

DATED

(1) Norfolk County Council

AND

(2) British Telecommunications plc

CONTRACT NO. BBfN contract 3

**CONTRACT FOR THE PROVISION OF DEPLOYED
SERVICES**

VERSION CONTROL

VERSION NUMBER	DATE	COMMENT
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THIS CONTRACT is made on

BETWEEN:

- (1) **Norfolk County Council** of County Hall, Martineau Lane, Norwich, NR1 2DH ("**Authority**"); and
- (2) **British Telecommunications plc** a company registered in England and Wales with number 1800000 whose registered office is at BT Centre, 81 Newgate Street London, EC1A 7AJ ("**Supplier**").

WHEREAS:

- (A) On 23 July 2018 the Authority issued its ITT.
- (C) On Wednesday 16th January 2019 following evaluation of the responses to the ITT, the Authority selected the Supplier as its preferred bidder and engaged in a process of contract finalisation.
- (D) Following conclusion of contract finalisation with the Supplier and on the basis of the Supplier's responses to the ITT, the Authority has selected the Supplier to provide the Deployed Services. The Supplier is willing to provide the Deployed Services on the terms set out in this Contract.

IT IS AGREED as follows:

PRELIMINARY

1. DEFINITIONS AND INTERPRETATION

- 1.1 In this Contract the definitions set out in Schedule 1 (Definitions) shall apply.
- 1.2 In this Contract:
 - 1.2.1 the singular includes the plural and vice versa;
 - 1.2.2 reference to a gender includes the other gender and the neuter;
 - 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;
 - 1.2.4 references to any person shall include natural persons and partnerships, firms and other incorporated bodies and all other legal persons of whatever kind and however constituted and their successors and permitted assigns or transferees;
 - 1.2.5 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;
 - 1.2.6 headings are included in this Contract for ease of reference only and shall not affect the interpretation or construction of this Contract;

- 1.2.7 unless otherwise provided, references to Clauses, paragraphs, Schedules and Appendices are references to the clauses and paragraphs of, and the schedules and appendices to, this Contract;
- 1.2.8 the words "day", "month" and "year" mean calendar day, calendar month and calendar year unless otherwise stated; and
- 1.2.9 a reference to GBP or £ shall mean pounds sterling.
- 1.3 Neither the giving of any approval, consent, examination, acknowledgement, knowledge of the terms of any agreement or document nor the review of any document or course of action by or on behalf of the Authority shall, unless otherwise expressly stated in this Contract, relieve the Supplier of any of its obligations pursuant to this Contract or of any duty which it may have hereunder to ensure the correctness, accuracy or suitability of the matter or thing which is the subject of approval, consent, examination, acknowledgement or knowledge or document review or course of action.
- 1.4 Where this Contract contemplates that the Authority may elect, determine, approve, consent, nominate, decide or consider any matter or thing, the Authority may make such election, determination, approval, consent, nomination, decision or consideration in its absolute discretion without being required to give reasons, unless this Contract expressly requires otherwise.
- 1.5 The Supplier shall remain responsible for all acts and omissions of each Subcontractor and the Supplier Personnel as if they were its own and shall not be entitled to any relief from the performance of its obligations or liability under this Contract due to any act or omission of any Subcontractor and/or any Supplier Personnel unless expressly provided otherwise in this Contract. Without prejudice to the foregoing and any express requirement for the Supplier to procure that its Subcontractors do or refrain from doing any act or thing, an obligation on the Supplier to do, or to refrain from doing, any act or thing shall (where applicable) include an obligation upon the Supplier to use reasonable endeavours to procure that each Subcontractor and the Supplier Personnel also do, or refrain from doing, such act or thing.

2. NOT USED

ORDER OF PRECEDENCE

- 2.1 In the event of any conflict, inconsistency or ambiguity arising between the provisions of this Contract, then (save as expressly provided elsewhere in this Contract) the order of precedence shall be as follows:
- 2.1.1 Clauses and Schedule 1 (Definitions);
- 2.1.2 Schedule 2 (Service Requirements) and its Appendices;
- 2.1.3 all other Schedules and their Appendices other than Schedule 3.1 (Supplier Solution) and its Appendices;
- 2.1.4 Schedule 3.1 (Supplier Solution) and its Appendices;
- 2.1.5 any documentation that the Supplier is required to produce in accordance with Schedule 3.1 (Supplier Solution).
- 2.2 Unless expressly provided otherwise, if there is any inconsistency between any diagram and text, the text shall take precedence.

3. NOT USED

4. DUE DILIGENCE

- 4.1 Subject to Clause 4.5, the Supplier acknowledges that the Authority has delivered or made available the Due Diligence Information and consequently the Supplier shall be deemed to have:
- 4.1.1 satisfied itself of all details relating to the nature of the Service Requirements;
 - 4.1.2 been supplied with sufficient information and satisfied itself about all relevant aspects of the Service Environment;
 - 4.1.3 [not used]
 - 4.1.4 raised all relevant due diligence questions with the Authority before the Effective Date and to have advised the Authority of:
 - (a) any aspect of the Service Environment that is not suitable for the provision of the Deployed Services;
 - (b) the proposed actions of the Supplier to accommodate any unsuitable aspects of the Service Environment and a timetable for such actions, which shall have been taken into consideration by the Supplier in the Implementation Plan and the Project Plan; and
 - 4.1.5 made its own enquiries to satisfy itself as to the accuracy and completeness of the Due Diligence Information.
- 4.2 Subject to Clause 4.5, the Supplier acknowledges that:
- 4.2.1 the Authority has relied upon the Supplier's expertise and professionalism in the carrying out of all due diligence activities in relation to this Contract including the requesting of and verification of all Due Diligence Information; and
 - 4.2.2 the Due Diligence Information, together with the Supplier's own expertise and working knowledge of the Authority's operations, are sufficient to enable the Supplier to satisfy itself that it is able to perform its obligations under this Contract.
- 4.3 Subject to Clause 4.5, the Supplier shall not be entitled to any additional payment, nor be excused from any liability under this Contract, and has no right to make a Claim against the Authority as a result of:
- 4.3.1 the Supplier having failed to inspect the Service Environment or failed to notify the Authority of any actions to accommodate the unsuitability of the Service Environment in accordance with Clause 5.1.4;
 - 4.3.2 the Supplier misinterpreting any matter or fact relating to the Service Requirements, or the functions, facilities, condition or capabilities of the Service Environment; or
 - 4.3.3 the Supplier having failed to review the Due Diligence Information or any documents referred to in the Due Diligence Information.
- 4.4 No warranty, representation or undertaking (whether express or implied) is given by the Authority as to the accuracy, completeness, adequacy or fitness for purpose of any Due Diligence Information or that such information constitutes all of the information relevant

or material to the Service Requirements and the Deployed Services. Accordingly, all liability on the part of the Authority in connection with:

4.4.1 the content of any Due Diligence Information; and

4.4.2 any representations or statements made in respect of any Due Diligence Information,

is excluded to the extent permitted by Law, except to the extent of any fraudulent misrepresentation.

4.5 At the Effective Date the Parties acknowledge that the Supplier has not had the opportunity to perform full surveys for all of the Service Environment for the purpose of Clauses 4.1 to 4.3 and that following the Effective Date the Supplier shall undertake the Post-Effective Date Surveys. As a consequence, the Authority has permitted the Supplier to make certain Survey Assumptions in respect of the Service Environment as set out in Appendix 4 of Schedule 4.1 (Implementation) and the provisions set out in paragraph 8, 10 and 11 of Schedule 4.1 (Implementation) shall apply in respect of the Survey Assumptions. The Parties agree that Clauses 4.1 to 4.3 shall apply in full (subject to any operation of Paragraph 11 of Schedule 4.1 (Implementation)) in respect of those particular aspects of the Service Environment that are subject to the Post-Effective Date Surveys, once the corresponding Milestone M0 process under paragraph 8 of Schedule 4.1 (Implementation) has been completed.

4.6 Except as provided in Clause 4.5, the Supplier acknowledges that there shall not be any due diligence or joint verification with the Authority after the Effective Date.

PROVISION OF THE DEPLOYED SERVICES

5. PROVISION OF THE NETWORK

5.1 The Supplier shall design, build, lay, rollout, test, install, commission, connect, interconnect, complete, provide, operate and maintain the Network in the Coverage Area and in accordance with this Contract and shall:

5.1.1 install the Network and make it ready for use in accordance with the Implementation Plan, the Project Plan, Clauses 14 to 18 and the other terms of this Contract which relate to the installation of the Network; and

5.1.2 ensure that the Network shall upon the relevant Milestone Date provide the relevant functions, capability and broadband services required by this Contract;

5.1.3 provide, at the request of the Authority from time to time or as otherwise expressly stated within this Contract, all supporting mapping and other deployment data to a granular level (including down to a 7 digit post code level, End User Premise level and Structure level) of actual or planned Network Deployment in the Coverage Area (or parts thereof), as reasonably required in order to ensure transparency consistent with the requirements under the Commission Decision and enable the Authority to audit, validate and reasonably satisfy itself that the actual provision and roll out of the Network and Deployed Services are or will be provided in accordance with the terms of this Contract.

6. NOT USED

7. SERVICE REQUIREMENTS AND SUPPLIER SOLUTION

7.1 The Supplier shall provide the Deployed Services for the duration of the Term and shall ensure that the Deployed Services:

7.1.1 comply in all respects with the Service Requirements and the other relevant terms of this Contract; and

7.1.2 are supplied in accordance with the Supplier Solution.

7.2 Subject to Clause 4.5:

7.2.1 the Supplier agrees that the inclusion of the Supplier Solution as part of this Contract shall not (subject to Clauses 4.5, 18 and 59) relieve the Supplier of its responsibility for ensuring compliance with the Service Requirements, whilst also agreeing that where a higher standard or greater commitment is specified in the Supplier Solution than specified in the corresponding Service Requirement it shall be obliged to deliver to that higher standard or greater commitment;

7.2.2 if either Party becomes aware of any conflict, inconsistency or ambiguity between the Service Requirements and the Supplier Solution, that Party shall as soon as reasonably practicable and in any event within ten (10) Working Days:

(a) notify the other Party of such conflict, inconsistency or ambiguity; and

(b) following receipt by the other Party of such notification, the Parties shall endeavour (acting reasonably) to promptly resolve such conflict, inconsistency or ambiguity and if necessary amend the Supplier Solution to address the conflict or inconsistency through the Change Control Procedure at no cost to the Authority.

8. OTHER BENEFICIARIES

8.1 The Parties agree that:

8.1.1 each Other Beneficiary shall:

(a) be entitled to benefit from the performance of the Supplier's obligations under this Contract to the same extent as the Authority is entitled to do so under the terms of this Contract (as if a Party) provided that, subject to Clause 8.1.3, each Other Beneficiary shall not itself be entitled to enforce any rights it has under this Contract nor bring any Claim against the Supplier; and

(b) be a third party beneficiary for the purposes of the Contracts (Rights of Third Parties) Act 1999;

8.1.2 the Authority shall use reasonable endeavours to procure that any Claim that any Other Beneficiary has under this Contract against the Supplier is assigned by that Other Beneficiary to the Authority and managed by the Authority. The Supplier agrees:

(a) that such Claims may be so assigned and managed; and

(b) in the circumstances contemplated under Clause 8.1.2(a), the Authority shall (subject to Clause 56) be entitled to recover Losses suffered by any Other Beneficiary to the same extent that such Losses would be recoverable from the Supplier under this Contract had they been suffered by the Authority, notwithstanding that such Losses may not have been suffered by the Authority;

8.1.3 to the extent that the Authority is unable to procure assignment of a Claim in accordance with Clause 8.1.2 (having complied with Clause 8.1.2), the relevant Other Beneficiary shall be entitled to bring such Claim under this Contract directly against the Supplier, as if that Other Beneficiary was the Authority (and the Authority shall provide reasonable notice to the Supplier to the extent it is aware of the intention of the Other Beneficiary to bring such Claim);

8.1.4 subject to Clauses 8.1.2 and 8.1.3, the Authority shall be entitled to enforce the terms of this Contract against the Supplier in relation to the performance or non performance of the Supplier's obligations set out in this Contract to an Other Beneficiary; and

8.1.5 an Other Beneficiary shall have no authority to agree changes to, or to waive any breach of, this Contract.

8.2 For the avoidance of doubt, where no Other Beneficiaries are included within the scope of this Contract whether by being specifically identified at the "Other Beneficiary" definition in Schedule 1 or by agreement of the Parties in accordance with that definition, any other references within the provisions of this Contract to an "Other Beneficiary" or "Other Beneficiaries" have no effect.

9. GENERAL PERFORMANCE STANDARDS

9.1 Without prejudice to the Service Requirements, the Supplier shall ensure that the Deployed Services are at all times performed:

9.1.1 in an economic, efficient, effective and safe manner in accordance with Good Industry Practice;

9.1.2 in accordance with the applicable Codes and Standards and the Consents;

9.1.3 in such a manner as not to detract from or damage the image and reputation of the Authority or the Programme Authority; and

9.1.4 save as expressly provided in the Contract, in such a manner as not to unreasonably impede, prevent or increase the cost of the Authority from discharging its obligations and duties (including any statutory and/or public finance related obligations).

9.2 Without prejudice to the Service Requirements, the Supplier shall ensure that Network Deployment is:

9.2.1 at all times performed so as to minimise interference with the convenience of the public, access to public/private roads or footpaths, or other users of the Service Environment;

9.2.2 wherever reasonably practicable, in accordance with all reasonably necessary directions given to the Supplier by the Authority during the Term, provided that those directions are not inconsistent with this Contract or are unreasonably burdensome to the Supplier having regard to the requirements of this Contract; and

9.2.3 in a manner that is not injurious to health and that (unless agreed otherwise with the Authority in writing) does not cause any nuisance or damage to any property or the environment.

9.3 The Parties shall at all times act reasonably and in good faith towards (and co-operate with) each other to the extent required for the performance of this Contract.

9.4 If the Supplier fails to comply with its obligations in accordance with this Contract the Authority may, in addition to its other rights, require the Supplier to comply with its obligations (with the costs of such compliance to be borne by the Supplier).

10. CODES AND STANDARDS

The Parties shall discuss any conflict that either Party reasonably believes that there is or will be between any of the Codes and Standards, or between any of the Codes and Standards and any other obligation under this Contract, and the Supplier shall make proposals for resolution of the conflict for consideration by the Authority.

11. CONSENTS

11.1 Subject to Clause 11.2, the Supplier shall, in its name (or, where necessary, in the name of a relevant Subcontractor), apply for, obtain, maintain, renew and adhere to the applicable conditions of all Consents.

11.2 The Authority shall apply for, obtain, maintain and renew all Consents that, as a matter of law, only the Authority is eligible to obtain (as agreed by the Parties in writing).

11.3 The Supplier shall use reasonable endeavours to consult with all relevant local planning and related organisations such as existing broadcast and telecommunications services, English Heritage, air traffic service operators and local planning and highway authorities in respect of any development proposed pursuant to this Contract and the obtaining of the requisite Consents.

12. COMPLIANCE WITH AND CHANGES IN LAW

12.1 The Supplier shall ensure that it performs its obligations under this Contract at all times in compliance with all applicable Laws.

12.2 The Supplier shall neither be relieved of the performance of any of its obligations under this Contract nor be entitled to an increase in any Milestone Payment as the result of:

12.2.1 a General Change in Law; or

12.2.2 a Specific Change in Law where the effect of that Specific Change in Law on the obligations set out in this Contract is known at the Effective Date.

12.3 If a Specific Change in Law occurs or will occur during the Term (other than those referred to in Clause 12.2.2), the Supplier shall notify the Authority of the likely effects of that change, including where the Supplier reasonably believes that:

12.3.1 a change is required to the terms of this Contract;

12.3.2 relief from compliance with the Supplier's obligations under this Contract is required; and/or

12.3.3 it will incur material additional cost in the performance of its obligations under this Contract as a consequence of the Specific Change in Law.

12.4 As soon as reasonably practicable the Parties shall meet to discuss the likely effects of the Specific Change in Law. Subject to Clauses 12.2.2 and 19.2, any change to this

Contract arising from this Clause 12 shall be processed by the Parties in accordance with Clause 31.

13. NOT USED

IMPLEMENTATION

14. NETWORK IMPLEMENTATION

The Supplier shall conduct Network Deployment and perform the Deployed Services in accordance with the Implementation Plan and the Project Plan.

15. MILESTONES

15.1 The Supplier shall ensure that each Milestone is Achieved on or before the associated Milestone Date in accordance with the procedure set out in paragraph 6 of Schedule 4.1 (Implementation).

15.2 The Authority shall issue a Milestone Achievement Certificate upon the Achievement of each Milestone in accordance with paragraph 6 of Schedule 4.1 (Implementation). Notwithstanding the issuing of any Milestone Achievement Certificate, the Supplier shall remain solely responsible for ensuring that the Supplier Solution as designed and developed is suitable for the delivery of the Deployed Services and that the Deployed Services are delivered in accordance with the terms of this Contract. No estoppel or waiver shall arise as a result of the issue of any Milestone Achievement Certificate.

16. DELAY – GENERAL PROVISIONS

16.1 If the Supplier becomes aware that it will not (or is unlikely to) Achieve any Milestone by the Milestone Date it shall as soon as is practicable notify the Authority of the fact of the Delay and summarise the reasons for it.

16.2 The Supplier shall (without prejudice to the Authority's rights and remedies under this Contract):

16.2.1 in respect of Delay caused by the Supplier's Default, use all reasonable endeavours; and

16.2.2 in respect of all other Delay, use reasonable endeavours,

to eliminate or mitigate the consequences of the Delay.

17.3 The Supplier acknowledges and agrees that any additional cost incurred in complying with Clause 16.2 may not, where such Delay resulted from Default by the Supplier, be claimed from the Authority nor otherwise applied within any of the financial mechanisms under Schedule 5.1 (Milestone Payments and Claims Procedure).

17. DELAY DUE TO SUPPLIER DEFAULT

17.1 Unless agreed otherwise by the Parties in writing, the Supplier shall submit a draft Remedial Plan in accordance with Clause 37 where due to any Default by the Supplier:

17.1.1 it becomes aware that it will not Achieve a Milestone by the associated Milestone Date; and/or

- 17.1.2 it has failed to Achieve a Milestone by the associated Milestone Date.
- 17.2 Each draft Remedial Plan provided pursuant to Clause 17.1 shall identify the issues arising out of the Delay and the steps that the Supplier proposes to take to Achieve the Milestone in accordance with the terms of this Contract.
- 17.3 If an M1 Milestone is not Achieved by the associated Milestone Date due (in whole or in part) to any Default by the Supplier, the Authority may at its discretion (without waiving any rights in relation to the other options or rights under or in relation to this Contract) elect to:
 - 17.3.1 issue a Milestone Achievement Certificate conditional on the remediation of the issue in accordance with an agreed Remedial Plan; and/or
 - 17.3.2 escalate the matter in accordance with the Escalation Process;
- 17.4 Where the Authority issues a conditional Milestone Achievement Certificate in respect of a M1 Milestone in accordance with Clause 17.3.1:
 - 17.4.1 the Authority shall be entitled to revise the failed Milestone Date and any subsequent Milestone Date;
 - 17.4.2 the Supplier shall be entitled to commence the performance of any work required to Achieve the subsequent M2 Milestone; and
 - 17.4.3 unless the Authority agrees otherwise in writing, any Milestone Payment associated with the relevant M1 Milestone shall not be payable until the remediation of the issue in accordance with the agreed Remedial Plan.

18. DELAY DUE TO A RELIEF EVENT

- 18.1 If and to the extent that as a direct result of the occurrence of a Relief Event the Supplier is unable to comply with its obligations under this Contract, then the Supplier shall be entitled to apply for relief in accordance with this Clause 18.
- 18.2 As soon as practicable after the Supplier becomes aware that a Relief Event has, will or is reasonably likely to cause the Supplier to be in Default of its obligations under this Contract, the Supplier shall promptly provide the Authority with a Relief Notice which shall include:
 - 18.2.1 a description of the Relief Event along with the date of occurrence and likely duration of the Relief Event;
 - 18.2.2 the Supplier's proposals for either remedying or mitigating the effects of the Relief Event;
 - 18.2.3 the Supplier's claim for relief from its obligations under this Contract,and the Supplier shall provide such additional information and/or attend any meetings with the Authority as the Authority may reasonably require for the purpose of clarifying the Relief Notice.
- 18.3 Subject to Clauses 18.1 and 18.4 and provided the Supplier has complied with Clauses 16.2.2 and 18.2 and used reasonable endeavours to perform the relevant obligations affected by the Relief Event:
 - 18.3.1 the Supplier shall not be treated as being in Default of this Contract to the extent that such Default is a direct result of the Relief Event; and

- 18.3.2 if as a direct consequence of the Relief Event the Supplier is unable to meet a deadline related to the performance of its obligations under this Contract, the deadline date shall be postponed by a reasonable time taking into account the likely effect of the delay caused by the Relief Event.
- 18.4 The Supplier shall not be entitled to relief in accordance with this Clause 18 to the extent that the relief from its obligations under this Contract claimed could reasonably be expected to be mitigated by the Supplier acting in accordance with Good Industry Practice and without incurring material additional expenditure.
- 18.5 Following the issue of a Relief Notice in accordance with Clause 18.2 the Parties shall negotiate in good faith and as soon as reasonably practicable attempt to agree upon the relief to be granted to the Supplier. If the Parties cannot agree the extent of any relief required, or that a Relief Event has occurred, the Parties shall resolve the matter in accordance with the Dispute Resolution Procedure.
- 18.6 To the extent that the consequences of a Relief Event can be addressed by a change to the Project Plan without impacting upon the Implementation Plan, then the Parties shall use their respective reasonable endeavours to agree a change to the Project Plan in accordance with paragraph 5.4.2 of Schedule 4.1 (Implementation) without recourse to the Change Control Procedure.
- 18.7 To the extent that the consequences of a Relief Event:
- 18.7.1 materially adversely affect (or are likely to materially adversely affect) the performance of the Deployed Services for a sustained and indeterminate period;
 - 18.7.2 have been mitigated by the Supplier in accordance with Good Industry Practice without incurring material expenditure pursuant to Clause 18.4; and
 - 18.7.3 cannot be addressed solely by a change to the Project Plan without recourse to the Change Control Procedure in accordance with Clause 18.6,
- then the Parties shall use their respective reasonable endeavours to address the consequences of the Relief Event in accordance with Clause 30.

FINANCIAL MATTERS

19. MILESTONE PAYMENTS AND INVOICING

- 19.1 In consideration of the Supplier performing the Deployed Services the Authority shall pay the Milestone Payments to the Supplier subject to and in accordance with Schedule 5.1 (Milestone Payments and Claims Procedure) and the other terms of this Contract.
- 19.2 Unless agreed otherwise by the Authority in writing or as expressly set out in this Contract and save for any right to claim for damages under this Contract or at law (subject always to Clause 56), the Milestone Payments shall be the only payments (of any kind) made by the Authority in respect of the Supplier's performance of its obligations under this Contract.
- 19.3 Except as expressly provided in this Contract, the Parties shall each bear their own costs and expenses incurred in respect of compliance with their obligations set out in this Contract.

- 19.4 Interest shall be payable on the late payment of any undisputed Milestone Payment properly invoiced in accordance with the terms of this Contract at the rate of two (2) per cent per annum above the base rate for the time being of the Bank of England. Such interest shall accrue on a daily basis from the due date until the date of actual payment of the overdue amount.
- 19.5 The Supplier shall ensure that any supply chain sourcing or procurement it or its Key Subcontractors conduct for the purposes of delivering the Deployed Services will be undertaken in accordance with the Supplier's or Key Subcontractor's (as applicable) standard procurement policies and will be consistent with Clause 33.
- 19.6 The Supplier shall ensure that any Subcontract awarded by the Supplier for the purposes of performing or contributing to the performance of any part of the Deployed Services will include terms requiring the:
- 19.6.1 Supplier to pay any sums which are due from it to the Subcontractor within 30 days from receipt of a valid and undisputed invoice;
- 19.6.2 Supplier to consider and verify any invoices for payment submitted by the Subcontractor in a timely fashion and that undue delay in doing so is not to be sufficient justification for failing to regard an invoice as valid and undisputed; and
- 19.6.3 Subcontractor to include in any sub-contract which it in turn awards for the purpose of performing or contributing to the performance of the whole or any part of this Contract suitable will impose, as between the parties to that sub-contract, requirements to the same effect as those required by this Clause 19.6.
- 19.7 Clause 19.6 above is without prejudice to any contractual or statutory provision under which any payment is to be made earlier than the time required by that clause.

20. WHOLESALE ACCESS PRICES

- 20.1 The Supplier shall make available Wholesale Access Products and Services at the Project Wholesale Access Prices in accordance with the relevant terms of this Contract.
- 20.2 The Project Wholesale Access Prices shall be benchmarked in accordance with Schedule 5.2 (Wholesale Access Pricing).

21. PROJECT MODEL

The provisions of Schedule 5.3 (The Project Model) shall apply in respect of the operation and maintenance of the Project Model.

22. STATE AID

- 22.1 Both the Supplier and the Authority acknowledge that any Subsidy Payments by the Authority to the Supplier pursuant to this Contract must be made in accordance with the State aid Terms (including being made pursuant to an approved State aid scheme).
- 22.2 The Supplier shall provide such assistance, information and/or support as the Authority may reasonably require from time to time in connection with the Authority's responsibilities under the State Aid Terms, or with any action, examination and/or investigation by the European Commission, pursuant to the State Aid Terms as may, in the Authority's view, be reasonably necessary and relevant, but for the avoidance of doubt shall not require the Supplier to provide legal advice subject to privilege to the Authority, and the Supplier shall be given adequate time to provide the information.

22.3 If the European Commission issues a recovery decision as defined in Article 16(1) of Council Regulation 2015/1589 in connection with this Contract naming the Supplier as beneficiary of unlawful aid, then, unless a repayment date has been specified by the European Commission or the national court, the Authority shall issue a written notice to the Supplier (with such notice including a copy of the relevant European Commission decision) and the Supplier shall pay without delay and in any event not later than 20 Working Days from the date of such written notice, an amount equivalent to the unlawful and incompatible aid of which the Supplier is beneficiary (plus interest, calculated from the date when the unlawful aid was first provided to the Supplier, as applicable), which the European Commission requires to be repaid pursuant to its decision into a blocked account to which neither Party has unilateral access pending either: (i) the expiry of the deadlines for the Supplier to bring proceedings challenging the recovery decision without the Supplier having brought such proceedings before such expiry; or, where the Supplier has brought proceedings before such expiry, (ii) the final outcome of those proceedings including any appeals, provided that where the European Commission's decision does not specify the precise amount of unlawful aid to be recovered, the Parties shall (acting reasonably) calculate and agree upon the precise amount to be repaid.

22.4 If the European Commission issues a recovery decision as defined in Article 16(1) of Council Regulation 2015/1589 in connection with this Contract naming the Supplier as beneficiary, the Supplier acknowledges that Clause 22.3 shall apply regardless of whether:

22.4.1 the Supplier is in Default and irrespective of the Supplier's financial circumstances, except that the Authority shall apply paragraphs 60 to 68 of the Notice from the Commission 2007/C 272/05 in respect of the Supplier; and

22.4.2 in the Authority's view, as previously indicated to the Supplier, the State aid granted in connection with this Contract complies with the State Aid Terms.

22.5 If the Supplier fails to bring proceedings in respect of the repayment decision before the expiry of the deadlines for those proceedings or loses any proceedings and fails to the extent possible to bring an appeal against that loss:

22.5.1 the Supplier shall immediately give its consent for the unlawful and incompatible aid (plus interest, as applicable) to be released from the blocked account to the Authority and/or to such other government body as the Authority may direct, including in particular the Programme Authority;

22.5.2 without prejudice to any other remedy available to the Supplier at law (subject always to Clause 56), the Authority shall make no payment to the Supplier to indemnify the Supplier for the recovery of the unlawful and incompatible State aid; and

22.5.3 subject to Clauses 19.2 and 22.5.2, the Parties shall deal with the effect on this Contract of the repayment of the unlawful State aid in accordance with the Change Control Procedure.

23. ADDITIONAL APPROVED FUNDING AND EXTERNAL FUNDING

23.1 Schedule 5.4 (Additional Approved Funding) shall apply in respect of any Additional Approved Funding within the scope of this Contract.

23.2 Schedule 5.5 (External Funding) shall apply in respect of any funding other than the Authority's own and Programme Authority funding within the scope of this Contract

24. NO INDEXATION

The Milestone Payments shall not be subject to indexation of any kind.

25. TAX

In the event that the Milestone Payments are, or become at any time, subject to VAT then the Authority shall provide such reasonable assistance as the Supplier may reasonably require in order to resolve this matter.

26. NOT USED

27. FINANCIAL DISTRESS

27.1 During the Term the Supplier shall regularly monitor its own and each of its Key Subcontractors' credit ratings or (where used as proxies for credit ratings) Dun & Bradstreet rating, which at the Effective Date are as follows:

ORGANISATION	AGENCY	RATING
Supplier	Standard & Poors	BBB
	Moody's	Baa2

27.2 The Supplier shall promptly notify (or shall procure that its auditors promptly notify) the Authority and Programme Authority in writing following the occurrence of a Financial Distress Event (and in any event ensure that such notification is made within ten (10) Working Days of the date on which the Supplier first becomes aware of the Financial Distress Event).

27.3 In the event that the Authority reasonably believes that the Financial Distress Event could adversely impact the performance of this Contract and/or the security of public subsidy already granted (or to be granted) pursuant to this Contract, at the request of the Authority the Supplier shall:

27.3.1 (and shall procure that the relevant Key Subcontractors shall) meet with the Authority as soon as practicable to review the effect of the Financial Distress Event on the continued performance of this Contract and/or the security of public subsidy already granted (or to be granted) pursuant to this Contract;

27.3.2 as soon as practicable and in any event within ten (10) Working Days (taking into account any discussions and any representations made pursuant to Clause 27.3.1), provide a draft Financial Distress Event Remedial Plan for approval by the Authority explaining how the Supplier and/or relevant Key Subcontractor will remedy the potential adverse impact of the Financial Distress Event on the continued performance of this Contract and/or the security of public subsidy already granted (or to be granted) pursuant to this Contract; and

27.3.3 provide such financial information as the Authority may reasonably require to support Clause 27.3.2.

27.4 The Supplier shall incorporate any reasonable comments provided by the Authority on the draft Financial Distress Event Remedial Plan and provide such number of revised drafts as may reasonably be required until the Authority has approved the Financial Distress Event Remedial Plan (which approval shall not be unreasonably withheld or delayed).

27.5 Following approval of any Financial Distress Event Remedial Plan pursuant to Clause 27.4, the Supplier shall implement the plan in accordance with its terms and review the plan on a regular basis and assess whether it remains adequate and up to date so as to ensure the continued performance of this Contract and/or the security of public subsidy already granted (or to be granted).

27.6 The Authority's rights set out in this Clause 27 shall be without prejudice to the Authority's termination rights set out in Clause 60.

28. NOT USED

29. NOT USED

30. SUPPLIER COSTS BORNE BY THE AUTHORITY

30.1 Where the terms of this Contract expressly provide that any increased costs incurred by the Supplier in performing the Deployed Services shall be borne by the Authority (in full or in part) or otherwise that the matter is to be addressed in accordance with this Clause 31, unless expressly provided otherwise in this Contract the Parties shall use their respective reasonable endeavours to agree (using the Change Control Procedure where applicable) the application of one or more of the following options in respect of any such costs:

30.1.1 the Parties shall endeavour to agree that any increased costs incurred by the Supplier in performing Network Deployment can be absorbed within the existing Milestone Payment arrangements, for example where the Supplier has incurred less cost in other areas of the Network Deployment, without amendment to the Milestones and the associated Milestone Achievement Criteria;

30.1.2 the Parties shall endeavour to agree amendments to the Milestones, the Milestone Achievement Criteria and/or the Milestone Payments provided that (subject to Clause 30.1.5) the aggregate Milestone Payments from time to time shall not exceed the aggregate Milestone Payments agreed at the Effective Date;

30.1.3 the Parties shall endeavour to agree amendments to the Service Requirements, the Supplier Solution and/or (subject to Clauses 19.2 and 30.1.2) any other term of this Contract;

30.1.4 the Parties shall endeavour to agree that the Supplier shall bear the increased costs incurred by the Supplier in performing the Deployed Services; and/or

30.1.5 only in exceptional circumstances, the Authority may make available additional funds to satisfy some or all of the increased costs.

SUBCONTRACTING AND SUPPLY CHAIN RIGHTS

31. SUBCONTRACTORS

31.1 The Supplier shall not subcontract any Key Service without the Authority's prior written consent, which shall not be unreasonably withheld or delayed. In providing its consent pursuant to this Clause 31.1, the Authority may impose such conditions as the Authority

reasonably considers appropriate including a requirement that certain terms and conditions from this Contract are flowed down to the relevant Key Subcontract.

- 31.2 At the Effective Date the Authority has consented to the engagement of the Key Subcontractors listed in Schedule 3.3 (Key Subcontractors). The Supplier shall provide to the Authority copies of any draft or final Key Subcontracts if required by Authority from time to time.
- 31.3 The Supplier shall ensure that a provision is included in each Key Subcontract requiring the Key Subcontractor to:
- 31.3.1 promptly notify the Supplier and the Authority in writing of a Key Subcontractor Financial Distress Event or any fact, circumstance or matter which could cause a Key Subcontractor Financial Distress Event (and in any event, provide such notification within ten (10) Working Days of the date on which the Key Subcontractor first becomes aware of the Key Subcontractor Financial Distress Event or the fact, circumstance or matter which could cause the Key Subcontractor Financial Distress Event); and
 - 31.3.2 co-operate with the Supplier and the Authority in order to give full effect to the provisions of Clauses 27.3 to 27.5, including meeting with the Supplier and the Authority to discuss and review the effect of the Key Subcontractor Financial Distress Event on the continued performance and delivery of the Deployed Services and/or the security of public subsidy already granted (or to be granted) pursuant to this Contract, and contributing to and complying with the Financial Distress Event Remedial Plan.
- 31.4 The Supplier shall not terminate or materially amend any Key Subcontract to the extent this could adversely affect the Supplier's compliance with its obligations under this Contract, or change the identity of any Key Subcontractor, without the Authority's prior written consent, which shall not be unreasonably withheld or delayed. This provision shall not apply to restrict amendments to Key Subcontracts to the extent these represent changes which ordinarily occur in the normal course of business.
- 31.5 At the Effective Date the Supplier undertakes that it has not entered into (and shall not enter into at any time during the Term) any form of exclusivity arrangement with any Subcontractor that would be detrimental to the level of competition for any other broadband project that may be procured by the Authority or other Local Body.
- 31.6 The Authority shall have the right to require the Supplier to cease to use any Subcontractor in connection with this Contract where the Subcontractor's failure has led to material Default of this Contract by the Supplier.

