doubt, Fibrus Networks has no obligation to issue, or to sign, an Order requested by the Retail Service Provider.

5. SUPPLY/USE OF EQUIPMENT, INSTALLATION SERVICES, TITLE

5.1 For Passive Services, once provided by Fibrus Networks, the Retail Service Provider may install or connect its own equipment that meet the appropriate Fibrus Networks stated requirements from time to time.

5.2 For Active Services:

- (a) The Retail Service Provider is responsible for supplying and installing at the Service Delivery Point any **CPE** (Customer Premises Equipment) to enable end-customer to access the Network;

- (b) Fibrus Networks is responsible for standard [Installation Services](#) (scheduled through the OWG system) to the Service Delivery Point, to include supplying and installing the **ONT (Optical Network Termination)** to connect the CPE to the Network.
- 5.3 The Network, any physical media and all Fibrus Networks equipment (including the ONT) are and will remain the exclusive property of Fibrus Networks at all times.
- 6. SUPPLY OF SERVICES**
- 6.1 Fibrus Networks shall provide the Services substantially in accordance with the descriptions and specifications and the relevant Order.
- 6.2 In providing the Services, Fibrus Networks shall:
- (a) perform the Services with care, skill and diligence in accordance with performance standards that meet prudent industry standards;
 - (b) have and maintain all the licences, permissions, authorisations, consents and permits needed to comply with its obligations under this Framework Agreement and any Order(s); and
 - (c) ensure that all goods, materials, standards and techniques used in providing the Services are free from defects in workmanship, installation and design.
- 6.3 Fibrus Networks does not warrant that the Network and Services will be free from vulnerabilities or that the Retail Service Provider's use of the Network and the Services will be uninterrupted or error-free. The Retail Service Provider acknowledges that Fibrus Networks cannot guarantee, and nor is it liable for, the security of information transmitted using the Network.
- 7. OPERATIONS & MAINTENANCE SERVICE LEVELS**
- 7.1 Fibrus Networks shall provide support and maintenance services in the [Service Level Agreement](#), using reasonable endeavours to meet any performance target response times as specified in the [Service Level Agreement](#), always provided that if no performance dates are so specified Fibrus Networks shall provide the support within a reasonable time (and time shall not be of the essence).
- 7.2 As a necessary part of maintaining the Network, Fibrus Networks carries out routine Planned Maintenance and it will ordinarily provide prior notice to the Retail Service Provider before initiating any Planned Maintenance work if there will be, or it is likely that there will be, an Outage or disruption. Any such Planned Maintenance Outage or disruption will not count towards the purposes of applying service levels/credits in the [Service Level Agreement](#), unless the Planned Maintenance is materially unreasonable in timescale.
- 7.3 The Retail Service Provider acknowledges the possibility of an Outage as a result of unscheduled or unplanned events. Fibrus Networks will use reasonable endeavours to minimise any such Outage time, which shall not count towards the purposes of applying service levels/credits in the [Service Level Agreement](#), to the extent caused by an Excused Outage.
- 7.4 Fibrus Networks will take all reasonable steps to minimise and mitigate the impact and disruption to the operation of the Network arising from any Outage.
- 7.5 Fibrus Networks will have sole responsibility for negotiating, executing and administering the agreements and all other aspects related to the construction, operation, maintenance and repair of the Network.
- 7.6 Fibrus Networks reserves the right to amend its Network and/or the Services descriptions and specifications as needed to comply with any applicable law or regulatory requirement, or if the amendment will not materially affect the nature or quality of the Services, and it shall notify the Retail Service Provider in any such event.
- 8. RETAIL SERVICE PROVIDER OBLIGATIONS**
- 8.1 The Retail Service Provider shall:
- (a) ensure that all information provided to Fibrus Networks is complete and accurate;
 - (b) at all times follow the processes set out in the documents incorporated by reference into this Framework Agreement;
 - (c) co-operate with Fibrus Networks in all matters relating to the Services;
 - (d) provide Fibrus Networks with such information and materials as Fibrus Networks may reasonably require in order to supply the Services, and ensure that such information is complete and accurate in all material respects;
 - (e) provide such access to the Service Delivery Point as may reasonably be requested by Fibrus Networks and agreed with the end-customer in writing in advance of delivery by Fibrus Networks of its Services and will promptly notify Fibrus Networks of any relevant premises safety or security issues;
 - (f) be responsible for any relevant Fibrus Networks Services and Charges (and assumptions), and for any additional Charges for Non-Standard Services and to provide its end-customers with a copy of the RSP end-customer [Installation Guide](#);
 - (g) obtain and maintain all necessary licences, permissions and consents which may be required for the Services at all times;
 - (h) comply with all applicable laws, including health and safety laws;
 - (i) comply with Fibrus Networks' reasonable instructions regarding use of the Network and regarding types and specifications of equipment to be connected;
 - (j) comply with Fibrus Networks' reasonable instructions regarding physical and network security, and regarding security, health and safety when accessing any point on the Network; and
 - (k) perform its obligations with care, skill and diligence in accordance with performance standards that meet prudent industry standards;
- 8.2 The Retail Service Provider's CPE and any other equipment must not: (a) interrupt, interfere with, degrade or impair service over any of the facilities comprising the Network or any circuits or facilities of any other entity connected to the Network; (b) impair the privacy of any communications over such circuits or facilities; (c) cause damage of any nature to the Network; or (d) create hazards to employees of Fibrus Networks or users of the Network or any third party.
- 8.3 The Retail Service Provider will not, and will ensure that its end-customers will not, use any part of the Network for any illegal purpose, and will comply at all times with any applicable legal requirement in respect of it.
- 8.4 The Retail Service Provider shall ensure that its use or access of the Services causes no detriment or financial or reputational damage to Fibrus Networks or to the Network or any Retail Service Providers of Fibrus Networks and the Retail Service Provider shall indemnify Fibrus Networks fully against loss suffered by Fibrus Networks as a result of the Retail Service Provider's activities using the Network or any Services.
- 8.5 If Fibrus Networks' performance of any of its obligations under this Framework Agreement or any Order is prevented or delayed by any act or omission by the Retail Service Provider default or failure by the Retail Service Provider to perform any relevant obligation (**Retail Service Provider Default**):
- (a) without limiting or affecting any other right or remedy available to it, Fibrus Networks may suspend performance of all or any of the Services under an Order until the Retail Service Provider remedies the Retail Service Provider Default, and to rely on the Retail Service Provider Default to relieve it from the performance of any of its obligations in each case to the extent the Retail Service Provider Default prevents or delays Fibrus Networks' performance of any of its obligations;

