

DATED 7th February **2022**

THE SECRETARY OF STATE FOR (1)
DEFENCE

AND

BRITISH TELECOMMUNICATIONS PLC (2)

Relating to

the site for the delivery of services at RAF
Brize Norton, Carterton, Oxfordshire
OX18 6LX

THIS AGREEMENT IS MADE BETWEEN:

- (1) **The Secretary of State for Defence** c/o Defence Infrastructure Organisation Land Management Services, Room F16, Leyburn Road, Piave Lines, Catterick, DL9 3LR (**"the Grantor"**); and
- (2) **BRITISH TELECOMMUNICATIONS PLC** (incorporated and registered in England and Wales under company registration number **01800000** the registered office of which is **81 Newgate Street, London, EC1A 7AJ** (**"the Company"**); and

RECITALS

- (A) This Agreement is made pursuant to Part 2 of the Code (as defined in clause 1).
- (B) The Company benefits from powers under the Code.

IT IS AGREED AS FOLLOWS:

1 Definitions and Interpretations

- 1.1 In this Agreement (unless the context otherwise requires) the following words have the following meanings:

"Act" means the Communications Act 2003;

"BT Equipment" means any equipment and any related Software that BT owns or that is licensed to BT and that BT uses to provide the Trial Service. BT equipment may also be referred to as **Permitted Apparatus**, such equipment that the Grantor will permit on its premises.

"BT Group" means BT Group plc and its Affiliates.

"BT Network" means the communications network owned or leased by BT and used to provide the Trial Service.

"Business Day" means any day generally seen locally in the place where a Trial Service is provided as a working day and excluding national, public and bank holidays. If one of us is supposed to do something on a day that is not a Business Day, then they will need to do it on the next Business Day.

"Claim" means any legal claims, actions or proceedings against one of us, whether threatened or actual, whether by a third party or the other party to this Contract.

"Compliance Obligations" mean those provisions, obligations and rights set out under the drop-down heading 'Compliance Obligations' at www.globalservices.bt.com/uk/en/footer_links/terms (or any other online address that BT may advise you).

"Confidential Information" means confidential information either of us (or each of our officers, employees, agents, subcontractors, suppliers, advisers or Affiliates) gives the other after the date of the Contract, no matter how it is recorded, stored or disclosed and includes:

- i. the Contract;

- ii. information about technical or commercial know-how, specifications, inventions, processes or initiatives; or
 - iii. any information a reasonable business person would see as confidential about:
 - 1. the operations, processes, product information, know-how, designs, trade secrets or software of either of us or our Affiliates,
- but it does not include:
- iv. information that is available to the public, or becomes available, unless it is because one of us breaches the Contract;
 - v. information that was already available on a non-confidential basis;
 - vi. information we both agree in writing is not confidential information; or
 - vii. information that was developed by or for the receiving party independently of the information disclosed by whoever disclosed it.

“Contract” means the agreement between the MOD and BT that is made up of these Trial General Terms, the Schedule, the SOW and the Cover Page.

“Code” Means the Electronic Communications Code contained in Schedule 3A to the Act;

“Customers” means any tenant and/or undertenant(s) and/or lawful occupiers of the Property which have a contract for any Electronic Communications Service with the Company and/or with any Group Company;

“Contractual Period” means a period of three years from the date of this Agreement;

“Data Protection Legislation” means collectively (i) any applicable laws of the European Union, (ii) any applicable local laws relating to the Processing of Personal Data and the protection of an individual’s privacy, (iii) the GDPR, and (iv) any binding guidance or code of practice issued by a Supervisory Authority.

“Effective Date” has the meaning given to it on the cover sheet of this Contract.

“Electronic Communications Apparatus” has the meaning given to it by Paragraph 5 of Part 1 of the Code;

“Electronic Communications Service” means an electronic communications service as defined in section 32 of the Act and as listed in Schedule 2 of this Agreement;

“Force Majeure Event” means any event that neither of us can control and that stops or delays one of us from doing something, including:

- I. natural event including a flood, a storm, lightning, a drought, an earthquake, seismic activity;
- II. an epidemic or a pandemic;
- III. a terrorist attack, civil war, civil commotion or riots, war, the threat of war, preparation for war, an armed conflict, an imposition of sanctions, an embargo or a breaking-off of diplomatic relations;
- IV. any law made or any action taken by a government or public authority, including not granting or revoking a licence or a consent;
- V. collapsing buildings, a fire, explosion or accident; or any labour or trade dispute, a strike, industrial action or lockouts.

“GDPR” means the General Data Protection Regulation (EU) 2016/679 and any amendment or replacement to it, (including any corresponding or equivalent national law or regulation that implements the GDPR).

“Group Company” means any company that is a member of the same group as the Company within the meaning of section 42 of the Landlord and Tenant Act 1954;

“Intellectual Property Rights” means any trademark, service mark, trade and business name, patent, petty patent, copyright, database right, design right, community design right, semiconductor topography right, registered design, right in Confidential Information, internet domain name, moral right and know-how, or any similar right in any part of the world. Any applications for registering any of these rights that can be registered in any part of the world are also included.

“Maintenance” means any work on the BT Network or Trial Service, including to maintain, repair or improve the performance of the BT Network or the Trial Service.

“Notice” means any notice to be given by one of us to the other under the Contract.

