



Schedule 1 – Definitions and Interpretation



Schedule 1 (Definitions and Interpretation)

- 1.1 In this Contract, unless the context otherwise requires, capitalised expressions shall have the meanings set out in this Schedule 1 (Definitions and Interpretation) or the relevant Schedule in which that capitalised expression appears.
- 1.2 If a capitalised expression does not have an interpretation in this Schedule or any other Schedule, it shall, in the first (1st) instance, be interpreted in accordance with the common interpretation within the relevant market sector/industry where appropriate. Otherwise, it shall be interpreted in accordance with the dictionary meaning.
- 1.3 In this Contract, unless the context otherwise requires:
- (a) the singular includes the plural and vice versa;
 - (b) reference to a gender includes the other gender and the neuter;
 - (c) references to a person include an individual, company, body corporate, corporation, unincorporated association, firm, partnership or other legal entity or Crown Body;
 - (d) a reference to any Law includes a reference to that Law as amended, extended, consolidated or re-enacted from time to time;
 - (e) the words **"including"**, **"other"**, **"in particular"**, **"for example"** and similar words shall not limit the generality of the preceding words and shall be construed as if they were immediately followed by the words **"without limitation"**;
 - (f) references to **"writing"** include typing, printing, lithography, photography, display on a screen, electronic and facsimile transmission and other modes of representing or reproducing words in a visible form, and expressions referring to writing shall be construed accordingly;
 - (g) references to **"representations"** shall be construed as references to present facts, to **"warranties"** as references to present and future facts and to **"undertakings"** as references to obligations under the Contract;
 - (h) references to **"Clauses"**, **"Schedules"** and **"Exhibits"** are, unless otherwise provided, references to the clauses, schedules and exhibits of the Terms and Conditions and references in any Schedule to parts, paragraphs, annexes and tables are, unless otherwise provided, references to the parts, paragraphs, annexes and tables of the Schedule in which these references appear;
 - (i) references to **"Paragraphs"** are, unless otherwise provided, references to the paragraph of the appropriate Schedules unless otherwise provided;
 - (j) references to a series of Clauses or Paragraphs shall be inclusive of the clause numbers specified;



- (k) the headings in the Contract are for ease of reference only and shall not affect the interpretation or construction of the Contract;
 - (l) a statute or statutory provision includes a reference to:
 - (i) any statutory amendment, consolidation or re-enactment of it to the extent in force from time to time;
 - (ii) all orders, regulations, instruments or other subordinate legislation (as defined in section 21(1) of the Interpretation Act 1978) made under it to the extent in force from time to time; and
 - (iii) any statute or statutory provision of which it is an amendment, consolidation or re-enactment; and
 - (m) an obligation on the Supplier to use all reasonable endeavours 'without incurring additional expenditure' does not relieve the Supplier of incurring expenditure to which it has committed under the terms of the Contract in respect of the relevant matter.
- 1.4 If there is any conflict between the Clauses and the Schedules and/or any Annexes to the Schedules, the conflict shall be resolved in accordance with the following order of precedence:
- (a) the Clauses and Schedule 1 (Definitions and Interpretation);
 - (b) Schedule 4 (Specification);
 - (c) any other Schedules and their Annexes (other than Annex 1 and Annex 2 of Schedule 3 (Financial Schedule) and Schedule 5 (Tender));
 - (d) Annex 1 and Annex 2 of Schedule 3 (Financial Schedule); and
 - (e) Schedule 5 (Tender).



1.5 In this Contract unless the context otherwise requires, the following words shall have the following meanings:

Defined Term	Definition
"10 Steps to Cyber Security"	the guidance on how organisations can protect themselves in cyberspace published by the National Cyber Security Centre, details of which can be found here: https://www.ncsc.gov.uk/collection/10-steps-to-cyber-security ;
"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 with the expectation that a customer would experience close to this speed for most of the times outside the Busiest Hours and will take into account any contention built into the Supplier Solution but will not take into account any contention introduced by RSPs;
"Access to Infrastructure Code"	means the code of conduct relating to access to infrastructure and sharing of information between suppliers regarding existing infrastructure it owns, controls or operates in Intervention Areas so as to avoid unnecessary and wasteful duplication of resources and to reduce the amount of public funding and which includes standards for: <ul style="list-style-type: none">(a) the level of detail of information that should be provided;(b) the time frames in which the information is to be provided;(c) the acceptable terms of a non-disclosure agreement; and(d) the obligations to make available the infrastructure for use in other bids;
"Access to Infrastructure"	the re-use of existing infrastructure forming part of the Network which may comprise existing infrastructure of: <ul style="list-style-type: none">(a) the Supplier;(b) another Service Provider;(c) a utility provider; and(d) an infrastructure owner;
"Achieve"	in relation to a Build Milestone or Key Milestone, the Milestone Criteria for that Build Milestone or Key Milestone have been satisfied and "Achieved" , "Achieving" and "Achievement" shall be construed accordingly;