- (b) Fibrus Networks shall not be liable for any costs or losses sustained or incurred by the Retail Service Provider arising directly or indirectly from Fibrus Networks' failure or delay performing any of its obligations as set out in this clause 8.5; and
- (c) the Retail Service Provider shall reimburse Fibrus Networks on written demand for any costs or losses sustained or incurred by Fibrus Networks arising directly or indirectly from the Retail Service Provider Default.

9. CHARGES AND PAYMENT

- 9.1 The Charges for the Services shall be calculated in accordance with the [Wholesale Price List](#) (for all Services). The Charges for the Services shall be set out in the relevant Order.
- 9.2 The Charges are based on, and assume, Fibrus Networks standard Services. Any Non-standard Services may incur additional Charges, which must be agreed between the parties before an Order comes into force under clause 3.2. A charge will be also be incurred in circumstances where scheduled Installation Services cannot be performed due to a default or failure on the part of the Retail Service Provider or its end-customer to observe the instructions in the [Installation Services](#) or for a late notice Retail Service Provider/end-customer rescheduled instal and/or Service changes.
- 9.3 Fibrus Networks will periodically review, and may increase, the Charges - ordinarily annually. Fibrus Networks shall give the Retail Service Provider not less than 3 months' notice of any increase. Any increase in the Charges shall apply with effect from expiry of the Fibrus Network's notice.
- 9.4 Fibrus Networks shall invoice the Retail Service Provider monthly or annually in advance as recorded in the Order.
- 9.5 The Retail Service Provider shall pay each invoice which is properly due and submitted to it by Fibrus Networks, within 30 days of receipt in cleared funds, to a bank account nominated in writing by Fibrus Networks, and time for payment shall be of the essence.
- 9.6 All amounts payable by the Retail Service Provider are exclusive of amounts in respect of value added tax chargeable for the time being (VAT). Where any taxable supply for VAT purposes is made under any Order by Fibrus Networks to the Retail Service Provider, the Retail Service Provider shall, on receipt of a valid VAT invoice from the Supplier, pay to the Supplier such additional amounts in respect of VAT as are chargeable on the supply of the Services at the same time as payment is due for the supply of the Services.
- 9.7 If the Retail Service Provider fails to make a payment due to Fibrus Networks by the due date, then, without limiting Fibrus Networks' remedies under clause 13, the Retail Service Provider shall pay interest on the overdue sum from the due date until payment of the overdue sum, whether before or after judgment. Interest under this clause 9.7 will accrue each day at 4% a year above the Bank of England's base rate from time to time, but at 4% a year for any period when that base rate is below 0%.
- 9.8 All amounts due under this Framework Agreement and any Order shall be paid in full without any set-off, counterclaim, deduction or withholding (other than any deduction or withholding of tax as required by law).