“Operational Land” means the part of the Property which comprises a strip one metre or thereabouts in width running over and to either side of the Permitted Apparatus;

“Operator” means any person in whose case the Code is applied by a direction under section 106 of the Act;

“Permitted Use” means the research and development trial and provision of Electronic Communications Service to the Property for the benefit of the Customers;

“Plan(s)” means the plans drawings and specifications referred to and annexed in Schedule 2;

“Property” means the property described in Part 1 of Schedule 1 and includes each and every part of it;

“Requirements” means the minimum requirements of the Permitted Apparatus as more particularly detailed at Schedule 4;

“Service Levels” means the service levels set out at Schedule 5;

“Service Specification” means the specification of the Permitted Apparatus set out at Schedule 3 which shall at all times be in compliance with the Requirements.

“Site” Refers to RAF Brize Norton.

“Trial Period” has the meaning given to it in the Schedule or SOW.

“Trial Service” means the service that BT provides under the Contract as set further described in the Schedule or SOW. If relevant, it includes a part or component of the Trial Service.

“Works” means any works to the Property necessary to install, use, keep, operate, maintain, repair, substitute renew, adjust, alter and remove the Permitted Apparatus, including any works to upgrade under clause 8 or works under any other provision of this Agreement and including any works of alteration, adjustment or addition made to the Permitted Apparatus which fall within upgrade substitution or maintenance works.

- 1.2 Reference to any statute statutory provision or other legislation includes a reference to the statute statutory provision or other legislation as from time to time amended, extended or re-enacted.

- 1.3 Reference to a clause, paragraph or schedule is to a clause or paragraph of or a schedule to this Agreement and a reference to this Agreement includes its schedules.
- 1.4 Any words following the terms “include” and “including” or any similar expression shall be interpreted as illustrative and shall not limit the sense of the words preceding those terms.
- 1.5 Obligations owed by or to more than one person are owed by or to them jointly and severally.
- 1.6 Words in the singular include the plural and vice versa.
- 1.7 Words importing the masculine gender only shall include the feminine and neuter genders and words denoting natural persons shall include companies and corporations and vice versa.

2 Rights of the Company

Subject to the express written approval of the Grantor to the Company for the erection of the Permitted Apparatus at an agreed location(s) at the Property, such Agreement being subject to i) a prior site inspection to establish suitability of any location at the Property; and ii) the attainment of prior planning permission from the local authority (as applicable) in accordance with Schedule 1 of this Agreement, the Company, and its duly authorised agents, shall be entitled during the Contractual Period:

- 2.1 to inspect locations at the Property that may be suitable to install the Permitted Apparatus and comply with all environmental regulations and legislation including the Control of Asbestos Regulations 2012;
- 2.2 to review any registers undertake risk assessments and/or property surveys carried out or sponsored by the Grantor identifying any risks including hazardous materials and latent defects in the infrastructure when installing the Permitted Apparatus at a location at the Property while complying with all environmental regulations and legislation including the Control of Asbestos Regulations 2012;
- 2.3 for the purpose of the Permitted Use only, to install, use, keep, operate, and where reasonably necessary inspect, maintain, repair, substitute, renew and (by way of substitution or on a like for like basis) adjust and alter and upgrade under clause 8 and remove the Permitted Apparatus in, on, under or over the Property;
- 2.4 for the purpose of clause 2.1 where reasonably necessary to enter into and upon the Property at reasonable times giving the Grantor prior reasonable notice which shall be no less than seven days (except in the case of emergency where as much notice as is reasonably practicable shall be given) with or without workmen, vehicles (where appropriate), plant equipment or machinery to carry out any Works subject to the Company complying with the Grantor's reasonable terms and arrangements (including any reasonable charges for vetting personnel, administration, supervision, accompaniment and attendance) from time to time applicable to the Company's access to the Property (“the Access Policy”) to comply with:
 - 2.4.1 The Grantor's own objectives on operations;
 - 2.4.2 Any programme of works on the Site;
 - 2.4.3 safety and security;

it being acknowledged that the Grantor will regularly set and review its Access Policy and reserves the right to make reasonable alterations to the Access Policy from time to time by notice to the Company and references to the Access Policy mean the Access Policy as so varied or supplemented from time to time; and

- 2.5 to use the Permitted Apparatus for the purpose of the Permitted Use only, for a period continuing until this Agreement is terminated pursuant to clause 6.
- 2.6 The installation of the Permitted Apparatus shall be conducted at the Company's sole and exclusive cost and risk. In the event that the Agreement is terminated under clause 6.1 or 6.2, the Grantor bears no financial or other liability for any costs incurred by the Company in installing the equipment.
- 2.7 Nothing in the Contract excludes or limits the liability of either of us for:
 - i. death or personal injury caused by either of us being negligent;
 - ii. fraud or fraudulent misrepresentation; or
 - iii. any other liability that cannot be excluded or limited under Applicable Law.
- 2.8 Other than for those matters set out in Clause 2.7, neither of us will be held liable, regardless of how that liability arose, under or in connection with the Contract, and whether in contract, tort (including negligence or breach of statutory duty), misrepresentation (whether innocent or negligent), restitution, or in any other way, for:
 - (A) any of the following losses, no matter if those losses are direct or indirect:
 - i. loss of profit, revenue or anticipated savings;
 - ii. loss of business or contracts;
 - iii. loss of goodwill;
 - iv. loss from wasted expenditure, wasted time or business interruption;
 - v. loss, destruction or corruption of data;
 - vi. liability to any third parties unless a Clause in the Contract says something different; and
 - vii. any special, indirect or consequential loss or damage.
 - b. Other than for those matters set out in 12.1-12.2 the total liability of each of us, regardless of how that liability arose, and regardless of the number of claims, under or in connection with the Contract, and whether in contract, tort (including negligence or breach of statutory duty), misrepresentation (whether innocent or negligent), restitution, or in any other way, will be limited to the greater of:
 - i. £100,000 (ONE Hundred Thousand); and
 - ii. **Except as** otherwise agreed, the total aggregate liability of either Party to the other Party arising out of this Agreement shall be limited to the £100,000. Such liability cap amount does not alter each Party's insurance obligations under the insurance obligations in this contract.