"Active Services Exposure to Clawback"	has the meaning set out in Paragraph 3.3 (Annual clawback payments) of Schedule 3 (Financial Schedule);
"Active Services Incremental Customer Margin (ICM)"	means steady state, incremental profit (incremental revenue minus incremental cost) of one active services customer as set out in section 6 of the Outputs section of the Financial Model. Where an average has been taken across all forecast active services, weighted based on net take-up and steady state refers to a year other than the initial connection year;
"Active Services Take-up"	the adoption by any End User of retail services connected to the Network both inside and outside the Intervention Area;
"Additional Information"	has the meaning set out in Clause 48.7(c) (Acceptance of the Change Impact Assessment Estimate or Change Impact Assessment);
"Affected Party"	the party seeking to claim relief in respect of a Force Majeure Event;
"Affiliates"	in relation to a body corporate, any other entity which directly or indirectly Controls, is Controlled by, or is under direct or indirect common Control of that body corporate from time to time;
"Annual Active Services Take-up Clawback Amount"	has the meaning set out in Paragraph 3.4 (Annual clawback payments) of Schedule 3 (Financial Schedule);
"Annual Contract Management Submission"	means the Supplier's annual submission as further described in the table in Clause 15.1 (Reports);
"Annual Contract Value"	<p>means the sum calculated in accordance with the following formula:</p> <p>$(A+B)/n$ where:</p> <p>A = the sum of Maximum Stage One Funding Payments for all Drawdowns;</p> <p>B = the sum of Maximum Stage Two Funding Payments for all Drawdowns;</p> <p>n = the number of years (rounded up to the nearest quarter) between the Effective Date and the Final Stage Two (Build) Complete Milestone Date;</p>
"Annual Passive Services Take-up"	has the meaning set out in Paragraph 4.4 (Annual passive services clawback amounts) of Schedule 3 (Financial Schedule);



"Clawback Amount"	
"Annual Progress Meeting"	the meeting between the Supplier and the Authority as described in Clause 14.16 (Governance Meetings);
"Associated Persons"	has the meaning given to it in Section 44(4) of the Criminal Finance Act 2017;
"Audit"	means any exercise by the Authority or its Auditors or the relevant Regulatory Body (and/or its agents or representatives) pursuant to Clauses 17.2 to 17.15 (Audit rights);
"Auditor"	<ul style="list-style-type: none">(a) the Authority's internal and external auditors;(b) the Authority's statutory or regulatory auditors;(c) the Comptroller and Auditor General, their staff and/or any appointed representatives of the National Audit Office;(d) HM Treasury or the Cabinet Office;(e) any party formally appointed by the Authority to carry out audit or similar review functions; and(f) successors or assignees of any of the above;
"Authorised Drawdown"	has the meaning set out in Clause 3.1 (Authorised Drawdowns);
"Authority IPR"	any IPR (excluding the New IPR and Supplier's Existing IPR) owned by, or licensed to, the Authority in connection with this Contract;
"Authority Representative"	the representative appointed by the Authority pursuant to Clause 14.2 (Representatives);
"Authority"	the entity identified as such in Paragraph 1 of the Parties Clause on page 1 of the Contract;
"Average Connection Life"	means the average connection life for the relevant Drawdown calculated in accordance with the formula specified in Annex 2 (Average Connection Life) of the Specification and as set out in the Financial Model in Schedule 3 (Financial Schedule);
"Backhaul"	high capacity connections for carrying aggregated customer traffic between local distribution nodes (e.g. exchanges or cabinets) and a core network