10. INTELLECTUAL PROPERTY RIGHTS

- 10.1 All Intellectual Property Rights in or arising out of or in connection with the Services (other than Intellectual Property Rights in any materials provided by the Retail Service Provider) shall be owned by Fibrus Networks.
- 10.2 The parties each grant to the other a fully paid-up, non-exclusive, royalty-free, non-transferable licence to copy and modify any materials provided in accordance with this Framework Agreement for the term the applicable Order for the purpose of providing the Services.

11. DATA PROTECTION

11.1 Definitions:

- (a) **Agreed Purposes:** for matching property by using Unique Property Reference Numbers (UPRN), Unique Street Reference Numbers (USRN) and postcode data, to determine Fibrus Networks full fibre broadband availability & connection speed;
- (b) **Controller, processor, data subject, personal data, personal data breach, processing and appropriate technical and organisational measures:** as set out in the Data Protection Legislation.
- (c) **Data Discloser:** a party that discloses Shared Personal Data to the other party.
- (d) **Data Protection Legislation:** all applicable data protection and privacy legislation in force from time to time in the UK including the UK GDPR; the Data Protection Act 2018 (DPA 2018) (and regulations made thereunder); the Privacy and Electronic Communications Regulations 2003 (SI 2003/2426) as amended and all other legislation and regulatory requirements in force from time to time which apply to a party relating to the use of personal data (including, without limitation, the privacy of electronic communications); and the guidance and codes of practice issued by the Information Commissioner or other relevant regulatory authority and applicable to a party.
- (e) **Permitted Recipients:** the parties to this Framework Agreement, their employees, any third parties engaged to perform obligations in connection with this Frameworks Agreement and/or any Order.
- (f) **Shared Personal Data:** the personal data to be shared between the parties. Shared Personal Data shall be confined to the following categories of information relevant to the following categories of data subject: property addresses (with occupant details anonymised).

11.2 Shared Personal Data. This clause sets out the framework for the sharing of personal data between the parties as controllers. Each party acknowledges that one party (referred to in this clause as the **Data Discloser**) will regularly disclose to the other party Shared Personal Data collected by the Data Discloser for the Agreed Purposes.

11.3 Effect of non-compliance with Data Protection Legislation. Each party shall comply with all the obligations imposed on a controller under the Data Protection Legislation, and any material breach of the Data Protection Legislation by one party shall, if not remedied within 30 days of written notice from the other party, give grounds to the other party to terminate this Framework Agreement and any relevant Order with immediate effect.

11.4 Particular obligations relating to data sharing. Each party shall:

- (a) ensure that it has all necessary notices and consents and lawful bases in place to enable lawful transfer of the Shared Personal Data to the Permitted Recipients for the Agreed Purposes;
- (b) give full information to any data subject whose personal data may be processed under this Framework Agreement or an Order of the nature of such processing. This includes giving notice that, on the termination of this Framework Agreement or Order, personal data relating to them may be retained by or, as the case may be, transferred to one or more of the Permitted Recipients, their successors and assignees;
- (c) process the Shared Personal Data only for the Agreed Purposes;
- (d) not disclose or allow access to the Shared Personal Data to anyone other than the Permitted Recipients;
- (e) ensure that all Permitted Recipients are subject to written contractual obligations concerning the Shared Personal Data (including obligations of confidentiality) which are no less onerous than those imposed by this agreement;

- (f) ensure that it has in place appropriate technical and organisational measures, reviewed and approved by the other party, to protect against unauthorised or unlawful processing of personal data and against accidental loss or destruction of, or damage to, personal data.
- (g) not transfer any personal data received from the Data Discloser outside the UK unless the transferor ensures that (i) the transfer is to a country approved under the applicable Data Protection Legislation as providing adequate protection; or (ii) there are appropriate safeguards or binding corporate rules in place pursuant to the applicable Data Protection Legislation; or (iii) the transferor otherwise complies with its obligations under the applicable Data Protection Legislation by providing an adequate level of protection to any personal data that is transferred; or (iv) one of the derogations for specific situations in the applicable Data Protection Legislation applies to the transfer.