3 The Company's Obligations

Subject to the satisfaction of the preconditions set out at Clause 2, the Company undertakes with the Grantor to:

- 3.1 pay the Grantor a sum of £1, the receipt of which is acknowledged by the Grantor;
- 3.2 ensure that the Permitted Apparatus meets the Service Specification at all times;
- 3.3 ensure that the Permitted Apparatus meets the Requirements at all times;
- 3.4 maintain the Service Levels during the Contractual Period;
- 3.5 The Grantor will make available to the Company the 'Asbestos Register' for the Site six weeks ahead of planned installation works at the Site.
- 3.6 take into account all risks at the Site as identified by the Company or disclosed by the Grantor to ensure that the Permitted Apparatus is installed, maintained and uninstalled safely;
- 3.7 where defects or hazards in the Site are identified or made known to the Company, to consider possible alternative locations to install the Permitted Apparatus;
- 3.8 to take all measures necessary in accordance with best industry standards and in accordance with applicable legal obligations, including but not limited to the Health and Safety at Work Act 1974, to ensure the safe installation, maintenance and uninstallation of the Permitted Apparatus;
- 3.9 ensure the Permitted Apparatus is securely affixed at all times;
- 3.10 carry out the Works in accordance with the Plans in a proper and workmanlike manner to the Grantor's reasonable satisfaction taking all reasonable precautions to avoid obstructions to or interference with the use of the Site or any adjoining Site and damage or injury to the Site or any structures thereon or drains or other services thereunder and so as to cause as little physical damage or legal nuisance as reasonably possible to the Grantor any tenants sub tenants or occupiers of the Property (including any Customers) or to their respective employees or property and any adjoining property and so as not at any time to interfere with or obstruct any access to or from the Property in any way which does or may materially affect the Grantor's operations without the Grantor's prior consent in writing;
- 3.11 carry out and complete the Works and use and operate the Permitted Apparatus in accordance in all respects with all relevant legislation (including Public Health England's guidance and the International Commission for Non-Ionizing Radiation Protection's guidelines in relation to Electronic Communications Apparatus, or equivalent guidance or guidelines provided by respective successor agencies);
- 3.12 install the Permitted Apparatus so as not to interfere with any normal foreseeable use of the Site as at the date of installation;
- 3.13 use best endeavours not to use any part of the Site other than the Operational Land for the carrying out of the Works save where it would be impossible not to use some part of the Site in addition to the Operational Land and for which the Grantor's prior

approval has been obtained (such approval not to be unreasonably withheld or delayed);

- 3.14 as soon as reasonably possible make good to the reasonable satisfaction of the Grantor all physical damage caused to the Site or any adjoining property arising as a result of the carrying out of the Works or any related works to which the Grantor has consented pursuant to this Agreement;
- 3.15 ensure that any underground cables are laid at least 600mm below ground level;
- 3.16 comply with the Access Policy;
- 3.17 maintain and keep the Permitted Apparatus identifiably labelled with the Company's name and/or other Operator's name and in good repair and condition and so as not to be a danger to the Grantor, or tenants or sub tenants or other occupiers of the Site or to their respective employees or property;
- 3.18 give to the Grantor not less than seven days' prior written notice (except in case of emergency works (as defined in paragraph 51(1) of the Code) where as much notice as is reasonably practicable shall be given) of its intention to enter into and upon the Site to exercise the rights granted by clause 2;
- 3.19 prior to carrying out the Works obtain from the Grantor a "permit to work" or equivalent permission or authority to carry out works and to comply with any access regulations notified in writing by the Grantor to the Company;
- 3.20 to provide Customers at the Site an 5G Radio Access Network with the characteristics and standards set out in Schedule 3;
- 3.21 to exercise the rights in clause 2 for the purpose of the Permitted Use only;
- 3.22 maintain insurance with a reputable insurance company for not less than TEN MILLION POUNDS (£10,000,000) in respect of each claim (and without limit as to the number of incidents covered) against public liability and other third party liability in connection with any injury, death, loss or damage to any persons or property belonging to any third party arising out of the exercise by the Company, its employees, agents or any person under its control of the rights hereby granted, and to provide sufficient details of such insurance to the Grantor upon request and evidence that it is in force.

4 Relocation of Permitted Apparatus

Subject to the satisfaction of the preconditions set out at Clause 2, the Grantor and the Company agree as follows:

- 4.1 Without prejudice to the provision of clauses 6.1 and 6.3 and the provisions of the Code, if the Grantor reasonably requires the relocation of the Permitted Apparatus to enable the Site or any part of them to be repaired, renewed, redeveloped, refurbished, excavated, demolished, altered, improved, added to or the use of it changed or to permit plant and machinery serving the Site to be installed or renewed or replaced, the Company will relocate the Permitted Apparatus at the Company's sole cost and within a reasonable period after receipt of the Grantor's written notice.
- 4.2 Following service of a notice under clause 4.1, the Grantor shall consult with the Company and use reasonable endeavours to find an alternative location for the Permitted Apparatus reasonably satisfactory to both parties and the Company's

reasonable requirements, which do not unduly hinder, prevent or impede or materially increase the cost of the works referred to in clause 4.1.