32. SMALL AND MEDIUM SIZED ENTERPRISES

- 32.1 Subject to Clause 32.3, the Supplier shall implement such processes and measures as may be appropriate so as to ensure that, where the Supplier is proposing to subcontract any of the Deployed Services prior to or at any time during the Term, SMEs (when compared with other potential Subcontractors) are given fair, equal and proportionate access to the subcontracting opportunity. At a minimum, the Supplier shall:
- 32.1.1 to the extent practicable, advertise its subcontracting opportunities in a form which is accessible by all potential Subcontractors including SMEs (for example, on the Government's Contracts Finder website); and
 - 32.1.2 propose to potential Subcontractors that are SMEs, such commercial, financial and technical terms and conditions that are, where appropriate and proportionate to the nature, size and capacity of the proposed Subcontractor and having regard to the services to be subcontracted, no more onerous than

the relevant terms and conditions proposed by the Supplier to other potential Subcontractors.

- 32.2 The Supplier shall report on its engagement with, and the opportunities made available to, SMEs pursuant to Clauses 32.1 and 32.3 in accordance with Schedule 6.4 (Reports). The Supplier shall be entitled to withhold specific details about the relevant SMEs to the extent this would place the Supplier in breach of confidentiality obligations owed by the Supplier to such SMEs.
- 32.3 Nothing in this Clause 32 shall require the Supplier to disrupt or not utilise contracted supply chain arrangements which are in place for the purposes of the Supplier's wider business and which are in effect prior to, or which come into effect after, the Effective Date, provided that the Supplier can demonstrate to the reasonable satisfaction of the Authority that such supply chain arrangements are consistent with the SME objectives set out in this Clause 32.

GOVERNANCE AND KEY PROCEDURES

33. REPRESENTATIVES

- 33.1 The Authority shall appoint an Authority Representative and the Supplier shall appoint a Supplier Representative who shall have the authority to act on behalf of the respective Party on the matters pursuant to this Contract. Either Party may, by prior written notice to the other Party, revoke or amend the authority of its Representative or appoint a new or an alternate Representative.
- 33.2 The respective Representatives shall be sufficiently senior within the organisation of the appointing Party, and granted sufficient authority by that Party, to ensure full cooperation in relation to the operation and the management of this Contract.

34. GOVERNANCE

The Parties agree to manage their relationship and this Contract in accordance with Schedule 6.1 (Governance).

35. AUDIT

- 35.1 If an audit is imposed on the Authority and/or this Contract by any Regulatory Body at any time during the Term and the 12 month period following the Term the provisions set out in this Clause 35 shall apply.
- 35.2 The relevant Regulatory Body (and/or its agents or representatives) may perform any such audit in accordance with this Clause 35.
- 35.3 There shall be no restriction on the frequency of such audits and the Authority shall use reasonable endeavours to procure that the relevant Regulatory Body (or where applicable its agents or representatives) shall endeavour, but shall not be obliged, to provide at least 15 Working Days' notice of the intention to conduct such audit.
- 35.4 The Authority shall use reasonable endeavours to procure that the conduct of any such audit does not unreasonably disrupt the Supplier or delay the performance of this Contract.
- 35.5 Subject to Clauses 35.6 and 49, the Supplier shall provide the relevant Regulatory Body (and/or its agents or representatives) with all such reasonable co-operation and

assistance as is reasonably necessary in relation to any such audit, including provision of:

35.5.1 such relevant information requested by the relevant Regulatory Body (and/or its agents or representatives) within the scope of the audit imposed by the Regulatory Body (provided that the Authority shall use reasonable endeavours to procure that the Regulatory Body shall limit the scope of any audit to the information provided or maintained pursuant to Clause 36 and the verification of such information, with the Supplier acknowledging that the relevant powers and duties of the Regulatory Body cannot be fettered and that the Regulatory Body may request additional information pursuant to this Clause 35.5.1); and

35.5.2 reasonable access to any site controlled by the Supplier or any Key Subcontractor (including any Network implementation or maintenance works conducted pursuant to this Contract) and/or reasonable access to Supplier Personnel, in each case where the scope of the relevant audit cannot be satisfied by the provision of the information provided pursuant to Clause 35.5.1.

35.6 The Parties agree that:

35.6.1 the provision of information by electronic means shall be used to satisfy an audit pursuant to this Clause 35 unless in the relevant Regulatory Body's (or its agent's or representative's) reasonable opinion this will not satisfy the audit requirement; and

35.6.2 where the inspection at any site controlled by the Supplier is required, such inspection shall be subject to the Supplier's then current standard security policies to the extent notified to the relevant Regulatory Body (or where applicable its agents or representatives) in advance of the relevant inspection.

35.7 The Supplier shall bear its own costs and expenses incurred in respect of compliance with this Clause 35, unless and to the extent such costs and expenses are recoverable as Qualifying Capital Expenditure pursuant to Schedule 5.1 (Milestone Payments and Claims Procedure).

35.8 The Authority shall procure that the relevant Regulatory Body (and where applicable its agents and representatives) shall bear its own costs and expenses incurred in respect of compliance with this Clause 35.

35.9 Where as a consequence of any audit carried out pursuant to this Clause 35 the relevant Regulatory Body (or its agents or representatives) reasonably considers that a re-audit is required, then such re-audit may be carried out in accordance with this Clause 35.

36. REPORTS AND RECORDS

36.1 The Supplier shall produce and provide to the Authority and the Programme Authority the reports set out in Schedule 6.4 (Reports) and such other reports as are expressly set out in this Contract, along with such reasonable additional ad hoc reports concerning the operation of this Contract as the Authority may reasonably require from time to time. Where the preparation of any ad hoc report requested by the Authority pursuant to this Clause 36.1 shall impose a material burden on the Supplier's resources, the Supplier shall notify the Authority and the Parties shall (prior to the Supplier actioning the request) promptly discuss the issue and agree in writing a reasonable resolution (including using the Change Control Procedure where applicable).

36.2 The Supplier shall keep and maintain:

36.2.1 for the duration of the Term; and

36.2.2 for seven (7) years or such longer period if required by Law after the termination or expiry of this Contract (taking into account the Supplier's own information retention policies in respect of such seven (7) year or longer period):

(i) the MPC Supporting Documentation described in paragraph 4 and the Project Accounts and other financial records as described in paragraph 5 of Schedule 5.1 (Milestone Payments and Claims Procedure); and (ii) such other records concerning the provision of the Deployed Services and the operation of this Contract as would be maintained in accordance with Good Industry Practice, which the Supplier shall provide to (i) the Authority pursuant to paragraph 4.3 of Schedule 5.1 (Milestone Payments and Claims Procedure); and (ii) as required pursuant to Clause 35.

36.3 Subject to Clause 49, the Authority may share the reports and records provided or made available to it pursuant to this Clause 36 with the Programme Authority any Crown Body or Local Body.

37. REMEDIAL PLAN PROCESS

37.1 Subject to Clause 37.2, if the Supplier commits a material Default and such Default is capable of remedy in accordance with Clause 60.1.1(a), or an event to which the Remedial Plan Process is stated to apply occurs, the Remedial Plan Process shall apply.

37.2 The Remedial Plan Process shall be without prejudice to the Authority's right to terminate this Contract without providing a remedy period in accordance with Clauses 60.1.1(b) and 60.1.2 to 60.1.7.

38. CHANGE CONTROL

38.1 Subject to Clause 38.2, the Parties shall comply with their respective obligations in relation to Contract Changes as set out in Schedule 6.2 (Change Control Procedure).

38.2 Subject to Clause 38.3, if and to the extent that the Wholesale Access Products and Services incorporate (expressly in this Contract or by reference) any regulated published list prices, regulated terms and/or other regulated items then such prices, terms and/or other items shall be maintained by the Supplier in accordance with the Supplier's normal business practice and not in accordance with the Change Control Procedure, provided that:

38.2.1 the Supplier shall promptly identify to the Authority in writing any relevant and material change to such prices, terms and/or other items; and

38.2.2 to the extent that such prices, terms and/or other items are expressly included in this Contract, the Parties shall document a variation to the relevant term of this Contract in writing.

38.3 Where any change to the regulated published list prices, regulated terms and/or other regulated items referred to in Clause 38.2 affects any relevant compliance statement set out in the Compliance Matrix or any other provision in this Contract, the Supplier shall promptly notify the Authority and the Parties shall use their respective reasonable endeavours to address the matter using the Change Control Procedure.

39. DISPUTES

All Disputes shall be resolved in accordance with the Dispute Resolution Procedure set out in Schedule 6.3 (Dispute Resolution Procedure).

PERSONNEL, PREMISES AND ASSETS

40. SUPPLIER PERSONNEL

40.1 General

The Authority may refuse admission to the Authority Premises and/or direct the Supplier to end the involvement in the performance of the Supplier's obligations under this Contract of any of the Supplier Personnel whom the Authority reasonably believes represents a security risk and/or does not have the required levels of training and expertise and/or where the Authority has other grounds for doing so. The Authority shall provide an explanation for any such decision, subject to confidentiality, safety or other reasonable restraints on releasing such information.

40.2 Convictions

40.2.1 For each of the Supplier Personnel who, in providing the Deployed Services, has, will have or is likely to have access to children, vulnerable persons, or other members of the public to whom the Authority owes a special duty of care, the Supplier shall (unless and to the extent agreed otherwise by the Authority in writing):

- (a) carry out appropriate checks in accordance with Good Industry Practice in relation to Convictions (including conducting a Criminal Records Bureau check where to conduct such a check would be consistent with Good Industry Practice); and
- (b) conduct such questioning and investigation as is reasonable regarding any Convictions, where the above required checks reveal a Conviction.

40.2.2 The Supplier shall not (and shall ensure that a Subcontractor shall not) engage or continue to utilise in the provision of those Deployed Services involving or which are likely to involve access to children, vulnerable persons, or other members of the public to whom the Authority owes a special duty of care, any member of the Supplier Personnel whose Conviction means it would reasonably be regarded as inappropriate for them to be conducting such activity.

40.2.3 For the purpose of this Clause 40.2, references to "access" shall not include incidental access to members of the public due to Network Deployment on or about a public highway.

40.3 Key Personnel

40.3.1 The Parties have agreed to the appointment of the Key Personnel as at the Effective Date. The Supplier shall obtain the prior written consent of the Authority (such consent not to be unreasonably withheld or delayed, but without prejudice to the Supplier needing to take any action as may reasonably be required in accordance with its employment procedures) before any member of the Key Personnel is removed or replaced from their corresponding role during the Term, and, where possible, at least three (3) months' written notice shall be provided by the Supplier of its intention to replace any member of Key Personnel from their corresponding role.

40.3.2 The Supplier acknowledges that the Key Personnel are essential to the proper provision of the Deployed Services. The Supplier shall ensure that the role of any Key Personnel is not vacant for any longer than ten (10) Working Days and that any replacement shall be as or more qualified and experienced as

the previous incumbent of such role to carry out the tasks assigned to the role of the member of Key Personnel whom he or she has replaced.

- 40.3.3 The Supplier shall ensure that each of the Key Personnel shall work for such a period of time in the performance of the Deployed Services that is commensurate with and sufficient to perform the obligation of that person's role (which shall be at least for the expected duration of the role set out in Schedule 3.4 (Key Personnel)), unless the Authority otherwise gives its prior written consent (such consent not to be unreasonably withheld or delayed). To the extent that it can do so without disregarding its statutory obligations, the Supplier shall take such steps as are reasonably necessary to ensure that it retains the services of all the Key Personnel.
- 40.3.4 The Authority may identify any of the roles performed by Supplier Personnel as Key Personnel for agreement by the Supplier (such agreement not to be unreasonably withheld or delayed), who will then be included on the list of Key Personnel by the Supplier in accordance with the Change Control Procedure. The Authority may also require the Supplier to remove any member of the Key Personnel that the Authority considers in any respect unsatisfactory and the Supplier shall take such action as may reasonably be required in accordance with its employment procedures.
- 40.3.5 The Authority shall not be liable for the cost of replacing any member appointed to a Key Personnel role.

40.4 Supplier Personnel Security

- 40.4.1 The Supplier shall ensure that proper staff vetting procedures are in place in respect of all Supplier Personnel employed or engaged in the performance of the Deployed Services.
- 40.4.2 The Supplier shall provide training on a continuing basis for all Supplier Personnel employed or engaged in the provision of the Deployed Services and maintain a proper and adequate security policy which the Supplier shall employ in the provision of the Deployed Services.

41. NOT USED

42. NOT USED

INTELLECTUAL PROPERTY, DATA AND CONFIDENTIALITY
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43. INTELLECTUAL PROPERTY RIGHTS

- 43.1 Save as expressly set out in Clauses 44 and 45, a Party shall not by virtue of this Contract acquire any right, title or interest in or to the IPR of the other Party or that other Party's licensors.
- 43.2 Where either Party (and in the case of the Supplier, its Subcontractors, Affiliates and/or Supplier Personnel) acquires, by operation of Law, title to IPR that is inconsistent with Clause 43.1, that Party shall, as soon as reasonably practicable, assign (or procure that as soon as reasonably practicable its relevant Affiliate, Subcontractor or relevant Supplier Personnel, assigns) in writing such IPR as that Party has acquired to the other Party (or, at the direction of the other Party, to such other person as the other Party may nominate from time to time) and execute and deliver all such other documents as may

be necessary to perfect such title and enable the relevant Party to enjoy the full benefits of ownership of the relevant IPR.

44. LICENCE GRANTED BY THE SUPPLIER

44.1 For the duration of the Term (and to the extent necessary to enable exercise and performance of rights, obligations and duties under or in relation to this Contract which continue in effect after the Term) and subject to Clause 49 the Supplier grants to the Authority and the Programme Authority a royalty free, non-exclusive, non-transferable licence to copy or otherwise use (including the right to distribute to and permit its agents, consultants, professional advisers, other Crown Bodies and each Local Body to copy or otherwise use, subject to Clause 49) the Supplier IPR contained in any information, document, specification, drawing, plan or other material supplied or otherwise made available to the Authority or Programme Authority by the Supplier or any Subcontractor (or their respective Affiliates), to the extent necessary for the purpose of:

44.1.1 receiving and benefiting from the Deployed Services, the granted rights and the Supplier's obligations provided under this Contract;

44.1.2 the Authority performing its responsibilities:

(a) under this Contract; and/or

(b) in connection with the Broadband Delivery Programme;

44.1.3 the exercise of the Authority's or Programme Authority's obligations or duties in relation to this Contract.

45. LICENCE GRANTED BY THE AUTHORITY

45.1 Subject to Clause 49, the Authority grants to the Supplier a royalty-free, non-exclusive, non-transferable licence to copy, distribute or otherwise use (and for the Supplier to permit its Subcontractors to copy, distribute or otherwise use) (i) the Authority IPR contained in any information, document, specification, drawing, plan or other material supplied or made available by the Authority to the Supplier; and (ii) the Authority Data, solely to the extent necessary for the performance of the Supplier's obligations under this Contract.

45.2 Upon the termination or expiry of this Contract, the licence referred to in Clause 45.1 shall terminate automatically and the Supplier shall deliver to the Authority all Authority IPR and Authority Data in accordance with Clause 64.2. If upon the expiry of this Contract the Supplier reasonably considers that it requires an ongoing licence to use any Authority IPR and/or Authority Data then the grant of any such ongoing licence shall be at the sole discretion of the Authority and shall be subject to the Authority's written agreement to commercially acceptable ongoing licence terms.

46. AUTHORITY DATA

46.1 The Supplier shall not delete or remove any proprietary notices contained within or relating to the Authority Data.

46.2 The Supplier shall not store, copy, disclose, or use the Authority Data except as necessary for the performance by the Supplier of its obligations under this Contract or as otherwise expressly authorised in writing by the Authority.

46.3 To the extent that Authority Data is held and/or processed by the Supplier, the Supplier shall at its cost supply that Authority Data to the Authority when reasonably requested by the Authority in the format reasonably specified by the Authority.

- 46.4 The Supplier shall take responsibility for preserving the integrity of Authority Data and preventing the corruption or loss of Authority Data as is reasonable in accordance with Good Industry Practice and taking into account the sensitivity of any such Authority Data.
- 46.5 If at any time the Supplier suspects or has reason to believe that Authority Data has or may become corrupted, lost or sufficiently degraded in any way for any reason, then the Supplier shall notify the Authority as soon as practicable.

47. PROTECTION OF PERSONAL DATA

Controller Status

47.1 For the purpose of this Contract the Parties understand as follows:

47.1.1 The **Supplier is the Controller** of:

- (a) Supplier Contact Data for its own internal business purposes;
- (b) Authority Contact Data where Processed by the Supplier for its own management and administration of this Contract;
- (c) Network Services Data (excluding that Network Services Data provided or made available by or on behalf of the Authority or which is Processed by the Supplier solely for the purposes of this Contract and would not otherwise be processed by the Supplier in its normal course of business);
- (d) Take-up Data for its own internal business purposes; and
- (e) Timesheet Data for its own internal business purposes.

47.1.2 The **Authority is the Controller** of:

- (a) the Network Services Data for:
 - (i) its own internal business purposes, being more particularly assurance of the actual provision and roll out of the Network and Deployed Services;
 - (ii) sharing the data with the UK Government and as such the Network Services Data may appear on the UK Government's systems and databases; and
 - (iii) otherwise as may be provided to Ministers or other Officers of the Crown and their personnel for the purpose of delivering the business of Government;
- (b) Take-up Data for:
 - (i) its own internal business purposes, being more particularly assurance of the effectiveness of the State aid intervention;
 - (ii) sharing the data with the UK Government and as such the Take-up Data may appear on the UK Government's systems and databases; and
 - (iii) otherwise as may be provided to Ministers or other Officers of the Crown and their personnel for the purpose of delivering the business of Government;
- (c) Timesheet Data for the purpose of assuring the basis of corresponding payment claims under this Contract;
- (d) the Authority Contact Data for its own internal business purposes; and
- (e) the Supplier Contact Data where it is Processed by the Authority for its own management and administration of this Contract.

General Commitment

- 47.2 Each Party commits to observe their corresponding applicable obligations under the Data Protection Legislation in relation to this Contract (including any notification requirements and requirements to appoint a data protection officer) and the Processing of Network Services Data, Take-up Data, Timesheet Data and Contact Data (as applicable).

Contact Data

- 47.3 Each Party shall Process the other Party's Contact Data in accordance with that first Party's relevant fair processing notice (note that the use of this term within these clauses means a fair processing notice which satisfies the requirements of Articles 13 and 14 of the GDPR).
- 47.4 Each Party may share the other Party's Contact Data with its Affiliates and other relevant parties as necessary for management and administration of this Contract but must ensure the recipients comply with the Data Protection Legislation.

Timesheet Data

- 47.5 Each Party shall Process the Timesheet Data in accordance with that Party's own relevant fair processing notice.
- 47.6 Each Party may share the Timesheet Data with its Affiliates and other relevant parties (which may include DCMS) as necessary for management, administration and financial assurance of this Contract but must ensure the recipients comply with the Data Protection Legislation.

Controller Obligations

- 47.7 Where acting as a Controller:
- 47.7.1 **Contact Data** - Each Party shall make available upon request to the other a copy of their applicable fair processing notice. The receiving Party shall provide this to the Data Subjects whose Personal Data is being shared;
 - 47.7.2 **Timesheet Data** - Each Party shall make available upon request to the other a copy of their applicable fair processing notice. The receiving Party shall provide this to the Data Subjects whose Personal Data is contained within the timesheets.
- 47.8 Each Party warrants, represents and undertakes that it is not subject to any prohibition or restriction which would prevent or restrict it from disclosing or transferring Contact Data, the Network Services Data, Take-up Data or Time Sheet Data (as applicable) to the other Party in accordance with the terms of this Contract.
- 47.9 Where each Party acts as a Controller in relation to the Processing of Personal Data under the Agreement, the Parties will not act as joint Controllers for the purposes of Article 26 of the GDPR in relation to such Processing.

Fair Processing Notices

- 47.10 **Network Services Data:** Each Party shall ensure that necessary fair processing notices have been given (and/or, as applicable, consents obtained) to use and disclose the Network Services Data as described in this Contract, as follows – the Authority is responsible (as relevant) for those notices concerning the Network Services Data provided or made available by it or on its behalf to the Supplier, whilst the Supplier is responsible (as relevant) for those notices concerning the Network Services Data it provides or makes available to the Authority.

- 47.11 **Take-up Data:** The Supplier shall ensure that necessary fair processing notices have been given (and/or, as applicable, consents obtained) to allow the Supplier to disclose the Take-up Data to the Authority in accordance with the Data Protection Legislation for its use as described in this Contract.

Data Processing Commitments

- 47.12 The Parties acknowledge that Personal Data as described in the Data Protection Particulars will be Processed by the Party identified in the Data Protection Particulars as a Processor in connection with the performance of this Contract. Where and to the extent a Party acts as a Processor for the purposes of any such Processing under this Contract, the Processor shall:
- 47.12.1 Process (ensuring its personnel Process) the Personal Data only in accordance with the written instructions of the Controller and the terms of this Contract (including the Data Protection Particulars), unless required to do so otherwise by Law;
 - 47.12.2 Notify the Controller as soon as reasonably practicable (suspending the corresponding Processing) if it believes the Controller's instructions infringe Data Protection Legislation;
 - 47.12.3 Provide reasonable assistance to the Controller in preparation of any data protection impact assessment (as such assessment is described in Article 35 of the GDPR);
 - 47.12.4 Implement appropriate technical and organisational measures and in accordance with Article 32 of the GDPR to protect Personal Data against Data Loss Events, such measures being appropriate to the harm which might result from any unauthorised or unlawful Processing accidental loss, destruction or damage to the Personal Data and having regard to the nature of the Personal Data which is to be protected;
 - 47.12.5 Takes all reasonable steps to ensure the reliability and appropriate training of its Personnel who have access to the Personal Data and ensure they (i) are subject to appropriate confidentiality undertakings with the Processor or any relevant sub-processor (as applicable); and (ii) work in a manner consistent with the Data Protection Legislation;
 - 47.12.6 Not Process or otherwise transfer any Personal Data outside the United Kingdom except:
 - (a) with the prior written consent from the Controller (which consent will be subject to requirements necessary for compliance with the Data Protection Legislation) (consent is deemed already provided for those specified in the agreed Exhibit to these provisions – this should be updated with any agreed changes to the sub-processors); or
 - (b) to other members of the Processor's group of companies after having provided appropriate safeguards by entering into standard contractual (from 25 May 2018, standard data protection) clauses as prescribed by the Data Protection Legislation, or by relying on Binding Corporate Rules (as referred to under the GDPR) applicable to the Processor and, at the Controller's request, the Processor will provide a copy of the transfer mechanism it relies on.
 - 47.12.7 At the written direction of the Controller, delete or return Personal Data (and any copies of it) to the Controller on expiry or termination of this Contract unless the Processor is required by Law to retain the Personal Data;

47.12.8 Notify the Controller promptly (and in any event within forty-eight (48) hours, or other period as agreed in writing with the Data Controller from time to time) following its receipt of any Data Subject Request or any correspondence from a competent regulator or any request or correspondence from a third party in relation to the Processing by it of Personal Data, and shall:

- (a) not disclose any Personal Data in response to any Data Subject Request or correspondence from a competent regulator or any request or correspondence from a third party without the Controller's prior written consent; and
- (b) provide the Controller promptly with all reasonable co-operation and assistance required by the Controller in relation to any such Data Subject Request or correspondence from the regulator or any request or correspondence from a third party;

47.12.9 Notify the Controller promptly (and in any event within twenty-four (24) hours) upon becoming aware of any Data Loss Event (and provide further information as it becomes available), and:

- (a) implement any technical and organisational measures reasonably necessary to restore the security of compromised Personal Data; and
- (b) provide reasonable assistance to the Controller to make any required notifications to the competent regulator and affected Data Subjects;

47.12.10 Provide, in a manner consistent with Article 28 of the GDPR, all reasonable assistance (implementing corresponding appropriate technical and organisational measures) in relation to the Controller's obligations under the Data Protection Legislation, including any Data Loss Event or complaint, communication or request relating to the Data Protection Legislation;

47.12.11 The Processor shall:

- (a) maintain complete and accurate records and information to demonstrate its compliance with these data protection requirements, and make these records and information available to the Controller; and
- (b) allow for audits of its Data Processing activity consistent with Article 28 of the GDPR. Subject to the extent it would be consistent with Data Protection Legislation requirements and/or any requirements of a competent regulator: (i) the Controller shall use reasonable endeavours to provide at least ten (10) Working Days' notice of the intention to conduct such audit and carry out any audit under this Clause with minimum disruption to the Processor's day to day business; and (ii) such audits shall be subject to the then current standard security policies of the Processor (to the extent notified to the Controller (or where applicable, to its employees, auditors, authorised agents or advisers) in advance of the relevant audit and to the extent those policies are consistent with the Controller still being able to meet its obligations under Data Protection Legislation);

47.12.12 Before allowing any sub-processor to Process any Personal Data related to this Contract, the Processor must:

- (a) obtain the written consent of the Controller (such consent not to be unreasonably withheld or delayed);
- (b) enter into a written agreement with the sub-processor on terms consistent with the data protection terms of this Contract (the

Processor shall remain fully liable for all acts or omissions of its sub-processor),

consistent with Article 28 of the GDPR.

48. FREEDOM OF INFORMATION

48.1 The Supplier acknowledges that the Authority is subject to the requirements of the FOIA and the Environmental Information Regulations and shall assist and cooperate with the Authority to the extent reasonably necessary to enable the Authority to comply with its Information disclosure obligations.

48.2 The Supplier shall and shall procure that its Subcontractors shall:

48.2.1 transfer to the Authority any Request for Information that it receives as soon as practicable and in any event within three (3) Working Days of receiving a Request for Information;

48.2.2 provide the Authority with a copy of all Information in its possession, or power in the form that the Authority requires within five (5) Working Days (or such other period as the Authority may specify) of the Authority's request; and

48.2.3 provide all necessary assistance as reasonably requested by the Authority to enable the Authority to respond to the Request for Information within the time for compliance set out in section 10 of the FOIA or regulation 5 of the Environmental Information Regulations.

48.3 The Authority:

48.3.1 shall consult with the Supplier to inform its decisions regarding any exemptions as they may relate to any Commercially Sensitive Information; and

48.3.2 may consult with the Supplier to inform its decisions regarding any other exemptions,

but the Authority shall be responsible for determining in its absolute discretion and notwithstanding any other provision in this Contract or any other agreement whether the Commercially Sensitive Information and/or any other Information is exempt from disclosure in accordance with the provisions of the FOIA or the Environmental Information Regulations.

48.4 In no event shall the Supplier respond directly to a Request for Information unless expressly authorised to do so by the Authority in writing.

48.5 The Supplier shall ensure that all Information is retained for disclosure in accordance with Clause 36.2.

49. CONFIDENTIALITY

49.1 Except to the extent set out in this Clause 49 or where disclosure is expressly permitted elsewhere in this Contract, each Party shall:

49.1.1 treat the other Party's Confidential Information as confidential and safeguard it accordingly; and

49.1.2 not disclose the other Party's Confidential Information to any other person without the owner's prior written consent.

- 49.2 This Clause 49 shall not apply to the extent that:
- 49.2.1 such disclosure is a requirement of Law placed upon the Party making the disclosure, including any requirements for disclosure under the FOIA or the Environmental Information Regulations pursuant to Clause 48;
 - 49.2.2 such information was in the possession of the Party making the disclosure without obligation of confidentiality prior to its disclosure by the information owner;
 - 49.2.3 such information was obtained from a third party without obligation of confidentiality;
 - 49.2.4 such information was already in the public domain at the time of disclosure otherwise than by a breach of this Contract; or
 - 49.2.5 it is independently developed without access to the other Party's Confidential Information.
- 49.3 Notwithstanding any other term of this Contract, the Supplier gives its consent for the Authority to publish to the general public this Contract, any Contract Changes and the reports provided by the Supplier to the Authority under this Agreement in their entirety but with any information which is exempt from disclosure in accordance with the provisions of the FOIA redacted. The Supplier shall assist and cooperate with the Authority to enable the Authority to publish the foregoing. For the purpose of this Clause 49.3 the Authority shall consult with the Supplier to inform its decision regarding any FOIA exemptions relating to the Commercially Sensitive Information in the above documents but the Authority shall have the final decision in its absolute discretion.
- 49.4 The Supplier may only disclose the Authority Confidential Information to the Subcontractors and Supplier Personnel who are directly involved in the performance of this Contract and who need to know the information for such purpose.
- 49.5 The Supplier shall ensure that Authority Confidential Information is used only for the purposes of this Contract.
- 49.6 Nothing in this Contract shall prevent the Authority from disclosing the Supplier Confidential Information:
- 49.6.1 to the Programme Authority in connection with the Contract and/or the Broadband Delivery Programme;
 - 49.6.2 to the Other Beneficiaries in connection with the Contract;
 - 49.6.3 to any Crown Body where such disclosure is in connection with this Contract and/or the Broadband Delivery Programme. All such Crown Bodies receiving such Confidential Information shall be entitled to further disclose the Confidential Information to other Crown Bodies where such disclosure is in connection with this Contract and/or Broadband Delivery Programme on the basis that the information is confidential and is not to be disclosed to any other third party;
 - 49.6.4 to any other Local Body where such disclosure is in connection with this Contract and/or the Broadband Delivery Programme, provided that the Authority shall not be permitted to disclose to any other Local Body that specific limited subset within the Commercially Sensitive Information as expressly identified in Schedule 3.2 (Commercially Sensitive Information) as being not for disclosure to other Local Bodies (with a corresponding time period during which this restriction applies);

- 49.6.5 to any consultant, supplier or other person engaged by the Authority in relation to this Contract or any person conducting an Official Assurance Review;
 - 49.6.6 for the purpose of the examination and certification of the Authority's accounts;
or
 - 49.6.7 for any examination pursuant to Section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which the Authority has used its resources.
- 49.7 The Authority shall ensure that any body or individual to whom the Supplier Confidential Information is disclosed pursuant to Clause 49.6 is made aware of the Authority's obligations of confidentiality (including the commitment set out in Clause 48.3 to consult in respect of disclosure of Commercially Sensitive Information) under this Contract and the Authority shall:
- 49.7.1 in respect of disclosure to any body or individual that is part of the Crown, any Regulatory Body and/or any Local Body, use reasonable endeavours to ensure that any such body or individual to whom such disclosure is made complies with similar obligations of confidentiality;
 - 49.7.2 in respect of disclosure to any other body or individual, ensure that any such body or individual to whom such disclosure is made complies with similar obligations of confidentiality.
- 49.8 Nothing in this Clause 49 shall prevent either Party from using any techniques, ideas or know-how gained during the performance of this Contract in the course of its normal business to the extent that this use does not result in a disclosure of the other Party's Confidential Information or an infringement of IPR.
- 49.9 The Parties acknowledge that a material Default of this Clause 49 may cause irreparable harm to the disclosing Party, for which monetary damages would be inadequate, and injunctive relief may be sought for a material Default of this Clause 49.

50. PROHIBITED ACTS AND PREVENTION OF BRIBERY

- 50.1 Each Party:
- 50.1.1 shall not in connection with this Contract commit a Prohibited Act;
 - 50.1.2 warrants, represents and undertakes that it is not aware of any financial or other advantage being given to any person working for or engaged by the other Party, or that an agreement has been reached to that effect, in connection with the execution of this Contract, excluding any arrangement of which full details have been disclosed in writing to the other Party before execution of this Contract.
- 50.2 Each Party shall, if requested, provide the other Party with any reasonable assistance to enable the other Party to perform any activity required by any relevant government or agency in any relevant jurisdiction for the purpose of compliance with the Bribery Act.
- 50.3 The Supplier shall have an anti-bribery policy (which shall be disclosed to the Authority) in place throughout the Term with aim of preventing any Subcontractor or Supplier Personnel from committing a Prohibited Act and shall enforce it where necessary.
- 50.4 If any breach of Clause 50.1 by either Party is suspected or known, such Party shall promptly notify the other Party.
- 50.5 If a Party notifies the other Party that it suspects or knows that there may be a breach of Clause 50.1, the other Party shall respond as soon as reasonably practicable and in

any event within ten (10) Working Days to the notifying Party's enquires and co-operate with any investigation.

51. CONFLICTS OF INTEREST

51.1 The Supplier shall as soon as practicable disclose to the Authority any actual or potential conflict of interest between (i) the interests of the Supplier and/or the Supplier Personnel; and (ii) the duties owed to the Authority under this Contract of which it becomes aware.

51.2 The Supplier shall at its cost give effect to such measures as may reasonably be required by the Authority for ending or avoiding any such actual or potential conflict of interest, or alleviating its effect, as soon as reasonably practicable.

52. CHANGE OF CONTROL

52.1 The Supplier shall provide written notice to the Authority within 10 Working Days of:

52.1.1 the Supplier becoming aware of a significant likelihood that a Change of Control of the Supplier will take place within the next 3 months (save in the case where the Supplier is prohibited by Law from providing any such prior notice); and

52.1.2 any actual Change of Control of the Supplier taking place.

52.2 Subject to Clauses 52.4 and 52.5, the Authority shall be entitled to terminate this Contract in accordance with Clause 60.1.1(b) where there is a Change of Control to which the Authority objects, except where the Authority has given its prior written consent to the particular Change of Control (such consent not to be unreasonably withheld or delayed), which subsequently takes place as proposed.

52.3 [not used]

52.4 The non exhaustive grounds upon which the Authority may object to a Change of Control are:

52.4.1 it would mean the Authority would contract with an entity which:

- (a) the Authority would not have contracted with at the Effective Date (for example, where the entity would not have met the ITT evaluation criteria);
- (b) has materially failed to deliver services to the Authority to the standards required in any contract with the Authority or any other Local Body; and/or
- (c) takes a stance on matters relating to corporate social responsibility (including environmental sustainability) which is inconsistent with the policies of the UK government; and/or

52.4.2 the Change of Control might or would adversely affect or prejudice:

- (a) national security or the level of threat of criminal activity; and/or
- (b) the operations, reputation or good standing of the Authority.

52.5 The Authority's right to terminate this Contract under Clause 52.2 shall expire if not exercised within six (6) months of the date of written notice to the Authority by the Supplier pursuant to Clause 52.2.