11.5 Mutual assistance. Each party shall assist the other in complying with all applicable requirements of the Data Protection Legislation. In particular, each party shall:

- (a) consult with the other party about any notices given to data subjects in relation to the Shared Personal Data;
- (b) promptly inform the other party about the receipt of any data subject rights request;
- (c) provide the other party with reasonable assistance in complying with any data subject rights request;
- (d) not disclose, release, amend, delete or block any Shared Personal Data in response to a data subject rights request without first consulting the other party wherever possible;
- (e) assist the other party, at the cost of the other party, in responding to any request from a data subject and in ensuring compliance with its obligations under the Data Protection Legislation with respect to security, personal data breach notifications, data protection impact assessments and consultations with the Information Commissioner or other regulators;
- (f) notify the other party without undue delay on becoming aware of any breach of the Data Protection Legislation;
- (g) at the written direction of the Data Discloser, delete or return Shared Personal Data and copies thereof to the Data Discloser on termination of this agreement unless required by law to store the Shared Personal Data;
- (h) use compatible technology for the processing of Shared Personal Data to ensure that there is no lack of accuracy resulting from personal data transfers;
- (i) maintain complete and accurate records and information to demonstrate its compliance with this clause and allow for reasonable audits by the other party or the other party's designated auditor; and
- (j) provide the other party with contact details of at least one employee as point of contact and responsible manager for all issues arising out of the Data Protection Legislation, including the joint training of relevant staff, the procedures to be followed in the event of a data security breach, and the regular review of the parties' compliance with the Data Protection Legislation.

11.6 Indemnity. Each party shall indemnify the other against all liabilities, costs, expenses, damages and losses (including but not limited to any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal costs (calculated on a full indemnity basis) and all other reasonable professional costs and expenses) suffered or incurred by the indemnified party arising out of or in connection with the breach of the Data Protection Legislation by the indemnifying party, its employees or agents, provided that the indemnified party gives to the indemnifier prompt notice of

such claim, full information about the circumstances giving rise to it, reasonable assistance in dealing with the claim and sole authority to manage, defend and/or settle it.

12. LIMITATION OF LIABILITY

12.1 The restrictions on liability in this clause 12 apply to every liability arising under or in connection with the Framework Agreement and each Order, including liability in contract, tort (including negligence), misrepresentation, restitution or otherwise.

12.2 The limitations apply separately and distinctly to this Framework and each Order.

12.3 No party may benefit from the limitations and exclusions set out in this clause in respect of any liability arising from its deliberate default.

12.4 Nothing in this clause 12.4 shall limit the Retail Service Provider's payment obligations under this Order.

12.5 Nothing in this Framework Agreement or in an Order shall limit or exclude or limit any party's liability for death or personal injury caused by its (or its agents or subcontractor's) negligence or for fraud or fraudulent misrepresentation or any other liability that cannot, as a matter of applicable law, be limited or excluded.

12.6 Except as expressly stated, all warranties, conditions and other terms that may be implied by statute, by course of dealing or by common law are, to the fullest extent permitted by law, excluded from this Framework Agreement and an Order.

12.7 Subject to clause 12.5 and to any expressly agreed service credits, no party shall under any circumstances whatever, be liable whether in tort (including for negligence or breach of statutory duty), contract, misrepresentation (whether innocent or negligent) or otherwise for: (a) loss of profits; (b) loss of business; (c) depletion of goodwill or similar losses; (d) loss of anticipated savings; (e) loss of goods; (f) loss of agreement; (g) loss of use; (h) loss or corruption of data or information; or (i) any special, indirect, consequential or pure economic loss, costs, damages, charges or expenses, howsoever caused and whether or not foreseeable.

12.8 The total aggregate liability of Fibrus Networks to the Retail Service Provider in contract, tort (including negligence or breach of statutory duty), in connection with the Services made under this Agreement or any Order shall be limited as follows:

- (a) Fibrus Networks shall not be responsible for any losses caused by any third party (except those third parties sub-contracted by Fibrus Networks to perform Services for which the Supplier shall remain fully liable), subject to the following limits;
- (b) in the case of damage to physical or real property, the limit of liability shall be £1,000,000; and
- (c) for any other liability, in no circumstances shall liability exceed a sum equal to 100% total amount of Charges paid or payable in respect of the Services in the twelve months preceding the claim.