	including, where applicable, the concept of the middle mile but does not include a Supplier's core transmission network;
"Benchmark Data"	the data which the Wholesale Access Prices are compared against as specified in the Tender and amended in accordance with Paragraph 5.4 (Wholesale Access Prices Benchmarking) of Schedule 3 (Financial Schedule);
"Brand and Communication s Instructions"	the Authority's brand and communication instructions which are in force throughout the Contract Period, as provided to the Supplier by the Authority in writing and as updated from time to time;
"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;
"Build Milestone"	means the milestone identified in the Project Plan as a build milestone;
"Build Unit"	<p>the build unit selected by the Supplier and set out in the Project Plan which is either:</p> <ul style="list-style-type: none">(a) Weighted Eligible Premises Passed; or(b) Metres of Line Plant Associated with Fibre Route Complete, <p>which is used to measure the Achievement of the Build Milestones. The total number of Build Units shall be calculated in the Financial Model and progress against completion of the total number of Build Units shall be calculated following receipt of the Stage Two Progress Report;</p>
"Build Year"	<p>means:</p> <ul style="list-style-type: none">(a) the twelve (12) month period commencing on the first Stage Two (Build) Commencement Date of either the Initial Scope or the Deferred Scope (as the context requires); and(b) each 12 month period thereafter, save that the final Build Year shall end on the Milestone Date for the final Stage Two (Build) Complete Milestone of the Initial Scope or the Deferred Scope (as the context requires);
"Busiest Hours"	the hours of the day (not more than four (4) out of every twenty four (24)) with the highest measured total data use in aggregate for a service. All measurement periods shall exceed one (1) hour and shall consist of at least four (4) measurements taken at no more than fifteen (15) minute intervals;



"CEDR"	the Centre for Effective Dispute Resolution, International Dispute Resolution Centre, 70 Fleet Street, London, EC4Y 1EU;
"Central Government Body"	<p>a body listed in one of the following subcategories of the Central Government classification of the Public Sector Classification Guide, as published and amended from time to time by the Office for National Statistics:</p> <ul style="list-style-type: none">(a) Government Department;(b) Non-Departmental Public Body or Assembly Sponsored Public Body (advisory, executive, or tribunal);(c) Non-Ministerial Department; or(d) Executive Agency;
"Change Authorisation Note"	Annex 3 (Change Authorisation Note) of the Change Forms executed by the Parties in accordance with Clause 48 (Changing the Contract Procedure);
"Change Forms"	forms for dealing with Contract Changes in accordance with the Changing the Contract Procedure, substantially in the form set out in Schedule 11 (Change Forms), Part 1 (Change Request), 2 (Change Impact Assessment) and 3 (Change Authorisation Note);
"Change Impact Assessment Estimate"	has the meaning set out in Clause 48.5 (Change Request);
"Change Impact Assessment"	Annex 2 (Change Impact Assessment) of the Change Forms completed by the Supplier in accordance with Clause 48 (Changing the Contract Procedure);
"Change in Law"	any change in Law which impacts on the carrying out of the Works and the provision of the Outputs and performance of the Contract which comes into force after the Effective Date;
"Change of Control"	a change of control where 'control' has the meaning set out in Section 450 of the Corporation Tax Act 2010;
"Change Request"	Annex 1 (Change Request) of the Change Forms completed by a Party in accordance with Clause 48 (Changing the Contract Procedure);
"Change"	any change to the terms of this Contract;



"Changing the Contract Procedure"	the procedure set out in Clause 48 (Changing the Contract Procedure);
"Claim"	any claim which it appears that an Indemnified Party is, or may become entitled to indemnification under this Contract;
"Commercially Sensitive Information"	the Confidential Information listed in Schedule 9 (Commercially Sensitive Information) comprising of commercially sensitive information relating to the Supplier, its IPR or its business that, if disclosed by the Authority, would cause the Supplier significant commercial disadvantage or material financial loss;
"Comparable Supply"	equivalent or comparable replacement services;
"Compliance Officer"	the person(s) appointed by the Supplier who is responsible for ensuring that the Supplier complies with its legal obligations;
"Confidential Information"	<p>means:</p> <ul style="list-style-type: none">(a) Information, including all Personal Data (however it is conveyed) provided by the Disclosing Party pursuant to or in anticipation of this Contract that relates to:<ul style="list-style-type: none">(i) the Disclosing Party Group; or(ii) the operations, business, affairs, developments, intellectual property rights, trade secrets, know-how, personnel and of the Disclosing Party Group;(b) other Information provided by the Disclosing Party pursuant to or in anticipation of this Contract that is clearly designated as being confidential or equivalent or that ought reasonably to be considered to be confidential (whether or not it is so marked) which comes (or has come) to the Recipient's attention or into the Recipient's possession in connection with this Contract;(c) discussions, negotiations, and correspondence between the Disclosing Party or any of its directors, officers, employees, consultants or professional advisers and the Recipient or any of its directors, officers, employees, consultants and professional advisers in connection with this Contract and all matters arising therefrom; and(d) Information derived from any of the above,