WARRANTIES, INDEMNITIES, LIABILITY AND FORCE MAJEURE

53. WARRANTIES

- 53.1 Each Party warrants, represents and undertakes that:
- 53.1.1 it has full capacity and authority to enter into and to perform this Contract;
 - 53.1.2 this Contract is executed by a duly authorised representative of that Party;
 - 53.1.3 as at the Effective Date there are no actions, suits or proceedings or regulatory investigations pending or, to that party's knowledge, threatened against or affecting that Party before any court or administrative body or arbitration tribunal that might affect the ability of that party to meet and carry out its obligations under this Contract; and
 - 53.1.4 once duly executed this Contract will constitute its legal, valid and binding obligations.
- 53.2 The Supplier warrants, represents and undertakes for the duration of the Term that:
- 53.2.1 it shall discharge its obligations under this Contract with all due skill, care and diligence including in accordance with Good Industry Practice;
 - 53.2.2 it has and will continue to hold all necessary Consents to perform the Supplier's obligations under this Contract (excluding any Consents that only the Authority is eligible to obtain as a matter of law);
 - 53.2.3 it has and will continue to have all IPR (excluding Authority IPR) necessary to perform the Supplier's obligations under this Contract;
 - 53.2.4 as at the Effective Date all statements and representations (subject to any relevant caveats and assumptions provided by the Supplier in writing at the time) in the Supplier ITT Response are to the best of its knowledge, information and belief, complete, true and accurate and that it will advise the Authority of any fact, matter or circumstance of which it may become aware which would render any such statement or representation to be materially false or misleading;
 - 53.2.5 all Supplier Personnel have been vetted and recruited on a basis of proper and adequate staff vetting procedures; and
 - 53.2.6 it shall at all times comply with all applicable Law in carrying out its obligations under this Contract.
- 53.3 The Authority warrants to the Supplier that it has undertaken all necessary corporate action to approve the execution of this Contract by the Authority.
- 53.4 Except as expressly stated in this Contract, all warranties and conditions whether express or implied by statute, common law or otherwise are hereby excluded to the extent permitted by Law.

54. THIRD PARTY IPR INDEMNITY

- 54.1 Each Party shall procure that the performance of its responsibilities under this Contract shall not infringe or cause the infringement of any IPR of any third party.

- 54.2 The Supplier shall indemnify the Authority against all third party claims, demands, actions, costs (including legal fees and royalties), expenses, losses or damages arising from or incurred by reason of any infringement or alleged infringement (including the defence of such alleged infringement) arising due to the use of Supplier IPR in accordance with the provisions of this Contract.
- 54.3 The Authority shall indemnify the Supplier against all third party claims, demands, actions, costs (including legal fees and royalties), expenses, losses or damages arising from or incurred by reason of any infringement or alleged infringement (including the defence of such alleged infringement) arising due to the use of Authority IPR in accordance with the provisions of this Contract.

55. HANDLING OF INDEMNIFIED CLAIMS

- 55.1 Each Party shall promptly notify the other in writing of any Indemnified Claim of which it becomes aware.
- 55.2 In respect of each Indemnified Claim, subject to Clause 55.3 the Indemnifying Party shall be entitled to defend the Indemnified Claim (acting diligently, using competent counsel and in such a way as not to bring the reputation of the Indemnified Party into disrepute) provided that (i) the Indemnifying Party consults with the Indemnified Party and keeps the Indemnified Party fully informed with respect to the Indemnified Claim; (ii) the Indemnifying Party shall not settle, admit fault or compromise the Indemnified Claim without the Indemnified Party's prior written consent (such consent not to be unreasonably withheld or delayed); and (iii) the Indemnified Party shall (at the Indemnifying Party's cost) provide such reasonable assistance as required by the Indemnifying Party.
- 55.3 Where the Supplier is the Indemnifying Party, the Authority may elect (following reasonable consultation with the Supplier) to defend the Indemnified Claim itself (acting diligently and using competent counsel) with the Supplier (at the Supplier's own cost) providing such reasonable assistance as required by the Authority if the Authority considers that sole control of the Indemnified Claim by the Supplier may place at risk or adversely affect (i) national security or the threat of criminal activity; and/or (ii) the operations, reputation or good standing of the Authority.
- 55.4 The Indemnified Party shall not settle, admit fault or compromise any Indemnified Claim without the Indemnifying Party's prior written consent (such consent not to be unreasonably withheld or delayed).
- 55.5 If an Indemnified Claim is made or the Indemnifying Party anticipates that an Indemnified Claim might be made, the Indemnifying Party may, at its own expense and reasonable discretion, procure the necessary rights or otherwise replace or modify the items or activities concerned to enable the Indemnified Party the right to continue using the relevant item or to otherwise properly permit the continuance of the activity which is the subject of the Indemnified Claim, provided that in each instance:
- 55.5.1 the performance and/or quality of the replacement item or activity concerned shall be at least equivalent to the performance and/or quality of the original item or activity;
 - 55.5.2 any such action by the Indemnifying Party does not have an adverse effect on the performance of this Contract or the Indemnified Party;
 - 55.5.3 there is no additional cost to the Indemnified Party; and
 - 55.5.4 the terms of this Contract shall continue to apply to the items and activities concerned.

56. LIMITATIONS ON LIABILITY

56.1 Neither Party limits its liability for:

56.1.1 death or personal injury caused by its negligence, or that of its employees, agents or Subcontractors (as applicable);

56.1.2 fraud or fraudulent misrepresentation by it or its employees;

56.1.3 breach of any obligation as to title implied by section 12 of the Sale of Goods Act 1979 or section 2 of the Supply of Goods and Services Act 1982; or

56.1.4 any other matter for which it would be unlawful for either Party to exclude or limit or attempt to exclude or limit its liability.

56.2 Subject to Clause 56.1, the Supplier's total aggregate liability:

56.2.1 in respect of the indemnity set out in Clause 54.2 relating to alleged or actual infringement of IPR shall be unlimited;

56.2.2 for all loss of or damage to the Authority Premises or any real property, real assets, equipment or infrastructure of the Authority or any third party (including any Other Beneficiary where applicable) caused by the Supplier's Default shall in no event exceed £10 million in respect of any one event.

56.2.3 in respect of all other claims, losses or damages, whether arising from tort (including negligence), breach of contract or otherwise pursuant to this Contract (including where suffered or incurred by any Other Beneficiary) shall in no event exceed 115% of the aggregate Milestone Payments paid, due or which would have been payable in the future under this Contract.

56.3 Subject to Clause 56.1, the Authority's total aggregate liability, in addition to its obligation to pay the Milestone Payments as and when they fall due for payment, in respect of:

56.3.1 the indemnity set out in Clause 54.3 relating to alleged or actual infringement of IPR shall be unlimited;

56.3.2 in respect of all other claims, losses or damages, whether arising from tort (including negligence), breach of contract or otherwise pursuant to this Contract shall in no event exceed 65% of the aggregate Milestone Payments paid, due or which would have been payable in the future under this Contract.

56.4 Subject to Clauses 56.1 and 56.5, neither Party will be liable to the other Party for:

56.4.1 any indirect, special or consequential loss or damage; or

56.4.2 any loss of profits, turnover, business opportunities or damage to goodwill (whether direct or indirect).

56.5 Subject to Clause 56.2, the Authority may, amongst other things, recover as a direct loss:

56.5.1 any additional operational and/or administrative costs and expenses arising from the Supplier's Default;

56.5.2 any wasted expenditure or charges rendered unnecessary and/or incurred by the Authority arising from the Supplier's Default; and

56.5.3 the additional cost of procuring Replacement Services for the remainder of the Term.

56.6 The Parties expressly agree that if any limitation or provision contained or expressly referred to in this Clause 56 is held to be invalid under any Law, it will be deemed omitted to that extent, and if any party becomes liable for loss or damage to which that limitation or provision applied, that liability will be subject to the remaining limitations and provisions set out in this Clause 56.

56.7 Nothing in this Clause 56 shall act to reduce or affect a Party's general duty to mitigate its loss.

57. INSURANCE

57.1 The Supplier shall maintain the Required Insurance in full force and effect at all times from the Effective Date until the Expiry Date.

57.2 The Required Insurance shall be maintained on terms that are as favourable to those generally available to a prudent contractor in respect of risks insured in the international insurance market.

57.3 The Required Insurance shall be maintained with an independently regulated insurance company of good financial standing properly licensed to underwrite the Required Insurance.

57.4 The Supplier shall procure that nothing is done which would entitle the relevant insurer to cancel, rescind or suspend any Required Insurance or related cover, or to treat any Required Insurance, related cover or claim as avoided in whole or part. The Supplier shall use reasonable endeavours to notify the Authority (subject to third party confidentiality obligations) as soon as practicable when it becomes aware of any relevant fact, circumstance or matter which has caused, or is reasonably likely to provide grounds to, the relevant insurer to give notice to cancel, rescind, suspend or avoid any Required Insurance, or any cover or claim under any Required Insurance in whole or in part.

57.5 The Authority may purchase (if possible) any of the Required Insurance which the Supplier has failed to maintain in full force and effect in accordance with the requirements of this Agreement. The Authority may recover the premium and other costs incurred in doing so as a debt due from the Supplier.

57.6 The Supplier shall as soon as reasonably practicable but no later than 10 Working Days, following the date of the Authority's request, provide the Authority with a certificate of insurance containing all relevant information of its insurance cover to verify its compliance with this Clause 58.

58. FORCE MAJEURE

58.1 Neither Party shall be entitled to bring a claim for a breach of obligations under this Contract by the Affected Party or incur any liability to the Affected Party for any Loss incurred by the Affected Party to the extent that a Force Majeure Event occurs and the Affected Party is prevented from carrying out obligations by that Force Majeure Event.

58.2 Where the Affected Party is the Supplier, none of the following events and circumstances shall be regarded as a Force Majeure Event that relieves liability under this Clause 59:

58.2.1 an event to the extent it is capable of being mitigated by any of the Deployed Services;

- 58.2.2 a failure by a Subcontractor to perform any obligation owed to the Supplier unless and to the extent that the failure is directly caused by a Force Majeure Event directly affecting that Subcontractor;
 - 58.2.3 an event or circumstance caused by a Default by the Supplier, a Subcontractor or Supplier Personnel;
 - 58.2.4 an event or circumstance attributable to the Supplier's or any Subcontractor's wilful act, neglect or failure to take reasonable precautions against the relevant event; or
 - 58.2.5 an event or circumstance where its effect is such that a prudent provider of services similar to the Deployed Services, operating to the standards required by this Contract, would have foreseen and prevented or avoided the consequences of such event or circumstance.
- 58.3 The Affected Party shall as soon as is practicable give the other Party written notice of the Force Majeure Event. Following the occurrence of a Force Majeure Event the Parties shall use their respective reasonable endeavours to prevent and mitigate the effects of any delay and the Supplier shall during the period which the effects of a Force Majeure Event are subsisting take such reasonable steps as are necessary in accordance with Good Industry Practice to overcome or minimise the consequences of the Force Majeure Event.
- 58.4 The Affected Party shall notify the other Party as soon as practicable after the Force Majeure Event ceases or no longer causes the Affected Party to be unable to comply with its obligations under this Contract. Following such notification, this Contract shall continue to be performed on the terms existing immediately before the occurrence of the Force Majeure Event unless agreed otherwise by the Parties.
- 58.5 Nothing in this Clause 59 shall prevent either Party from performing any of its obligations set out in this Contract that are not affected by the relevant Force Majeure Event.
- 58.6 To the extent that the consequences of a Force Majeure Event can be addressed by a change to the Project Plan without impacting upon the Implementation Plan, then the Parties shall use their respective reasonable endeavours to agree a change to the Project Plan in accordance with paragraph 5.8 of Schedule 4.1 (Implementation) without recourse to the Change Control Procedure.
- 58.7 To the extent that the consequences of a Force Majeure Event:
- 58.7.1 materially adversely affect (or are likely to materially adversely affect) the performance of the Deployed Services for a sustained and indeterminate period;
 - 58.7.2 have been mitigated by the Supplier in accordance with Good Industry Practice pursuant to Clause 58.3; and
 - 58.7.3 cannot be addressed solely by a change to the Project Plan without recourse to the Change Control Procedure in accordance with Clause 58.6,

then subject to Clause 58.1 the Parties may elect to use their respective reasonable endeavours to address the consequences of the Force Majeure Event in accordance with the Change Control Procedure, provided that unless the Parties agree otherwise in writing the Parties shall in respect of the agreement of any such change adhere to the principle that each Party shall bear its own costs incurred in dealing with a Force Majeure Event.

TERM AND TERMINATION

59. TERM OF THIS CONTRACT

This Contract shall commence on the Effective Date and, unless terminated at an earlier date by operation of Law or in accordance with the provisions of this Contract, shall expire on the Expiry Date.

60. TERMINATION FOR SUPPLIER DEFAULT

60.1 The Authority may terminate this Contract without penalty by written notice to the Supplier (where such notice shall specify the date of termination being the date of notice or later) upon the occurrence of one or more of the following events:

60.1.1 where the Supplier commits a material Default of this Contract and:

- (a) the material Default is capable of remedy but which, subject to Clause 37, it has failed to remedy in accordance with the Remedial Plan Process; or
- (b) in the reasonable opinion of the Authority the material Default is not capable of remedy;

60.1.2 where the Supplier is in material Default of its State aid obligations set out in Clause 22 and the material Default is capable of remedy (in which case Clause 60.1.1(a) shall apply) or in the reasonable opinion of the Authority the material Default is not capable of remedy (in which case Clause 60.1.1(b) shall apply);

60.1.3 where the Supplier's ITT Response is identified to be materially false or misleading;

60.1.4 where the Supplier has failed to Achieve a Milestone by the associated Longstop Date due to Supplier Default;

60.1.5 where an Insolvency Event occurs in respect of the Supplier;

60.1.6 in accordance with Clause 52.2 in relation to a Change of Control; or

60.1.7 in accordance with paragraphs 2.3.1 or 2.3.3 of Schedule 6.5 (Remedial Plan Process).

60.2 Termination in accordance with this Clause 60 shall be without prejudice to any right of action or remedy of either Party which has accrued or which subsequently accrues.

61. TERMINATION FOR AUTHORITY DEFAULT

The Supplier may terminate this Contract only if the Authority is in material breach of its obligation to pay undisputed Milestone Payments by giving the Authority 60 days' written notice specifying the breach and requiring its remedy and the breach is not resolved upon the expiry of such notice.

62A. TERMINATION ON REGULATION 73 GROUNDS

62A.1 The Authority may terminate this Contract in whole or part with immediate effect by the service of written notice if any of the provisions of Regulation 73(1) of the Public Contracts Regulations 2015 apply.

62A.2 Where this Contract is terminated pursuant to Clause 62A.1 on Regulation 73(1)(a) and (c) grounds, the consequences of such termination shall be the same as the consequences set out in Clause 65.1.2.

62A.3 Where this Contract is terminated pursuant to Clause 62A.1 on Regulation 73(1)(b) grounds, the consequences of such termination shall be the same as the consequences set out in Clause 65.1.1.

62. TERMINATION DUE TO FORCE MAJEURE

62.1 Either Party may, by written notice to the other, terminate this Contract, or in respect of Clause 62.1.2 only require the partial termination of the part of this Contract affected by the Force Majeure Event in accordance with Clause 63, if:

62.1.1 a Force Majeure Event occurs which affects all or a substantial part of the Deployed Services for a continuous period of more than 90 Working Days; or

62.1.2 a Force Majeure Event occurs which affects a non-substantial part of the Deployed Services for a continuous period of more than 120 Working Days.

63. PARTIAL TERMINATION

Where the Authority has the right to terminate this Contract for Supplier Default in accordance with Clause 60, the Authority may terminate the part of the Deployed Services affected by such Supplier Default by written notice to the Supplier (where such notice shall specify the date of termination for the relevant part of this Contract). The consequences of any such partial termination shall be addressed by the Parties in accordance with the Change Control Procedure.

64. CONSEQUENCES OF TERMINATION OR EXPIRY

64.1 Following the service of notice terminating this Contract by:

64.1.1 the Authority in accordance with Clause 60 (Termination due to Supplier Default):

- (a) subject to Clause 64.3, the Supplier shall continue to be under an obligation to perform its obligations under this Contract until the date of the termination specified in the termination notice;
- (b) the Authority shall pay any outstanding undisputed Milestone Payments which are properly due and payable prior to the date of the termination specified in the termination notice in accordance with the terms of this Contract;
- (c) the Authority shall make no termination or compensation payment of any kind;
- (d) the Supplier shall, within 20 Working Days of termination, pay to the Authority all amounts due and payable to the Authority under this Contract; and
- (e) the Parties shall consult with the European Commission and Programme Authority in its capacity as a competency centre to ensure that any public funding paid under this Contract is not rendered unlawful State aid as a result of the early termination of this Contract (which the Parties acknowledge for such purpose may include the application of certain ongoing requirements in respect of the Network following the early termination of this Contract). Any respective rights and obligations of either Party agreed pursuant to

such consultation shall be set out in a written document and executed by duly authorised representatives of each Party.

64.1.2 the Supplier in accordance with Clause 61 (Termination due to Authority Default):

- (a) subject to Clause 64.3, the Supplier shall not be under an obligation to continue to perform its obligations under this Contract;
- (b) save in respect of any contract damages claim successfully made by the Supplier (subject to the provisions of this Contract), the Authority shall make no termination or compensation payment of any kind;
- (c) the Supplier shall, within 20 Working Days of termination, pay to the Authority all amounts due and payable to the Authority under this Contract; and
- (d) the Parties shall consult with the European Commission and Programme Authority in its capacity as a competency centre to ensure that any public funding paid under this Contract is not rendered unlawful State aid as a result of the early termination of this Contract (which the Parties acknowledge for such purpose may include the application of certain ongoing requirements in respect of the Network following the early termination of this Contract). Any respective rights and obligations of either Party agreed pursuant to such consultation shall be set out in a written document and executed by duly authorised representatives of each Party.

64.1.3 either Party in accordance with Clause 62 (Termination due to a Force Majeure Event):

- (a) subject to Clause 64.3, the Supplier shall not be under an obligation to continue to perform its obligations under this Contract;
- (b) the Authority shall pay any outstanding undisputed Milestone Payments which are properly due and payable prior to the date of the termination specified in the termination notice in accordance with the terms of this Contract;
- (c) each Party shall bear its own costs in relation to such termination;
- (d) the Supplier shall, within 20 Working Days of termination, pay to the Authority all amounts due and payable to the Authority under this Contract; and
- (e) the Parties shall consult with the European Commission and Programme Authority in its capacity as a competency centre to ensure that any public funding paid under this Contract is not rendered unlawful State aid as a result of the early termination of this Contract (which the Parties acknowledge for such purpose may include the application of certain ongoing requirements in respect of the Network following the early termination of this Contract). Any respective rights and obligations of either Party agreed pursuant to such consultation shall be set out in a written document and executed by duly authorised representatives of each Party.

64.2 Upon termination or expiry of this Contract:

64.2.1 the Supplier shall cease to use any Authority IPR and Authority Data and, at the direction of the Authority:

- (a) shall provide the Authority with a complete and uncorrupted version of the relevant Authority IPR and Authority Data in electronic form in a format and on media as reasonably requested by the Authority; and
- (b) on the earlier of the receipt of the Authority's written instructions or the date of expiry or termination, shall destroy (subject to any constraints of Law) all copies of the relevant Authority IPR and Authority Data remaining in its possession or control;

64.3 The following provisions of this Contract shall survive the termination or expiry of this Contract and shall continue in effect along with such other provisions of this Contract which expressly or by implication have effect after termination: Clauses 1, 0, 8, 22, 35, 36.2, 39, 43 to 49, 54 to 56, 64 and 66 to 75.

MISCELLANEOUS

65. ASSIGNMENT AND NOVATION

65.1 The Supplier shall not assign, novate or otherwise dispose of or create any trust in relation to (i) any or all of its rights and obligations under this Contract; and/or (ii) the Network (or part of the Network, save that this shall not preclude replacement of Network sub-components as part of Network maintenance), without the prior written consent of the Authority (which in respect of a proposed assignment, novation or disposal to an Affiliate only, shall not be unreasonably withheld or delayed). In circumstances where the Authority gives its prior written consent it may stipulate certain conditions of such consent (such as reasonable requirements for sharing of profits or the provision of a guarantee (in a form satisfactory to the Authority) from the parent company of the assignee or novatee).

65.2 The Authority may:

65.2.1 assign, novate or otherwise dispose of any or all of its rights and obligations under this Contract to any Contracting Authority or Local Body; and/or

65.2.2 novate this Contract to any other body (including any private sector body) which substantially performs any of the functions that previously had been performed by the Authority in connection with the scope of this Contract (including where applicable the payment of Milestone Payments), provided that where any such body is a competitor of the Supplier in respect of the Supplier's primary business or function within the UK such novation shall be subject to the prior written consent of the Supplier (such consent not to be unreasonably withheld or delayed).

65.3 A Party shall be entitled to disclose the other Party's Confidential Information to any person to whom it assigns, novates or otherwise disposes of the rights and obligations under this Contract in accordance with this Clause 65, subject to:

65.3.1 Clause 49.7 applying in the case of the Authority assigning, novating or otherwise disposing of its rights and obligations in accordance with Clause 66;

65.3.2 in the case of the Supplier assigning, novating or otherwise disposing of its rights and obligations in accordance with Clause 66, the Supplier ensuring

that such person complies with the provisions of Clause 50 in respect of that information.

- 65.4 A change in the legal status of the Authority shall not affect the validity of this Contract and it shall be binding on any successor body to the Authority.

66. WAIVER AND CUMULATIVE REMEDIES

- 66.1 The rights and remedies provided by this Contract may be waived only in writing by the relevant Representative in a manner that expressly states that a waiver is intended, and such waiver shall only be operative with regard to the specific circumstances referred to.
- 66.2 Unless a right or remedy of a Party is expressed to be an exclusive right or remedy, the exercise of it by that Party is without prejudice to that Party's other rights and remedies. Any failure to exercise or any delay in exercising a right or remedy by either Party shall not constitute a waiver of that right or remedy or of any other rights or remedies.
- 66.3 The rights and remedies provided by this Contract are cumulative and, unless otherwise provided in this Contract, are not exclusive of any right or remedy provided at law or in equity or otherwise under this Contract.

67. RELATIONSHIP OF THE PARTIES

Nothing in this Contract is intended to create a partnership or legal relationship of any kind that would impose liability upon one Party for the act or failure to act of the other Party, or to authorise either Party to act as agent for the other Party. Neither Party shall have authority to make representations, act in the name of, or on behalf of, or to otherwise bind the other Party.

68. PUBLICITY AND BRANDING

- 68.1 Neither Party shall:
- 68.1.1 make any press announcement or publicise this Contract or its contents in any way; or
 - 68.1.2 use the other Party's name or brand in any promotion or marketing or announcement of orders,
- without the prior written consent of the other Party, which shall not be unreasonably withheld or delayed.
- 68.2 Neither Party shall make any press or other public announcements using the name of the Programme Authority without the prior consent of the Programme Authority, which shall not be unreasonably withheld.
- 68.3 The Supplier shall notify the Authority as soon as reasonably practical and in advance of any meetings planned to be held or attended by the Supplier concerning the Contract and Deployed Services or its application with local communities and other local authorities within the Authority's administrative area and the Authority shall be entitled to send a representative to the meeting or request feedback from the Supplier at the Authority's discretion.

69. SEVERANCE

If any provision of this Contract is held invalid, illegal or unenforceable for any reason by any court of competent jurisdiction, such provision shall be severed without effect to the remaining provisions.

70. FURTHER ASSURANCES

Each Party shall, at the request of the other, at its own cost, to do all acts and execute all documents which may be necessary to give effect to the meaning of this Contract.

71. ENTIRE AGREEMENT

71.1 This Contract, together with the documents referred to in it (save for the ITT and Supplier ITT Response which are only applicable in the context and to the extent of the specific express references within this Contract) and/or attached to it, constitutes the entire agreement and understanding between the Parties in respect of the matters dealt with in it and supersedes any previous agreement between the Parties in relation to such matters notwithstanding the terms of any previous agreement or arrangement expressed to survive termination.

71.2 Each Party acknowledges and agrees that in entering into this Contract and the documents referred to in it and/or attached to it, it does not rely on, and shall have no remedy in respect of, any statement, representation, warranty or undertaking (whether negligently or innocently made) other than as expressly set out or referred to in this Contract.

71.3 Nothing in this Clause 71 shall operate to exclude any liability for fraud.

72. THIRD PARTY RIGHTS

72.1 Except as provided in Clauses 8 and 72.2, nothing in this Contract shall be deemed to grant any rights or benefits to any person other than the Parties, or entitle any third party to enforce any term or condition of this Contract.

72.2 Each Other Beneficiary may enforce the terms of this Contract subject to and in accordance with the provisions of Clause 8 and the Contracts (Rights of Third Parties) Act 1999.

73. NOTICES

73.1 Any notices given under or in relation to this Contract shall be in writing, signed by or on behalf of the Party giving it and shall be served by delivering it personally or by sending it by pre-paid first class post, recorded delivery or registered post or by fax or email to the address and for the attention of the relevant Party as follows:

Authority	Supplier
County Hall, Martineau Lane, Norwich, Norfolk, NR1 2DH For the attention of: REDACTED Email: REDACTED	British Telecommunications plc Pp Room 3.89 Kelvin House 123 Judd Street London WC1H 9NP For the attention of: [NAME REDACTED] Managing Director, Next Generation Access

	<p>Email: REDACTED</p> <p>With a copy to:</p> <p>British Telecommunications plc Pp Room 3.89 Kelvin House 123 Judd Street London WC1H 9NP</p> <p>For the attention of: REDACTED</p> <p>Email: REDACTED</p>
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73.2 A notice shall be deemed to have been received:

- 73.2.1 if delivered personally, at the time of delivery;
- 73.2.2 in the case of pre-paid first class post, recorded delivery or registered post, three (3) Working Days from the date of posting;
- 73.2.3 in the case of fax, on the day of transmission if sent before 16:00 hours of any Working Day and otherwise at 09:00 hours on the next Working Day and provided that, at the time of transmission of a fax, an error-free transmission report has been received by the sender; and
- 73.2.4 in the case of email, at the time that the email enters the Information System of the intended recipient provided that no error message indicating failure to deliver has been received by the sender and provided further that, in relation to any notice provided under Clauses 1 to 75 of this Contract, within 24 hours of transmission a hard copy of the email signed by or on behalf of the person giving it is delivered by hand or sent by facsimile, pre-paid first class post, recorded delivery or registered post to the intended recipient.

73.3 In proving service, it shall be sufficient to prove that the envelope containing the notice was addressed to the relevant Party at its address previously notified for the receipt of notices (or as otherwise notified by that Party) and delivered either to that address or into the custody of the postal authorities as pre-paid first class post, recorded delivery, registered post or airmail letter, or that the notice was transmitted by fax to the fax number of the relevant Party at its fax number previously notified for the receipt of notices (or as otherwise notified by that Party).

74. **AUTHORITY POWERS**

Nothing contained or implied in this Contract or any consent or approval granted pursuant to it shall fetter the discretion or otherwise prejudice or affect the rights, powers, duties and obligations of the Authority in the exercise of its functions as the local authority, the local planning authority, the highway authority or other statutory authority and such rights, powers, duties and obligations under Law may be as fully and effectually exercised as if the Authority were not party to this Contract and any approval, consent, direction or authority given by the Authority as the local or other statutory authority shall not be or be deemed to be an approval, consent, direction or authority given under this Contract and vice versa.

75. GOVERNING LAW AND JURISDICTION

This Contract shall be governed by and construed in accordance with English law and without prejudice to the Dispute Resolution Procedure each Party agrees to submit to the exclusive jurisdiction of the courts of England and Wales.

EXECUTION

SIGNED for and on behalf of the **Norfolk County Council** by

SIGNED for and on behalf of **British Telecommunications Plc** by

1st Signature:

2nd Signature

Signature:

Name:

Name:

Position:

Position:

Date:

Date:

SCHEDULE 1

DEFINITIONS

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
0.3	25 October 2016 plus 14 November 2016 update of Premises Cap definition	Uplifted following local body and supplier feedback
1.0	16 November 2016	Baselined Version 1.0
1.5	26 February 2019	Contract finalisation version

SCHEDULE 1 – DEFINITIONS

In this Contract the following words shall have the meanings set out below.

Access Line Speed	the maximum speed of the data connection between the End User termination point and the handover point, local exchange or cable head end. This constitutes the maximum speed a consumer will be able to experience and will take into account any contention built into the Supplier Solution but will not take into account any contention introduced by RSPs;
Achieve	in relation to a Milestone, the Milestone Achievement Criteria for that Milestone have been satisfied and " Achieved " and " Achievement " shall be construed accordingly;
Actual Supplier NGA Network Build Investment	the actual Supplier NGA Network Build Investment incurred;
Actual Qualifying Capital Expenditure	the actual Qualifying Capital Expenditure incurred;
Actual Qualifying Operating Expenditure	the actual Qualifying Operating Expenditure incurred;
Additional Approved Funding	funding, whether from the Authority, the Programme Authority and/or other third parties, which (i) is in addition to that which has already been provided for within the Milestone Payments agreed at the Effective Date; (ii) has been approved by the NCC as public funding eligible to be used to further the project aims in the Coverage Area under this Contract, subject to (a) agreement by the Parties in accordance with Schedule 5.4 (Additional Approved Funding); and (b) such utilisation meeting the requirements of the Commission Decision;
Additional Service	those wholesale access products and services offered over and above the reference offer in the Wholesale Access Products and Services;
Additional Service Revenue	gross revenue derived by the Supplier from Wholesale Access Products and Services, other than broadband revenues (excluding RSP services that utilise Wholesale Access Products and Services);
Additional Service Claw Back Amount	an amount calculated in accordance with paragraph 10.2 of Schedule 5.1 (Milestone Payments and Claims Procedure), which is repayable to the Authority;
Additional Service Review Point	(a) the third anniversary of the Effective Date and thereafter the expiry of each two (2) year period during the Term (each being an 'interim Additional Service Review Point'); and (b) the Expiry Date (being the 'final Additional Service Review Point');
Affected Party	the Party affected by a Force Majeure Event;
Affiliate	in relation to any person, any Holding Company or Subsidiary of that person or any Subsidiary of such Holding Company;

Authority Assets	the assets, equipment and infrastructure owned by or leased or licensed to the Authority (except where leased or licensed to the Authority by the Supplier under this Contract) to which the Supplier requires access to and/or use of in order to provide the Deployed Services and which are listed in Schedule 4.2 (Authority Assets);
Authority Confidential Information	all Personal Data and any information provided by or at the direction of the Authority (or its employees, agents, consultants and contractors) to the Supplier and/or its Subcontractors in relation to this Contract, however it is conveyed, that relates to the business, affairs, developments, trade secrets, know-how, personnel, and suppliers of the Authority, including all IPR, together with all information derived from any of the above, and any other information clearly designated as being confidential (whether or not it is marked "confidential") or which ought reasonably be considered to be confidential;
Authority Data	<p>the data, text, drawings, diagrams, images or sounds (including any database made up of any of these) which are embodied in any electronic, magnetic, optical or tangible media, and which are:</p> <p>(c) supplied to the Supplier by or on behalf of the Authority pursuant to this Contract; and/or</p> <p>(d) Personal Data for which the Authority is the Data Controller and which is processed or otherwise made available pursuant to this Contract;</p>
Authority IPR	any IPR (excluding the Supplier IPR) owned by, or licensed to, the Authority in connection with this Contract;
Authority Premises	the premises owned, controlled and/or occupied by the Authority or other Local Body or Crown Body;
Authority Representative	the representative appointed by the Authority in accordance with Clause 34.1;
Benchmark Data	that data used to form the basis of comparison in a Wholesale Access Prices Benchmarking, as described in paragraphs 3.3 and 3.4 of Schedule 5.2 (Wholesale Access Pricing);
Bribery Act	the Bribery Act 2010 and any subordinate legislation made under that Act from time to time together with any guidance or codes of practice issued by the relevant government department concerning the legislation;
Broadband Delivery Programme	the UK Government's Programme supporting the roll-out of NGA, Ultrafast Broadband and Gigabit Broadband services, managed by the Programme Authority;
Build/No-Build Changes	shall have the meaning set out in paragraph 9.4 of Schedule 4.1 (Implementation);
Case Summary	a concise summary of a Party's case in a Dispute subjected to mediation;
CEDR	the Centre for Effective Dispute Resolution, International Dispute Resolution Centre, 70 Fleet Street, London, EC4Y 1EU;

Change Authorisation	Part 3 of the Change Form executed by the Parties in accordance with paragraph 4 of Schedule 6.2 (Change Control Procedure);
Change Control Procedure	the procedure set out in Schedule 6.2 (Change Control Procedure);
Change Form	a form for dealing with Contract Changes in accordance with the Change Control Procedure, substantially in the form set out in the Appendix to Schedule 6.2 (Change Control Procedure);
Change Impact Assessment	Part 2 of the Change Form completed by the Supplier in accordance with paragraphs 2 and 3 of Schedule 6.2 (Change Control Procedure);
Change of Control	a change in Control of the Supplier;
Change Request	Part 1 of the Change Form completed by a Party in accordance with paragraph 2 of Schedule 6.2 (Change Control Procedure);
Change in Law	any change in Law which impacts on the performance of the Deployed Services and which comes into force after the Effective Date;
Claim	any action, claim, demand or proceedings;
Clawback Adjustment	an amount calculated in accordance with paragraph 11 of Schedule 5.1 (Milestone Payments and Claims Procedure);
Codes and Standards	<ul style="list-style-type: none"> (e) all of the codes and standards listed in the Service Requirements and/or the Supplier Solution; (f) all applicable codes of practice issued pursuant to the New Roads and Street Works Act 1991; (g) all applicable standards, specifications and codes of practice issued by the Secretary of State for Transport, the Department for Transport (or a successor body) and/or the Department for the Environment, Food and Rural Affairs including in respect of the design, construction, operation or maintenance of highways; (h) all applicable national and local planning policy in respect of electronic communications and sensitive locations and buildings including the natural, built and historic environment; (i) all applicable guidelines published by the International Commission on Non-Ionising Radiation Protection; (j) the Code of Best Practice on Mobile Phone Network Development published by the Office of the Deputy Prime Minister (where applicable to the Deployed Services), <p>as updated or amended from time to time;</p>
Commission Decision	the decision from the European Commission approving an aid scheme (as defined in Council Regulation (EC) 2015/1589) with reference number C(2016) 3208;