12.9 No party shall have any liability to the other in respect of a breach unless it has issued proceedings in respect of such breach within 18 months of the date when that party first became aware of the circumstances constituting the breach.

13. TERMINATION

13.1 Without affecting any other right or remedy available to it, either party may terminate this Framework Agreement and/or, as the case may be, the affected Order with immediate effect by giving written notice to the other party if:

- (a) the other party fails to pay any amount due and remains in default not less than 30 days after being notified in writing to make such payment under the affected Order;

- (b) the other party commits a material breach of any other term of this Framework Agreement and/or the affected Order and (if such breach is remediable) fails to remedy that breach within a period of 30 days after being notified in writing to do so;
- (c) if the other party does anything which can or may cause reputational damage to the other party;
- (d) the other party repeatedly breaches any of the terms of this Framework Agreement and/or the affected Order in such a manner as to reasonably justify the opinion that its conduct is inconsistent with it having the intention or ability to give effect to the terms of this Framework Agreement and/or the affected Order;
- (e) the other party takes any step or action in connection with its entering administration, provisional liquidation or any composition or arrangement with its creditors (other than in relation to a solvent restructuring), being wound up (whether voluntarily or by order of the court, unless for the purpose of a solvent restructuring), having a receiver appointed to any of its assets or ceasing to carry on business;
- (f) the other party takes any step or action in connection with its entering administration, provisional liquidation or any composition or arrangement with its creditors (other than in relation to a solvent restructuring), being wound up (whether voluntarily or by order of the court, unless for the purpose of a solvent restructuring), having a receiver appointed to any of its assets or ceasing to carry on business;
- (g) the other party suspends, or threatens to suspend, or ceases or threatens to cease to carry on all or a substantial part of its business; or
- (h) the other party's financial position deteriorates to such an extent that in the terminating party's opinion the other party's capability to adequately fulfil its obligations under this Framework Agreement and/or an Order has been placed in jeopardy.

13.2 Without affecting any other right or remedy available to it, Fibrus Networks may instead suspend performance of the Services in which event it will notify the Retail Service Provider of such suspension and of the basis on which it would be prepared to re-activate this Services.

14. CONSEQUENCES OF TERMINATION AND EXPIRY

14.1 On termination (or expiry) of this Framework Agreement, howsoever arising, each Order then in force at the date of such termination shall continue in full force and effect for the remainder of the term of such Order, unless terminated earlier in accordance with the terms of such Order.

14.2 The termination of any Order shall not affect any other Orders or this Framework Agreement.

14.3 Termination shall not affect any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination, including the right to claim damages in respect of any breaches of this Framework Agreement/affected Order which existed at or before the date of termination.

14.4 On termination of any Order, the Retail Service Provider shall immediately pay to Fibrus Networks all of Fibrus Networks' outstanding unpaid invoices and interest and, in respect of Services supplied under that Order but for which no invoice has been submitted, Fibrus Networks shall submit an invoice, which shall be payable by the Retail Service Provider immediately on receipt;

14.5 Any provision of this Framework Agreement or applicable Order that expressly or by implication is intended to come into or continue in force on or after termination or expiry shall remain in full force and effect.

15. FORCE MAJEURE

15.1 **Force Majeure Event** means any circumstance not within a party's reasonable control including, without limitation:

- (a) acts of God, flood, drought, earthquake or other natural disaster;
- (b) epidemic or pandemic;
- (c) terrorist attack, civil war, civil commotion or riots, war, threat of or preparation for war, armed conflict, imposition of sanctions, embargo, or breaking off of diplomatic relations;
- (d) nuclear, chemical or biological contamination or sonic boom;
- (e) any law or any action taken by a government or public authority, including without limitation imposing an export or import restriction, quota or prohibition, or failing to grant a necessary licence or consent;
- (f) collapse of buildings, fire, explosion or accident; and
- (g) any labour or trade dispute, strikes, industrial action or lockouts (other than in each case by the party seeking to rely on this clause, or companies in the same group as that party);
- (h) non-performance by suppliers or subcontractors; and
- (i) interruption or failure of utility service.