- 4.3 The Company shall relocate the Permitted Apparatus in a timely manner in accordance with this Agreement and as soon as reasonably practicable after an alternative location for the Permitted Apparatus has been agreed or determined even if the notice given under clause 4.1 has not expired.
- 4.4 If the Permitted Apparatus is relocated, the provisions of this Agreement will continue to apply to the Site and Permitted Apparatus in its altered location. If the Grantor requires, the Company will accept (and execute and deliver a counterpart of) a variation Agreement coming into effect on the date of the relocation of the Permitted Apparatus on the same terms, provisions and conditions as this Agreement with such amendments as required to describe the Permitted Apparatus in the altered location that has been agreed between the parties.
- 4.5 If a new variation Agreement is not required to be entered into by the Grantor under clause 4.4, the Grantor and the Company shall each sign a memorandum, which includes details of the Permitted Apparatus in its altered location, and shall each send the signed memorandum to the other party within one month of the date of the relocation of the Permitted Apparatus.
- 4.6 If the parties are unable to agree on an alternative location for the Permitted Apparatus by the expiry of the written notice given by the Grantor in accordance with clause 4.1, any party may refer the matter for determination under clause 9.

5 Interference

If it is demonstrated by the Grantor that the Permitted Apparatus is interfering (electronically, electromagnetically or otherwise) with the operation of other equipment now or at any time after the date of this Agreement installed at the Site, all parties agree with each other to co-operate and use reasonable endeavours in achieving a technical solution within a reasonable time period, failing which the Grantor shall be entitled to terminate this Agreement immediately.

6 Contractual Period and Termination

The Grantor and the Company agree between themselves as follows:

- 6.1 The Agreement shall endure for the Contractual Period save that in the event that approval is not granted to the Company by the Grantor to install Permitted Apparatus at defined locations at the Site within a period of 120 days of the date of this Agreement, this Company may terminate this Agreement immediately.
- 6.2 The Grantor may terminate this Agreement with immediate effect by giving written notice to the Company in the event of:
 - 6.2.1 The Company removing the Permitted Apparatus from the Site;
 - 6.2.2 the Company ceasing to be a person to whom the Code is applied;

- 6.2.3 no suitable location(s) at the Site being identified in the reasonable opinion of the Grantor to install the Permitted Apparatus; or
- 6.2.4 any refusal(s) of planning permission for the installation of Permitted Apparatus at suitable locations at the Site being granted by the local authority, where applicable.
- 6.2.5 The Permitted Apparatus is causing interference with the operation of other equipment and a technical solution cannot be achieved by cooperation between the Parties.
- 6.3 The Grantor may terminate this Agreement by giving the Company not less than 30 days' written notice in the event of there being no Customer at the Site.
- 6.4 In the event that the Company is in breach of any of its obligations under this Agreement and the breach is incapable of remedy or the Company fails to remedy such breach within 15 business days following receipt of written notice from the Grantor, the Grantor may terminate this Agreement with immediate effect by giving written notice to the Company.
- 6.5 The Grantor may terminate this Agreement by giving the Company not less than one months' written notice if:
 - 6.5.1 The Grantor or any superior landlord intends to redevelop all or part of the Site; or
 - 6.5.2 In accordance with paragraph 31 (4)(d) of the Code, either of the following applies:-
 - (i) the prejudice caused to the Grantor and/or the superior landlord(s) by the continuation of the Agreement is incapable of being adequately compensated by money and
 - (ii) The public benefit likely to result from the continuation of this Agreement does not outweigh the prejudice to the Grantor or the superior landlord(s) ;
- 6.6 The Company's rights will continue under Paragraph 30 of the Code until notice is served under Paragraph 31 of the Code.
- 6.7 Termination under this clause 6 shall be without prejudice to the rights of any party in respect of any antecedent claim or breach of obligation, or any outstanding obligation, under this Agreement.
- 6.8 On the termination of this Agreement (except where this Agreement continues in accordance with paragraph 30(2) of Part 5 of the Code) the Company shall as soon as reasonably practicable as required by the Grantor to decommission, and remove the Permitted Apparatus from the Site and make good any damage to the Site caused by its removal to the reasonable satisfaction of the Grantor at the Company's exclusive cost and expense.
- 6.9 If this Agreement no longer continues pursuant to Paragraph 30 (2) of Part 5 of the Code the Company shall as soon as reasonably practicable as required by the Grantor either decommission and remove the Permitted Apparatus from the Site and make good any damage to the Site caused by its removal to the reasonable satisfaction of the Grantor at the Company's exclusive cost and expense.

- 6.10 If the Company does not comply with its obligation under clause 6.8 within three months after termination of this Agreement or if later one month after the date of this Agreement is no longer continuing pursuant to Paragraph 30 (2) of Part 5 of the Code the Company may be treated by the Grantor as having abandoned its property in the Permitted Apparatus (which shall be deemed to be without value) and the Grantor may remove and dispose of the Permitted Apparatus and may recover from the Company the reasonable and proper costs of doing so.
- 6.11 The Company shall indemnify the Grantor against all losses, actions, claims, demands, compensation, damages, costs and expenses and increased costs and expenses in respect of each claim or series of connected claims, relating to or arising from any breach of the obligations owed by the Company under clauses 6.8, 6.9 or 6.10 or failure to comply with an Order under Paragraph 44 of the Code whether related to the retention and use of the Permitted Apparatus in breach of this Agreement and/or it remaining in or on the Site in breach of this Agreement including any such arising from delay to or abandonment of or re-design of works to repair, renew, redevelop, refurbish, alter, improve or change the use of the Site or any adjoining property or any part thereof or plant or machinery serving it and/or the difference between the value of Grantor's interest with the Permitted Apparatus installed on it and the value of those interests with the Permitted Apparatus removed from it which flows from any such delay or abandonment or re-design of such works. This indemnity is Capped as agreed at 2.8(b) of this agreement.