Commercially Sensitive Information	the information listed in Schedule 3.2 (Commercially Sensitive Information) comprising the information of a commercially sensitive nature relating to the Supplier, its IPR or its business or which the Supplier has indicated to the Authority that, if disclosed by the Authority, would cause the Supplier significant commercial disadvantage or material financial loss;
Compliance Matrix	the compliance matrix set out in the Supplier Solution which details the agreed compliance of the Supplier Solution against the Service Requirements, as further specified in Schedule 2 (Service Requirements);
Confidential Information	the Authority Confidential Information and/or the Supplier Confidential Information;
Consents	all permits, licences, permissions, consents, approvals, certificates and authorisations (whether statutory or otherwise) which are required for the performance of any of the Supplier's obligations under this Contract, whether required in order to comply with Law or as a result of the rights of any third party;
Contact Data	contact data for a Party's personnel (including relevant employees and contractors) (and "Supplier Contact Data" and "Authority Contact Data" shall be construed accordingly);
Contract	the Clauses of this Contract together with the Schedules and Appendices to it and the terms set out in any executed Change Form;
Contract Change	any change to the terms of this Contract;
Contracting Authority	any contracting authority as defined in regulation 3 of the Public Contracts Regulations 2015 excluding the Authority;
Control	where a person possesses, directly or indirectly, the power to direct or cause the direction of the management and policies of another person (whether through the ownership of voting shares, by contract or otherwise) and " Controls " and " Controlled " shall be interpreted accordingly;
Controller	has the meaning given to it under the Data Protection Legislation;
Conviction	other than for minor road traffic offences, any previous or pending prosecutions, convictions, cautions and binding-over orders (including any spent convictions as contemplated by section 1(1) of the Rehabilitation of Offenders Act 1974 by virtue of the exemptions specified in Part II of Schedule 1 of the Rehabilitation of Offenders Act 1974 (Exemptions) Order 1975 (SI 1975/1023) or any replacement or amendment to that Order, or being placed on a list kept pursuant to section 1 of the Protection of Children Act 1999 or being made the subject of a prohibition or restriction under section 218(6) of the Education Reform Act 1988);
Cost Book	the relevant sheets contained in, or referenced from, the Project Model which contain certain input cost data in the form of a catalogue of components expressed and broken down, that are used in constructing infrastructure, together with any and all unit costs, such as, masts, hardware, electronic equipment, cabinets, lengths of fibre, engineer time. The Cost Book includes the Network Build Cost Book, PMO Cost Book and the In Life Cost

	Book, all as further described in Appendix 2 to Schedule 5.3 (Project Model);
Coverage Area	the area designated as white for either NGA, Ultrafast Broadband or Gigabit Broadband by the Authority within the Speed and Coverage Template within which the Deployed Services are to be provided;
Crown Body	any department, office or agency of the Crown;
DCMS	the Secretary of State for Culture, Media and Sport acting through the Department for Culture, Media and Sport (or any successor body);
Data Loss Event	any actual or suspected event that results, or may result, in unauthorised (i) access to; and/or (ii) loss, alteration, disclosure and/or destruction of, Personal Data;
Data Protection Legislation	any law, statute, declaration, decree, directive, legislative enactment, order, ordinance, regulation, rule or other binding restriction (as amended, consolidated or re-enacted from time to time) which relates to the protection of individuals with regards to the processing of Personal Data to which a Party is subject, including the Data Protection Act 2018 and the General Data Protection Regulation (Regulation (EU) 2016/679) (" GDPR ");
Data Protection Particulars	in relation to any Processing under this Contract: (a) the subject matter and duration of the Processing; (b) the nature and purpose of the Processing; (c) the type of Personal Data being Processed; and (d) the categories of Data Subjects; and (e) sub-processors, as set out in the Exhibit to the clauses of this Contract;
Data Subject	shall have the same meaning as set out in the Data Protection Legislation;
Data Subject Request	an actual or purported request, notice or complaint made by, or on behalf of, a data subject in accordance with the exercise of rights granted pursuant to the Data Protection Legislation;
Default	any breach of the obligations of the relevant Party or any other default, act, omission, negligence or statement of the relevant Party, its employees, servants, agents or Subcontractors pursuant to this Contract and in respect of which such Party is liable to the other;
Delay	any period of time by which the implementation of the Deployed Services is delayed by reference to the Implementation Plan;
Demand Stimulation	the stimulation of End User broadband demand and Take-up in accordance with the terms of this Contract;
Deployed Services	all or any part of the services to be provided and/or obligations to be performed by the Supplier to cover the agreed number of premises within the Coverage Area as set out within the Speed and Coverage Template in order to comply with the Service Requirements, the Supplier Solution and Schedule 4.1 (Implementation), and shall include Demand Stimulation, Network Deployment and the Wholesale Access Products and Services;

Deployment Period	the period from the Effective Date up to and including the Full Service Commencement Date;
Dispute	any dispute, difference or question of interpretation pursuant to this Contract, including any dispute, difference or question of interpretation relating to a failure to agree in accordance with the Change Control Procedure or any matter where this Contract directs the Parties to resolve an issue by reference to the Dispute Resolution Procedure;
Dispute Resolution Procedure	the procedure set out in Schedule 6.3 (Dispute Resolution Procedure);
Dispute Resolution Timetable	the Standard Dispute Resolution Timetable or the Expedited Dispute Resolution Timetable;
Due Diligence Information	all information and documents that the Supplier considers either necessary or relevant for the performance of its obligations under this Contract, the development of the Supplier Solution and the calculation of the Milestone Payments (including all information and documents requested by the Supplier);
End User	a consumer or a business in the Coverage Area who/which uses any communications service offered on the Network by a Retail Service Provider;
End User Premises	the End User's home, community or business premises;
Environmental Information Regulations	the Environmental Information Regulations 2004 together with any guidance and/or codes of practice issued by the Information Commissioner or relevant government department in relation to such regulations;
Effective Date	the date on which this Contract is signed by both Parties;
Escalation Process	the process for escalation during commercial negotiations in accordance with paragraph 3 of Schedule 6.3 (Dispute Resolution Procedure);
Excluded Expenditure	is expenditure falling within the parameters of Appendix 6 of Schedule 5.1 (Milestone Payments and Claims Procedure);
Expedited Dispute Resolution Timetable	the reduced timetable for the resolution of material Disputes set out in the Appendix to Schedule 6.3 (Dispute Resolution Procedure) to be used in accordance with paragraph 2.6 of Schedule 6.3 (Dispute Resolution Procedure);
Expiry Date	(a) in respect of the claw back mechanisms contained in paragraphs 9 and 10 of Schedule 5.1 (Milestone Payments and Claims Procedure) 30 September 2029 save that where the Full Service Commencement Date has not been achieved by the 'anticipated FSCD' (being a date which is 50 Working Days after the planned final NGA M2 Milestone Date in the Implementation Plan as at the Effective Date) the Expiry Date shall be extended by a period equivalent to that from the anticipated FSCD until the actual Full Service Commencement Date (save to the extent such period of delay resulted from Force Majeure or a Relief Event);

- (b) in respect of all other provisions of this Contract, the date that is 7 years from the actual Full Service Commencement Date;

External Funding

funding being made available for payment under this Contract from parties other than the Authority and the Programme Authority, as provided for under Schedule 5.5 (External Funding);

Final Additional Service Claw Back Amount

an amount calculated in accordance with paragraph 10.3 of Schedule 5.1 (Milestone Payments and Claims Procedure), which is re-payable to the Authority;

Final Take-up Claw Back Amount

an amount calculated in accordance with paragraph 9.5 of Schedule 5.1 (Milestone Payments and Claims Procedure), which is repayable to the Authority;

Financial Distress Event

the occurrence of one or more of the following events:

- (k) the Supplier's or the relevant Key Subcontractor's credit or Dun & Bradstreet rating (as applicable) drops one or more levels below the level set out in Clause 28.1;
- (l) the Supplier or a Key Subcontractor issues a profits warning to a stock exchange or makes any other public announcement about a material deterioration in its financial position or prospects;
- (m) there is a public investigation into improper financial accounting and reporting, suspected fraud and/or any other impropriety of the Supplier or a Key Subcontractor;
- (n) the Supplier or a Key Subcontractor commits a material breach of covenants to its lenders;
- (o) a Key Subcontractor notifies the Authority that the Supplier has not satisfied any material sums properly due under a specified invoice and not subject to a genuine dispute;
- (p) either of the following events:
 - (i) commencement of any litigation against the Supplier or a Key Subcontractor with respect to financial indebtedness; or
 - (ii) any financial indebtedness of the Supplier or a Key Subcontractor becoming due as a result of an event of default,

which in respect of (f) only, the Authority reasonably believes could materially impact on the continued performance and delivery of the Deployed Services in accordance with this Contract and/or puts at risk public subsidy already granted (or to be granted) pursuant to this Contract;

Financial Distress Event Remedial Plan

a plan provided by the Supplier in accordance with Clause 28 to remedy the potential adverse impact of the relevant Financial Distress Event on the continued performance of this Contract

	and/or the security of public subsidy already granted (or to be granted) pursuant to this Contract;
FOIA	the Freedom of Information Act 2000 and any subordinate legislation made under this Act together with any guidance and/or codes of practice issued by the Information Commissioner or relevant government department in relation to such legislation;
Force Majeure Event	<p>any cause affecting the performance by a Party of its obligations arising from acts, events, omissions, happenings or non-happenings beyond its reasonable control, including:</p> <ul style="list-style-type: none"> (q) acts of God, riots, war or armed conflict; (r) acts of terrorism; (s) acts of the Crown or any Regulatory Body; (t) fire, flood, storm or earthquake, subsidence or disaster (including epidemics or pandemics); (u) any failure or shortage of power, fuel or transport, <p>but excluding (i) any industrial dispute relating to the Supplier or the Supplier Personnel; or (ii) any other failure in the Supplier or any Subcontractor's supply chain;</p>
Forecast Qualifying Capital Expenditure	the Supplier's forecasted capital expenditure for this Contract as detailed in the Project Model;
Forecast Qualifying Operating Expenditure	the Supplier's forecasted operating expenditure for this Contract as detailed in the Project Model;
Full Service Commencement Date	the date on which the Authority issues the final M2 Milestone Achievement Certificate;
General Change in Law	a Change in Law that is not a Specific Change in Law;
Good Industry Practice	using standards, practices, methods and procedures (as practised in the UK) and conforming to Law and exercising that degree of skill, diligence, prudence and foresight which would reasonably and ordinarily be expected from a skilled and experienced service provider, manager, operator or other person (as the case may be) engaged in a similar type of undertaking as under this Contract under the same or similar circumstances;
Handover Point	a network interconnection point between different communications providers or a communications provider and an RSP;
Holding Company	has the meaning given in section 1159 Companies Act 2006 (and for the purposes of the membership requirement in section 1159(1)(b) and section 1159(1)(c) a company shall be treated as a member of another company even if its shares in that other company are registered (i) in the name of its nominee; or (ii) in the name of a person (or the nominee of that person) who is holding the shares as security);

Implementation Plan	the implementation plan set out at Appendix 2 to Schedule 4.1 (Implementation) as updated from time to time in accordance with paragraph 5 of Schedule 4.1 (Implementation);
Indemnified Claim	any claim, demand, threatened or anticipated claim or demand or other similar circumstance which falls within the scope of one or more of the indemnities provided in this Contract;
Indemnified Party	in respect of an indemnity being given under the terms of this Contract, the Party being indemnified;
Indemnifying Party	in respect of an indemnity being given under the terms of this Contract, the Party providing the indemnity;
Information	has the meaning given by section 84 of the Freedom of Information Act 2000;
Information System	a system for generating, sending, receiving, storing or otherwise processing electronic communications;
Insolvency Event	<p>the occurrence of any of the following events (or any event analogous to any of the following events in a jurisdiction other than England and Wales) in relation to the Supplier (the "entity"):</p> <ul style="list-style-type: none"> (v) passing a resolution for its winding up or a court of competent jurisdiction making an order for the entity to be wound up or dissolved or the entity being otherwise dissolved; (w) the appointment of a liquidator, administrator, administrative receiver or the making of an administration order in relation to the entity or an encumbrancer taking possession of or selling all or a material part of the entity's undertaking, assets, rights or revenue; (x) any proposal being made for a voluntary arrangement, a composition of debts or a scheme of arrangement to be approved whether under the Insolvency Act 1986 or the Companies Act 2006 or otherwise with all or a substantial majority of its creditors; (y) being unable or admitting its inability to pay its debts as they fall due or being capable of being deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 (but with the phrase "it is proved to the satisfaction of the court that" removed from section 123(2) of the Insolvency Act 1986); (z) enforcement of any security over all or a material part of the assets of the entity; or (aa) any expropriation, attachment, sequestration, distress or execution affecting all or any material part of any asset or assets of the entity which is not discharged within 14 days, <p>except, where applicable, in respect of any resolution by the relevant entity or a court order that such entity be wound up for the purpose of a bona fide solvent reconstruction or amalgamation;</p>

Intellectual Property Right	<ul style="list-style-type: none"> (bb) copyright, rights related to or affording protection similar to copyright, rights in databases, patents and rights in inventions, semi-conductor topography rights, trade marks, rights in Internet domain names and website addresses and other rights in trade names, designs, know-how, trade secrets and other rights in Confidential Information; (cc) applications for registration, and the right to apply for registration, for any of the rights listed at (a) that are capable of being registered in any country or jurisdiction; and (dd) all other rights having equivalent or similar effect in any country or jurisdiction;
IPR	Intellectual Property Right;
ITT	the invitation to tender for the provision of certain network deployment and broadband related services issued by the Authority to the tenderers on 23 July 2018 (as may have been updated by the Authority during the procurement process);
Key Personnel	those members of the Supplier Personnel listed in Schedule 3.4 (Key Personnel);
Key Service	<p>any Deployed Service (in whole, part or under Subcontract) where in the Authority's reasonable view from time to time:</p> <ul style="list-style-type: none"> (ee) the relevant Deployed Service is critical to the provision of the Deployed Services as a whole; (ff) there is no immediately available equivalent or comparable replacement service; and/or (gg) the non-performance of the relevant Deployed Service would disproportionately affect the delivery of this Contract relative to the delivery of network and wholesale broadband related services by the Supplier in areas of the UK without public subsidy;
Key Subcontract	a Subcontract between the Supplier and a Key Subcontractor;
Key Subcontractor	in the Authority's opinion, any Subcontractor providing, or that is proposed to provide, a Key Service, which at the Effective Date comprises those Subcontractors listed in Schedule 3.3 (Key Subcontractors);
Key Subcontractor Financial Distress Event	a Financial Distress Event affecting a Key Subcontractor;
Law	any applicable law, statute, by-law, State Aid Terms, regulation, order, regulatory policy, rule of court or directives or requirements of any Regulatory Body, delegated or subordinate legislation or notice of any Regulatory Body;
LCIA	the London Court of International Arbitration;

Local Body	<p>each of the following bodies within the UK borders including successors to those bodies' functions and organisations created to deliver their functions and objectives:</p> <ul style="list-style-type: none"> (hh) local authorities (including groups of local authorities) within the UK borders a list of which as at the date of signature of the Contract is available at: http://webarchive.nationalarchives.gov.uk/20120604101819/http://direct.gov.uk/en/DI1/Directories/Localcouncils/AToZOfLocalCouncils/DG_A-Z_LG; (ii) Local Enterprise Partnerships established (or to be established) between any of the local authorities within the UK borders referred to above and businesses; (jj) the Welsh Ministers; (kk) the Scottish Ministers; (ll) Scottish Enterprise; (mm) Highlands and Islands Enterprise; and (nn) the Department of Enterprise, Trade and Investment in Northern Ireland;
Longstop Date	each of the dates described as such in the Implementation Plan
Loss	all damages, losses, liabilities, costs, expenses (including legal and other professional charges and expenses), and charges whether arising under statute, contract or at common law or in connection with judgments, proceedings, internal costs or demands;
M0 Milestone	an M0 type Milestone specified as such in the Implementation Plan, which shall be consistent with the relevant Milestone Achievement Criteria set out in Appendix 1 of Schedule 4.1 (Implementation);
M1 Milestone	an M1 type Milestone specified as such in the Implementation Plan, which shall be consistent with the relevant Milestone Achievement Criteria set out in Appendix 1 of Schedule 4.1 (Implementation);
M2 Milestone	an M2 type Milestone specified as such in the Implementation Plan, which shall be consistent with the relevant Milestone Achievement Criteria set out in Appendix 1 of Schedule 4.1 (Implementation);
M3 Milestone	an M3 type Milestone specified as such in the Implementation Plan, which shall be consistent with the relevant Milestone Achievement Criteria set out in Appendix 1 of Schedule 4.1 (Implementation);
Milestone	each of the milestones set out in the Implementation Plan;
Milestone Achievement Certificate	a certificate provided by the Authority upon the Achievement of a Milestone in accordance with paragraph 6 of Schedule 4.1

	(Implementation), substantially in the form set out in Appendix 3 to Schedule 4.1 (Implementation);
Milestone Achievement Criteria	the criteria for the Achievement of each Milestone type as specified in Appendix 1 of Schedule 4.1 (Implementation);
Milestone Achievement Progress Report	a report provided by the Supplier in accordance with paragraph 6.2 of Schedule 4.1 (Implementation);
Milestone Achievement Report	a report provided by the Supplier in accordance with paragraph 6.3 of Schedule 4.1 (Implementation);
Milestone Completion Certificate	a certificate issued by the Authority pursuant to paragraph 3.11 of Schedule 5.1 (Milestone Payments and Claims Procedure);
Milestone Date	each of the dates described as such in the table set out in Appendix 2 of Schedule 4.1 (Implementation);
Milestone Payment	each of the payments specified as such in Appendix 1 of Schedule 5.1 (Milestone Payments and Claims Procedure);
Milestone Payment Claim	the Supplier's claim for payment in respect of the Achievement of a Milestone;
Mediator	the independent third party appointed in accordance with paragraph 4.2 of Schedule 6.3 (Dispute Resolution Procedure);
MPC	Milestone Payment Claim;
MPC Supporting Documentation	the documentation described in paragraph 4 of Schedule 5.1 (Milestone Payments and Claims Procedure);
NGA	has the meaning given in Schedule 2;
NGA In Life Costs	comprise: (a) Non-Qualifying Capital Expenditure; and (b) Non-Qualifying Operating Expenditure;
NGA Network Build Costs	comprise: (a) Qualifying Capital Expenditure; and (b) Qualifying Operating Expenditure;
Non-Qualifying Capital Expenditure	is capital expenditure falling within the parameters of Appendix 4 of Schedule 5.1, to the extent incurred by the Supplier during the Term in respect of the implementation and making available of the Network but excluding Qualifying Capital Expenditure and Excluded Expenditure;
Non-Qualifying Operating Expenditure	is operating expenditure falling within the parameters of Appendix 5 of Schedule 5.1, to the extent incurred by the Supplier during the Term in respect of the implementation and making available of the Network but excluding Qualifying Operating Expenditure and Excluded Expenditure;
Net Additional Service Revenue	has the meaning given in paragraph 10.2 of Schedule 5.1 (Milestone Payments and Claims Procedure);

Net Additional Take-up	has the meaning given in paragraph 9.2 of Schedule 5.1 (Milestone Payments and Claims Procedure);
Network	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;
Network Deployment	the design, Testing, installation, implementation, rollout, provision and ongoing maintenance of the Network in accordance with the Implementation Plan, the Project Plan and the other relevant terms of this Contract;
Network Services Data	supporting mapping and other deployment where provided at a granular level (including down to a 7 digit post code level, End User Premise level and Structure level) of actual or planned Network Deployment in the Coverage Area (or parts thereof) to the extent it may comprise Personal Data in relation to End Users (excluding Take-Up Data);
Notice of Dispute	a written notice served by one Party on the other in accordance with paragraphs 2.1 and 2.2 of Schedule 6.3 (Dispute Resolution Procedure);
Other Beneficiary	<p>each of the following bodies:</p> <p>There are currently no Other Beneficiaries as at the Effective Date; and</p> <p>such other public body beneficiaries notified by the Authority to the Supplier from time to time and agreed by the Parties (acting reasonably) in accordance with the Change Control Procedure;</p>
Outturn Investment Ratio	the Supplier NGA Network Build Investment incurred to date and forecast by the Supplier to be incurred during the Deployment Period, divided by the sum of: (i) the Supplier NGA Network Build Cost incurred to date and forecast by the Supplier to be incurred during the Deployment Period; plus (ii) Subsidy Payments received and forecast by the Supplier to be received;
Parties	the parties to this Contract (which at the Effective Date is the Authority and the Supplier) and their permitted assigns, and references to a " Party " shall mean one of the parties to this Contract;
Permitted SCT Changes	shall have the meaning set out in paragraph 9.1 of Schedule 4.1 (Implementation);
Personal Data	shall have the same meaning as set out in the Data Protection Legislation;
Phase	each phase of Implementation as set out in the Implementation Plan;
Post-Effective Date Surveys	those surveys of the Service Environment agreed by the Parties to be conducted after the Effective Date pursuant to Clause 5.5, as detailed in the Supplier Solution;

Premises Cap	REDACTED
Priority Area	a part of the Coverage Area designated as a priority by the Authority and identified in the Speed and Coverage Template;
Process	has the meaning given to it under the Data Protection Legislation but, for the purposes of this Contract, shall include both manual and automatic processing. " Processing " and " Processed " shall be construed accordingly;
Processor	has the meaning given to it under the Data Protection Legislation;
Procurement Legislation	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;
Programme Authority	the Secretary of State for Culture, Media and Sport acting through the Department for Culture, Media and Sport (or any successor body);
Programme Level Change Request	a change request initiated by the Programme Authority which relates to more than one broadband intervention contract, including the Contract;
Prohibited Act	<p>each of the following constitutes a Prohibited Act:</p> <ul style="list-style-type: none"> (oo) to directly or indirectly offer, promise or give any person working for or engaged by the Authority a financial or other advantage to: <ul style="list-style-type: none"> (i) induce that person to perform improperly a relevant function or activity; or (ii) reward that person for improper performance of a relevant function or activity; (pp) to directly or indirectly request, agree to receive or accept any financial or other advantage as an inducement or a reward for improper performance of a relevant function or activity in connection with this Contract; (qq) committing any offence: <ul style="list-style-type: none"> (i) under the Bribery Act; (ii) under legislation creating offences concerning fraudulent acts; (iii) at common law concerning fraudulent acts relating to this Contract or any other contract with the Authority; or <p>defrauding, attempting to defraud or conspiring to defraud the Authority;</p>

Project Accounts	the summary financial records to be maintained by the Supplier in respect of this Contract, as described in paragraph 5 of Schedule 5.1 (Milestone Payments and Claims Procedure);
Project Investment Ratio ("PIR")	the Supplier NGA Network Build Investment which the Supplier forecasts to incur during the Deployment Period, divided by the sum of: (i) the Supplier NGA Network Build Investment which the Supplier forecasts to incur during the Deployment Period; plus (ii) Subsidy Payments the Supplier forecasts to receive, such resulting ratio being specified in the output tab of the Project Model;
Project Model	the Supplier's financial model (including the Cost Book and the Wholesale Access Price Book) for this Contract, which at the Effective Date is set out in the Appendix to Schedule 5.3 (The Project Model), as updated from time to time in accordance with this Contract;
Project Period	a defined period within the relevant Phase against which costs and revenues are set out in the Project Model – i.e. monthly/quarterly;
Project Plan	the Supplier's project plan, which shall comply with the requirements for such plan set out in paragraph 5 of Schedule 4.1 (Implementation) and which at the Effective Date is referenced at Appendix 2 to Schedule 4.1 (Implementation);
Project Specific IPR	<p>(rr) IPR in items or works created by the Supplier (or a Subcontractor or third party on behalf of the Supplier) for the purposes of this Contract and updates and amendments of such items or works; and/or</p> <p>(ss) IPR arising as a result of the performance of the Supplier's obligations under this Contract;</p>
Project Unit Margin	a proxy profit margin figure per End User per Project Period expressed (before interest, tax, depreciation and amortisation) as an average over the project life or timeline as set out in the Project Model for the period following the final M2 Milestone;
Project Wholesale Access Prices	the wholesale access prices applicable to this Contract, as described in paragraph 2 of Schedule 5.2 (Wholesale Access Pricing);
Quarter	each sequential three (3) month period aligned with the Authority's fiscal year;
Qualifying Capital Expenditure	is capital expenditure falling within the parameters of Appendix 2 of Schedule 5.1, to the extent incurred by the Supplier during the Deployment Period in respect of the implementation of the Network but excluding Non-Qualifying Capital Expenditure and Excluded Expenditure;
Qualifying Operating Expenditure	is operating expenditure falling within the parameters of Appendix 3 of Schedule 5.1, to the extent incurred by the Supplier during the Deployment Period in respect of the implementation of the Network but excluding Non-Qualifying Operating Expenditure and Excluded Expenditure;

Regulator	the body responsible for regulating the UK telecommunications market from time to time, which at the Effective Date is Ofcom;
Regulatory Bodies	those government departments including the Programme Authority and UK and EU regulatory, statutory and other entities, committees and bodies (excluding the Authority) which, whether under statute, rules, regulations or otherwise, are entitled to regulate, investigate, audit, monitor, oversee or influence the matters dealt with in this Contract or any other affairs of the Authority (which shall include any body required to perform any annual statutory financial audit or any value for money (VfM) audit of the Authority or the Programme Authority and any successor body responsible from time to time for performing the audit function previously performed by the Audit Commission) and " Regulatory Body " shall be construed accordingly;
Relief Event	the failure of the Authority to perform a dependency listed in Schedule 4.3 (Relief Events) upon which the Supplier is dependent in order to perform the Deployed Services;
Relief Notice	a notice provided by the Supplier in accordance with Clause 19.2;
Remedial Plan	a remedial plan agreed by the Parties in accordance with the Remedial Plan Process;
Remedial Plan Process	the remedial plan process described in Clause 38 and Schedule 6.5 (Remedial Plan Process);
Request for Information	has the meaning set out in the FOIA or any apparent request for information under the FOIA or the Environmental Information Regulations;
Required Insurance	<p>i) public liability insurance to a minimum cover of not less than £10 million per event;</p> <p>ii) employers liability cover of not less than £10 million per event;</p> <p>iii) professional indemnity to a minimum cover of not less than £5 million per event and in the annual aggregate; and</p> <p>iv) product liability cover of not less than £5 million per event and in the annual aggregate;</p>
Replacement Services	any services which are the same as or substantially similar to any of the Deployed Services and which are provided, or are to be provided, in substitution for any of the Deployed Services following the termination (in whole or in part) and/or expiry of this Contract;
Representative	the Authority Representative or the Supplier Representative as the context requires;
Retail Service Provider	a provider of retail internet services to End Users and/or a reseller of wholesale broadband services to providers of retail internet services to End Users;
RSP	Retail Service Provider;

Service Environment	the environment within which the Deployed Services shall be provided and/or connected to including all relevant land, property, buildings, carriageways, highways, infrastructure, networks and airspace;
Service Requirements	the Authority's requirements for the Deployed Services set out in Schedule 2 (Service Requirements), as qualified by the compliance statements set out in the Compliance Matrix;
SMEs	small and medium sized enterprises;
Solution Component	a physical and/or logical component constituting the technology underlying the Supplier Solution as set out in the Solution Component Template;
Solution Component Template	a template setting out details for each Solution Component, as set out in the Supplier Solution;
Specific Change in Law	a Change in Law that solely affects or solely relates to the provision of the Deployed Services (or services equivalent to the Deployed Services) in any area in the UK which receives or which is eligible to receive public subsidy to stimulate private broadband infrastructure investment;
Speed and Coverage Template	the speed and coverage template set out at Appendix 1 of the Supplier Solution, as updated from time to time in accordance with this Contract;
Speed Category	a speed or range of broadband speeds shown as a separate category within the Speed and Coverage Template;
State Aid Terms	<p>the terms set out in:</p> <p>(tt) the Commission Decision;</p> <p>(uu) the relevant articles of the Treaty on the Functioning of the European Union, in particular Articles 107 - 109; and</p> <p>the European Community rules, regulations and guidelines relating to State aid in force from time to time, including at the Effective Date the Community Guidelines for the application of State aid rules in relation to rapid deployment of broadband networks (reference 2013/C 25/01);</p>
Structure	a component element of the Network which is used to connect End User Premises to the wider Network, as further described in the Supplier Solution;
Subcontract	any agreement (other than this Contract) in which a third party agrees to provide (i) any part of the Deployed Services; and/or (ii) any facilities or services materially required for the provision of the Deployed Services;
Subcontractor	a third party other than the Supplier which enters into a Subcontract;
Subsidiary	has the meaning given in section 1159 Companies Act 2006 (and for the purposes of the membership requirement in section 1159(1)(b) and section 1159(1)(c) a company shall be treated as a member of another company even if its shares in that other

company are registered (i) in the name of its nominee; or (ii) in the name of a person (or the nominee of that person) who is holding the shares as security);

Subsidy Payments	those UK or European Union public funding payments paid to the Supplier pursuant to this Contract;
Superfast Broadband	an Access Line Speed of 24Mbps and above;
Supplier Confidential Information	any information provided by the Supplier (or its Subcontractors or Supplier Personnel) to the Authority in relation to this Contract, however it is conveyed, that relates to the business, affairs, developments, trade secrets, know-how, personnel and suppliers of the Supplier, including IPR, together with all information derived from the above, and any other information clearly designated as being confidential (whether or not it is marked as "confidential") or which ought reasonably to be considered to be confidential;
Supplier IPR	any IPR (excluding the Authority IPR) owned by the Supplier or any Subcontractor (or their respective Affiliates), or licensed to or used by the Supplier or any Subcontractor (or their respective Affiliates) in connection with this Contract, and which shall include the Project Specific IPR;
Supplier ITT Response	the Supplier's response to the ITT (including any supplementary clarifications, answers and other provided information) submitted to the Authority;
Supplier NGA Network Build Investment	comprises the Supplier's investment in the Network during the Deployment Period which is made up of the projected NGA Network Build Costs set out in the Project Model minus any Subsidy Payments paid to the Supplier;
Supplier Location	any location at or from which the Supplier provides the Deployed Services (other than the Authority Premises);
Supplier Personnel	all employees, agents, consultants and contractors of the Supplier and/or of any Subcontractor employed or engaged in the performance of this Contract from time to time;
Supplier Representative	the representative appointed by the Supplier in accordance with Clause 34.1;
Supplier Solution	the Supplier's solution to meet the Service Requirements, as set out in Schedule 3.1 (Supplier Solution);
Survey Assumption	a survey assumption specified in Appendix 4 of Schedule 4.1 (Implementation);
Take-up	the adoption by any End User of retail services delivered on the Network in the Coverage Area;
Take-up Claw Back Amount	an amount calculated in accordance with Paragraph 9.4 of Schedule 5.1, which is repayable to the Authority;
Take-up Data	data provided at a granular level (including down to a 7 digit post code level, End User Premise level and Structure level) of actual Take-up to the extent it may comprise Personal Data in relation to End Users;

Take-up Review Point	a) each anniversary of the Effective Date; and b) the Expiry Date (being the 'final Take-up Review Point');
Term	the period that this Contract is in force;
Test	a test performed by the Supplier in respect of a Test Item, in accordance with the Test Strategy and paragraph 7 of Schedule 4.1 (Implementation);
Test Item	an item or Deployed Service (or part of a Deployed Service) identified in the Test Strategy as being subject to Testing;
Test Success Criteria	the test success criteria for each Test as specified in the Test Strategy;
Test Strategy	the strategy for Testing that shall be maintained by the Supplier in accordance with paragraph 7 of Schedule 4.1 (Implementation), the version agreed at the Effective Date being set out in Schedule 3.1 (Supplier Solution);
Testing	the performance of Tests in accordance with paragraph 7 of Schedule 4.1 (Implementation);
Timesheet Data	Personal Data that is included in timesheets issued by the Supplier to its employees/contractors and used by the Parties in relation to this Contract.
Upper Cost Cap	has the meaning given in paragraph 10.1 of Schedule 4.1 (Implementation);
VAT	any value added tax;
Wholesale Access Prices Benchmarking	a benchmarking exercise as described in paragraph 3 of Schedule 5.2 (Wholesale Access Pricing);
Wholesale Access Price Book	the relevant sheets contained in, or referenced from, the Project Model which contain wholesale access pricing;
Wholesale Access Products and Services	the wholesale access products and services to be leased to Retail Service Providers as set out in the Wholesale Product Template;
Wholesale Passive Product	a Wholesale Access Product and Service relating to passive access products and which is identified as such in the Wholesale Product Template;
Wholesale Product Template	the wholesale product template set out in the Supplier Solution;
Work in Progress ("WIP") Costs	NGA Network Build Costs that have been incurred but where the Supplier is not, at the time, able to include them in an MPC;
Working Day	any day other than a Saturday, Sunday or public holiday in England and Wales or a day which falls on a privilege holiday for the Authority.

SCHEDULE 2
SERVICE REQUIREMENTS

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
0.3	25 October 2016 plus 14 November 2016 update to 3.5.2	Uplifted following local body and supplier feedback
1.0	16 November 2016	Baselined Version 1.0
1.3	22 January 2019	Contract finalisation version

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SCHEDULE 2 – SERVICE REQUIREMENTS

A. BACKGROUND

This Schedule 2 sets out the Service Requirements for the purpose of this Contract.

B. SERVICE REQUIREMENTS

The Service Requirements are set out below in paragraphs 1 - 11 of this Schedule.

C. COMPLIANCE MATRIX

- (i) The Compliance Matrix comprises two matrices which shall be set out in Schedule 3.1 (Supplier Solution):
- a. a matrix confirming full, partial or non-compliance for the overall Supplier Solution against the Service Requirements; and
 - b. a matrix confirming full, partial or non-compliance for individual Solution Components against the Service Requirements.