15.2 Provided it has complied with clause 15.4, if a party is prevented, hindered or delayed in or from performing any of its obligations under this agreement by a Force Majeure Event (**Affected Party**), the Affected Party shall not be in breach of this agreement or otherwise liable for any such failure or delay in the performance of such obligations. The time for performance of such obligations shall be extended accordingly.

15.3 The corresponding obligations of the other party will be suspended, and its time for performance of such obligations extended, to the same extent as those of the Affected Party.

15.4 The Affected Party shall:

- (a) as soon as reasonably practicable after the start of the Force Majeure Event but no later than five days from its start, notify the other party in writing of the Force Majeure Event, the date on which it started, its likely or potential duration, and the effect of the Force Majeure Event on its ability to perform any of its obligations under this Framework Agreement and/or any affected Order; and
- (b) use all reasonable endeavours to mitigate the effect of the Force Majeure Event on the performance of its obligations.

15.5 If the Force Majeure Event prevents, hinders or delays the Affected Party's performance of its obligations for a continuous period of more than 90 days, the party not affected by the Force Majeure Event may terminate this agreement by giving four weeks' written notice to the Affected Party.

16. GENERAL

16.1 Assignment and other dealings

Neither party shall assign, transfer, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any of its rights and obligations under this Framework Agreement or any Order without the prior written consent of the other party (such consent not to be unreasonably withheld or deferred).

16.2 Confidentiality

- (a) Each party undertakes that it shall not at any time disclose to any person any confidential information concerning the business, affairs, Retail Service Providers, clients or Retail Service Providers of the other party, except as permitted below.

- (b) Each party may disclose the other party's confidential information:
- (i) to its employees, officers, representatives, subcontractors or advisers who need to know such information for the purposes of carrying out the party's obligations under this Framework Agreement or an Order. Each party shall ensure that its employees, officers, representatives, subcontractors or advisers to whom it discloses the other party's confidential information comply with this clause; and
 - (ii) as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.
- (c) Neither party shall use the other party's confidential information for any purpose other than to perform its obligations under this Framework Agreement and any Order.

16.3 Variation

No variation of this Framework Agreement or any Order shall be effective unless it is in writing and signed by the parties (or their authorised representatives).

16.4 Waiver

A waiver of any right or remedy under this Framework Agreement or any Order or by law is only effective if given in writing and shall not be deemed a waiver of any subsequent right or remedy. A failure or delay by a party to exercise any right or remedy provided under this Framework Agreement or an Order or by law shall not constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict any further exercise of that or any other right or remedy. No single or partial exercise of any right or remedy provided under this Framework Agreement or any Order or by law shall prevent or restrict the further exercise of that or any other right or remedy.

16.5 Severance

If any provision or part-provision of this Framework Agreement or any Order is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of this Framework Agreement or any Order.

16.6 Notices

- (a) Any notice given to a party under or in connection with this Framework Agreement and any Order shall be in writing and shall be:
- (i) delivered by hand or by pre-paid first-class post or other next working day delivery service at its registered office (if a company) or its principal place of business (in any other case); or
 - (ii) sent by email to such email address (or an address substituted in writing by the party to be served) notified in writing by a party.
- (b) Any notice shall be deemed to have been received:
- (i) if delivered by hand, on signature of a delivery receipt or at the time the notice is left at the proper address;
 - (ii) if sent by pre-paid first-class post or other next working day delivery service, at 9.00 am on the second Business Day after posting or at the time recorded by the delivery service; or
 - (iii) if sent by email, at the time of transmission, or, if this time falls outside normal business hours in the place of receipt, when normal business hours resume.
- (c) This clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.

16.7 Third party rights.

- (a) Unless it expressly states otherwise, this Framework Agreement or an Order does not give rise to any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Framework Agreement or Order.
- (b) The rights of the parties to rescind or vary this Framework Agreement are not subject to the consent of any other person.

16.8 Governing law. This Framework Agreement and each Order, and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with them or their subject matter or formation shall be governed by and construed in accordance with the law of England & Wales.

16.9 Jurisdiction. Each party irrevocably agrees that the courts of England & Wales shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with this Framework Agreement or Order or their subject matter or formation.

Signed on behalf of Fibrus Networks GB Ltd

.....
 Name
 Title
 Date

Signed on behalf of the Retail Service Provider

.....
 Name
 Title
 Date