7 Assignment

- 7.1 Assignment is not permitted, except as agreed between the parties.

8 UPGRADING OR SHARING OF PERMITTED APPARATUS

The Grantor and the Company agree between themselves as follows:

- 8.1 Upon first agreeing in writing with the Grantor providing specifications and plans of the proposed upgrade or sharing of the Permitted Apparatus the Company may:

- 8.1.1 Upgrade the Permitted Apparatus; or
- 8.1.2 Share the use of the Permitted Apparatus with another Operator (including the carrying out of works to the Permitted Apparatus to enable such sharing to take place);

provided that the conditions in clauses 8.2 and 8.3 are met. Any reference to “**sharing**” in the remainder of this clause 8 includes the carrying out of works referred to in clause 8.1.2.

- 8.2 Any changes to the Permitted Apparatus as a result of the upgrading or sharing will have no adverse impact, or no more than a minimal adverse impact, on the appearance of the Permitted Apparatus;
- 8.3 The upgrading or sharing will impose no additional burden on the Grantor and “**additional burden**” includes anything that:

- 8.3.1 Has an additional adverse effect on the Grantor's enjoyment of the Site; or

- 8.3.2 Causes additional loss, damage or expense to the Grantor.
- 8.4 A reasonable period of not less than one month before the Company commences any upgrade of the Permitted Apparatus or sharing use of the Permitted Apparatus with another Operator, which will require the carrying out of any works the Company shall provide:
- 8.4.1 Reasonable evidence (including drawings, specifications, plans and method statements as appropriate) to the Grantor's reasonable satisfaction that the conditions in clauses 8.2 and 8.3 will be met; and
- 8.4.2 Where relevant, details of the identity of the Operator with whom the Company will share the use of the Permitted Apparatus.
- 8.5 Upgrading or sharing of Permitted Apparatus is not permitted, except in accordance with this clause 8.

9 Disputes

The Grantor and the Company agree between themselves as follows:

- 9.1 If any dispute of differences arises between the parties in connection with this Agreement pertaining to land, such a dispute or difference will be referred to a single duly qualified independent surveyor where the parties can agree on one, or otherwise to such a surveyor appointed by the President of the Royal Institution of Chartered Surveyors ("**President**") on the application by any party.

10 Dispute Resolution Procedure for matters other than land

- 10.1 The Parties will use reasonable endeavours to resolve any dispute or claim arising out of or in connection with this Contract without referral to the courts or applicable regulatory authority.
- 10.2 The Parties will use the following dispute resolution process:
- i. either Party may initiate a dispute by giving Notice to the other Party of its complaint and setting out the nature and full particulars of the dispute, together with relevant supporting documents;
 - ii. each Party will use its reasonable endeavours to resolve the dispute within 14 days of notification, and will keep the other Party informed of developments;
 - iii. if the dispute remains unresolved after 14 days (or any other period agreed in writing between the Parties), it may be escalated to a senior executive of each Party (at Vice President level or above in respect of Military rank that will equate to members of the Naval/General/Air Staff at OF5 rank or above); and
 - iv. if the dispute remains unresolved 14 days after escalation, the Parties will consider mediation.

10.3 Subject to the Parties' compliance with Clause **Error! Reference source not found.**, either Party may, by giving Notice to the other Party, propose a mediator, in which case:

- i. unless both Parties agree to an alternative date, the other Party will either confirm their acceptance of the mediator or propose an alternative mediator within 15 days of the date of the Notice;
- ii. where both Parties cannot agree to the choice of mediator within a further 15 days, the mediator will be appointed by the London Court of International Arbitration or an equivalent independent body;
- iii. unless both Parties agree otherwise, proceedings will be conducted in London and in the English language; and
- iv. unless both Parties agree otherwise, the costs of any mediation will be shared equally between the Parties.

10.4 Nothing in this Clause prevents either Party from:

- i. seeking interlocutory or other immediate relief where a risk of imminent harm exists for that Party for which there is no other adequate remedy in the Contract;
- ii. pursuing court proceedings, where that Party considers it reasonable; or

10.5 exercising any rights and remedies that may be available to it in respect of a breach of the provisions of the Contract.

11 No Restrictions on Redeveloping

Nothing in this Agreement will prevent or restrict the Grantor from altering, amending, developing or redeveloping the Site or any other buildings, property or land (subject (where applicable) to the terms of clause 4).

12 Notices

The Grantor and the Company agree between themselves as follows:

12.1 Any notice given by any party to this Agreement shall be in writing.

12.2 Any such notice will be deemed to have been given if it is:

12.2.1 Personally delivered (in which case service will be deemed effective immediately); or

12.2.2 Sent by a registered post service or recorded delivery (in the case of the Grantor it will be deemed effective upon being signed for by the Grantor); and in each case addressed to the Grantor at Defence Infrastructure Organisation Land Management Services, Room F16, Leyburn Road, Piave Lines, Catterick, DL9 3LR to the Company at 81 Newgate Street, London, EC1A 7AJ and for any successor

of the Grantor or assignee from the Company addressed to such address and contact name notified to the other party to this Agreement.

- 12.3 Following the date of this Agreement, any party may amend its addressee and address for the purposes of clause 12.2 by notice to the other party.
- 12.4 Each party agrees that the address set out in clause 12.2 (as it may be subsequently amended under clause 12.3) will also constitute their address for service for the purposes of paragraph 91(2)(a) of the Code.