D. SERVICE REQUIREMENTS GLOSSARY

- (i) Capitalised terms in this Schedule 2 that are not defined in Schedule 1 (Definitions) shall have the following meanings:

Adds	provision of additional services to an End User;
ALA	Active Line Access, as defined by NICC;
Automated Retail Online Platform	a range of interfaces, systems and processes which allow Retail Service Providers to deliver, maintain, cease or transfer an End User's retail broadband service, through the inputs needed to build a broadband access service;
B2B	Business to business;
BSS	the Supplier's business support systems which comprise software applications that support the RSP to the extent provided for in this Schedule 2;
Busy Hour Committed Rate	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;
Community Contribution Scheme	a contribution of funding made by a community and provided to the Authority which then procures an extension to the Network for the provision of NGA Broadband, Ultrafast Broadband or Gigabit Broadband services which benefit that Community through this Contract;
Gigabit Broadband	gigabit download speeds of at least 1000Mbps delivered across an NGA network;
IEEE	the Institute of Electrical and Electronic Engineering;
IETF	the Internet Engineering Task Force;

Industry Standards	manufacturers' and industry bodies' standards, whether open or proprietary, as well as all relevant British, European and international standards ¹ ;
ISO	the International Standards Organisation;
ITU	the International Telecommunication Union;
Lead-to-Cash Process	process which starts with a sales dialogue between a buyer and supplier which establishes that a product or service will meet the buyer's needs and ends when this need is fulfilled, the service is available to use and the supplier has been paid;
Local Community Project	a project being delivered pursuant to paragraph 4 of these Service Requirements;
Local Community Requirements	a set of requirements defined by a community from time to time during the Term in respect of a project attracting a capital contribution from the Authority. A Local Community Requirement will only be eligible for Authority capital contribution in the event that the proposed solution seeks to deploy NGA qualifying technologies and meets the requirements of the Commission Decision;
MACD	Moves, Adds, changes and disconnects;
Mbps	megabits per second;
Minimum Service Requirements	those minimum requirements specified at paragraphs 80.1.1 and 80.1.2 of this Schedule 2;
Moves	refers to an End User that requests to be moved from one RSP to another RSP and/or is moving from one home/office location to a different location;
National Competence Centre or NCC	the national competence centre established by the UK in accordance with the Commission Decision;
NGA (Next Generation Access)	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;
NICC	NICC Standards Limited, being a technical forum for the UK communications sector that develops interoperability standards for public communications networks and services in the UK. It is an independent organisation owned and run by its members;

¹ These include standards from the following relevant bodies:

- NICC for fixed network elements (<http://www.niccstandards.org.uk/publications>)
- 3GPP for wireless and mobile broadband networks (<http://www.3gpp.org/specifications>)
- IEEE for Ethernet and wireless networks (<http://standards.ieee.org/about/get/802/802.html>)
- IETF RFCs for Internet and IP networks (<https://www.rfc-editor.org/>)
- British Standards (<http://shop.bsigroup.com/en/Browse-by-Subject/ICT/>)
- ETSI Standards (<http://www.etsi.org/standards>)
- ITU-T Recommendations for fixed networks (<http://www.itu.int/en/ITU-T/publications>)
- ITU-R Recommendations for wireless networks (<http://www.itu.int/pub/R-REC>)

NICC ALA Specifications	<p>[1] ND1030 Ethernet ALA Service Definition</p> <p>[2] ND1031 ALA UNI Specification</p> <p>[3] ND1036 ALA NNI Specification</p> <p>[4] ND1642 Requirements for Ethernet Interconnect and Ethernet ALA</p> <p>[5] ND 1644 Architecture for Ethernet Active Line Access (ALA)</p> <p>[6] ND 1704 End to End Network Performance Rules and Objectives for the Interconnect of NGNs;</p>
NICC B2B Specifications	<p>[1] ND 1421 NICC B2B User Story Approach</p> <p>[2] ND 1422 NICC B2B Best Practice</p> <p>[3] ND1427 B2B Location & Address Identification Principles</p> <p>[4] ND 1429 Guidelines on Tools for Structuring B2B Specifications</p> <p>[5] ND 1430 B2B Designers and Developers Guide</p> <p>[6] ND 1507 NICC B2B Interface Framework Document</p> <p>[7] ND 1508 Trouble-To-Resolve (T2R) white paper proposal</p> <p>[8] ND 1509 B2B Trouble-To-Resolve (T2R) International Gap Analysis</p> <p>[9] ND 1510 Lead-To-Cash (L2C) White Paper Proposal</p> <p>[10] ND 1617 Automated Business to Business (B2B) Transactions: Architecture and Principles</p> <p>[11] ND 1618 Profile for ebXML Messaging Service 2.0 Gateways</p> <p>[12] ND 1622 NICC B2B Interface Requirements Document</p> <p>[13] ND 1623 B2B Trouble-To-Resolve (T2R) User Story Requirements</p> <p>[14] ND1624 B2B Lead-to-Cash (L2C) User Story Requirements</p> <p>[15] ND 1626 NICC B2B Trouble-To-Resolve (T2R) Interface Standard</p> <p>[16] ND 1627 B2B Lead-to-Cash (L2C) Interface Standard</p> <p>[17] ND 1637 B2B Trouble-To-Resolve (T2R) XML Standard</p> <p>[18] ND 1641 L2C XML Schema</p>
Ofcom	the national regulatory authority for the telecommunication industries in the United Kingdom;
Open Access	separation of access to the network from delivery of services, where the owner or operator of the network allows other communication providers to make use of the facilities for the provision of Wholesale Access Products and Services on commercial terms which are non-discriminatory between the other communication providers;
OSS	operational support system which comprises software applications (and occasionally hardware) that support back-office activities in a telecommunications service provider's network including processes such as maintaining network inventory, provisioning services (the process of preparing and equipping a network to allow it to provide services to its users), configuring network components, and managing faults. The OSS layer contains the infrastructure for technical network management;
PSN or Public Sector Network	a network to support Local Bodies which is compliant with CESG 2-2-2 assurance;
Public Enterprise Network	a network carrying voice and data traffic between public sector offices and which provides access to and from other networks. This may include access to the public switched telephone network (PSTN) and the public internet;

SOGE	Sustainable operations on the Government Estate;
Step Change	change meeting the requirements of paragraphs 59 – 62 of the Commission Decision;
Symmetrical	the capability of the network devices to transmit and receive data at equal rates;
Ultrafast Broadband	ultrafast download speeds of at least 100Mbps delivered across an NGA network.

- (ii) Words and phrases defined in the NICC ALA and NICC B2B specifications (as the same may be updated or amended from time to time) shall have the same meanings in this Contract.

SERVICE REQUIREMENTS

76. AUTHORITY'S SERVICE REQUIREMENTS

- 76.1 This section sets out the Authority's Service Requirements for the Deployed Services.
- 76.2 There are a number of types of requirements, including:
- 76.2.1 State aid Requirements - requirements that specifically relate to compliance with the Commission Decision (this is not exhaustive of all Commission Decision compliance requirements);
 - 76.2.2 Solution Requirements – those requirements that define the Supplier Solution based on Solution Components;
 - 76.2.3 Solution Component Requirements – those requirements that relate to the Solution Components that underpin the Wholesale Access Products and Services and the Supplier Solution; and
 - 76.2.4 Wholesale Access Products and Services Requirements – those requirements that define a minimum set of products and services that shall be retailed by Retail Service Providers.

77. STATE AID REQUIREMENTS

- 77.1 The Supplier Solution must be compliant with the Commission Decision.
- 77.2 The Supplier Solution must comprise and, in accordance with the Service Requirements, provide Next Generation Access infrastructure utilising qualifying NGA technologies capable of delivering broadband services with a download speed of at least 30 Mbps.
- 77.3 The Supplier Solution must deliver a Network which represents a Step Change in terms of broadband availability. Step Change can be achieved by demonstration of all the following:
- 77.3.1 Speeds have to be at least doubled by the intervention and substantially higher upload speeds provided when compared with existing upload and download speeds;
 - 77.3.2 Significant new investments in the broadband network are undertaken (i.e. investments that must include civil works and installation of new passive elements); and

- 77.3.3 The new infrastructure brings significant new capabilities to the market in terms of broadband service availability, capacity and speeds and / or competition.
- 77.4 The Wholesale Access Products and Services made available by the Supplier shall comply with the requirements of the Commission Decision recognising that the specific requirements vary depending on the specific configuration of the network and the qualifying technologies utilised.
- 77.5 The Supplier must provide:
- 77.5.1 Open Access to the Network;
- 77.5.2 Wholesale Access Products and Services on an open, fair, reasonable, equal and non-discriminatory basis, as further described in paragraph 5 of this Schedule 2. The pricing of these Wholesale Access Products and Services shall be benchmarked in accordance with Schedule 5.2 (Wholesale Access Pricing), which benchmarking process shall be applied in a manner consistent with Paragraphs 134 to 138 of the Commission Decision.
- 77.6 The Supplier Solution should seek to utilise existing infrastructure and facilities where it is technically feasible, cost effective and commercially viable to do so. This can be achieved through:
- 77.6.1 Use of own infrastructure;
- 77.6.2 Use of another supplier's infrastructure;
- 77.6.3 Use of other utilities infrastructure;
- 77.6.4 Use of Authority assets where identified in Schedule 4.2 (Authority Assets).
- The Supplier shall on request by the Authority confirm the extent that it is currently reusing and will reuse existing infrastructure and facilities as part of the Supplier Solution.

78. SOLUTION REQUIREMENTS

- 78.1 The Supplier Solution shall be an Open Access Network which supports the UK's broadband policy objectives by providing Retail Service Providers the Wholesale Access Products and Services through Solution Components that can support Take-up.
- 78.2 The Supplier Solution must provide NGA Broadband, Ultrafast Broadband and Gigabit Broadband to:
- 78.2.1 the volumes of End User Premises designated per Speed Category (being Speed Categories within the ranges of NGA, Ultrafast Broadband or Gigabit Broadband as applicable) - cumulative level criteria; and
- 78.2.2 those identified End User Premises designated to Speed Categories within the ranges of NGA, Ultrafast Broadband or Gigabit Broadband (as applicable) - identified NGA End User Premises level criteria,
- as set out in the Speed and Coverage Template, including providing the allocated speeds specified in that Speed and Coverage Template to those identified End User Premises within any designated Priority Areas.
- 78.3 The Supplier shall (i) work with the Authority and Programme Authority; and (ii) cooperate with other suppliers and utility providers, to ensure delivery of the Supplier's Solution and to enable the efficient delivery of other related or interfacing publicly

subsidised broadband network programmes (supporting the UK Government's broadband policy objectives).

- 78.4 The Supplier Solution shall provide wholesale access network services from Handover Points to End User network termination points, supporting the provision of Wholesale Access Products and Services in the Coverage Area.
- 78.5 The Supplier shall implement, operate and maintain the Supplier Solution to provide Wholesale Access Products and Services delivering to the End User Premises specified in the Speed and Coverage Template:
- 78.5.1 the corresponding level of Access Line Speed provided under paragraph 78.2;
- 78.5.2 a minimum of a doubling of download speeds overall across the Network when compared to the existing speed category data in the Speed and Coverage Template and substantially higher upload speeds overall across the Network when compared with the Ofcom reference data published at the time the Authority issued the ITT;
- 78.5.3 a minimum Busy Hour Committed Rate for each End User Premise of 15Mbps;
- 78.5.4 the capability (without requiring the Supplier to mandate this to Retail Service Providers) for an installation to be completed by a Retail Service Provider based on a Retail Service Provider's standard installation charges, with no excess installation charges payable by the Retail Service Provider to the Supplier;
- 78.5.5 ensuring that capacity is managed for the duration of the Term so that any End User Premises can place an order with a Retail Service Provider which can be provisioned in accordance with the Service Levels set out in paragraph 80.1.2;
- 78.5.6 ensuring that the service provided to the End User Premises continues to meet the criteria set out in paragraphs 78.5.1 to 78.5.5 for the duration of the Term following Achievement of the corresponding Milestone Type M2 under which each relevant End User Premises is served; and
- 78.5.7 such that Wholesale Access Products and Services are provided at charges which allow Retail Service Providers to provide affordable NGA, Ultrafast Broadband and Gigabit Broadband services to End Users.

79. COMMUNITY NETWORK REQUIREMENTS

- 79.1 The following requirements apply only where the Authority has included a specific Local Community Project requirement as part of the Service Requirements for this Contract. The following establishes the associated minimum requirements to be met by the Supplier.
- 79.2 The Supplier shall provide, subject to the Change Control Procedure, a network access and data transport components service, as agreed with the Authority, to communities requesting to extend Wholesale Access Products and Services connectivity and/or to increase Access Line Speeds, beyond the Supplier's originally planned Supplier Solution provided that such change falls within the Commission Decision.
- 79.3 The Supplier shall support extensions to the Supplier Solution by offering and supporting a Local Community Project. Additionally, upon reasonable request, the Supplier may also support extensions to its NGA proposals by supporting a Community Contribution Scheme.

- 79.4 The Supplier shall identify and provide connectivity to nominated points, where the local community (for example, a local authority, residential groups, local businesses) provides, builds and maintains its own access network. This is described as a community backhaul solution.
- 79.5 The Supplier shall in respect of any Local Community Project:
- 79.5.1 proactively and effectively engage, interact with and inform each local community to ensure a proper and successful delivery; and
 - 79.5.2 work with the local community to define a set of Local Community Requirements subject to such requirements being incorporated to this Contract via the Change Control Procedure.
- 79.6 Nothing under this paragraph 4 shall prevent a local community from sourcing services that are available outside of this Contract and which are capable of achieving similar objectives for the local community.

80. SERVICE LEVEL CATEGORY

- 80.1 The Supplier Solution shall at all times meet or exceed the following service levels set out in paragraphs 5.1.1 and 5.1.2, which together constitute the Minimum Service Requirements:
- 80.1.1 The Supplier shall provide minimum network availability and support for its Retail Service Providers which shall include:
 - (a) Network availability of 99.5%, measured on a monthly basis and in accordance with Good Industry Practice;
 - (b) Trouble to Resolve (T2R) (as defined in NICC ND1626) time of a maximum of two (2) Working Days; and
 - (c) technical support and customer care hours – 0800 to 1800 7 days a week.
 - 80.1.2 The Supplier Solution for NGA, Ultrafast Broadband and Gigabit Broadband Wholesale Access Product and Services shall be deployed by the Supplier in a manner that will ensure when a retail service is requested by a Retail Service Provider that such orders can be provisioned to End Users with order, installation and availability service levels, including as a minimum a provisioning order installation timescale assessed separately on a per Wholesale Access Product and Service basis of 90% of all orders completed in ten (10) Working Days and 100% of all orders completed in twenty (20) Working Days, as calculated on a monthly basis.
 - 80.1.3 The Supplier Solution for Wholesale Access Product and Service in respect of Wholesale Passive Products, shall ensure provision of such services in accordance with the corresponding order, installation and availability services levels as specified in the Wholesale Product Template.
- 80.2 In order to enable the Retail Service Providers to support the End User experience, the Supplier shall back up the achievement of the Minimum Service Requirements with appropriate service credits or similar mechanisms to incentivise performance and compensate the Retail Service Providers in the event that the Supplier fails to achieve any of the Minimum Service Requirements.
- 80.3 The Supplier Solution shall provide integrated network access and data transport components to End User Premises and Handover Points that comply with all relevant Industry Standards or achieve functions/performance levels that are equivalent to or

better than those provided for by such standards as are necessary to ensure interoperability.

- 80.4 The Supplier shall mitigate and minimise, in accordance with Good Industry Practice, the number of single points of failure within the Network.
- 80.5 The Supplier Solution shall be capable of enabling symmetrical services for RSPs.
- 80.6 The Supplier shall consider potential future demand by itself and alternative operators in the infrastructure design of the Supplier Solution and the deployment of physical assets, and shall design the Supplier Solution accordingly in order to minimise the likelihood of unnecessary further creation of infrastructure assets by itself or alternative operators.

81. OPERATIONS

- 81.1 The Supplier shall provide the same Automated Retail Online Platform (capable of handling volume transactions) for use by all Retail Service Providers. Where the Supplier is developing new systems and associated processes, these shall align with an industry standard service management framework (e.g. FTM Framework, eTOM, ITIL).
- 81.2 The Supplier shall provide a Lead-to-Cash Process to support Retail Service Providers which, as a minimum, shall include the following:
 - 81.2.1 order entry;
 - 81.2.2 order fulfilment such as line testing;
 - 81.2.3 distribution;
 - 81.2.4 billing and invoicing; and
 - 81.2.5 buyer payment/collection.
- 81.3 The Supplier Solution shall include capabilities so as to be able to service MACDs.
- 81.4 The Supplier shall provide full OSS facilities to provide high quality and on-going operational management to Retail Service Providers, and which as a minimum shall include:
 - 81.4.1 maintaining network inventory (including both physical and logical);
 - 81.4.2 providing communications providers with location-based, capacity management information for all offered products on subsidised infrastructure;
 - 81.4.3 provisioning services;
 - 81.4.4 configuring network components;
 - 81.4.5 monitoring and managing performance using relevant performance indicators;
 - 81.4.6 monitoring and managing faults;
 - 81.4.7 trouble-ticketing; and
 - 81.4.8 service assurance.

- 81.5 The Supplier's OSS shall be designed so as to be capable of being scaled to manage increased Take-up delivered by Retail Service Providers as necessary to achieve the Minimum Service Requirements. All OSS/BSS Supplier systems that are not as at the date of this Contract capable of dealing with large volumes of operations shall be upgraded as part of the Deployed Services so as to become compliant with the NICC B2B specifications or equivalent Industry Standards.
- 81.6 The Supplier shall operate a BSS, which as a minimum shall include the following B2B processes:
- 81.6.1 RSP contact service;
 - 81.6.2 customer relationship management;
 - 81.6.3 order management;
 - 81.6.4 order fulfilment;
 - 81.6.5 service activation; and
 - 81.6.6 billing and invoicing.
- 81.7 The Supplier's BSS shall be designed so as to be capable of being scaled to manage increased Take-up delivered by Retail Service Providers whilst continuing to meet at least the Minimum Service Requirements.
- 81.8 The Supplier shall provide a service management model which describes the processes and communication needed to address disputes with and complaints from Retail Service Providers, including a dispute escalation procedure.
- 81.9 The Supplier shall have standard OSS and BSS processes and procedures for Retail Service Providers. These shall, as applicable, comply with the relevant NICC standards, or Industry Standards, or achieve functions/performance levels that are equivalent to or better than those standards.
- 81.10 The Supplier Solution shall enable RSPs using it to adhere to Ofcom's Approved Code of Practice for Complaints Handling as the same may be amended, updated or replaced from time to time.
- 81.11 The Supplier shall report on Take Up, RSP availability, active wholesale connections and average end user pricing as set out in Schedule 6.4 (Reports).

82. PROJECT DELIVERY

- 82.1 The Supplier shall roll out the Network and its Wholesale Access Products and Services in accordance with this Contract and in doing so shall:
- 82.1.1 adopt a standard project management approach;
 - 82.1.2 meet, communicate and co-operate with the Authority as required in accordance with this Contract to allow the Authority to adequately understand progress of the project, achievement of Milestones and associated issues and risks.
- 82.2 The Supplier shall, where the Authority's investment includes European Regional Development Fund (ERDF) funds, meet standards required by ERDF as identified in Schedule 5.5 (External Funding) of this Contract.
- 82.3 The Supplier Solution shall include:

- 82.3.1 the agreed and defined Milestones for delivery of the Supplier Solution;
- 82.3.2 the timetable for the preparation and delivery of the Supplier's detailed marketing strategy;
- 82.3.3 the Supplier's change management process for change to the Project Plan, an example of which could be the rollout delivery phasing;
- 82.3.4 details of the Supplier's project management processes including its procedures, standards, tools and documentation that it will use to deliver its Supplier Solution;
- 82.3.5 details of the Supplier's quality management process, including standards, tools and key performance indicators that shall be used by the Supplier to deliver the Supplier Solution;
- 82.3.6 the Supplier's project organisation and staffing including key roles and responsibilities;
- 82.3.7 the type of project team availability (on site / back office / remotely / on call, etc.) during the various project phases;
- 82.3.8 a detailed project plan for each Phase including key planning information with respect to the design, build and testing of the Supplier Solution associated with each Milestone;
- 82.3.9 details of the Wholesale Access Product and Service documentation to be provided by the Supplier to Retail Service Providers and the Authority, such as functional and technical admin specifications and guides, training manuals, configuration and customisation manuals; and
- 82.3.10 details of the Supplier's project finance management processes, including with respect to audit.

82.4 The Supplier shall produce and maintain suitable documentation, information and records such that it can at all times demonstrate to the Authority on request that the Supplier Solution will provide the required Network performance as specified in the Supplier Solution, which shall include:

In the case of a fibre based solution:

- 82.4.1 A list of Structures to be built under the Supplier Solution;
- 82.4.2 The network design, topology and element dimensioning;
- 82.4.3 The list of NGA white premises and applicable postcodes for each Structure.

In the case of a wireless based solution:

- 82.4.4 The network design, topology and element dimensioning;
- 82.4.5 Radio and interference plans that are specific to the proposed technologies;
- 82.4.6 Frequency plan;
- 82.4.7 The list of NGA white Premises and applicable postcodes that will receive an NGA solution.

In the case of other solutions, should include comparable documentation, information and records to that outlined above.

- 82.5 During the term of this Contract the Supplier shall provide assistance to the Authority which may include:
- 82.5.1 test validation reports;
 - 82.5.2 site visits;
 - 82.5.3 systems/records review;
 - 82.5.4 field strength measurements and surveys;
 - 82.5.5 witnessing testing; and
 - 82.5.6 End User visits.

83. SUSTAINABILITY

The Supplier shall as a minimum:

- 83.1.1 roll out Deployed Services which are sustainable and comply with or exceed the UK Government sustainability targets, including SOGE and 'Greening Government ICT';
- 83.1.2 ensure compliance with relevant environmental legislation; and
- 83.1.3 in association with the Authority develop, implement and operate the Supplier's plans to meet the Authority targets, as agreed with the Supplier, for sustainability in accordance with the Authority's ITT when developing the Supplier Solution.

84. DELIVERING TAKE-UP

- 84.1 The Supplier shall create and deliver within the timescales specified in the Project Plan a detailed marketing strategy (including a programme of activities) which supports the maximum Take-up during the term of this Contract for NGA, Ultrafast Broadband and Gigabit Broadband.
- 84.2 As a minimum the Supplier's marketing strategy shall provide for:
 - 84.2.1 white label generic unbranded marketing to encourage maximum business and residential take up;
 - 84.2.2 white label generic unbranded marketing approaches for NGA, Ultrafast Broadband and Gigabit Broadband campaigns;
 - 84.2.3 the establishment of a marketing and account resource to support Take Up;
 - 84.2.4 a range of marketing communications channels (examples: web, newspaper, radio, brochures, stickers etc.) to ensure maximum coverage of information during the NGA, Ultrafast Broadband and Gigabit Broadband implementation.
- 84.3 The Supplier methodology for measuring both NGA, Ultrafast Broadband and Gigabit Broadband Take Up and how delivery will be validated and shared with the Authority is set out in Schedule 3.1 (Supplier Solution).
- 84.4 The Supplier shall provide reports on the adoption by RSPs of Wholesale Access Products and Services in accordance with Schedule 6.4 (Reports) in order to enable monitoring of the success of the marketing plan.

84.5 The Supplier, together with the Authority, shall engage with local businesses, residents and communities to discuss an engagement and resourcing plan for Demand Stimulation in the identified target areas detailed in this Contract.

84.6 The Supplier shall conduct such additional Demand Stimulation activities as may be requested and funded jointly between the Parties.

85. SOLUTION COMPONENT REQUIREMENTS

The following requirements relate to the Solution Components as detailed in the Solution Components Template as part of the Supplier Solution.

85.1 The Solution Components shall have a lifespan and an upgrade path for the Term. The Supplier shall report (where applicable) on advances and opportunities for trials or piloting of new NGA qualifying technology through the governance arrangements set out in Schedule 6.1 (Governance), for consideration for inclusion under this Contract (subject to Commission Decision and procurement constraints).

85.2 The Solution Components, including data transport components, shall be upgradable so as to support increasing Access Line Speeds throughout the Term.

85.3 The Solution Components when configured together shall be capable of providing Wholesale Access Products and Services that underpin the broadband products and services offered by Retail Service Providers in the marketplace as at the Effective Date.

85.4 The Solution Components shall support the following ALA (as defined in ALA ND 1644) classes of service or the equivalent Industry Standard:

85.4.1 Class A Real time, delay sensitive, applications (e.g. voice);

85.4.2 Class B Streaming applications (e.g. video);

85.4.3 Class C Internet Data; and

85.4.4 Class D Guest or 3rd party access,

having taken account of the packet loss, delay, round trip delay, jitter and wander characteristics inherent in the Supplier Solution. For QoE and QoS harmonisation, NICC ND 1030 recommendations will be used as a guideline.

85.5 Throughout the Term the Supplier shall ensure all Solution Components comply with the applicable Industry Standards or achieve function/performance levels that are equivalent to or better than those standards.

85.6 The Solution Components shall independently, and as part of the Supplier Solution, be capable of meeting the requirements for technical acceptance detailed in the Test Strategy. These shall include, at a minimum:

85.6.1 interoperability tests;

85.6.2 operations tests, including end to end testing of BSS, OSS and Network;

85.6.3 performance tests;

85.6.4 operations readiness tests, including monitoring, failovers; and

85.6.5 other relevant technology-specific tests.

85.7 The Supplier shall maintain, and when appropriate publish to Retail Service Providers a technical release schedule for each Solution Component which supports new software

and hardware changes to continue service delivery with equal or higher quality and/or performance.

86. WHOLESALE ACCESS PRODUCTS AND SERVICES

- 86.1 The Wholesale Product Template shall set out the Supplier's range of Wholesale Products and Services which will be published and available to the Retail Service Providers, including any new forms of access granted pursuant to paragraph 86.6.
- 86.2 Wholesale Access Products and Services shall support Retail Service Providers in gaining Take-up, excluding the impact the Retail Service Provider may have on the retail products and services consumed by the End User.
- 86.3 The Supplier shall develop and configure new or existing Wholesale Access Products and Services on a regular basis throughout the Term in line with reasonable Retail Service Provider requirements and the goal of maximising Take-up.
- 86.4 The Supplier shall offer Wholesale Products and Services:
- 86.4.1 suitable to allow access seekers to obtain effective Open Access on fair, reasonable and non-discriminatory terms;
 - 86.4.2 consistent with the Service Requirements;
 - 86.4.3 consistent with the Commission Decision, in particular with regard to paragraphs 122 to 127 of the Commission Decision.

This obligation shall, as a minimum, apply to all infrastructure assets in the Coverage Area that have been subsidised by State aid as well as all existing infrastructure in the Coverage Area that is used in the deployment of the subsidised network. The Supplier shall document how multiple communication providers can use the physical assets and how capacity is managed between multiple communications providers.

- 86.5 Specific Forms of Network Access: In all cases the Supplier must make available from the point of deployment the forms of physical access as identified in paragraph 126 of the Commission Decision.
- 86.6 General forms of new network access: In all cases the Supplier must make available other forms of wholesale access in accordance with paragraph 127 of the Commission Decision, insofar as it relates to Open Access procurement. The Parties shall agree and apply a process for receipt and handling of applications for new forms of network access which shall include the requirement for notification of such requests to the Authority prior to such other form of wholesale access being provided by the Supplier to the access seeker.
- 86.7 Where the circumstances described in Paragraphs 139 and 140 of the Commission Decision occur, any supplementary or increased regulatory requirements supplementary access requirements shall be deemed automatically included in this Schedule 2.

SCHEDULE 3.1 – DOCUMENT REMOVED COMMERICALLY SENSITIVE INFORMATION

SCHEDULE 3.2 – DOCUMENT REMOVED COMMERICALLY SENSITIVE INFORMATION

SCHEDULE 3.3

KEY SUBCONTRACTORS

VERSION CONTROL

VERSION NUMBER	DATE	COMMENT
0.1	27 July 2016	Preliminary draft template version made available for general comment
0.2	31 August 2016	Uplifted draft, following feedback, made available for final comment
1.3	22 January 2019	Contract finalisation version

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SCHEDULE 3.3 – KEY SUBCONTRACTORS

87. BACKGROUND

This Schedule 3.3 sets out the Key Subcontractors for the purpose of this Contract and should be read in conjunction with Clause 32.

88. KEY SUBCONTRACTORS

88.1 At the Effective Date the parties listed below are Key Subcontractors for the purpose of this Contract provided that, unless subsequently approved otherwise by the Authority in writing, the Authority's approval shall extend only to: (i) the relevant Deployed Services set out below; and (ii) a maximum work value materially in line with the figure indicated below (recognising that actual payment to the Key Subcontractor may be lower):

Name and Registered Address	Subcontracted Deployed Services	Approximate Value Of Key Subcontract
N/A	N/A	N/A

As at the Effective Date there are no Key Subcontractors.

SCHEDULE 3.4
KEY PERSONNEL

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
0.3	25 October 2016	Uplifted following local body and supplier feedback
1.0	16 November 2016	Baselined Version 1.0
1.3	22 January 2019	Contract finalisation version

CONTENTS

1 BACKGROUND

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APPENDIX – KEY PERSONNEL

2

SCHEDULE 3.4 – KEY PERSONNEL

89. BACKGROUND

- 89.1 This Schedule 3.4 sets out (in the Appendix) the Key Personnel for the purpose of this Contract and should be read in conjunction with Clause 41.3.

APPENDIX – KEY PERSONNEL

NAME	ROLE	EMPLOYER	FULL TIME OR PART TIME	EXPECTED DURATION OF ROLE
<i>REDACTED</i>	Programme Director (Executive level)	The Supplier	Part Time	Term
<i>REDACTED</i>	Senior Project Lead	The Supplier	Part Time	Term
<i>REDACTED</i>	Finance Lead	The Supplier	Part Time	Term
<i>REDACTED</i>	Network Deployment Lead	The Supplier	Part Time	Deployment Period

SCHEDULE 4.1
IMPLEMENTATION

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
0.3	25 October 2016 plus 11 and 14 November 2016 minor edits	Uplifted following local body and supplier feedback
1.0	16 November 2016	Baselined Version 1.0
1.5	14 February 2019	Contract finalisation version

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SCHEDULE 4.1 – IMPLEMENTATION

90. BACKGROUND

This Schedule 4.1 contains provisions relating to Network Deployment, Testing, Milestone Achievement, the Implementation Plan, the Project Plan, the Milestone M0 process and application of the Premises Cap.

91. GENERAL SUPPLIER OBLIGATIONS

91.1 In addition to its other applicable obligations set out elsewhere in this Contract, the Supplier shall:

- 91.1.1 ensure it Achieves each Milestone by the associated Milestone Date;
- 91.1.2 perform such activities, functions and services as are necessary to perform Network Deployment in accordance with the Implementation Plan and the Project Plan;
- 91.1.3 perform Testing in accordance with paragraph 96, the Test Strategy, the Implementation Plan and the Project Plan;
- 91.1.4 be responsible for the overall management and delivery of Network Deployment, the Implementation Plan and the Project Plan;
- 91.1.5 appoint an appropriately qualified single point of contact who shall be responsible for Network Deployment and identified as Key Personnel;
- 91.1.6 identify and manage the resolution of any problems encountered in relation to Network Deployment in order to ensure the timely and effective completion of each task; and
- 91.1.7 develop and adhere to appropriate risk mitigation plans (copies of which shall be provided to the Authority).

92. MILESTONES

92.1 Subject to Clauses 5.5, 19 and 59, the Supplier shall ensure that each Milestone is Achieved on or before the associated Milestone Date in accordance with the procedure set out in paragraph 95.

92.2 The Milestone Achievement Criteria for each Milestone type are set out in Appendix 1.

93. IMPLEMENTATION PHASES

93.1 Network Deployment is comprised of Phases. Each Phase is a set of activities which shall facilitate the delivery of Network Deployment enabling availability of Wholesale Access Products and Services in the Coverage Area. The Phases and Milestones are detailed in the Implementation Plan.

93.2 Ongoing delivery by the Supplier against the Phases and individual Milestones shall be monitored by the governance meetings under Schedule 6.1 (Governance).

94. IMPLEMENTATION PLAN AND PROJECT PLAN

- 94.1 The Implementation Plan and the Project Plan shall be maintained in accordance with this paragraph 94.
- 94.2 At the Effective Date:
- 94.2.1 the Implementation Plan has been agreed by the Parties and is set out at Appendix 2; and
 - 94.2.2 the first version of the Project Plan has been agreed by the Parties and its document reference is set out at Appendix 2.
- 94.3 The Supplier shall ensure that:
- 94.3.1 the Implementation Plan continues to comprise the level of detail provided in its initial version;
 - 94.3.2 the Project Plan continues to comprise, at a minimum for the then current and next Phase, such planning data as is reasonably necessary to provide identification and notice of the individual Deployed Service activities in order to support the practical operation of this Contract and tracking of the progress of the Deployed Services.
- 94.4 Changes to the Implementation Plan and the Project Plan shall be dealt with as follows:
- 94.4.1 Any amendment to the Implementation Plan must be agreed by the Parties in accordance with the Change Control Procedure, including the timings specified in that procedure.
 - 94.4.2 Any update to the Project Plan may be agreed in writing by suitably authorised representatives of each Party without recourse to the Change Control Procedure, provided such amendments remain consistent with the then current Implementation Plan.
- 94.5 The Supplier shall establish an appropriate version control procedure so as to ensure that the agreed version of the Project Plan is made available to the Authority at all times.

95. MILESTONE ACHIEVEMENT PROCEDURE

- 95.1 The procedure described in this paragraph 95 shall apply to the Achievement of each Milestone.
- 95.2 On a monthly basis (at least 5 Working Days prior to the scheduled monthly Build/Roll out meeting between the Parties pursuant to Schedule 6.1) the Supplier shall provide the Authority with a Milestone Achievement Progress Report setting out at a summary level the progress made to Achieving the forthcoming Milestone(s), including anticipated dates of Achievement, any significant financial and deployment risks then known by the Supplier, and planning application and way-leave status.
- 95.3 The Supplier shall not more than twenty (20) Working Days following the later of:
- 95.3.1 the Milestone Date for each Milestone; and
 - 95.3.2 the date on which the corresponding (minimum) number of End User Premises for that Milestone have been covered by the Supplier Solution,
- provide the Authority with a final Milestone Achievement Report which details the Supplier's Achievement of the relevant Milestone.

- 95.4 The Supplier shall ensure that each final Milestone Achievement Report and its supporting evidence are sufficiently detailed to enable the Authority to assure the extent of the Achievement of the Milestone.
- 95.5 The Authority shall within ten (10) Working Days of receipt of each final Milestone Achievement Report that complies with the requirements of this Schedule either:
- 95.5.1 issue a Milestone Achievement Certificate confirming that the relevant Milestone has been Achieved; or
- 95.5.2 notify the Supplier in writing that the Authority considers that the relevant Milestone has not been Achieved and provide supporting reasons.
- 95.6 If the Authority notifies the Supplier in accordance with paragraph 95.5.2 then, without prejudice to the Authority's rights and remedies under this Contract in relation to the Achievement of Milestones, the Parties shall as soon as practicable meet to discuss the Achievement of the relevant Milestone and (subject to paragraph 95.9) agree an appropriate course of action which may include compliance with the Remedial Plan Process. Unless the Authority elects to issue a conditional Milestone Achievement Certificate in respect of a Milestone in accordance with Clause 18, the Authority shall issue a Milestone Achievement Certificate only if and when the relevant Milestone has been Achieved.
- 95.7 The Authority may, acting reasonably, require the provision by the Supplier of clarificatory information in relation to the specific evidence requirements noted in Appendix 1 in order to assure the extent of the Achievement of the Milestone.
- 95.8 In the event that the Parties fail to agree whether or not the relevant Milestone has been Achieved then the matter shall be treated as a Dispute which the Parties shall attempt to resolve in accordance with the Dispute Resolution Procedure.
- 95.9 The Supplier shall not be entitled to submit an invoice to the Authority for a Milestone Payment (in accordance with Schedule 5.1 (Milestone Payments and Claims Procedure)) until such time as the relevant Milestone has been Achieved and the Authority has issued a Milestone Achievement Certificate in respect of the relevant Milestone.
- 95.10 The date of Achievement of a Milestone is the date on which the Authority signs the Milestone Achievement Certificate. In the case of a Milestone Achievement Certificate for the final NGA M2, this Authority signature date also represents the Full Service Commencement Date.