	<p>but not including any Information which:</p> <ul style="list-style-type: none">(i) was in the possession of the Recipient without obligation of confidentiality prior to its disclosure by the Disclosing Party;(ii) the Recipient obtained on a non-confidential basis from a third party who is not, to the Recipient's knowledge or belief, bound by a confidentiality agreement with the Disclosing Party or otherwise prohibited from disclosing the information to the Recipient;(iii) was already generally available and in the public domain at the time of disclosure otherwise than by a breach of this Contract or breach of a duty of confidentiality;(iv) was independently developed without access to the Confidential Information; or(v) relates to the Supplier's:<ul style="list-style-type: none">(A) performance under this Contract (including in accordance with Clause 34.4 (When you can share information) and Clause 15.3 (How the Supplier's performance will be measured)); or(B) failure to pay any Subcontractor, as required pursuant to Clause 19.8 (Supply chain);
"Conflict of Interest"	a conflict between the financial or personal duties of the Supplier or the Supplier Staff and the duties owed to the Authority under the Contract, in the opinion of the Authority;
"Contract Notice"	means the notice published on the UK's e-notification service, Find a Tender, notifying the market in accordance with the PCR Regulations of the opportunities for agreements for the provision of certain network deployment and broadband related services issued by the Authority;
"Contract Period"	the term of the Contract from the Effective Date until the End Date;
"Contract Year"	(a) a period of twelve (12) months commencing on the Effective Date; or



	(b) thereafter a period of twelve (12) months commencing on each anniversary of the Effective Date, provided that the final Contract Year shall end on the expiry or termination of the Contract Period;
"Contract"	the Terms and Conditions, together with Schedules and appendices to it, and the terms set out in any executed Change Form, as the context requires;
"Control"	control in either of the senses defined in sections 450 and 1124 of the Corporation Tax Act 2010 and "Controlled" shall be construed accordingly;
"Controller"	means the entity which determines the purposes and means of the Processing of Personal Data;
"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 Categories"	the levels of granular cost details as described in Schedule 2 (Cost Categories) under which pricing and reporting will be produced by Suppliers;
"Credit Rating Threshold"	means the minimum credit rating level issued by Dun & Bradstreet for each Monitored Company;
"Crown Body"	the government of the United Kingdom (including the Northern Ireland Assembly and Executive Committee, the Scottish Government and the National Assembly for Wales), including, but not limited to, government ministers and government departments and particular bodies, persons, commissions or agencies from time to time carrying out functions on its behalf;
"CRTPA"	the Contract (Rights of Third Parties) Act 1999;
"Cyber Essential Scheme Data"	sensitive and personal information and other relevant information as referred to in the Cyber Essentials Scheme;
"Cyber Essentials Basic Certificate"	the certificate awarded on the basis of self-assessment, verified by an independent certification body, under the Cyber Essentials Scheme and is the basic level of assurance;



"Cyber Essentials Certificate"	Cyber Essentials Basic Certificate or the Cyber Essentials Plus Certificate to be provided by the Supplier;
"Cyber Essentials Plus Certificate"	the certification awarded on the basis of external testing by an independent certification body of the Supplier's cyber security approach under the Cyber Essentials Scheme and is a more advanced level of assurance;
"Cyber Essentials Scheme"	the Cyber Essentials Scheme developed by the Government which provides a clear statement of the basic controls all organisations should implement to mitigate the risk from common internet based threats (as may be amended from time to time). Details of the Cyber Essentials Scheme can be found here: https://www.cyberessentials.ncsc.gov.uk/ ;
"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"	means (i) the UK GDPR; (ii) the DPA 2018; (iii) the Privacy and Electronic Communications (EC Directive) Regulations 2003; and (iv) all Law about the processing of personal data and privacy;
"Data Subject Rights Request"	a request made by, or on behalf of, a Data Subject in accordance with rights granted pursuant to the Data Protection Legislation to access their Personal Data;
"Data Subject"	means an identified or identifiable natural person, who can be identified directly or indirectly, in particular by reference to an identifier such as a name, an identification number, location data, an online identifier or to one or more factors specific to the physical, physiological, genetic, mental, economic, cultural or social identity of that natural person;
"Default"	any breach of the obligations of the Supplier (including abandonment of this Contract in breach of its terms) or any other default (including material default), act, omission, negligence or statement of the Supplier, of its Subcontractors or any Supplier Staff howsoever arising in connection with or in relation to the subject-matter of this Contract and in respect of which the Supplier is liable to the Authority;
"Deferred Scope"	means: (a) Drawdown 1 (Deferred Scope);
"Deferred Scope Submission"	has the meaning set out in Clause 6.1(b) (Deferred Scope Authorisation);