13 Payments by way of indemnity

The Grantor and the Company agree between themselves as follows:

- 13.1 Regardless of what it may say elsewhere in the Contract, both of us will take reasonable steps to mitigate each of our losses, even where that loss occurs as a result of anything that may give rise to a Claim under an indemnity.
- 13.2 If either of us has agreed to indemnify the other under the terms of the Contract, that indemnity is only given as long as the party being indemnified:
- i. tells the party giving the indemnity promptly about the Claim;
 - ii. gives the party giving the indemnity complete control of the Claim straightaway;
 - iii. does not say anything publicly about the Claim, or do anything that harms the defence of it; and
 - iv. does what it can to help the party giving the indemnity with the Claim.
- 13.3 The Company recommends that the Grantor obtain business continuity (or other) insurance that is appropriate for the nature of your business, just in case something goes wrong.
- 13.4 Provided the Company has complied with its obligations within this contract, the Company will not be held responsible for any loss or damage caused by unauthorised access to any part of the Company's Network.

14 Claims in respect of death or personal injury

- 14.1 It is agreed that any liability to any claim in respect of death or personal injury arising through the Company's deliberate act or omission or negligence shall be unlimited.

15 Governing law

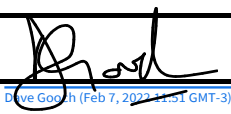
- 15.1 This Agreement and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) are governed by English law and any such dispute or claim not dealt with by clause 9 will be decided in accordance with the provisions of the Code in so far as the Code is applicable to it.

16 Contracts (Rights of Third Parties) Act

Unless expressly stated nothing in this Agreement will create any rights in favour of any person pursuant to the Contracts (Rights of Third Parties) Act 1999.

17 General

- 17.1 It is agreed that no relationship of landlord and tenant is created by this Agreement between the Grantor and the Company;
- 17.2 Subject to clause 6.10, the Permitted Apparatus will at all times remain the property of the Company.
- 17.3 This Agreement will not apply to any part of the Site which is (or from the date of such adoption becomes) adopted as highway maintainable at the public expense.
- 17.4 This Agreement is the entire Agreement between the Grantor and the Company relating to the Permitted Apparatus at the Site.
- 17.5 In the event that any term(s) contained in this Agreement conflict with the Code, the conflicting provision in the Code shall always take precedence.
- 17.6 Each obligation and provision of this Agreement will be construed as a separate obligation or provision and if one or more of them is considered unenforceable or unlawful for whatever reason then that obligation or provision will be deemed deleted but the enforceability of the remainder of this Agreement will not be affected.
- 17.7 If, The Company proposes amendments to the Contract to reflect changes to the Company's security measures, policies and processes to enable the Company to comply with the Data Protection Legislation, the Grantor will act reasonably and in good faith to negotiate those amendments in a timely manner with the Company.

Signed for and on behalf of the Grantor: ANDREW TRINICK Air Commercial Define & Procure Dep. Head	
<i>Andrew Trinick</i>	
Signed for an on behalf of the Company:	
	

Dave Goodrich (Feb 7, 2022 11:51 GMT-3)

Schedule 1

Property/Site

The site for the delivery of services and deliverables shall be at [an] agreed location[s] at RAF Brize Norton, Carterton, Oxfordshire OX18 6LX (the 'Property'). Installation of Permitted Apparatus shall be subject to express written authority being given by the Grantor which shall be subject to a satisfactory prior (i) site inspection to establish the suitability of the location for the erection of the Permitted Apparatus; and (ii) planning permission to erect Permitted Equipment being granted by the applicable local authority at any locations on the site of the Property.

Schedule 2

Apparatus

Company to provide plans and specifications of the Permitted Apparatus when available.

Schedule 3

Service Specification

Company to provide the Services which shall be in compliance with the Requirements at
Schedule 4

Schedule 4

Statement of Requirement

The Provision of a Private 5G Network at RAF Brize Norton

Ref Requirement

A **General Requirements**

A.1 **Scope of Requirement**

- A.1.a Installation of a private 5G network at RAF Brize Norton to facilitate trials of this technology using a number of innovative digital capabilities and use cases. Due to the impact of both BREXIT and coronavirus on supply chains and operations, all lead times or any other delivery timescales set out in this proposal are subject to change and the Company will notify the Grantor of any such changes as soon as reasonably practicable. The aspirational date for completion of the installation of the trial network is 31 March 2022, however both parties acknowledge the current significant supply chain issues, The Company will seek to deliver under the terms of this contract as soon as reasonably practicable
- A.1.b The purpose of establishing a private 5G Radio Access Network (RAN) is to facilitate experimentation to satisfy a wide number of innovative use cases at RAF Brize Norton as part of Air Command's wider ASTRA programme. The 5G network will be required to integrate with the existing Business Internet solution installed at the Station, enhancing these capabilities to the required standard for such trial activity. The resultant blended LAN, WiFi 6 and 5G RAN infrastructure will deliver the essential framework infrastructure for both the Provider and other industry partners to demonstrate viable and innovative solutions for improvements across multiple operational areas at RAF Brize Norton, and potential wider Defence application. The Provider would be expected to act as an integrator of their own solutions and those from wider industry to support use cases developed by RAF Brize Norton personnel to include, but not be limited to enhancements in the areas of airfield management, base security, future ground support engineering, virtual support opportunities, airfield operations, automated asset tracking and effective centralised command and control. The provided solution cannot be used for commercial purposes and no personal devices will be permitted to access the network. The delivery and maintenance of this 5G network is to be provided at zero cost to the MoD for a period of 36 months, with all equipment being removed from the site at the end of this period at zero cost to the MoD.

A.2 **Definitions**

- A.2.a In addition to the definitions detailed in the Terms and Conditions of the Contract the following definitions shall also apply. Where the definitions below contrast to those detailed in the Terms and Conditions of the Contract then the definitions within the Terms and Conditions of the Contract shall take precedence.