96. TESTING

- 96.1 The Supplier shall undertake Testing in accordance with this paragraph 96, the Test Strategy and the Service Requirements.
- 96.2 Any Testing shall be without prejudice to the Authority's rights and remedies set out elsewhere in this Contract and the passing of any Test shall not relieve the Supplier from complying with its other obligations in this Contract.
- 96.3 **Test Strategy**
- 96.3.1 The version of the Test Strategy agreed at the Effective Date is set out in Schedule 3.1 (Supplier Solution).
- 96.3.2 The Supplier shall ensure that the testing procedures specified in the Test Strategy for Milestone Types and Solution Components are applied in respect of testing under this Contract.

- 96.3.3 The Test Strategy shall include:
- (a) an overview of how Testing shall be conducted in relation to the Implementation Plan and the Project Plan;
 - (b) full details of the testing (where applicable) of each Solution Component and Milestone type, including the Test Success Criteria for each applicable Test;
 - (c) the process to be used to capture and record Test results and Test issues and a procedure for the resolution of Test issues;
 - (d) the method for mapping the expected Test results to the Test Success Criteria;
 - (e) the names and contact details of the Authority's and the Supplier's Test representatives; and
 - (f) a high level identification of the resources required for Testing, including facilities, infrastructure, personnel and/or the third party involvement in the conduct of the Tests.

96.3.4 No later than 20 Working Days prior to the planned start date for a Phase, the Supplier shall provide to the Authority for approval an updated Test Strategy (to the extent such updates are required taking into account the existing content of the Test Strategy) providing full details for that Phase in accordance with paragraph 96.3.3.

96.3.5 As soon as reasonably practicable and in any event within five (5) Working Days of receipt the Authority shall notify the Supplier that it either approves the updates to the draft Test Strategy (in which case it shall become the Test Strategy for the purpose of this Contract) or, acting reasonably, requires the draft Test Strategy to be amended and/or developed further (in which case the Supplier shall provide such revised drafts as is necessary, taking into account any reasonable comments provided by the Authority, until the Test Strategy is approved by the Authority). The Authority's approval of any Test Strategy shall not be unreasonably withheld or delayed.

96.4 Test Attendance

96.4.1 The Supplier shall notify the Authority when any Test Item is in such state, form and completeness as to be ready for Testing. The Supplier shall give such notice at least five (5) Working Days prior to the date for commencing the applicable Testing.

96.4.2 The Authority shall be entitled but is not obliged to attend any Test. Where the Authority has notified the Supplier in writing providing not less than three (3) Working Days prior to commencement of the Test that it wishes to attend a particular Test, the Supplier shall facilitate such attendance. Subject to the Supplier's compliance with this paragraph 96.4, the Authority's non-attendance at a Test shall not prevent completion of the Test by the Supplier.

97. MILESTONE M0 REVIEW PROCESS

97.1 Commencement of Network roll-out (build) for a Phase cannot commence before Achievement of the corresponding Milestone Type 0, save as otherwise expressly provided in paragraph 97.10 below.

97.2 In accordance with and without limitation to the Achievement Criteria specified in Appendix 1 to this Schedule, Achievement of a Milestone Type 0 requires, (i) completion

by the Supplier and approval by the Authority of detailed Supplier Solution design and implementation planning for that Phase; and (ii) approval of any corresponding Contract Changes, in accordance with this Paragraph 8.

- 97.3 The Supplier shall in the course of the Milestone Type 0 process for each Phase:
- 97.3.1 conduct Post-Effective Date Surveys to verify the condition of the actual Service Environment for that Phase; and
 - 97.3.2 review in detail the planned Deployed Services, including associated solution, implementation and cost planning for that Phase.
- 97.4 The Supplier shall, following completion of the activities noted in paragraph 97.3 above, provide the Authority with:
- 97.4.1 confirmation that the Post-Effective Date Surveys and Deployed Services review have been completed;
 - 97.4.2 its assessment of whether (a) no Contract change is required at all; or (b) Contract change is required (separately identifying the changes as (i) Permitted SCT Changes; (ii) Build/No Build Changes; and/or (iii) other Contract Changes); and
 - 97.4.3 the supporting evidence for Milestone M0 as identified in Appendix 1 to this Schedule. This evidence must be in sufficient detail to support Authority verification of the findings of the Post-Effective Date Surveys and analysis of any proposed Contract Change.
- 97.5 In the event the Supplier indicates that no change is required to the Contract as a result of the M0 process, the M0 Milestone Achievement procedure will then progress from the step at paragraph 95.5 of this Schedule.
- 97.6 Where and to the extent Contract Changes are proposed by the Supplier, the M0 Milestone Achievement procedure will otherwise progress from the step at paragraph 95.5 of this Schedule subject to the following:
- 97.6.1 Permitted SCT Changes - the Authority shall not withhold approval as part of that Milestone Achievement procedure (unless and to the extent the supporting evidence is incorrect and/or the proposed Permitted SCT Changes are otherwise inconsistent with the requirements of this Contract);
 - 97.6.2 Build/No-Build Changes - the Authority may withhold its approval as part of that Milestone Achievement procedure;
 - 97.6.3 other Contract changes, the steps in paragraphs 97.7 to 97.9 shall apply.
- 97.7 Where and to the extent the Supplier indicates that Contract Change is required and such change is not Permitted SCT Change or Build/No-Build Change, it shall provide a Change Impact Assessment (meeting the requirements of Schedule 6.2 (Change Control Procedure)) covering the following options:
- 97.7.1 Deferral to a subsequent Phase;
 - 97.7.2 De-scoping from this Contract;
 - 97.7.3 Use of contingency funding, if any, made available under Paragraph 13 of Schedule 5.1,
- including (i) details of the impact of each option on the Contract; (ii) the identification of the specific material technical or operational risks (if any) associated with the delivery

of each option; and (iii) any other matter considered by the Supplier (acting reasonably) to be relevant for the purpose of the Authority's selection.

- 97.8 The Authority shall as soon as reasonably practicable (and in any event within 10 Working Days) after receipt of the above impact assessment, select (at its sole discretion) one or more (if technically feasible to implement more than one option) of the options. Upon selection of an option:
- 97.8.1 the Supplier shall raise a Change Request to contractually agree and incorporate this option pursuant to the Change Control Procedure (approval to that Change Request cannot be unreasonably withheld by the Authority); and
- 97.8.2 the M0 Milestone will thereafter progress from the step at paragraph 6.5 of this Schedule.
- 97.9 With respect to any Change Request raised pursuant to paragraph 97.8.1, the Authority will only consider granting approval where the Supplier reasonably evidences (i.e. in sufficient detail to allow assessment and assurance by the Authority) that:
- 97.9.1 the Post-Effective Date Survey reasonably demonstrates that the actual Service Environment differs from those circumstances set out in a relevant Survey Assumption;
- 97.9.2 the reason for the Survey Assumption no longer holding true is not due, directly or indirectly, to any act or omission of the Supplier, its Subcontractors and/or agents; and
- 97.9.3 as a consequence of the Survey Assumption no longer holding true, the Supplier's costs and/or timetable for provision of the Network are impacted to an extent that cannot be mitigated through Good Industry Practice and that the corresponding changes reflect that impact only.
- 97.10 To enable progression of roll-out, the Supplier may in the course of the M0 process but in advance of seeking full Achievement of the Milestone complete the steps at paragraphs 97.3 and 97.4 in respect of sub-sets of individual Structures within the Phase and submit these to the Authority seeking approval to proceed with their build. The Authority shall use all reasonable endeavours to support such progression of roll-out, providing written confirmation within five (5) Working Days of receipt of any such request whether it: (i) approves the request (approval by a duly authorised representative of the Authority); (ii) rejects the request (outlining the basis for such rejection); or (iii) requires, acting reasonably, additional time to consider the request – for the avoidance of doubt, paragraphs 97.6 - 97.9 shall also apply to changes proposed pursuant to this paragraph 97.10 with respect to the sub-sets of individual Structures concerned. Where the Authority grants approval to proceed, the Supplier shall be entitled to progress with build of those Structures subject to the terms of this Agreement. Those Structures shall then be included in the consolidated assessment of Achievement of the M0 Milestone but will be regarded as having satisfied the necessary M0 evidence and approval requirements when conducting that consolidated review.
- 97.11 For Contract Changes other than those already provided for under paragraph 97.8.1, the Change Control Procedure must still be applied to formally update the Contract to reflect Contract Changes approved pursuant to this paragraph 8 within a reasonable period following such approval and in any event sufficiently promptly to ensure that the Contract is updated prior to those changes being relevant for the purposes of Milestone Achievement and/or the application of the MPC process. Where applying the Change Control Procedure in those circumstances, provided and to the extent the updates to the Contract Changes reflect only the prior Authority approved changes then the Authority shall not be entitled to withhold consent to the change. Paragraph 98.5 applies in respect of any corresponding changes to the Project Plan.

97.12 In the event that the Supplier proceeds with Network build without complying with the applicable procedure specified in this paragraph 8, Qualifying Capital Expenditure for the corresponding Network build cannot be claimed from the Authority nor applied within any of the mechanisms under Schedule 5.1 (Milestone Payments and Claims Procedure) but the corresponding parts of the Network to which the expenditure relates will otherwise remain subject to the terms of this Agreement.

98. PERMITTED SCT CHANGES AND BUILD/NO-BUILD CHANGES

98.1 **"Permitted SCT Changes"** are any changes to the Speed and Coverage Template other than any change which:

98.1.1 affects the cumulative minimum volume of End User Premises within a Speed Category (other than a Speed Category below NGA speed) contracted to be delivered in any Phase;

98.1.2 affects any Priority Area;

98.1.3 raises a clear risk with regard to funding source availability in respect of this Contract (where such parameters were specified in the ITT);

98.1.4 comprises a Build/No-Build Change.

98.2 Permitted SCT Changes may be made by the Supplier as part of and in accordance with the M0 process as described in paragraph 97. Following Achievement of Milestone M0 (or having received approval to proceed for the Structures concerned pursuant to paragraph 97.10), further corresponding Permitted SCT Changes may also be made without immediate recourse to the Change Control Procedure. In such circumstances, the Supplier must complete the steps at paragraphs 97.3 and 97.4 in respect of the replacement Structures and submit the associated evidence to the Authority for review and approval following an equivalent process to that described in paragraph 97.10. The Change Control Procedure must be applied to formally update the SCT to reflect those changes within a reasonable period following such approval and in any event sufficiently promptly to ensure that the Speed and Coverage Template is updated prior to those changes being relevant for the purposes of Milestone Achievement and/or the application of the MPC process. Where applying the Change Control Procedure in those circumstances, provided and to the extent the updates to the Speed and Coverage Template reflect only the prior approved Permitted SCT Changes then the Authority shall not be entitled to withhold consent to the change.

98.3 Changes in End User Premises classification from NGA build to no build (or vice versa) within the Speed and Coverage Template) that do not fall within the scope of paragraphs 98.1.1 to 98.1.3 comprise **"Build/No-Build Change"**. These Build/No-Build Changes may, subject to Authority approval, also be made by the Supplier as part of and in accordance with the M0 process as described in paragraph 97. Following Achievement of Milestone M0 (or having received approval to proceed for the Structures concerned pursuant to paragraph 97.10) corresponding Build/No-Build Changes may also be proposed in accordance with the process described in paragraph 98.2 above. Such proposed changes are subject to approval in writing by a suitably authorised Authority representative in advance of the Supplier commencing the corresponding Deployed Services. The Change Control Procedure must be applied to formally update the SCT to reflect any approved changes within a reasonable period following such approval, on an equivalent timing basis for application of the Change Control Procedure to that provided in paragraph 98.2.

98.4 Notwithstanding any other provision of paragraphs 8 or 9 of this Schedule, Permitted SCT Changes and Build/No-Build Change, whether dealt with as part of the M0 process or subsequently, must not:

- 98.4.1 require a change to any part of this Contract other than the Speed and Coverage Template and/or Project Plan; or
 - 98.4.2 increase the cumulative Milestone Payments applicable up to the end of the then current Phase or the aggregate Milestone Payments across Phases.
- 98.5 Where and to the extent changes to the Project Plan are proposed by the Supplier reflecting the impact of approved SCT Permitted Changes and/or approved Build/No-Build Changes meeting the requirements of this Schedule 4.1, the Authority shall not withhold agreement under paragraph 94.4.2 to those Project Plan changes, unless the proposed Project Plan changes would be otherwise inconsistent with the terms of this Agreement.
- 98.6 The Supplier shall:
- 98.6.1 seek to limit the scope and frequency of SCT Permitted Changes and/or Build/No-Build Changes to that reasonably required to support the efficient and timely roll-out of the Network whilst also supporting the aims of transparency and certainty for the Authority, Programme Authority and other stakeholders;
 - 98.6.2 maintain and provide to the Authority on request a written log of all Permitted SCT Changes and/or Build/No-Build Change.

99. PREMISES CAP PROCEDURE

- 99.1 Where subsequent to Achieving Milestone M0 for a Phase (or having received approval to proceed for the Structures concerned pursuant to paragraph 97.10) but prior to completion of a Milestone M2 for that Phase, the Supplier reasonably believes that an unexpected cost will result in the Qualifying Capital Expenditure for those End User Premises connected to a Structure affected by the unexpected cost ("**Affected Premises**") exceeding both (i) the Structure cost forecast for the affected End User Premises at M0; and (ii) the Premises Cap (the higher of the two figures (i) or (ii) being the "**Upper Cost Cap**"), the Supplier shall, subject to this paragraph 99, as soon as is reasonably practicable trigger the procedure described below. In the case of shared infrastructure, the foregoing only applies where the cost per End User Premise for all End User Premises facilitated by this shared infrastructure exceeds on average the Upper Cost Cap.
- 99.2 The cost capping procedure described below in this paragraph 99 shall only apply where and to the extent the Supplier can evidence to the Authority that the unexpected cost is a result of further divergence from one or more of the Survey Assumptions due to events or circumstances which could not reasonably have been identified by the Supplier through its application of Good Industry Practice at or before completion of M0 for the relevant Phase or otherwise reasonably mitigated.
- 99.3 In the event that the criteria in paragraphs 99.1 and 99.2 are not satisfied then:
- 99.3.1 the cost capping procedure in this paragraph 99 shall not apply;
 - 99.3.2 the Authority shall be under no requirement to agree any form of associated Contract Change or take any other action to address the associated cost impact on the Supplier;
 - 99.3.3 the Supplier shall only be permitted to count NGA Network Build Costs up to the Upper Cost Cap (such costs to be claimed in accordance with the MPC process when the corresponding Milestone is Achieved). All excess costs shall be borne by the Supplier.

99.4 In the event that the criteria set out in paragraphs 99.1 and 99.2 are satisfied the Supplier shall first seek to implement an alternative form of Network Deployment to achieve the same or better outcome where it is reasonably practicable to do so without in respect of the Affected Premises:

99.4.1 exceeding the Upper Cost Cap; and/or

99.4.2 requiring a Contract Change.

99.5 In the event it is not reasonably practicable to provide an alternative form of Network Deployment in the manner described in paragraph 99.4 without exceeding the Upper Cost Cap; and/or (b) requiring a Contract Change, the Supplier shall as soon as reasonably practicable notify the Authority of the:

If the unexpected cost is unique to a specific Structure:

99.5.1 forecast cost of the Structure as established at M0 split between direct cost (being cost solely relating to the End User Premises concerned) and shared cost (being cost relating to the End User Premises concerned and other non-impacted End User Premises) as well as by Network sub-component, for the End User Premises concerned. Forecast cost should only include direct Network build costs and should exclude from the calculation, planning costs and programme-wide deployment costs (e.g. programme management);

99.5.2 total number of all End User Premises connected to the Structure and NGA white End User Premises passed per Structure;

99.5.3 unexpected incremental direct cost that is now expected to be incurred above and beyond the forecast cost established at Milestone M0, otherwise forecast and detailed on a basis equivalent to that under paragraph 99.5.1;

If the unexpected cost is a shared cost, which will impact more than one Structure:

99.5.4 forecast cost of all Structures and shared Network as established at M0 split between direct and shared cost and by Network sub component (direct cost for each Structure, shared cost will be across all Structures). Forecast cost should include direct Network build costs and should exclude from the calculation, planning costs and programme-wide deployment costs (e.g. programme management). For shared costs, the Supplier shall ensure it identifies the impact on all corresponding Structures within its Supplier Solution, whether in current or subsequent Phases;

99.5.5 total number of all End User Premises connected to the effected Structure and NGA white End User Premises passed by the effected Structures;

99.5.6 unexpected incremental shared cost that is now expected to be incurred above and beyond the forecast cost established at Milestone M0, otherwise forecast and detailed on a basis equivalent to that under paragraph 99.5.4;

Plus in each of the above instances:

99.5.7 the technical and operational reasons why the Upper Cost Cap will be exceeded together with supporting evidence to validate such reasons; and

99.5.8 an impact assessment of each potential option under paragraph 99.6 which shall include:

(a) the impact of each option on this Contract including in respect of the Implementation Plan, the Speed and Coverage Template, the

Milestone Payments, the Project Model and the provision of the Deployed Services;

- (b) the identification of the specific material technical or operational risks (if any) associated with the delivery of each option; and
- (c) any other matter considered by the Supplier to be relevant for the purpose of the Authority's selection of the relevant option under paragraph 99.6.

The proposed options should seek to maintain delivery to the Affected Premises where financially reasonable (the Supplier should liaise with the Authority to inform this assessment), with inclusion of alternative premises and/or de-scoping being a secondary preferential approach.

99.6 The Authority shall as soon as reasonably practicable after receipt of the notification under paragraph 99.5 select (at its sole discretion) one or more (if technically feasible to implement more than one option in respect of the Affected Premises) of the following options:

99.6.1 continue with the Network Deployment of the Affected Premises as planned, provided that agreement is reached between the Parties in accordance with paragraph 99.7 as to the:

- (a) eligibility of any Qualifying Capital Expenditure for Network Deployment additional to the prior forecast (i.e. prior to applying this paragraph 99 procedure) Qualifying Capital Expenditure, calculated in accordance with paragraph 99.5; and/or
- (b) reduction in the scope of the Deployed Services to an appropriate level to compensate the Supplier for any additional Qualifying Capital Expenditure for Network Deployment of the Affected Premises;

99.6.2 place Network Deployment of the Affected Premises on hold for deferral provided that:

- (i) the number of End User Premises required to be passed under the relevant Phase in which the Affected Premises were originally placed and the corresponding M2 Milestone is reduced by the number of deferred Affected Premises;
- (ii) the Affected Premises together with an amount equal to the forecasted value of the proportion of the Milestone Payment(s) associated with the provision of Network Deployment to the Affected Premises as calculated in accordance with paragraph 99.5 are transferred to the relevant Milestone Payment(s) in the corresponding Phase (once such Phase is determined) with such sums/Affected Premises being held provisionally in the final Phase in the interim; and
- (iii) there is at least one subsequent Phase which has not commenced.

99.6.3 remove the Affected Premises and de-scope the Deployed Services accordingly (including de-scoping the affected Milestone(s) and Speed and Coverage Template), provided that the Milestone Payments shall be reduced by an amount equivalent to the total forecasted Qualifying Capital Expenditure for each Affected Premise calculated in accordance with paragraph 99.5 (less any actual Qualifying Capital Expenditure in respect of the Affected Premises (i) for which the Supplier is entitled to submit a Milestone Payment Claim but has not done so or has submitted a Milestone Payment Claim and the

Authority has not made the corresponding Milestone Payment; or (ii) which has been paid by the Authority in the form of Milestone Payment(s), in each case following the Achievement of any applicable M0 Milestones, M1 Milestones and/or M2 Milestones and in accordance with the terms of this Contract);

- 99.6.4 where it is reasonably practicable to provide an alternative form of Network Deployment in the manner described in paragraph 99.4 without exceeding the Upper Cost Cap, but requiring a Contract Change, provide such alternative form of Network Deployment provided that agreement is reached between the Parties in respect of the necessary changes to this Contract in accordance with paragraph 99.7;
- 99.6.5 use of contingency funding, if any, made available under Paragraph 13 of Schedule 5.1.
- 99.7 Once an option(s) has been selected by the Authority pursuant to paragraph 99.6 and notified to the Supplier the Parties shall agree in writing any consequential changes required to this Contract without recourse to the Change Control Procedure (provided that once the changes are agreed the Supplier shall document such changes in a Change Request for authorisation by the Parties in a Change Authorisation). Any failure to agree the necessary changes in accordance with the option(s) selected by the Authority shall be dealt with by the Parties under the Dispute Resolution Procedure.
- 99.8 Provided the Supplier has acted in good faith to reach formal agreement of any changes as contemplated by paragraph 99.7 and otherwise complied with its obligations under this paragraph 10, if and to the extent that as a direct result of the operation of paragraphs 99.5 to 99.7 the Supplier is unable to achieve a Milestone by the associated Milestone Date as planned, such circumstance shall not be treated by the Authority as a Supplier Default and shall not prevent or delay issue of a Milestone Achievement Certificate in respect of the Milestone Achievement Criteria that have been Achieved at the relevant Milestone Date.
- 99.9 If the deferral option under paragraph 99.6.2 is selected by the Authority with corresponding amendments to this Contract agreed under paragraph 99.7 to reflect such option, then prior to the commencement of each subsequent Phase:
 - 99.9.1 the Supplier shall determine whether Network Deployment can be provided to the Affected Premises as planned within the Upper Cost Cap; or
 - 99.9.2 where the Supplier determines that the Affected Premises still exceed the Upper Cost Cap, the Authority shall determine whether to keep the Affected Premises deferred provisionally to the next Phase in accordance with paragraph 99.6.2 or to select one of the other options under paragraph 99.6 with relevant Contract Changes required to be agreed under paragraph 99.7.
- 99.10 For the purpose of paragraph 99.1, the number of Affected Premises and the associated Qualifying Capital Expenditure shall be determined with reference to:
 - 99.10.1 the particular Network Deployment Structure(s) being implemented in respect of the Affected Premises;
 - 99.10.2 the number of End User Premises planned to be passed by such Structure(s) (which shall be the number of Affected Premises); and
 - 99.10.3 the Qualifying Capital Expenditure for Network Deployment associated with passing the Affected Premises and not passing and connecting the Affected Premises.

99.11 The cost capping process as provided above in this paragraph 99 shall not apply where and to the extent the Upper Cost Cap is exceeded due (in whole or in part) to any Supplier Default.

99.12 In the event that the Supplier proceeds with Network build without complying with the applicable procedure specified in this paragraph 99, Qualifying Capital Expenditure for the corresponding Network build cannot be claimed from the Authority nor applied within any of the mechanisms under Schedule 5.1 (Milestone Payments and Claims Procedure) save up to the amount provided for under paragraph 99.3.3 but the corresponding parts of the Network to which any additional expenditure relates will otherwise also remain subject to the terms of this Agreement.

100. SURVEY ASSUMPTIONS

100.1 The application of the Survey Assumptions to a Phase ceases on completion of the corresponding Milestone M0, subject only to the specific limited application within the cost cap process provided for under paragraph 99 of this Schedule. Survey Assumptions may not otherwise be utilised as a basis on which to claim any variation to this Contract (including Deployed Services and/or Milestone Payments) or its associated obligations.

100.2 No other survey or cost assumptions (whether contained in the Project Model or otherwise) are intended by the Parties to vary the Milestone Payments or any other obligation under this Contract.

APPENDIX 1 – MILESTONE ACHIEVEMENT CRITERIA

MILESTONE TYPE	MILESTONE ACHIEVEMENT CRITERIA
<p>Milestone Type 0: Survey and Detailed Design Completion</p>	<p>There shall be one Milestone M0 allocated to each Phase:</p> <p><u>Outcomes:</u></p> <p>The overall outcome of a Milestone Type 0 is completion of detailed Supplier Solution design and implementation planning for that Phase. The specific contractual outcomes comprise:</p> <p>(i) Closure of Survey Assumptions, in accordance with Paragraph 8 of Schedule 4.1 (save only to the extent of application under Paragraph 10 of Schedule 4.1);</p> <p><i>Plus</i></p> <p>(ii) Confirmation that no changes to the Contract are required; or</p> <p>(iii) Approved updates, in accordance with paragraph 8 of Schedule 4.1 (Implementation)), to the Contract including any changes to the:</p> <ul style="list-style-type: none"> a) Milestone Payments; b) Project Model; c) Implementation Plan; d) Speed and Coverage Template. <p><i>Plus</i></p> <p>(iv) Confirmation that the minimum volume of planned NGA and Ultrafast End User Premises for that Phase (as set out in the Speed and Coverage Template as at commencement of the M0 process but adjusted to take into account agreed adjustments in accordance with the M0 process) is maintained.</p> <p><u>Supporting evidence:</u></p> <ul style="list-style-type: none"> (a) A complete and accurate C1 Report; (b) Confirmation that the Post-Effective Date Surveys and detailed Deployed services review for this Phase (as specified in the Project Plan) have been completed; (c) A copy of the Supplier's Post-Effective Date Survey reports (including resulting findings), together with associated supporting evidence; (d) An explanation of the impact of any instances of where the Survey Assumption have not held true, including resulting cost impact and mitigation proposals (including equivalent cost information to that described in paragraph 10.5 of this Schedule 4.1); (e) A full list of Network Structures with corresponding End User Premises served plus estimated Access Line Speed Range for each premise; (f) A planned cost per Network Structure comprised of direct and shared cost by Network sub-component (including identifying which other Structures

MILESTONE TYPE	MILESTONE ACHIEVEMENT CRITERIA
	<p>outside of this Phase the shared costs apply to and the corresponding basis for allocation of the shared costs);</p> <p>(g) A list of Structures that will or are reasonably likely to exceed the Premises Cap, with the cost identified of each Structure along with the corresponding number of NGA white End User Premises.</p>
<p>Milestone Type 1: Network Build</p>	<p>There shall be one or more Milestone M1 allocated to each Phase:</p> <p><u>Outcomes:</u></p> <p>Implemented and operationally ready deployed shared Network to which M2 Structures will be attached, within the scope of this Milestone and in accordance with the Service Requirements.</p> <p><u>Supporting evidence:</u></p> <ul style="list-style-type: none"> (a) A complete and accurate C1 Report; (b) Copies of 'As-built' documentation (and/or, if agreed by the Parties in writing, all reasonable access to that documentation) for the applicable Network infrastructure. Any such 'As built' documentation shall contain an updated inventory of Network sub-components and locations sufficient to comply with corresponding State Aid and public sector subsidy requirements; (c) Confirmation from the Supplier that the applicable Tests (supporting the Milestone outcomes noted above) have been successfully completed in accordance with the Test Strategy; (d) Test data (e.g. Ethernet tests, optical tests) available to the Authority on request, evidencing that the applicable Tests have been successfully completed in accordance with the Test Strategy; and (e) Issued Milestone Achievement Certificate for the corresponding Milestone M0 for the corresponding Phase.
<p>Milestone Type 2: Availability of Wholesale Access Products and Services</p>	<p>There shall be one or more Milestone M2 allocated to each Phase:</p> <p><u>Outcomes:</u></p> <p>Implemented and operationally ready Network Structures serving End User Premises:</p> <p><i>Plus</i></p> <p>Wholesale Access Products and Services are made available, providing Access Line Speeds at Speed Categories of 30Mbps and above on a cumulative End User Premises basis (cumulative criteria) and to End User Premises designated within those Speed Categories (individual NGA End User Premises criteria), in accordance with the Speed and Coverage Template and the Service Requirements for the scope of this Milestone. This shall include:</p>

MILESTONE TYPE	MILESTONE ACHIEVEMENT CRITERIA
	<p>(1) the establishment of an operational business to business (B2B) system (comprising part of the Supplier's OSS/BSS), providing Retail Service Providers the ability to access Wholesale Access Products and Services;</p> <p>(2) that the End User Premises which can be provisioned (if a Retail Service Provider orders corresponding Wholesale Access Products and Services) with retail broadband products and services by Retail Service Providers include as a minimum those premises specified for this Milestone;</p> <p>(3) the Access Line Speed ranges for the End User Premises in (2) above meet or exceed the Access Line Speed ranges at or above 30Mbps in the Speed and Coverage Template,</p> <p>for the scope of this Milestone and in accordance with the Service Requirements.</p> <p><u>Supporting evidence:</u></p> <p>(a) A complete and accurate C1 and C3 Report;</p> <p>(b) Copies of 'As-built' documentation (and/or, if agreed by the Parties in writing, all reasonable access to that documentation) for the applicable Network infrastructure. Any such 'As built' documentation shall contain an updated inventory of Network sub-components and locations sufficient to comply with corresponding State Aid and public sector subsidy requirements;</p> <p>(c) Confirmation from the Supplier that the applicable Tests (supporting the Milestone outcomes noted above) have been successfully completed in accordance with the Test Strategy;</p> <p>(d) Detailed test data demonstrating proof of full functionality of the Supplier's B2B system for access by Retail Service Providers;</p> <p>(e) Detailed test data showing at least one available Wholesale Access Product and Service available to Retail Service Providers through the B2B system;</p> <p>(f) Detailed data evidencing that the End User Premises can be provisioned (if a Retail Service Provider orders the corresponding Wholesale Access Product and Service) with retail broadband products and services by Retail Service Providers in accordance with the Service Requirements and include as a minimum those premises specified in the Speed and Coverage Template for this Milestone. Such data to include full address point and postcode data by premise and Access Line Speed by premise; and</p> <p>(g) Issued Milestone Achievement Certificates for the applicable Milestone M0 and M1 corresponding to this Milestone.</p>
<p>Milestone Type 3 End User Take Up</p>	<p>There shall be one or more Milestone M3 at defined stages of planned cumulative End User Take-up. Notwithstanding the criteria below, a Milestone Type 3 cannot be Achieved prior to the Full Service Commencement Date:</p> <p><u>Outcomes:</u></p>

MILESTONE TYPE	MILESTONE ACHIEVEMENT CRITERIA
	<p>(i) Required level of cumulative Take-up of NGA and Ultrafast at End User Premises on the Network, achieving the level set out below in accordance with the Service Requirements.</p> <p>(ii) The Supplier's Take-up for End User Premises in the Coverage Area meets or exceeds 20% of the Supplier's forecast Take-up for the end of the Term (as shown in the Project Model) to a maximum of 10% expressed in number of End User Premises – in accordance with the Milestone M3 breakdown set out in the Implementation Plan.</p> <p><u>Supporting evidence:</u></p> <p>(a) A complete and accurate C3 Report;</p> <p>(b) evidence, based on a OSS/BSS data, that the required minimum threshold of End User Premises Take-up has been achieved; and</p> <p>(c) data demonstrating the Take-up concerned is consistent with its definition in Schedule 1 (Definitions).</p>

SCHEDULE 4.2

AUTHORITY ASSETS

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
0.3	25 October 2016	Uplifted following local body and supplier feedback
1.0	16 November 2016	Baselined Version 1.0
1.3	22 January 2019	Contract finalisation version

SCHEDULE 4.2 – AUTHORITY ASSETS

There are no Authority Assets for the purposes of this Agreement

APPENDIX

There are no Authority Assets for the purposes of this Co

**SCHEDULE 4.3 – DOCUMENT REMOVED COMMERICALLY SENSITIVE
INFORMATION**

SCHEDULE 5.1

MILESTONE PAYMENTS AND CLAIMS PROCEDURE

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VERSION CONTROL

VERSION NUMBER	DATE	COMMENT
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1.3	22 January 2019	Contract finalisation version

SCHEDULE 5.1 – MILESTONE PAYMENTS AND CLAIMS PROCEDURE

101. BACKGROUND

- 101.1 This Schedule 5.1 sets out:
- 101.1.1 the Milestone Payment amounts associated with each Milestone;
 - 101.1.2 the claims procedure applicable to Milestone Payments;
 - 101.1.3 certain payment specific record keeping, audit and reporting obligations;
 - 101.1.4 details of classification criteria for Qualifying Capital Expenditure, Qualifying Operating Expenditure, Non-Qualifying Capital Expenditure, Non-Qualifying Operating Expenditure and Excluded Expenditure; and
 - 101.1.5 the financial mechanisms applicable to avoid Supplier over-compensation.

102. MILESTONE PAYMENTS

- 102.1 The Milestone Payments payable subject to the terms of this Contract to the Supplier for Achievement of each Milestone (in accordance with Schedule 4.1 (Implementation)) are as detailed in Appendix 1 to this Schedule 5.1.
- 102.2 If actual cost for a Milestone Payment is impacted or is anticipated to be impacted due to:
- 102.2.1 a Post-Effective Date Survey completion taking into account the Survey Assumptions in accordance with paragraph 8 of Schedule 4.1 (Implementation);
 - 102.2.2 the cost of Network Deployment to affected Premises being likely to exceed the higher of the Premises Cap or cost forecast for the affected End User Premises at M0, in accordance with paragraph 10 of Schedule 4.1 (Implementation);
 - 102.2.3 a Relief Event;
 - 102.2.4 a Force Majeure Event; or
 - 102.2.5 a Specific Change in Law,
- then any adjustment to the Milestone Payments shall be dealt with in accordance with the mechanisms set out in this Contract.
- 102.3 Notwithstanding the above provisions of this paragraph 102, the Supplier shall in any event only be entitled to claim the lower of the (up to that point) unclaimed balance of:
- 102.3.1 cumulative Milestone Payments for Achieved Milestones;
 - 102.3.2 (cumulative Actual Qualifying Capital Expenditure plus Actual Qualifying Operating Expenditure) x (1-PIR) for Achieved Milestones; or
 - 102.3.3 cumulative Actual Qualifying Capital Expenditure for Achieved Milestones.
- 102.4 Qualifying Capital Expenditure, other than that falling within the scope of paragraph 102.5, for an Achieved Milestone may only be claimed (and Qualifying Operating Expenditure may only be counted within the mechanisms under this Schedule 5.1), by

the end of the second Quarter immediately following the Quarter in which the corresponding Milestone Achievement Certificate is issued by the Authority. Any such Qualifying Capital Expenditure not claimed within that period cannot be claimed from the Authority nor applied within any of the mechanisms under this Schedule 5.1 but the corresponding parts of the Network to which the expenditure relates will otherwise remain subject to the terms of this Agreement.