"Devolved Administration"	<p>means each of the following:</p> <ul style="list-style-type: none">(a) the National Assembly for Wales;(b) the Scottish Government; and(c) the Northern Ireland Assembly and Executive Committee, <p>including government ministers and government departments and other bodies, persons, commissions or agencies from time to time carrying out functions on its behalf and any successors to those entities' functions and organisations created to deliver their functions and objectives;</p>
"Disclosing Party Group"	<ul style="list-style-type: none">(a) where the Disclosing Party is the Supplier, the Supplier and any Affiliate of the Supplier; and(b) where the Disclosing Party is the Authority, the Authority and any Central Government Body with which the Authority or the Supplier interacts in connection with this Contract;
"Disclosing Party"	<p>the Party directly or indirectly providing or making available Confidential Information to the other Party in accordance with Clause 33 (What you must keep confidential);</p>
"Dispute Notice"	<p>has the meaning set out in Clause 61.2 (Starting the formal Dispute Resolution Procedure);</p>
"Dispute Resolution Procedure"	<p>the dispute resolution procedure set out in Clause 61 (Governing Law and resolving Disputes);</p>
"Dispute"	<p>any claim, dispute or difference arises out of or in connection with the Contract or in connection with the negotiation, existence, legal validity, enforceability or termination of the Contract, whether the alleged liability shall arise under English law or under the law of some other country and regardless of whether a particular cause of action may successfully be brought in the English courts;</p>
"DOTAS"	<p>the Disclosure of Tax Avoidance Schemes rules which require a promoter of tax schemes to tell HMRC of any specified notifiable arrangements or proposals and to provide prescribed information on those arrangements or proposals within set time limits as contained in Part 7 of the Finance Act 2004 and in secondary legislation made under vires contained in Part 7 of the Finance Act 2004 and as extended to national insurance contributions by the National Insurance Contributions (Application of Part 7 of the Finance</p>



	Act 2004) Regulations 2012, SI 2012/1868 made under section 132A of the Social Security Administration Act 1992;
"DPA 2018"	the Data Protection Act 2018;
"Drawdown 1 (Initial Scope)"	means, at the Effective Date the list of UPRNs set out in i.Build table of the relevant Financial Model for Drawdown 1;
"Drawdown 2 (Initial Scope)"	means the list of UPRNs set out in i.Build table of the relevant Financial Model, thereafter as updated in accordance with the terms of this Contract;
"Drawdown 3 (Initial Scope)"	means the list of UPRNs set out in i.Build table of the relevant Financial Model, thereafter as updated in accordance with the terms of this Contract;
Drawdown 4 (Initial Scope)"	means the list of UPRNs set out in i.Build table of the relevant Financial Model, thereafter as updated in accordance with the terms of this Contract;
"Drawdown 1 (Deferred Scope)"	means the list of UPRNs set out in i.Build table of the relevant Financial Model, thereafter as updated in accordance with the terms of this Contract;
"Drawdowns"	means: (a) Drawdown 1 (Initial Scope); (b) Drawdown 2 (Initial Scope); (c) Drawdown 3 (Initial Scope); (d) Drawdown 4 (Initial Scope); and (e) Drawdown 1 (Deferred Scope); and "Drawdown" shall mean any one of them;
"Effective Date"	the date on which the final Party has signed the Contract;
"EIR"	the Environmental Information Regulations 2004, together with any guidance and/or codes of practice issued by the Information Commissioner or any Central Government Body in relation to such regulations;