Definition

Interpretation

Contractor's Personal Use

Any use of MoD furnished property, facilities or equipment intended for the primary benefit of the Contractor or the Contractor's Personnel which is contrary to the MoD's interests is considered personal use.

Contractor's Personnel

Any employees, including sub-contractors or other agents working on behalf of the Contractor, shall be deemed the Contractor's Personnel.

<u>Ref</u>	<u>Requirement</u>	
	Designated Officer	The Designated Officer is the MOD representative responsible for the Requirement and is as defined at Box 2 of DEFFORM 111 of this Contract.

A.3 Abbreviations and Acronyms

A.3.a In addition to the abbreviations and acronyms detailed in the Terms and Conditions of the Contract the following abbreviations and acronyms will be used.

<u>Abbreviation or Acronym</u>	<u>Interpretation</u>
AP	Authorised Person
DO	Designated Officer
LAN	Local Area Network
MoD	Ministry of Defence
RAF	Royal Air Force
RAN	Radio Access Network
SC	Security Check
SCIDA	Site Coordinating Installation Design Authority
SHEF	Safety, Health, Environment and Fire
SoR	Statement of Requirement
WiFi	Wireless Fidelity

A.4 References

A.4.a In addition to the references detailed in the Terms and Conditions of the Contract the following references shall also apply as well as any subsequent revisions and amendments to the references. This list does not absolve the Contractor from conforming to any other relevant publications.

<u>Reference</u>	<u>Version</u>	<u>Source</u>
Data Protection Act 2018	2018 c. 12	http://www.legislation.gov.uk/ukpga/2018/12/contents/enacted
Government Security Classifications	1.0	https://www.gov.uk/government/publications/security-classifications
JSP740: Acceptable Use Policy (AUP) for Information and Communications Technology (ICT)		https://assets.publishing.service.gov.uk/government/uploads/attachment_data/file/677131/jsp740-acceptable-use-policy-aup-for-ict.pdf
JSP604: Defence Manual of ICT		https://www.gov.uk/government/publications/publication-jsp-604-network-rules

A.5 Processes and Related Taskings

A.5.a Existing cross site fibre installations and all existing WiFi infrastructure remain as station assets. All such infrastructure will be made available to interconnect the solution network components across the site but will not become the property of, and may not be altered by the Contractor.

<u>Ref</u>	<u>Requirement</u>
A.5.b	There is an additional requirement that the solution remains flexible for use in yet to be specified trials activity. Additional future services may require the finalised RAN solution, but this will not be considered as an indication of RAF Brize Norton to retain the temporary
A.5.c	5G infrastructure. Removal of provider-installed equipment will be at cost to the provider. During the advertising period for this requirement, potential bidders will be permitted to access site to survey potential siting locations for the delivery before finalising their proposal. Any such visits should be arranged via the Designated Commercial Officer.
A.6	Site
A.6.a	The Site for the delivery of all services is RAF Brize Norton. RAF Brize Norton is sited In Carterton, Oxfordshire, OX18 6LX.
A.6.b	The Designated Officer is OC C4I, C4i, RAF Brize Norton. 01993 895280.
A.7	Security
A.7.a	The Contractor is to ensure that all of the Contractor's Personnel have Security Check (SC) clearance. Where the Contractor's Personnel does not have SC clearance that individual will not be allowed access to MOD facilities. However, where specialist resources are required and SC clearance is not held by those individuals, RAF Brize Norton will provide a chaperone in order to allow access and avoid delay to contract delivery.
A.7.b	All information related to or generated by this Contract is to be treated in the appropriate manner in accordance with Government Security Classifications. The classification of the material to be handled shall not exceed OFFICIAL-SENSITIVE in nature.
A.7.c	All personal data processed under this Contract is to be treated in accordance with the
A.7.d	Data Protection Act 2018 and GDPR. The network must not be accessible by any personal devices or for any commercial use beyond the specifications of trial and innovation activity agreed by MoD.
A.8	Site Access
A.8.a	The contractors will be required to report to the Main Entry Point at RAF Brize Norton with photographic ID (a passport or driving licence are the only acceptable forms of identification). If not in possession of an SC Clearance they will be rejected. An Unescorted pass will be issued for the duration of the installation/testing at RAF Brize Norton however, the contractor will be escorted by a member of C4i Sqn when transiting around the Airfield.
A.9	Safety and Environmental Provision
A.9.a	When on the Site, the Contractor is to comply with all MOD Safety, Health and Environmental Protection regulations and policy. The contractor will be provided with access to relevant SHEF policy documents by the local SHEF Manager on site.
A.10	Hours of Operation and Times of Delivery
A.10.a	All installation of services to the site and any subsequent repair or upgrades to the service shall be delivered between the hours of 08:00 - 17:00 on weekdays with exception of recognised UK Bank Holidays and Public Holidays. When installed, the 5G solution should be available 24/7, 365 days per year subject to caveat at B.1.

Ref **Requirement**
A.11 **Quality Assurance**

A.11.a No specific Quality Management System requirements are defined. This does not relieve the Supplier of providing conforming products under this contract.

A.12 **Contract Monitoring**

A.12.a For the purposes of contract monitoring, representatives of the Contractor will report to the Designated Officer on the performance of the Contract every 3 months.

A.12.b The Contractor is responsible for the performance of the Contract by any sub-contractors or other agents working on behalf of the Contractor. The Contractor is to deal with any issues relating to any sub-contractors or other agents working on behalf of the Contractor, this however, does not exclude sub-contractors or other agents working on behalf of the Contractor from attending any Contract Monitoring meeting or contributing to any report where it is appropriate for such sub-contractors or other agents to do so.