- 102.5 Qualifying Capital Expenditure that cannot be directly and uniquely associated with any given milestone (i.e. "time based" NGA Network Build Costs such as PMO), may only be claimed (and Qualifying Operating Expenditure may only be counted within the mechanisms under this Schedule 5.1), by the end of the Quarter immediately following the Quarter in which the relevant cost is incurred. Any such Qualifying Capital Expenditure not claimed within that period cannot be claimed from the Authority nor applied within any of the mechanisms under this Schedule 5.1 but the corresponding parts of the Network to which the expenditure relates will otherwise remain subject to the terms of this Agreement.
- 102.6 Paragraphs 102.4 and 102.5 above are subject to the additional requirements on submitting Milestone Payment Claims for Qualifying Capital Expenditure as specified in paragraph 8.1 of this Schedule 5.1.

103. MILESTONE PAYMENT CLAIMS

- 103.1 Where the Authority has issued a Milestone Achievement Certificate in respect of a Milestone the Supplier shall be entitled to claim (subject to any constraints on claims specified in this Schedule) the corresponding Qualifying Capital Expenditure in respect of that Milestone, in accordance with the MPC process and other requirements of this Schedule.
- 103.2 The Authority shall make payment to the Supplier within 30 calendar days of receipt of a MPC that complies with the requirements of this Schedule 5.1. The Authority shall consider and verify MPCs in a timely fashion (undue delay in doing so is not to be sufficient justification for failing to regard an MPC as complying with the requirements of this Schedule).
- 103.3 The Supplier shall ensure that each MPC contains the following information:
- 103.3.1 the date of the MPC;
 - 103.3.2 a unique MPC number;
 - 103.3.3 the unique Milestone reference as specified in Appendix 1 (Milestone Payments);
 - 103.3.4 Milestone Achievement Certificate identification reference;
 - 103.3.5 the period and activity to which the MPC relates;
 - 103.3.6 the MPC Supporting Documentation;
 - 103.3.7 a contact name and telephone number of a responsible person in the Supplier's finance department in the event of administrative queries; and
 - 103.3.8 the banking details for payment to the Supplier via electronic transfer of funds (i.e. name and address of bank, sort code, account name and number).
- 103.4 Each MPC shall at all times be accompanied by MPC Supporting Documentation to enable the Authority to assess whether the MPC is correctly calculated and whether any public subsidy is properly payable.

- 103.5 The Supplier shall submit all MPCs and supporting information (including the MPC Supporting Documentation) required under this Schedule 5.1 in such format and to such address as the Authority may reasonably specify, with a copy (including all supporting information) to the Programme Authority.
- 103.6 All Supplier MPCs shall be expressed in Pounds Sterling (£) or such other currency as shall be permitted by the Authority in writing.
- 103.7 The Authority shall only regard an MPC as valid if it complies with the provisions of this Contract. Where any MPC is identified by the Authority as not conforming to the provisions of this Contract, the Authority shall return the deficient MPC to the Supplier identifying the deficiencies. The Supplier shall promptly issue a replacement MPC.
- 103.8 Only one MPC submission shall take place in any 30 day period, unless otherwise agreed by the Authority.
- 103.9 Where either Party identifies (whether through MPC verification or otherwise) any overpayment has been made by the Authority (including administrative error and where it becomes apparent a *Milestone* had not in fact been achieved), the Supplier shall:
- 103.9.1 where the next planned MPC payment date is less than 90 days after identification of the overpayment, reduce the claim for the next MPC payment;
or
- 103.9.2 where no further MPC payments are to be made or the next planned MPC payment is more than 90 days after identification of the overpayment, promptly issue a refund for that overpayment to the Authority.

At the Authority's discretion, where the overpayment is due to a Default of the Supplier, the refund (or reduced claim, as applicable) shall also include an interest rate based uplift calculated as follows:

$$C = O + (O \times (\text{interest rate}) \times (T \div 365))$$

Where:

C = the amount of credit;

O = the overpayment;

Interest rate = an annual rate equivalent to 2% above the Bank of England base rate (as adjusted from time to time and set out in the London Financial Times);

T = the number of days between the date on which the overpayment arose and the date on which the notification of the overpayment was made by the Authority or the Supplier to the other Party.

This paragraph 103.9 shall continue to be effective until 7 years following the Term or early termination of this Contract.

- 103.10 Without prejudice to paragraph 103.9, where the Authority has reasonable grounds for believing that an overpayment has been made in respect of any MPC, it may request that the Supplier reviews and re-submits verification of the supporting evidence provided pursuant to paragraph 104.1. Such verification shall be provided by the Supplier within 15 Working Days of receiving that Authority request.
- 103.11 Following successful completion by the Authority of its standard assurance process for the final Milestone Payment Claim and without prejudice to paragraph 103.9, 103.10 or any other related right of the Authority or Regulatory Body, the Authority shall issue to the Supplier a Milestone Completion Certificate using the pro/forma at Appendix 7 to this Schedule.

104. MPC SUPPORTING DOCUMENTATION

104.1 Each MPC shall be provided together with the following MPC Supporting Documentation:

104.1.1 evidence of the NGA Network Build Cost incurred to achieve the relevant Milestone (through copies of invoices, receipts, timesheets, payroll records and other supporting information), this must include evidence to clearly demonstrate that the expenditure:

- (a) falls within the parameters of Qualifying Capital Expenditure or Qualifying Operating Expenditure (as applicable);
- (b) is in relation to the scope of this Contract only;

104.1.2 evidence (through payment or bank records and statements, BACS lists, receipts or other confirmation) that the NGA Network Build Cost has actually been incurred by the Supplier at the date of the MPC, provided that in relation to Deployed Services performed by the Supplier's Subcontractors, NGA Network Build Cost shall for the purposes of this Schedule be deemed "incurred" if the circumstances in paragraph 4.1.2A are satisfied (this qualification of how the word "incurred" shall be construed herein is without prejudice to any other requirement in this Schedule);

4.1.2A NGA Network Build Cost in respect of Deployed Services performed by the Supplier's Subcontractors shall be deemed incurred when the Subcontractor has invoiced the Supplier for the amount to be claimed by the Supplier as Qualifying Capital Expenditure or counted as Qualifying Operating Expenditure, provided that:

4.1.2A(a) the Supplier confirms in the MPC Supporting Documentation that the expenditure does not represent an advance payment for work or services;

4.1.2A(b) the Supplier confirms in the MPC Supporting Documentation that the invoice(s) in question are otherwise correct, due and payable by the Supplier in accordance with the terms of the relevant Subcontract; and

4.1.2A(c) providing a minimum of 90 days has elapsed since payment of the relevant MPC, the Authority may subsequently request that the Supplier provide evidence to demonstrate that applicable amounts were in due course actually paid to the Subcontractors. If no such evidence can be provided, then, if the Authority requests a refunding of the payment made by the Authority, the Supplier shall refund (as soon as reasonably practical) in the form of an electronic re-payment (with the payment details to be notified to the Supplier by the Authority) any such amounts claimed as being incurred Qualifying Capital Expenditure. If subsequently the Supplier provides evidence to demonstrate that applicable amounts were actually paid to the Subcontractors such amounts will then be re-paid by the Authority to the Supplier.

104.1.3 all WIP Costs not yet claimed under an MPC, broken down by:

- (a) WIP related to Achieved Milestones; and
- (b) WIP related to future Milestones not yet Achieved;

- 104.1.4 signed confirmation from a suitably qualified finance representative of the Supplier that:
 - (a) the Qualifying Capital Expenditure is not covered by (i) any other form of public subsidy; or (ii) more than one form of public subsidy; and
 - (b) the Subsidy Payment claimed is matched by an equivalent sum of Qualifying Capital Expenditure;
- 104.1.5 signed confirmation from a suitably qualified finance representative of the Supplier that part apportionment or allocation of NGA Network Build Cost between this Contract and other contracts or services provided by the Supplier, is accurate and a fair reflection of the work carried out;
- 104.1.6 signed confirmation from a suitably qualified finance representative of the Supplier that the NGA Network Build Cost has been properly incurred and is in accordance with the financial control, financial management and internal risk processes of the Supplier. The confirmation should also state that the NGA Network Build Cost has been incurred and is in accordance with the accounting requirements for NGA Network Build Cost, and is consistent with Generally Accepted Accountancy Principles with regard to capitalisation and the accounting policies that the Supplier applies under its corporate financial reporting and audit standards.
- 104.2 In all cases the MPC Supporting Documentation shall be of sufficient detail to allow the Authority to determine the eligibility of the relevant NGA Network Build Cost and the validity of the MPC.
- 104.3 The MPC and its supporting information must separately identify Qualifying Capital Expenditure and Qualifying Operating Expenditure in the MPC and MPC Supporting Documentation to support the operation of the mechanisms under this Schedule 5.1.
- 105. PROJECT ACCOUNTS AND FINANCIAL RECORDS**
- 105.1 The Supplier shall maintain separate summary Project Accounts (for use, among other matters, for reconciliation of MPC claims to expenditure and costs incurred and to calculate the financial reporting measures relating to clawback as described in this Schedule). The Project Accounts shall include:
 - 105.1.1 a summary revenue and expenditure statement (including public subsidy received) in respect of this Contract;
 - 105.1.2 a record of Network assets created or deployed in respect of this Contract;
 - 105.1.3 details of any re-payments made to the Authority pursuant to this Schedule 5.1;
 - 105.1.4 supporting notes and information as appropriate for the reasonable understanding of the Project Accounts; and
 - 105.1.5 actual Take-up per Project Period.
- 105.2 The Project Accounts shall be:
 - 105.2.1 prepared on a basis that is consistent with the accounting policies that the Supplier applies under its own corporate financial reporting and audit standards; and
 - 105.2.2 subject to the Supplier's own internal and external audit procedures.

105.3 Within 30 days of each anniversary of the Effective Date the Supplier shall submit to the Authority a copy of the Project Accounts and an accompanying short narrative report for the preceding 12 months, certified by a suitably qualified finance representative or the external auditor of the Supplier. On expiry or termination of this Contract, the Supplier shall prepare an equivalent copy of the Project Accounts for the period since the preceding copy of Project Accounts produced pursuant to this paragraph 5.3 (noting that the specific timing of the production of such copy on expiry or termination must support the operation of those provisions of this Contract which themselves take effect at expiry or termination of this Contract).

105.4 The Supplier shall maintain accounting records for all NGA Network Build Costs under this Contract in accordance with Clause 37. These accounting records shall include, original invoices, receipts, accounts, deeds, bank records and any other relevant documentation whether in written or electronic form.

106. SUPPLIER AUDIT AND FINANCIAL CONTROL

106.1 The Supplier shall ensure that all public subsidy it receives pursuant to this Contract is subject to the Supplier's own internal and external audit processes.

106.2 As part of the Authority's own internal financial control process or otherwise complying with its legal duties, the Authority (and/or its agents or representatives) and/or the Programme Authority may undertake reviews of the NGA Network Build Cost under this Contract. In such circumstances, the Authority (and/or its agents or representatives) and/or the Programme Authority may require the Supplier to provide, as soon as is reasonably practical, additional reasonable assistance and reasonable supporting information regarding any MPC (as supplementary assurance to the evidence provided pursuant to paragraph 104.1).

106.3 Paragraphs 103.10 and 106.2 of this Schedule shall continue to be effective until:

106.3.1 12 months following the Term, subject to early termination of this Contract; or

106.3.2 in the event of early termination of this Agreement, 24 months following such termination date.

107. PROJECT MODEL OUTPUTS

107.1 The Supplier shall ensure that the Project Model:

107.1.1 contains the details of the Supplier NGA Network Build Investment that is forecast to be incurred over the Deployment Period;

107.1.2 calculates a Project Investment Ratio; and

107.1.3 calculates a Project Unit Margin.

107.2 Where the forecast NGA Network Build Cost is expected to be less than that forecast in Project Model, then the Authority shall require an appropriate reduction to the Milestone Payments such that on Achievement of the final NGA Milestone type 2, Actual Supplier NGA Network Investment should be equal to that forecast in the Project Model.

108. DEPLOYMENT COMPLETION

108.1 Notwithstanding paragraphs 102.4 and 102.5, claims evidencing NGA Network Build Cost can only be submitted by the Supplier up to the end of the Quarter immediately following the Quarter in which the Full Service Commencement Date is Achieved. Milestone Payment Claims in respect of type M3 Milestones may be submitted after that date but these can only provide for Subsidy Payment corresponding to NGA Network Build Cost already evidenced in claims submitted within the time-limit specified in the

first sentence of this paragraph. Any Milestone Payment Claims not submitted in accordance with the foregoing provisions of this paragraph are invalid and the Qualifying Capital Expenditure covered by such claims cannot be claimed from the Authority nor applied within any of the mechanisms under this Schedule 5.1 but the corresponding parts of the Network to which the expenditure relates will otherwise remain subject to the terms of this Agreement.

108.2 Where at the Full Service Commencement Date, the Supplier has not incurred and satisfied (without Subsidy Payment being paid or payable) the Supplier NGA Network Build Investment set out in the Project Model, then:

108.2.1 the Supplier shall pay directly to the Authority within 20 Working Days of receipt of the final MPC the difference between Supplier NGA Network Build Investment incurred and the Supplier NGA Network Build Investment set out in the Project Model; and

108.2.2 where, following completion by the Authority of its assurance in respect of the final MPC, if there remains any further difference between the Supplier NGA Network Build Investment incurred and the NGA Network Build Investment set out in the Project Model, then the Supplier shall pay any such residual balance directly to the Authority within 20 Working Days of the Authority issuing to the Supplier a Milestone Completion Certificate.

109. OVER-SUBSIDY CLAW-BACK: POST IMPLEMENTATION

109.1 At each Take-up Review Point the Supplier shall perform an assessment of Take-up in accordance with paragraph 109.2.

109.2 At each Take-up Review Point the Supplier shall submit updated Project Accounts to the Authority which shall include actual total Take-up per Project Period. The actual Take-up shall be compared to the forecast Take-up as shown in the 'Solution Volumes Tab' in the Project Model, for each Project Period, from the Effective Date to the relevant Take-up Review Point. If the sum of the cumulative actual Take-up per Project Period (being the 'Cumulative Sum' in the column of the table exemplified below) is more than the cumulative forecast Take-up per Project Period the difference represents a "**Net Additional Take-up**" - see table below for example:

Project Period	1	2	3	4	Cumulative Sum Across Periods 1-4
Project Model	150	200	250	250	850
Actual	175	200	200	300	875

Notes: The Take-up numbers included in columns 1-4 are the Take-up total at the end of the Project Period.

In this example the Net Additional Take-up would be 25 i.e. 875 minus 850.

The above table is solely a simplified set of numbers to example the principles of this paragraph 10.2 – the figures have no other application or relevance.

109.3 REDACTED

109.4 At each interim Take-up Review Point, a Take-up Claw Back Amount shall be calculated as follows:

- *Take-up Claw Back Amount = (Exposure to claw-back at Take-up Review Point less any Take-up Claw Back Amounts previously paid back to the Authority)*

Any positive Take-up Claw Back Amount shall be repaid direct to the Authority within 20 Working Days of the Take-up Review Point.

109.5 At the final Take-up Review Point a Final Take-up Claw Back Amount shall be calculated, with reference to the Net Additional Take-up across the Term, as follows:

- *Final Take-up Claw-back Amount = Exposure to claw-back at Take-up Review Point less any Take-up Claw Back Amounts previously paid to the Authority.*

Any Final Take-up Claw-back Amount shall be repaid direct to the Authority within 20 Working Days of the final Take-up Review Point.

110. OVER-SUBSIDY CLAW-BACK: ADDITIONAL SERVICES

110.1 At each Additional Service Review Point the Supplier shall perform an assessment of Additional Service Revenue in accordance with paragraph 110.2.

110.2 At each Additional Service Review Point the Supplier shall submit updated Project Accounts to the Authority, additionally showing actual total Additional Service Revenue in relation to this Contract. The actual Additional Service Revenue shall be compared to the forecast Additional Service Revenue as shown in the Project Model, from the Effective Date to the relevant Additional Service Review Point. If the actual Additional Service Revenue is more than the forecast Additional Service Revenue the difference represents a **"Net Additional Service Revenue"**. Exposure to claw-back at each interim Additional Service Review Point shall be calculated as follows:

- *Additional Service Claw Back Amount = (Net Additional Service Revenue x A%, less any Additional Service Claw Back Amounts previously paid to the Authority)*

Any Additional Service Claw Back Amount shall be shall be repaid direct to the Authority within 20 Working Days.

110.3 At the final Additional Service Review Point a Final Additional Service Claw Back Amount shall be calculated, with reference to the Net Additional Service Revenue across the Term, as follows:

- *Final Additional Service Claw Back Amount = Net Additional Service Revenue x A%, less any Additional Service Revenue Amounts previously paid to the Authority*

Any Final Additional Service Claw Back Amount shall be repaid direct to the Authority within 20 Working Days.

110.4 For the purposes of paragraphs 110.2 and 110.3, "A%" shall be determined at each Additional Service Review Point as follows:

110.4.1 The Supplier shall provide to the Authority details of the total margin achieved in respect of the Net Additional Service Revenue including the accounting principles used to calculate that margin;

110.4.2 As part of the Additional Service Review Point concerned, the Parties shall, acting reasonably, agree A% such that it represents an appropriate portion of the margin achieved on the Net Additional Service Revenue (taking into account relevant factors including (i) the extent to which the infrastructure used by the Wholesale Access Products and Services concerned was funded under this Contract; and (ii) the Commission Decision). If agreement of A% is not achieved within 10 Working Days from commencing that Additional Services Review Point this shall represent a Dispute.

111. NEGATIVE CLAWBACK SUM

Where any of the calculations at paragraphs 109 or 110 demonstrate a prior over-payment by the Supplier to the Authority pursuant to those provisions, the over-payment shall be refunded by the Authority directly to the Supplier within 20 Working Days.

112. LIABILITY IN AUDITED ACCOUNTS

Where at any Take-up Review Point or Additional Service Review Point a greater liability is shown in the Supplier's audited accounts for anticipated re-payment pursuant to paragraphs 9 or 10 than would otherwise be re-payable at that time to the Authority under those paragraphs, the Supplier shall re-pay that higher amount in accordance with the corresponding re-payment timings noted in paragraphs 9 or 10 (as applicable).

113. NOT USED

APPENDIX 1 – MILESTONE PAYMENTS

DOCUMENT REMOVED – COMMERCIALY SENSITIVE INFORMATION

APPENDIX 2 – QUALIFYING CAPITAL EXPENDITURE CATEGORIES

Qualifying Capital Expenditure

Qualifying Capital Expenditure is that capital expenditure actually incurred by the Supplier which can attract capital public subsidy under this Contract.

Qualifying Capital Expenditure is that Supplier expenditure which (i) can be reasonably allocated or apportioned to this Contract; (ii) is incremental to the Supplier's cost base that would otherwise have been incurred; (iii) is incurred in accordance with this Contract; (iii) is directly attributable to bringing the wholesale access infrastructure to the location and working condition necessary for its intended use but excluding those costs directly attributable to connecting End User Premises to the Network; and (iv) is capable of being capitalised under Generally Accepted Accountancy Principles.

The following examples for this expenditure category are provided:

- The cost of tangible broadband infrastructure (plant, machinery and equipment) in both active and passive layers)
- Infrastructure installation and assembly costs
- Cost of active electronics, data transport and backhaul equipment
- Cost of vectoring technologies, where such technologies are integral to a significant improvement in the available network
- Specific software and systems (including reporting systems) development costs directly attributable to bringing the broadband infrastructure into use for this Contract
- Staff costs directly attributable to bringing the broadband infrastructure into use
- Planning, way-leaves, site investigation and site preparation costs directly attributable to bringing the broadband infrastructure into use (expenditure that will attract subsidy under Milestone 0)
- Power connection costs
- Professional fees directly attributable to bringing the broadband infrastructure into use (expenditure that will attract subsidy under Milestone 0)

APPENDIX 3 – QUALIFYING OPERATING EXPENDITURE CATEGORIES

Qualifying Operating Expenditure

Qualifying Operating Expenditure is that operating expenditure incurred by the Supplier which may be included when calculating the PIR (forecast expenditure)/OIR (actual) under this Contract.

Qualifying Operating Expenditure is that Supplier expenditure which (i) is incremental to the Supplier's cost base that would otherwise have been incurred (ii) can be reasonably allocated or apportioned to this Contract; (iii) is incurred in accordance with this Contract; (iv) is directly attributable to bringing the wholesale access infrastructure to the location and working condition necessary for its intended use (excluding customer connection and Network maintenance related costs); and (v) is not capable of being capitalised under Generally Accepted Accountancy Principles.

The following examples for this expenditure category are provided:

- HR support solely related to direct NGA network build resource
- Non capitalisable labour costs of the direct NGA network build resource
- Direct labour costs associated with compiling all reports and claims obligated under the Contract.
- Travel and subsistence for direct NGA network build resource
- Fleet:
 - Vehicle lease costs
 - Insurance
 - Repair and Maintenance
 - Fuel
- Operating lease rentals that do not relate to point (i) of Appendix 5 to this Schedule in respect of Non-Qualifying Operating Expenditure.

APPENDIX 4 – NON-QUALIFYING CAPITAL EXPENDITURE CATEGORIES

Non-Qualifying Capital Expenditure

Non-Qualifying Capital Expenditure is that capital expenditure actually incurred by the Supplier which cannot attract capital public subsidy under this Contract.

Non-Qualifying Capital Expenditure is that Supplier expenditure which (i) is directly attributable to connecting End Users to the Network (to the extent such expenditure is incurred after deployment of the Network (i.e. after Achievement of the M2 Milestone(s) for that part of the Network servicing those End Users)) and maintaining the Network post-deployment; (ii) is incremental to the Supplier's cost base that would otherwise have been incurred (iii) can be reasonably allocated or apportioned to this Contract; (iv) is incurred in accordance with this Contract; and (v) is capable of being capitalised under Generally Accepted Accountancy Principles, to the extent incurred by the Supplier during the Term;

The following examples for this expenditure category are provided:

- Connection costs including Network termination equipment and End User Premises equipment as required to deliver wholesale services

APPENDIX 5 – NON-QUALIFYING OPERATING EXPENDITURE CATEGORIES

Non-Qualifying Operating Expenditure

Non-Qualifying Operating Expenditure is that operating expenditure incurred by the Supplier which may not be included when calculating the PIR (forecast expenditure)/OIR (actual).

Non-Qualifying Operating Expenditure is that Supplier expenditure which (i) is directly attributable to connecting End Users to the Network (to the extent such expenditure is incurred after deployment of the Network (i.e. after Achievement of the M2 Milestone(s) for that part of the Network servicing those End Users)) and maintaining Network post-deployment; (ii) is incremental to the Supplier's cost base that would otherwise have been incurred; (iii) can be reasonably allocated or apportioned to this Contract; (iv) is incurred in accordance with this Contract; and (v) is not capable of being capitalised under Generally Accepted Accountancy Principles, to the extent incurred by the Supplier during the Term.

The following examples for this expenditure category are provided:

- Operating costs of providing broadband services (wholesale) to third parties and consumers
- Power and other utility running costs
- Operating and maintenance costs of the broadband infrastructure created
- Operating lease rentals
- Connection costs including Network termination equipment and End User Premises equipment as required to deliver wholesale services

APPENDIX 6 – EXCLUDED EXPENDITURE CATEGORIES

Excluded Expenditure

Excluded Expenditure is that expenditure which may not be classified as Qualifying Capital Expenditure, Qualifying Operating Expenditure, Non-Qualifying Capital Expenditure or Non-Qualifying Operating Expenditure for the purposes of this Contract.

The **Excluded Expenditure** examples below are, for the avoidance of doubt, without limitation to other forms of Excluded Expenditure which does not meet the descriptions of Qualifying Capital Expenditure, Qualifying Operating Expenditure, Non-Qualifying Capital Expenditure or Non-Qualifying Operating Expenditure:

- Costs involved in re-working of design and build due to Supplier Default (including non-compliance with Clause 10)
- Costs of planning, design and build for Structures that did not Achieve M2 (abortive Structures), unless due to Authority requested de-scope (provided such Authority requested de-scope is not required due to Supplier Default (including non-compliance with Clause 10))
- Costs involved in winding up a company
- Payments for unfair dismissal
- Payments into private pension schemes
- Payments for un-funded pensions
- Compensation for loss of office
- Bad debts arising from loans to employees, proprietors, partners, directors, guarantors, shareholders or a person connected with any of these
- Payments for gifts and donations
- Payment for entertainment
- Input VAT reclaimable by the Supplier
- Statutory fines and penalties
- Criminal fines and damages
- Legal expenses in respect of litigation
- Expenditure on works or activities which any person has a statutory duty to undertake
- Any liability arising out of negligence
- Professional fees not directly attributable to bringing the broadband infrastructure into use
- Provisions and contingent liabilities (including for risk related to this Contract)

- Supplier profit mark up, margin or administration charge that is added to the actual bought in costs of goods or services procured from third parties
- Administration and general management costs
- Dividends
- Interest and financing charges
- Costs resulting from the deferral of payments to creditors
- Costs incurred before the Effective Date of this Contract (including bid costs)
- Any cost relating to insurance and insurance policies
- Customer acquisition and churn costs
- General corporate or unabsorbed overheads
- Depreciation, amortisation and impairment of assets
- Service and financing costs under finance leases, of broadband infrastructure, plant, machinery and equipment
- Operating costs of providing broadband services (retail) to third parties and consumers
- Demand surveys, marketing other sales costs
- Corporation tax and non domestic rates
- Retail connection costs and End User Premises equipment at retail level
- Any premium rates of overtime, unless prior approval given by the Authority
- Cost of vectoring technologies, where such technologies are not integral to a significant improvement in the available network
- Additional costs incurred as a result of Supplier Default
- Any other costs expressly identified in this Agreement as not recoverable from the Authority

**SCHEDULE 5.3 – DOCUMENT REMOVED COMMERICALLY SENSITIVE
INFORMATION**

SCHEDULE 5.4
ADDITIONAL APPROVED FUNDING

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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
0.3	25 October 2016	Uplifted following local body and supplier feedback
1.0	16 November 2016	Baselined Version 1.0
1.3	14 February 2019	Contract finalisation version 1.5

SCHEDULE 5.4 – ADDITIONAL APPROVED FUNDING

114. BACKGROUND

This Schedule 5.4 contains provisions relating to Additional Approved Funding obtained by the Authority for the purposes of this Contract.

115. FUNDING

115.1 The Parties acknowledge that, as stated in the ITT, the Authority may during the Term secure a sum of Additional Approved Funding of an amount up to £7,110,875 (Seven million one hundred and ten thousand eight hundred and seventy-five pounds) This Additional Approved Funding may be utilised in accordance with this Contract to further the project aims in the Coverage Area (extending the coverage and/or improving broadband speeds), subject to:

115.1.1 such utilisation falling within the permitted parameters of the Commission Decision; and

115.1.2 the further provisions of this Schedule.

116. APPLICATION OF ADDITIONAL APPROVED FUNDING

116.1 The Additional Approved Funding may, at the Authority's sole discretion and subject to the Parties agreeing a corresponding Contract Change, be utilised for Deployed Services extending coverage and/or improving broadband speeds.

116.2 If at any time during the Term the Authority is able to secure all or part of the Additional Approved Funding, it may (in accordance with paragraph 116.1) issue a Change Request for all or part of that secured amount. The Supplier shall provide the Change Impact Assessment, proposing an allocation of the funding, within 10 Working Days of receipt of the completed Change Request (or such longer period as may be agreed in writing by the Parties) or such extended period either specified by the Authority in the Change Request or as agreed in accordance with the process for extending Change Impact Assessment delivery timelines in paragraph 2.4 of Schedule 6.2. Paragraph 2.5 of Schedule 6.2 shall also apply in respect of any Supplier failure to provide an Impact Assessment in accordance with this paragraph 116.2 within twenty (20) Working Days from the date determined by this paragraph 116.2.

117. GENERAL PROVISIONS APPLICABLE TO ADDITIONAL FUNDING

117.1 Any Supplier Change Impact Assessment provided pursuant to paragraph 116.2 above shall, without limitation to the other requirements of the Change Control Procedure, include:

117.1.1 the additional investment by the Supplier;

117.1.2 a summary of the proposed additional areas of coverage, including speed and coverage outcomes for the additional Deployed Services to be performed;

117.1.3 details of any impact on the existing contracted Deployed Services; and

117.1.4 an update to the Speed and Coverage Template, Project Model, Project Plan, Implementation Plan, Project Plan and Milestone Payments table.

117.2 The Parties shall seek to agree a corresponding Contract Change in respect of the proposed use of the Additional Approved Funding, through the Change Control Procedure. For the avoidance of doubt, any issuing of a Change Request and/or seeking to agree a Contract Change does not commit the Authority to the inclusion of

Additional Approved Funding under this Contract, which is only committed to the extent specified in a corresponding agreed Contract Change.

- 117.3 Each Party's costs associated with the preparation and subsequent agreement of any Contract Change incorporating Additional Approved Funding shall be borne by that Party (and accordingly paragraph 2.6.2 of Schedule 6.2 (Change Control Procedure) in respect of costs for preparation of the Change Impact Assessment shall apply).
- 117.4 The Parties acknowledge that the agreement of any Contract Change in respect of the Additional Approved Funding shall be subject to the Authority 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).

SCHEDULE 6.1

GOVERNANCE

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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1.0	16 November 2016	Baselined Version 1.0
1.1	21 June 2018	Norfolk Specific variations
1.5	14 February 2019	Contract finalisation version

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SCHEDULE 6.1 – GOVERNANCE

118. BACKGROUND

This Schedule 6.1 sets out the governance arrangements for the purpose of this Contract.

119. GENERAL

119.1 Nothing in the governance arrangements provided in this Schedule 6.1 or their operation shall be construed as prejudicing or varying either Party's obligations and/or rights under this Contract (unless agreed by the Parties in accordance with the Change Control Procedure).

119.2 Subject to the extent this constitutes agreed Qualifying Capital Expenditure, there shall be no charge levied by the Supplier (including its Subcontractors) for attendance and/or participation in the governance arrangements described in this Schedule 6.1.

120. MEETINGS

120.1 The Parties shall hold the meetings specified in Appendix 1 and in respect of those meetings:

120.1.1 either Party may, on giving reasonable prior notice to the other Party and in addition to the attendees specified in Appendix 1, reasonably request the attendance of a particular individual from the other Party or an associated party at the meeting. The other Party shall use reasonable endeavours to procure that such individual is available to attend in person;

120.1.2 the Authority may, on reasonable notice, opt to bring other third parties (including subject matter experts and interested civil service colleagues) to the meetings (for the avoidance of doubt, this attendance is subject to Clause 50);

120.1.3 the Authority (or the Supplier, if the Authority so directs a reasonable period in advance) will prepare and circulate in advance and no later than 10 Working Days before the meeting a proposed agenda for the meeting and the other Party may add additional items and return an amended agenda no later than 5 Working Days before the meeting;

120.1.4 subject to Clause 37.1, the Supplier shall circulate, in advance and no later than 5 Working Days before the meeting, any related reports or documents required or reasonably requested by the Authority for consideration at or subsequent to any meeting (including any reports/submissions specified in Appendix 1); and

120.1.5 the Programme Authority may, in addition to the Authority's representatives, also attend the Appendix 1 meetings.

120.2 If requested by the Programme Authority, the Supplier shall attend the meetings in Appendix 2 and in respect of those meetings:

120.2.1 either the Programme Authority or the Supplier may, on giving reasonable prior notice to the other party and in addition to the attendees specified in Appendix 2, reasonably request the attendance of a particular individual from the other party or an associated party at the meeting. The other party shall use reasonable endeavours to procure that such individual is available to attend in person;

120.2.2 the Programme Authority may, on reasonable notice, opt to bring other third parties (including subject matter experts and interested civil service

colleagues) to the meetings (for the avoidance of doubt, this attendance is subject to Clause 50);

- 120.2.3 the Programme Authority (or the Supplier, if the Programme Authority so directs a reasonable period in advance) will prepare and circulate in advance and no later than 10 Working Days before the meeting a proposed agenda for the meeting and the other party may add additional items and return an amended agenda no later than 5 Working Days before the meeting; and
- 120.2.4 subject to Clause 37.1, the Supplier shall circulate, in advance and no later than 5 Working Days before the meeting, any related reports or documents required or reasonably requested by the Programme Authority for consideration at or subsequent to any meeting (including any reports/submissions specified in Appendix 1).

APPENDIX 1 – MEETINGS

Meeting	Purpose	Frequency	Repor subm
Build / Roll-out	<p>To review the Supplier's overall performance of this Contract. These meetings will cover:</p> <ul style="list-style-type: none"> • Network build and commission (in particular, progress in Network Deployment) based on each Phase; • Milestone Achievement – discussing matters related to Milestone Achievement and Acceptance; • Milestone Payments – reviewing and discussing forecast for the then current Network build within the Phase, together with a forecast for the next Phase; • operational performance (customer provisioning, technical performance and support); • RSP take-up; • reviewing Network implementation issues to the Network build and commission roll-out plan (subject to the Change Control Procedure); • reviewing Contract Change proposals (subject to the Change Control Procedure); • dealing with requests and progress reports on planned and actual site visits for testing and verification pursuant to Schedule 4.1; • reviewing progress updates on any planned or existing Community Solutions (if applicable); • reviewing the build/rollout risk and issue logs. 	Monthly but changing to quarterly once the Network has been successfully implemented	As per (Repor Milesto Progre Sched Payme Proced Curren Project
Finance	<p>To review the Supplier's financial performance in respect of this Contract. These meetings will cover:</p> <ul style="list-style-type: none"> • reviewing actual spend against Project Model; • identifying, managing and agreeing any financial variations (including payment profiles), subject to the Change Control Procedure; • forecasting potential financial issues arising from future Phases; • reviewing financial forecasts covering WIP (current and future); • reviewing clawback in accordance with Schedule 5.1; • audit requirements and general financial review requirements; 	Quarterly but changing to quarterly once the Network has been successfully implemented	As per (Imple 5.1 (M Payme Proced (Repor

Meeting	Purpose	Frequency	Repor subm
	<ul style="list-style-type: none"> reviewing and scheduling timetable for MPCs (subject to contracted timeframe requirements). 		