"Eligible Expenditure"	means (as applicable): (a) Eligible Stage One Expenditure; and/or (b) Eligible Stage Two Expenditure;
"Eligible Premises"	a UPRN which is designated in the ITT as being eligible for Funding Payments, or which the Authority subsequently notifies to the Supplier using the Changing the Contract Procedure is eligible for Funding Payments;
"Eligible Premises Passed"	an Eligible Premises which has achieved Premises Passed status;
"Eligible Stage One Expenditure"	is that Supplier expenditure which: (a) can be reasonably allocated or apportioned to this Contract; (b) is incremental to the Supplier's cost base that would otherwise have been incurred; (c) is incurred in accordance with this Contract; (d) is directly attributable to the Stage One (Network Detailed Design and Due Diligence) Works; and (e) is capable of being capitalised under Generally Accepted Accountancy Principles;
"Eligible Stage Two Expenditure"	is that Supplier expenditure which: (a) can be reasonably allocated or apportioned to this Contract; (b) is incremental to the Supplier's cost base that would otherwise have been incurred; (c) is incurred in accordance with this Contract; (d) is directly attributable to the Stage Two (Build) Works; and (e) is capable of being capitalised under Generally Accepted Accountancy Principles;
"End Date"	the earlier of: (a) the Expiry Date; or



	(b) if the Contract is terminated before the date specified in (a) above, the date of termination of the Contract;
"End User Premises"	the End User's home, community or business Premises;
"End User"	a consumer or a business who/which can use or uses (as applicable) any communications service offered on the Network by a Retail Service Provider;
"Environmental Policy"	a policy to conserve energy, water, wood, paper and other resources, reduce waste and phase out the use of ozone depleting substances and minimise the release of greenhouse gases, volatile organic compounds and other substances damaging to health and the environment, including the written environmental policy of the Authority made available to the Supplier and updated from time to time;
"Equality and Human Rights Commission"	the Government body named as such as may be renamed or replaced by an equivalent body from time to time;
"Exceptional Engineering Difficulty Plan"	a plan provided by the Supplier in the event of an Exceptional Engineering Difficulty in accordance with Clause 41 (Exceptional Engineering Difficulties);
"Exceptional Engineering Difficulty"	<p>means the :</p> <p class="list-item-l1">(a) discovery of any articles of value or antiquity, structures or other remains or items of geological or archaeological interest such that planned infrastructure build is directly impacted; and/or</p> <p class="list-item-l1">(b) unforeseen physical conditions including man-made or other physical obstructions or pollutants, including sub-surface and hydrological conditions,</p> <p>which becomes evident following the Effective Date that unavoidably impacts on the performance costs of the Authorised Drawdown and which, if unaddressed would render the Authorised Drawdown unable to be performed;</p>
"Existing IPR"	any and all IPR that are owned by or licensed to either Party and which are or have been developed independently of the Contract (whether prior to the Effective Date or otherwise);
"Exit Plan"	has the meaning given in Clause 28 (Exit management);
"Expiry Date"	means the date on which, for the final Authorised Drawdown:



	<p>(a) the Supplier has repaid any positive Final Active Services Take-up Clawback Amount in accordance with Paragraph 3.8(b) (Final Active Services Take-up Clawback Amount) of Schedule 3 (Financial Schedule) or the Authority has refunded any prior overpayment to the Supplier in accordance with Paragraph 3.12 (Final Active Services Take-up Clawback Amount) of Schedule 3 (Financial Schedule); and</p> <p>(b) the Supplier has repaid all positive Final Passive Services Take-up Clawback Amounts for all Wholesale Passive Products in accordance with Paragraph 4.8(b) (Final passive services clawback amount) of Schedule 3 (Financial Schedule) or the Authority has refunded all prior overpayments to the Supplier in accordance with Paragraph 4.12 (Final passive services clawback amount) of Schedule 3 (Financial Schedule);</p>
"Fast Track Change Procedure"	has the meaning given in Clause 48.30 (Fast track Changes);
"Final Active Services Take-up Clawback Amount"	has the meaning set out in Paragraph 3.11 (Final Active Services Take-up Clawback Amount) of Schedule 3 (Financial Schedule);
"Final Passive Services Take-up Clawback Amount"	has the meaning set out in Paragraph 4.11 (Final passive services clawback amount) of Schedule 3 (Financial Schedule);
"Final Stage Two (Build) Achievement Date"	means the latest date on which any Stage Two (Build) Milestone is Achieved for all Authorised Drawdowns;
"Financial Distress Event"	<p>means the occurrence or one or more of the following events:</p> <p>(a) the credit rating of the Monitored Company dropping below the applicable Credit Rating Threshold;</p> <p>(b) the Monitored Company issuing a profits warning to a stock exchange or making any other public announcement about a material deterioration in its financial position or prospects;</p>