A.12.c If any sub-contractors or other agents working on behalf of the Contractor are found unsuitable, for whatever reason, the Contractor is to engage with the relevant sub-contractors or other agents to broker a resolution.

B **Deliverable Requirements**

<u>Ref</u>	<u>Requirement</u>	<u>Additional Information</u>	<u>Quantity</u>	<u>Standard of Performance</u>
B.1	All configured IT Network hardware to provide the 5G solution.	Initial requirement is for 5G network coverage across site, with high data transfer (live video capability) at minimum to the buildings listed at Annex A.	23 Buildings	24/7, 365 days per year availability, noting of course, the trial nature of Service may result in infrequent minor interruption. Fault reporting 24/7 365 days per year and responses within the timescale articulated at B.7 would seek to minimise any disruption.
B.2	The system should use components which are consistent with the UK Government's 5G Supply Chain Diversification Strategy	Components manufactured or supplied by Huawei must not be used. Components originating in the UK, EU or North America are preferred.	As required.	Supplier to provide documentary evidence of where components are sourced from.

<u>Ref</u>	<u>Requirement</u>	<u>Additional Information</u>	<u>Quantity</u>	<u>Standard of Performance</u>
B.3	Location of network equipment	Location of any equipment relating to 5G network installation, or any trial activity equipment, must be approved via an official Siting Board conducted at RAF Brize Norton, coordinated by Station Services Squadron (SSS). This will aim to highlight any obstacles to installation, such as asbestos or power availability, which will be the responsibility of the provider to overcome. This may be achieved through selection of alternate installation location or funding of any remedial works to overcome the obstacle.	As required.	Approved record of Siting Board acceptance. Assumption of costs written into delivery contract.
B.4	Full service lifecycle software updates.		As required	Software updates for all delivered equipment installed within 2 weeks of availability.
B.5	Remote management of the system to identify faults.	Fault reporting facility to be provided by the supplier.	As required	Remote management of network by provider should be conducted 24/7, 365 days per year. Fault reporting facility available 0900-1700, Mon-Fri. Such fault reporting will take place via email.
B.6	The system shall access a private radio access network.	All necessary licensing and spectrum clearances will be the responsibility of the Supplier to secure.	As required	Wireless access is not to be shared with external parties without the MoD's consent. Required licenses and spectrum clearance must be proven in writing before any system becomes live.

Ref	Requirement	Additional Information	Quantity	Standard of Performance
B.7	Full onsite repair of faulty components.	Zero cost to MoD.	As required	Best efforts to achieve a 72-hour onsite repair/replacement. Noting of course that 5G technology is in its infancy and replacement parts come from vendors outside of the Company's control.
B.8	The system needs to be User Agnostic.	Must not be tied or linked to a network provider such as EE, O2, Three, Vodafone etc.	As required	All onsite users must be able to utilise the system as required.
B.9	Appointed Service Delivery Manager	To escalate any service faults and support all innovation and testing activity.	As required	Service delivery manager available 0900-1700, Mon-Fri.
B.10	Industry collaboration agreement.	The provider must be willing to work in collaboration with industry and academic partners to test a range of trial capabilities, alongside developing and demonstrating their own.	As required	All MoD approved trial activity utilising the 5G network must be actively supported to succeed from a connectivity perspective.
B.11	Local information sharing.	All data related to trial activity will be shared freely amongst collaborators and not owned by any one organisation; it must be accessible at no cost between approved stakeholders. The only exception to this requirement is data of a sensitive nature which needs to be held by MOD stakeholders only; such data will be indicated by the MOD.	As required	Seamless transfer or usage of all information related to trial activity.

<u>Ref</u>	<u>Requirement</u>	<u>Additional Information</u>	<u>Quantity</u>	<u>Standard of Performance</u>
B.12	Fully encrypted wireless network with ability to provide access control.	All users authenticated by provider and can be identified by station.	As required	Connections encrypted as per latest industry encryption standards. WPA2 encrypted connections as an absolute minimum.
B. 13	Roaming ability between Access Points.	The provider must abide by Data Protection Regulations and GDPR rules in respect to information provided by unit personnel authorised to 'roam' on the network.	As required	Ability to manoeuvre mobile devices around station without a requirement to re-connect to the service – automatic transfer to another WAP/mast.
B. 14	WaH and specific installation safety.	The equipment provided by the supplier must adhere to the Station's health and safety requirements.	As required	All work must be supported and agreed by local AP before commencement. Installation must meet SCIDA compliance.
B. 15	At the end of the trial the equipment shall be decommissioned and removed at no cost to MOD.	Nil	All installed equipment.	Removed within 3 months of cessation of service.
B. 16	Service Level Agreement	Must include all deliverables stated here with action strategy should deliverables fail to be met.	1	Must be provided and agreed by supplier and customer ahead of installation.

Annex A
Minimum Building Coverage

Initial requirement is for 5G network coverage with high data transfer (live video capability) at minimum to the buildings listed:

Bldg No	Bldg Name
H115/6	GEF
H878	Base Hangar

Schedule 5

Service Levels

The Company shall:

- Provide a contact number to allow the Grantor and its personnel to report issues with the Services and/or Equipment 24/7 365 days per year;
- Make reasonable efforts to resolve any issues with the Services and/or Equipment within 72 hours of notification without charge to the Grantor or its personnel;
- Inform the Grantor where it cannot for any reason resolve the issue within 72 hours and the steps and timeframe reasonably required to resolve such issues to the satisfaction of the Grantor.
- Seek to engage on a quarterly basis with the Grantor to assess performance of the Permitted Apparatus and the Services with a view to remedying any issues/concerns.