APPENDIX 2 – PROGRAMME AUTHORITY MEETINGS

Meeting	Purpose	Frequency	Repor subm
Supplier Management Board	<p>To review the Supplier's individual involvement in the NGA Broadband Programme. These meetings will cover:</p> <ul style="list-style-type: none"> overseeing the Supplier's involvement in the NGA Broadband Programme and resolve any issues that arise; supporting delivery of Local Body projects managed by the Supplier, identifying any barriers to delivery, and taking action as appropriate to tackle these barriers; identifying opportunities to accelerate delivery where possible; helping ensure that project management and reporting systems are operating effectively; providing a forum for an exchange of information between the Supplier and Programme Authority including State aid issues and non-BDUK funded delivery; annual Wholesale Access Prices Benchmark review; reviewing Supplier's proposed solution evolution, product/solution roadmaps and evolution. 	Quarterly or otherwise agreed	As per Level n Sched
Joint Supplier/Authority forum	<p>To review in a joint forum related issues in respect of the NGA Broadband Programme. These meetings will cover:</p> <ul style="list-style-type: none"> reviewing and managing Programme Level Change Requests and Local Body/Supplier level issues (i.e. changes, risks and/or issues affecting all suppliers and/or projects); obtaining Suppliers' and Local Bodies' experiences and feedback. 	Quarterly	n/a
Strategic	<p>To review the Supplier's overall performance. These meetings will cover:</p> <ul style="list-style-type: none"> reviewing the contribution the project is making to supporting the Authority's strategic ambitions; 	Quarterly	As per (Repor

Meeting	Purpose	Frequency	Repor subm
	<ul style="list-style-type: none"> • contributing “Best Practice” knowledge including, technology, business, commercial and sales & marketing, as appropriate to ensure the project meets its strategic objectives; • overall financial management; • overall performance against plan; • reviewing major implementation issues and their resolution; • innovation and technology roadmap, trials and pilot opportunities for new solutions if any; • exploring opportunities for extending coverage subject to compliance with this Contract and the Commission Decision; • exploring additional funding opportunities if relevant; • use of SMEs and approach to enabling opportunities for SMEs in the supply chain; • review of escalated high risks and issues; • review of take-up by Structure; • considering significant PR and demand stimulation activities. 		

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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1.3	22 January 2019	Contract finalisation version

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SCHEDULE 6.2 – CHANGE CONTROL PROCEDURE

121. BACKGROUND

- 121.1 Subject to Clause 39.2, this Schedule 6.2 sets out the procedure for dealing with Contract Changes.
- 121.2 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 Contract) 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.

122. CHANGE REQUESTS

- 122.1 Subject to the remainder of this paragraph 122.1, 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.
- 122.2 If the Supplier 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 Authority as soon as reasonably practicable but in any event within five (5) Working Days of the date of issuing the Change Request. The Supplier shall provide such further information and revised versions of each Change Request and/or Change Impact Assessment and within such timescales as the Authority may reasonably require.
- 122.3 Subject to paragraph 122.4, if the Authority issues a Change Request, the Supplier shall provide a corresponding Change Impact Assessment to the Authority within ten (10) Working Days from receipt of the Change Request by the Supplier or such longer period as specified by the Authority within the Change Request. If the Supplier 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 Authority and the Authority 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 Authority to respond to the clarification).
- 122.4 If the Supplier considers (acting reasonably) that a Change Impact Assessment in respect of an Authority issued Change Request would require:
 - 122.4.1 more than five (5) FTE Working Days of Supplier Personnel time to prepare; and/or
 - 122.4.2 a longer period than that provided pursuant to paragraph 122.3,the Supplier shall (within five (5) Working Days of receipt of the Change Request) propose to the Authority in writing:
 - 122.4.3 the reasonable cost for preparing and providing the corresponding Change Impact Assessment; and/or
 - 122.4.4 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 122.3 shall continue to apply). If, subject to any refinement of the Supplier's proposal under paragraph 122.4, the Authority wishes to proceed with that proposal:

- 122.4.5 it shall inform the Supplier in writing;
 - 122.4.6 the Supplier shall provide the Change Impact Assessment within the timescale determined in accordance with this paragraph 122.4;
 - 122.4.7 the Authority shall be liable to pay the reasonable additional cost indicated by the Supplier (being the incremental cost beyond five (5) FTE Working Days of Supplier Personnel time), subject to provision of reasonable supporting evidence of the incurrence of those costs.
- 122.5 The Supplier acknowledges and agrees that, without prejudice to any other right or remedy the Authority may have for failure by the Supplier to comply with the timeframe requirements in this paragraph 122, any failure to provide a Change Impact Assessment to the Authority (consistent with the requirements of paragraph 123) within twenty (20) Working Days from the date of delivery for the Change Impact Assessment determined in accordance with this paragraph 122 shall constitute a material breach by the Supplier.
- 122.6 The following principles also apply to the above processes:
- 122.6.1 the Authority 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;
 - 122.6.2 the Supplier shall not be entitled to recover the costs identified in accordance with paragraph 122.4 in the event that the Change Request concerns the deployment of additional or enhanced Network coverage.

123. CHANGE IMPACT ASSESSMENT

- 123.1 Each Change Impact Assessment shall include:
- 123.1.1 a descriptive summary of the proposed Contract Change;
 - 123.1.2 proposed drafting changes to this Contract 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 Supplier shall take into account any proposed drafting changes set out in the Change Request where submitted by the Authority (the Contract Change should reflect these Authority proposals, save to the extent it would be unreasonable to require use of the drafting concerned);
 - 123.1.3 details of the impact of the proposed Contract Change on:
 - (a) the delivery and receipt of the Deployed Services;
 - (b) the Supplier Solution;
 - (c) the Supplier's ability to meet its other obligations under this Contract; and

- (d) any other matter requested by the Authority at the time of the assessment, or considered by the Supplier to be relevant;
- 123.1.4 details of how the proposed Contract Change will ensure compliance with any applicable Change in Law;
- 123.1.5 a reasonable level of justification and evidence for these Changes and the above noted impact, including sufficient supporting detail to enable Authority assessment. In the case of changes to the Supplier Solution, this must include:
 - (a) detailed supporting financial information covering any changes to Milestone Payments, Supplier 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 M0 process described in Paragraph 8 of Schedule 4.1 (Implementation);
- 123.2 If the proposed Contract Change has no impact of the kind described in paragraph 123.1.3 the Supplier shall provide a statement of this fact in the Change Impact Assessment.
- 123.3 The Authority shall review each Change Impact Assessment and as soon as reasonably practicable shall respond to the Supplier in accordance with paragraph 124. The Supplier must comply with reasonable requests for further clarification in respect of the Change Impact Assessment if requested by the Authority.
- 124. AUTHORITY'S RIGHT OF APPROVAL**
- 124.1 The Authority shall review each Change Request and/or Change Impact Assessment and as soon as reasonably practicable shall do one of the following:
 - 124.1.1 approve the proposed Contract Change, in which case the Parties shall follow the procedure set out in paragraph 124.2;
 - 124.1.2 reject the Contract Change (providing reasons for the rejection), in which case it shall notify the Supplier of the rejection. The Authority shall not reject any proposed Contract Change to the extent the Contract Change is necessary for the Supplier or the Deployed Services to comply with any Change in Law;
 - 124.1.3 require the Supplier to modify the Change Request and/or Change Impact Assessment in which case the Supplier shall, as soon as practicable, submit a modified proposal for consideration by the Authority which takes the Authority's comments into account. The Authority shall have the approval rights set out in this paragraph 124.1 in respect of each modified Change Request and Change Impact Assessment and any subsequent version required by the Authority.
- 124.2 If the Authority approves a Contract Change pursuant to paragraph 124.1.1 and it has not been rejected by the Supplier in accordance with paragraph 125, it shall notify the Supplier and the Parties shall sign a Change Authorisation (by completing Part 3 of the Change Form set out in the Appendix) within three (3) Working Days. Upon signature by both Parties, a Change Authorisation shall constitute a binding variation to this Contract.
- 124.3 Until such time as a Change Authorisation has been signed by both Parties in accordance with paragraph 124.2, unless the Parties (acting reasonably having regard to the nature of the proposed Contract Change) agree otherwise in writing and subject

to paragraph 125.3, the Supplier shall continue to supply the Deployed Services in accordance with the existing terms of this Contract as if the proposed Contract Change did not apply.

125. SUPPLIER'S RIGHT OF REJECTION

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

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

125.1.2 subject to paragraph 125.2, materially and adversely impacts:

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

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

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

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

125.2 Paragraph 125.1.2 shall not permit the Supplier to reject any proposed Contract Change to the extent the Contract Change is necessary for the Authority 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).

125.3 The Supplier shall not, in any event and without limitation to paragraph 125.2, be entitled to reject any Authority 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 Authority 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 Supplier by the Authority that this verification process has been conducted) coverage plans and/or to ensure compliance with Law.

125.4 If the circumstances of de-scoping described in paragraph 125.3 above apply, the Parties shall work together to ensure the Deployed Services, Speed and Coverage Template, Milestone Payments table, Project Model and other relevant Contract components are correspondingly amended to reasonably reflect the de-scoping (including ensuring the Supplier is compensated for any wasted or stranded costs of the Supplier which would result from the de-scoping, on a basis consistent with the principles set out in paragraph 125.6 below). Where an Authority Change Request directs a de-scope of part of the Network, if required by the Authority the Supplier 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.

125.5 It is acknowledged that:

- 125.5.1 a requirement to cease work pursuant to paragraphs 125.3 and 125.4 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;
 - 125.5.2 the de-scoped part of the Network shall be removed from the scope of the corresponding Milestone(s) and the Supplier 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;
 - 125.5.3 the Authority shall reasonably consult with the Supplier 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 Authority 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).
- 125.6 Where a de-scoping is required pursuant to the above provisions of this paragraph 125, as part of the corresponding Contract Change the following cost principles shall be applied regarding the Supplier recovering wasted or stranded costs arising from that de-scoping:
- 125.6.1 As a result of another operator's coverage plans (save where also falling within paragraph 125.6.2 - the Authority shall pay the Supplier's wasted or stranded costs;
 - 125.6.2 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 Authority. The Supplier may only claim such wasted or stranded costs:
- 125.6.3 provided the costs were incurred within the parameters of paragraph 5.4;
 - 125.6.4 where they are evidenced on the same basis as Milestone Payment Claims; and
 - 125.6.5 provided the Supplier has used its reasonable endeavours to mitigate such costs.

126. 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.

127. COSTS

- 127.1 Subject to:
 - 127.1.1 those costs for preparation of a Change Impact Assessment payable by the Authority pursuant to paragraph 122.4 (which is itself subject to paragraph 122.6.2); and

127.1.2 paragraph 127.2,

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.

127.2 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.

128. 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.

129. PROGRAMME RELATED CHANGES

From time to time the Authority 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	
CONTRACT NO:	<i>[Please state]</i>
CHANGE NO:	<i>[Please state]</i>
DESCRIPTION OF THE PROPOSED CHANGE: <i>[Please state]</i>	
FAST-TRACK PROPOSED IN RELATION TO CHANGE?	<i>[Yes/No]</i>
PRELIMINARY CHANGE ASSESSMENT TO BE PROVIDED?	<i>[Yes/No]</i>
PROPOSED DATE FOR CHANGE:	<i>[Please state]</i>
SUBMITTED TO:	<i>[Please state]</i>
REQUESTING PARTY:	<i>[Please state]</i>
SIGNED:	
NAME:	<i>[Please state]</i>
DATE:	<i>[Please state]</i>

PART 2: CHANGE IMPACT ASSESSMENT

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

PART 3: CHANGE AUTHORISATION

CHANGE AUTHORISATION	
CONTRACT NO:	<i>[Please state]</i>
CHANGE NO:	<i>[Please state]</i>
ON BEHALF OF THE SUPPLIER	
SIGNED:	
NAME:	<i>[Please state]</i>
DATE:	<i>[Please state]</i>
ON BEHALF OF THE AUTHORITY	
SIGNED:	
NAME:	<i>[Please state]</i>
DATE:	<i>[Please state]</i>

SCHEDULE 6.3
DISPUTE RESOLUTION 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
1.3	22 January 2019	Contract finalisation version

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SCHEDULE 6.3 – DISPUTE RESOLUTION PROCEDURE

130. BACKGROUND

This Schedule 6.3 sets out the Dispute Resolution Procedure for the purpose of this Contract.

131. NOTICE OF DISPUTE

131.1 The Dispute Resolution Procedure shall commence with the service of a Notice of Dispute by either Party on the other Party (with a copy provided to the Programme Authority).

131.2 The Notice of Dispute shall:

131.2.1 set out the material particulars of the Dispute;

131.2.2 set out the reasons why the Party serving the Notice of Dispute believes that the Dispute has arisen;

131.2.3 subject to paragraph 131.6, elect whether the Dispute should be dealt with under the Standard Dispute Resolution Timetable or the Expedited Dispute Resolution Timetable; and

131.2.4 if the Party serving the Notice of Dispute believes that the Dispute should be dealt with under the Expedited Dispute Resolution Timetable, explain the reason why.

131.3 Unless agreed otherwise in writing, the Parties shall continue to comply with their respective obligations under this Contract regardless of the nature of the Dispute and notwithstanding the referral of the Dispute to the Dispute Resolution Procedure.

131.4 Subject to paragraph 132.5, the Parties shall seek to resolve Disputes firstly by commercial negotiation (in accordance with paragraph 132), then by mediation (in accordance with paragraph 133) and lastly, subject to Paragraph 133.11, by recourse to litigation.

131.5 The time periods set out in the Dispute Resolution Timetable shall apply to all Disputes unless the Parties agree that an alternative timetable should apply in respect of a specific Dispute.

131.6 The Parties may only agree to use the Expedited Dispute Resolution Timetable in exceptional circumstances where the use of the Standard Dispute Resolution Timetable would be unreasonable, including (by way of example) where one Party would be materially disadvantaged by a delay in resolving the Dispute. If the Parties are unable to reach agreement on the use of the Expedited Dispute Resolution Timetable within five (5) Working Days of the issue of the Notice of Dispute then the use of this timetable shall be at the sole discretion of the Authority.

131.7 If at any point it becomes clear that an applicable deadline set out in the Dispute Resolution Timetable cannot be met or has passed, the Parties may agree in writing to extend the deadline. Any agreed extension shall have the effect of delaying the start of the subsequent stages set out in the Dispute Resolution Timetable by the period agreed in the extension.

132. COMMERCIAL NEGOTIATIONS

132.1 Subject to paragraph 132.5, the Parties shall use all reasonable endeavours to settle any Dispute between them as soon as possible through commercial negotiation

conducted in good faith and in accordance with the procedure set out in this paragraph 132.

132.2 The Parties shall refer the Dispute to the Level 1 representatives set out in the table below, who shall meet as soon as practicable after the service of the Notice of Dispute but in any event within ten (10) Working Days.

132.3 If the Dispute cannot be resolved by the Level 1 representatives within the relevant time period specified in the Dispute Resolution Timetable, or within any other period agreed by the Parties, the Dispute shall be referred to the Level 2 representatives set out in the table below for resolution, who shall meet within five (5) Working Days after such referral, or such other period as the Parties may agree, in order to attempt to resolve the Dispute.

Level	For the Authority	For the Supplier
Level 1	Programme Director	Director NGA East
Level 2	Executive Director of Community and Environmental Services	Director NGA

132.4 Any resolution reached during commercial negotiations shall not be legally binding until it has been documented in writing and signed by, or on behalf of, the Parties and in accordance with the Change Control Procedure where changes to this Contract are required.

132.5 If either Party is of the reasonable opinion that the resolution of a Dispute by commercial negotiation, or the continuance of commercial negotiations, shall not result in an appropriate solution or that the Parties have already held discussions of a nature and intent (or otherwise conducted in the spirit) that would equate to the conduct of commercial negotiations in accordance with this paragraph 132, that Party shall serve a written notice to that effect and the Parties shall proceed to mediation in accordance with paragraph 133.

133. MEDIATION

133.1 In the event that a Dispute between the Parties cannot be resolved by commercial negotiation in accordance with paragraph 132 the Parties shall attempt to resolve it in accordance with CEDR's model mediation procedure.

133.2 If the Parties are unable to agree on the joint appointment of a Mediator within the timescale specified in the applicable section of the Dispute Resolution Timetable, they shall make a joint application to CEDR to nominate the Mediator.

133.3 The Parties shall use all reasonable endeavours to ensure that the Mediator, after consultation with the Parties where appropriate, shall:

133.3.1 attend any meetings with either or both of the Parties preceding the mediation, if requested or if the Mediator decides this is appropriate and the Parties agree;

133.3.2 read before the mediation each Case Summary and all the documents sent to him;

133.3.3 chair, and determine the procedure for the mediation;

133.3.4 assist the Parties in drawing up any written settlement agreement; and

133.3.5 abide by the terms of CEDR's model mediation procedure and CEDR's code of conduct for mediators.

133.4 The Parties shall ensure that the Mediator (and any member of the Mediator's firm or company) shall not act for either of the Parties individually in connection with the Dispute in any capacity during the Term. The Parties accept that in relation to the Dispute neither the Mediator nor CEDR is an agent of, or acting in any capacity for, any of the Parties. Furthermore, the Parties and the Mediator accept that the Mediator (unless an employee of CEDR) is acting as an independent contractor and not as an agent or employee of CEDR.

133.5 **CEDR**

133.5.1 The parties shall ensure that CEDR, in conjunction with the Mediator, shall make the necessary arrangements for the mediation including, as necessary:

- (a) nominating, and obtaining the agreement of the Parties to, the Mediator;
- (b) organising a suitable venue and dates;
- (c) organising exchange of the Case Summaries and documents;
- (d) meeting with either or both of the Parties (and the Mediator if appointed), either together or separately, to discuss any matters or concerns relating to the mediation; and
- (e) general administration in relation to the mediation.

133.5.2 If there is any issue about the conduct of the mediation upon which the Parties cannot agree within a reasonable time, CEDR shall, at the request of either Party, decide the issue for the Parties, having consulted with them.

133.5.3 The Parties agree to notify the Mediator that they wish to observe the relevant timescales agreed in the Dispute Resolution Timetable.

133.6 **Participants**

133.6.1 Each Party shall state the names of:

- (a) the person(s) who shall be the lead negotiator(s) for that Party, who must have full authority to settle the Dispute for the purpose of the Mediation; and
- (b) any other person(s) (such as professional advisers, colleagues or subcontractors) who shall also be present at, and/or participating in, the mediation on that Party's behalf.

133.7 **Exchange of Information**

133.7.1 Each Party shall send to CEDR at least two (2) weeks before the mediation, or such other date as may be agreed between the Parties and CEDR, sufficient copies of:

- (a) its Case Summary; and
- (b) all the documents to which the Case Summary refers and any others to which it may want to refer in the mediation.

133.7.2 In addition, each Party may send to the Mediator (through CEDR) and/or bring to the mediation further documentation which it wishes to disclose in confidence to the Mediator but not to any other Party, clearly stating in writing that such documentation is confidential to the Mediator and CEDR.

133.7.3 The Parties shall procure that the Mediator shall be responsible for sending a copy of each Party's Case Summary and supporting documents (pursuant to paragraph 133.7.1) to the other simultaneously.

133.7.4 The Parties shall endeavour to agree:

- (a) the maximum number of pages of each Case Summary; and
- (b) a joint set of supporting documents or the maximum length of each set of supporting documents.

133.8 **The Mediation**

133.8.1 The mediation shall take place at the time and place arranged by CEDR. The Parties agree to request that CEDR arrange the time and place for the mediation within the timescale specified in the applicable section of the Dispute Resolution Timetable. If the mediation cannot be arranged within the relevant timescale the Parties shall treat the delay as though they had agreed an extension to the Dispute Resolution Timetable in accordance with paragraph 131.7.

133.8.2 The Parties shall procure that the Mediator shall chair, and determine the procedure at, the mediation.

133.8.3 No recording or transcript of the mediation shall be made.

133.8.4 The Parties agree to notify CEDR that the maximum duration for the mediation meeting shall be as set out in the applicable section of the Dispute Resolution Timetable.

133.9 **Settlement Agreement**

Any settlement reached in the mediation shall not be legally binding until it has been reduced to writing and signed by, or on behalf of, the Parties and in accordance with the Change Control Procedure where changes are required to this Contract. In any event any settlement agreement must be finalised within the timescales specified in the Dispute Resolution Timetable unless the Parties agree an extension to the Dispute Resolution Timetable in accordance with paragraph 131.7 or the timetable is otherwise extended by operation of paragraph 133.8.1. The Parties shall procure that the Mediator shall assist the Parties in recording the outcome of the mediation.

133.10 **Termination**

133.10.1 The mediation shall terminate when:

- (a) a Party withdraws from the mediation;
- (b) a written settlement agreement is concluded;
- (c) the Mediator decides that continuing the mediation is unlikely to result in a settlement; or
- (d) the Mediator decides he should retire for any of the reasons in CEDR's code of conduct.

133.11 No Stay of Proceedings

Any litigation or arbitration in relation to the Dispute may be commenced or continued notwithstanding the mediation unless the Parties agree otherwise or a court so orders.

133.12 Confidentiality

133.12.1 The Parties shall ensure that every person involved in the mediation shall keep confidential and not use for any collateral or ulterior purpose:

- (a) information that the mediation is to take place or has taken place, other than to inform a court dealing with any litigation relating to the Dispute of that information; and
- (b) all information (whether given orally, in writing or otherwise) arising out of, or in connection with, the mediation including the fact of any settlement and its terms.

133.12.2 All information (whether oral or documentary and on any media) arising out of, or in connection with, the mediation shall be without prejudice, privileged and not admissible as evidence or disclosable in any current or subsequent litigation or other proceedings whatsoever. This does not apply to any information, which would have been admissible or disclosable in any such proceedings but for its use in the mediation.

133.12.3 Paragraphs 133.12.1 and 133.12.2 shall not apply insofar as any such information is necessary to implement and enforce any settlement agreement arising out of the mediation.

133.12.4 Neither Party to the mediation shall call the Mediator or CEDR (or any employee, consultant, officer or representative of CEDR) as a witness, consultant, arbitrator or expert in any litigation or other proceedings whatsoever. The Parties shall procure that the Mediator and CEDR shall not voluntarily act in any such capacity without the written agreement of the Parties.

133.13 Mediator's fees and expenses

133.13.1 CEDR's fees (which include the Mediator's fees) and the other expenses of the mediation shall be borne equally by the Parties. Payment of these fees and expenses shall be made to CEDR in accordance with its fee schedule and terms and conditions of business.

133.13.2 Each Party shall bear its own costs and expenses of its participation in the mediation.

133.14 Exclusion of Liability

Neither the Mediator nor CEDR shall be liable to the Parties for any act or omission in connection with the services provided by them in, or in relation to, the mediation, unless the act or omission is shown to have been in bad faith.

134. NOT USED

135. URGENT RELIEF

Nothing in this Schedule 6.3 shall prevent either Party from seeking injunctive relief at any time.

APPENDIX – DISPUTE RESOLUTION TIMETABLE

Disputes shall be escalated in accordance with the following timetable:

Stage	Standard Dispute Resolution Timetable	Expedited Dispute Resolution Timetable
Time permitted for resolution of the Dispute by the Level 1 representatives pursuant to paragraph 132.2 of this Schedule 6.3 from the date of reference to them	Ten (10) Working Days	Three (3) Working Days
Time permitted for resolution of the Dispute by the Level 2 representatives pursuant to paragraph 132.3 of this Schedule 6.3 from the date of reference to them	15 Working Days	Five (5) Working Days
Period of time in which Dispute is to be referred to mediation in accordance with paragraph 133.1 of this Schedule 6.3 from the date of the expiry of the period set out immediately above	Ten (10) Working Days	Five (5) Working Days
Period of time permitted in paragraph 133.2 of this Schedule 6.3 to agree the appointment of the Mediator	Ten (10) Working Days	Five (5) Working Days
Period of time in which Mediator may convene the mediation meeting from the date of appointment in accordance with paragraph 133.8.1 of this Schedule 6.3	30 Working Days	20 Working Days
Maximum duration of mediation meeting in accordance with paragraph 133.8.4 of this Schedule 6.3	Three (3) Working Days	One (1) Working Day
Period of time in which the mediation settlement is to be recorded in writing and signed by the Parties in accordance with paragraph 133.9 of this Schedule 6.3	Ten (10) Working Days	Five (5) Working Days

SCHEDULE 6.4
REPORTS

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
0.3	25 October 2016	Uplifted following local body and supplier feedback
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SCHEDULE 6.4 – REPORTS

136. BACKGROUND

This Schedule 6.4 contains details of the reports that shall be provided by the Supplier in accordance with Clause 37.

137. REPORT TEMPLATES

The Authority may, acting reasonably, issue templates (together with periodic template updates) which shall be used by the Supplier in providing the reports.

138. TIMING OF REPORTING

For those reports to be provided on a month / quarter / year (as specified) basis, the Supplier shall deliver all reports to the Authority no later than 20 Working Days after the end of the corresponding month / quarter / year for which they are due. Other reports shall be delivered on their corresponding specified delivery date in this Agreement.

139. PROGRAMME AUTHORITY AS RECIPIENT

The reports shall also be provided by the Supplier to the Programme Authority within the timescales noted in paragraph 138 of this Schedule.

140. REPORTS

ID	Report Name	Description	Frequency and Coverage Period	Start Date (provision of first report)
C1	Build & Roll-Out Report	Report providing detail for the Coverage Area in respect of: <ul style="list-style-type: none"> - The Solution Component being deployed - Network Deployment by Network sub-component (built and to be built) - Identifying the number of End User Premises per Structure - Details of survey work undertaken, by Phase - Local authority planning requests - Implementation progress report (including details of NGA, Ultrafast Broadband and Gigabit Broadband geographic coverage achieved against plan) - 'Snagging' report – highlight any significant issues with Network Deployment - Milestone testing and achievement - Summary of design and implementation changes during period 	Quarterly	First Quarter end after the Effective Date
C2	Build Forecast report (3 month build plan)	Report identifying the key Network survey, build, commission, test, launch and operate activities that are planned in the next three (3) months, cross-referenced to the Project Plan Note: Can be incorporated within C1 report.	Quarterly	First Quarter end after the Effective Date
C3	Customer Take-up and Access Requests report	Report that identifies: <ul style="list-style-type: none"> - "Retail-Ready" Wholesale Access Products and Services availability (by End User Premise and by Structure, including upload and download speeds, UPRN data (or other identification data agreed by the Authority)) reconciled to the SCT - Which End User Premises are serviced by which Structures - Names of RSPs offering retail services - Total new active NGA, Ultrafast Broadband and Gigabit Broadband wholesale connections - Total cancelling NGA, Ultrafast Broadband and Gigabit Broadband wholesale connections 	Quarterly	From Achievement of first Milestone 2 (Availability of Wholesale Access Products and Services)

		<ul style="list-style-type: none"> - Total numbers of active NGA, Ultrafast Broadband and Gigabit Broadband wholesale connections - Superfast Broadband connections delivered during the quarter and cumulative, measured at 24 Mbps and above: <ul style="list-style-type: none"> • Split by End User Premise • Split by business & residential (using the classification by the Authority in the reference data tab of the SCT) • Split by Solution Component • Wholesale Access Products and Services type - Take-up of other Wholesale Access Products and Services split by: <ul style="list-style-type: none"> • Wholesale Access Products and Services (non-passive) • Wholesale Passive Products - Access requests made by access seekers split by: <ul style="list-style-type: none"> • Summary of all access requests received • Number of access requests granted and declined • Basis and rationale for granting or declining each access request 		
C4	Marketing Report	<p>Report that identifies:</p> <ul style="list-style-type: none"> - Marketing activities undertaken by the Supplier within the reporting period, and planned marketing activities for next three months consistent with the agreed Marketing Strategy 	Quarterly	First quarter end after Effective Date
C5	Service Requirements Report	<p>Report that identifies performance against the Service Requirements and Supplier Solution, with respect to:</p> <ul style="list-style-type: none"> - Access Line Speed - Busy Hour Committed Rate - Upload speed - Structures at capacity (number of Structures unable to take new orders due to capacity issues by length of time at full capacity by month, identification of those Structures at capacity that are causing Service Levels to be exceeded (along with timescales to add additional capacity)) - The Service Levels, to enable identification of Service Level compliance and to provide such further granularity concerning 	Quarterly	From Achievement of first Milestone 2 (Availability of Wholesale Access Products and Services)

		<p>performance as committed to within the Supplier Solution, including:</p> <ul style="list-style-type: none"> • Network availability • Trouble to Resolve time – by age • Provisioning order installation timescale – by age <p>- Service failure compensation (number and value of compensation paid for failed T2R, L2C)</p>		
C6	Financial Report	<p>Report demonstrating Supplier expenditure on all NGA Network Build Costs incurred (per quarter and with a cumulative summary) broken down by:</p> <ul style="list-style-type: none"> - Qualifying Capital Expenditure (as compared to the Project Model) - Qualifying Operating Expenditure (as compared to the Project Model) - With such QCE and QOE expenditure further broken down by: <ul style="list-style-type: none"> • Solution sub component (as compared to the Project Model) • Achieved Milestones • Future Milestones - Time based costs claimed in the quarter including PMO (as compared to the Project Model) - Subsidy Payments claimed in the quarter (with a cumulative summary) (as compared to the Project Model) - Actual Supplier NGA Network Build Investment for the purpose of calculating the Outturn Investment Ratio (as defined in Schedule 5.1) - A summary of evidence, in accordance with Schedule 5.1, provided by the Supplier to support Qualifying Capital Expenditure and Qualifying Operating expenditure claimed for Achieved milestones - A comparison of forecast NGA Network Build Cost in Project Model against the latest Supplier forecast of anticipated actual NGA Network Build Cost based on current status and information 	Quarterly	Claim for first Milestone Payment
C7	State aid Report	<ul style="list-style-type: none"> - State aid leverage (i.e. % of project funding coming from state aided sources) 	One-off report covering entirety of implementation	Within 20 Working Days of the date of the implementation

		- "Asset Re-use" information (i.e. where existing assets are being leveraged)		Milestone Completion Certificate
C8	SME Inclusion	Report to monitor SME supply chain inclusion: <ul style="list-style-type: none"> - identification of SMEs within the project supply chain and the number of these located within the Authority's administrative area - % of total contract value flowing down to SMEs in the supply chain - % of allocated public funds flowing down to SMEs in the supply chain - number of new sub-contractor opportunities arising in previous quarter, and where these were advertised (e.g. "Contracts Finder" website) 	Quarterly	First quarter end after Effective Date
C9	Milestone Achievement Progress Report	As described in Schedule 4.1 (Implementation) paragraph 6	See Schedule 4.1 para. 6	See Schedule 4.1 para. 6
C10	Project Accounts	Copy of the Project Accounts with an accompanying short narrative report in accordance with Schedule 5.1	Annual	First anniversary of the Effective Date
C11	Wholesale Access Prices Benchmarking Report	As described in Schedule 5.2 (Wholesale Access Pricing)	See Schedule 5.2	See Schedule 5.2

SCHEDULE 6.5
REMEDIAL PLAN PROCESS

VERSION CONTROL

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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 6.5 – REMEDIAL PLAN PROCESS

141. BACKGROUND

This Schedule 6.5 sets out the Remedial Plan Process which the Supplier shall comply with in accordance with Clause 38.

142. REMEDIAL PLAN PROCESS

142.1 General

142.1.1 If:

- (a) the Supplier is required to comply with the Remedial Plan Process in accordance with the terms of this Contract; and
- (b) a Remedial Plan has not yet been agreed by the Parties in accordance with this Schedule 6.5,

then to the extent that any problems which have triggered the Remedial Plan Process may (in the reasonable opinion of the Authority) have a material impact upon the Authority, the Supplier shall upon reasonable notice provided by the Authority advise the Authority of the status of the remedial efforts being undertaken with respect to such problems.

142.2 Remedial Plan

142.2.1 The Supplier shall provide the Authority with a draft Remedial Plan without delay (even, where relevant, if the Supplier disputes whether or not it has committed a Default) and in any event no later than five (5) Working Days (or such other period as the Parties may agree):

- (a) where this Contract requires service of a notice, after the notice provided by the Authority requiring the Supplier to initiate the Remedial Plan Process; or
- (b) after the relevant circumstance giving rise to the Supplier's obligation to comply with the Remedial Plan Process has occurred.

142.2.2 The Supplier shall ensure that each Remedial Plan:

- (a) specifies the steps that the Supplier proposes to take to remedy or to avoid the relevant Default (including actions and timings); and
- (b) is in sufficient detail for it to be properly evaluated by the Authority.

142.2.3 If the Authority considers that a draft Remedial Plan provided by the Supplier under paragraph 142.2.1 is:

- (a) insufficiently detailed to be properly evaluated;
- (b) will take too long to complete; and/or
- (c) will not remedy the relevant Default or address sufficiently the issues it is aimed at addressing,

the Authority may at its sole discretion either agree a further time period for the development and agreement of the Remedial Plan or escalate any issues with the draft Remedial Plan using the Dispute Resolution Procedure. Where

the Authority agrees a further time period for the development and agreement of the Remedial Plan, the Supplier shall within the relevant time period produce such revised drafts of the Remedial Plan as the Authority may require and shall take into account in the Remedial Plan any reasonable comments by the Authority, so as to address the issues set out in paragraphs 142.2.3(a), (b) and/or (c) (as applicable).

142.2.4 The Supplier shall comply with a Remedial Plan following its agreement by the Parties.

142.2.5 The Supplier shall provide to the Authority, in accordance with the relevant timescales agreed in each Remedial Plan:

- (a) regular updates on the implementation of the Remedial Plan; and
- (b) evidence, either documentary or demonstrative as the Authority may reasonably require, of the implementation of the Remedial Plan.

142.3 **Failure to Agree or Implement Remedial Plan**

142.3.1 If the Remedial Plan cannot be agreed (each Party acting reasonably) within the relevant time period agreed or by operation of the Dispute Resolution Procedure under paragraph 142.2.3, the Authority may elect to end the Remedial Plan Process at the end of the relevant time period or the Dispute Resolution Procedure (as applicable) and serve notice to terminate this Contract in accordance with Clause 61.1.1(b) and this Contract shall terminate on the date specified by the Authority in the termination notice.

142.3.2 If a Remedial Plan is agreed between the Parties but the Supplier fails to implement the Remedial Plan in accordance with its terms then the Authority may, at its sole discretion:

- (a) give the Supplier a further opportunity to resume full implementation of the Remedial Plan (in accordance with such timescales as the Authority may reasonably require); or
- (b) escalate any issues arising out of the failure to implement the Remedial Plan using the Dispute Resolution Procedure.

142.3.3 If the reasons for the Supplier's failure to implement the Remedial Plan have not been resolved despite the use of the Dispute Resolution Procedure in accordance with paragraphs 142.2.3 or 142.3.2, and the Supplier has not otherwise remedied the Default which gave rise to the Remedial Plan then the Authority may serve notice to terminate this Contract in accordance with Clause 61.1.1(b) and this Contract shall terminate on the date specified by the Authority in that notice.

142.4 **No Obligation to Follow Remedial Plan Process**

142.4.1 The Authority shall not be obliged to follow the Remedial Plan Process (and the relevant Default shall be deemed irremediable) where a Default giving rise to compliance with the Remedial Plan Process in accordance with this Contract arises if:

- (a) a Remedial Plan has previously been implemented in respect of the relevant Default but the Supplier failed to remedy the Default by those means; or

there is an occurrence of substantially the same Default within a period of three (3) months following the completion of any previous Reme