	<ul style="list-style-type: none">(c) there being a public investigation into improper financial accounting and reporting, suspected fraud or any other impropriety of the Monitored Party;(d) Monitored Company committing a material breach of covenant to its lenders;(e) a Key Subcontractor (where applicable) notifying the Authority that the Supplier has not satisfied any sums properly due under a specified invoice and not subject to a genuine dispute; or(f) any of the following:<ul style="list-style-type: none">(i) commencement of any litigation against the Monitored Company with respect to financial indebtedness or obligations under a contract;(ii) non-payment by the Monitored Company of any financial indebtedness;(iii) any financial indebtedness of the Monitored Company becoming due as a result of an event of default; or(iv) the cancellation or suspension of any financial indebtedness in respect of the Monitored Company, <p>in each case which BDUK reasonably believes (or would be likely reasonably to believe) could directly impact on the continued performance of this Contract and delivery of the Outputs and the carrying out of the Works in accordance with the Contract and/or puts at risk public funding already granted (or to be granted) under the Contract;</p>
"Financial Distress Service Continuity Plan"	<p>means a plan setting out how the Supplier will:</p> <ul style="list-style-type: none">(a) remedy the potential adverse impact of the relevant Financial Distress Event; and(b) ensure:<ul style="list-style-type: none">(i) the continued performance of this Contract, including the continued provision of the Outputs and carrying out of the Works in accordance with each Authorised Drawdown;(ii) the security of public funding already granted (or to be granted); and



	(iii) for each Authorised Drawdown, it has or has access to enough funds to continue to pay its financial contribution amounts required to Achieve the Stage One (Network Detailed Design and Due Diligence) Complete Milestone and Stage Two (Build) Complete Milestone;
"Financial Model"	the financial models in respect of any Subsequent Drawdowns as amended from time to time in accordance with Clause 16.1 (Updates to the Financial Model);
"Financial Standing Report"	means the Supplier's report of its financial standing and as further described in the table in Clause 15.1 (Reports);
"Financial Year"	means the period commencing on 1 April and ending on 31 March;
"First Escalation Point of Contact"	means the individual identified by that name in Schedule 10 (Key Personnel);
"FOIA"	the Freedom of Information Act 2000 and any subordinate legislation made under that Act from time to time 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 event, occurrence, circumstance, matter or cause affecting the performance by either the Authority or the Supplier of its obligations arising from:</p> <ul style="list-style-type: none">(a) acts, events, omissions, happenings or non-happenings beyond the reasonable control of the Affected Party which prevent or materially delay the Affected Party from performing its obligations under the Contract;(b) riots, civil commotion, war or armed conflict, acts of terrorism, nuclear, biological or chemical warfare;(c) acts of a Crown Body, local government or regulatory bodies;(d) fire, flood or any disaster;(e) antiquities or unexploded ordnances; or(f) an industrial dispute affecting a third party for which a substitute third party is not reasonably available but excluding:



	<p>(i) any industrial dispute relating to the Supplier, the Supplier Staff (including any subsets of them) or any other failure in the Supplier or the Subcontractor's supply chain;</p> <p>(ii) any event, occurrence, circumstance, matter or cause which is attributable to the wilful act, neglect or failure to take reasonable precautions against it by the Party concerned; and</p> <p>(iii) any failure or delay caused by a lack of funds,</p> <p>but excluding, in the case of the Supplier:</p> <p>(a) an event to the extent it is capable of being mitigated by any of the Works;</p> <p>(b) 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;</p> <p>(c) an event or circumstance attributable to the Suppliers' or any Subcontractors' wilful act, neglect or failure to take reasonable precautions against the relevant event; and</p> <p>(d) an event or circumstance where its effect is such that a prudent provider of services similar to the Works, operating to the standards required by this Contract, would have foreseen and prevented or avoided the consequences of such event or circumstance;</p>
"Force Majeure Notice"	a written notice served by the Affected Party on the other Party stating that the Affected Party believes that there is a Force Majeure Event;
"Funding Payment"	a public funding payment paid to the Supplier under this Contract;
"GDPR"	the General Data Protection Regulation (Regulation (EU) 2016/679);
"General Anti-Abuse Rule"	<p>(a) the legislation in Part 5 of the Finance Act 2013; and</p> <p>(b) any future legislation introduced into parliament to counteract tax advantages arising from abusive arrangements to avoid National Insurance contributions;</p>



"General Change in Law"	a Change in Law where the change is of a general legislative nature (including taxation or duties of any sort affecting the Supplier) or which affects or relates to a Comparable Supply;
"Generally Accepted Accountancy Principles"	means the generally accepted accounting principles in the United Kingdom from time to time (UK GAAP);
"Gigabit Capable Connectivity"	gigabit download speeds of at least 1 Gbps delivered across the Network;
"Gigabit Infrastructure Subsidy"	the Government's programme awarding funding to private organisations to build their own broadband infrastructure networks to the twenty per cent (20%) of premises in the UK that are not commercially viable for the market to build to and make a profit;
"GIS IDAP Chair"	means the chair of the GIS IDAP, appointed by the Authority in accordance with the GIS IDAP Terms of Reference;
"GIS IDAP Terms of Reference"	means the document of the same name as provided to the Supplier by the Authority at Annex 1 of the Terms and Conditions and as updated from time to time;
"Gigabit Infrastructure Subsidy Independent Dispute Avoidance Panel" or "GIS IDAP"	means the panel constituted for the purposes of Gigabit Infrastructure Subsidy as further described in the GIS IDAP Terms of Reference;
"Good Industry Practice"	standards, practices, methods and procedures conforming to the Law and the exercise of the degree of skill and care, diligence, prudence and foresight which would reasonably and ordinarily be expected from a skilled and experienced person or body engaged within the relevant industry or business sector, which includes compliance with the NCSC High Risk Vendors Guidance;
"Governance Meetings"	means: (a) the meetings described in the tables at Clauses 14.14 to 14.16 (Governance Meetings); and



	<p>(b) any ad-hoc meetings requested by the Authority in accordance with Clause 14.12 (Governance),</p> <p>and "Governance Meeting" shall mean any one (1) of them;</p>
"Government Data"	<p>(a) the data, text, drawings, diagrams, images or sounds (together with any database made up of any of these) which are embodied in any electronic, magnetic, optical or tangible media, including any of the Authority's Confidential Information, and which:</p> <p>(i) are supplied to the Supplier by or on behalf of the Authority; or</p> <p>(ii) the Supplier is required to generate, process, store or transmit pursuant to this Contract; or</p> <p>(b) any Personal Data for which the Authority is the Data Controller;</p>
"Government"	the government of the United Kingdom (including the Northern Ireland Assembly and Executive Committee, the Scottish Government and the National Assembly for Wales), including government ministers and government departments and other bodies, persons, commissions or agencies from time to time carrying out functions on its behalf;
"Guarantee"	means a deed of guarantee in favour of the Authority in the form set out in Annex 1 (Form of Guarantee) of Schedule 12 (Guarantee);
"Guarantor"	means the person acceptable to the Authority and who has entered into a Guarantee;
"Halifax Abuse Principle"	the principle explained in the CJEU Case C-255/02 Halifax and others;
"Handover Point"	a network interconnection point between different communications providers or a communications provider and an RSP;
"High Risk Entity"	<p>means any entity:</p> <p>(a) which any involvement or association may:</p> <p>(i) prejudice the carrying out of the Works and/or provision of the Outputs;</p> <p>(ii) be contrary to the Authority's interests;</p>



	<ul style="list-style-type: none">(iii) be inconsistent with the policies of the Gigabit Infrastructure Subsidy and/or the terms of this Contract;(iv) cause reputational damage to the Authority and/or the Gigabit Infrastructure Subsidy or otherwise bring the Authority and/or the Gigabit Infrastructure Subsidy into disrepute;(v) cause the Authority to have concerns about the financial stability of the Supplier; and/or(vi) adversely affect or prejudice national security or the level of threat of criminal activity; and/or <p>(b) identified by the Authority as unsuitable in relation to the carrying out of the Works and/or provision of the Outputs;</p>
"HMRC"	His Majesty's Revenue and Customs;
"Incremental Product Margin"	means steady state, incremental profit (incremental revenue minus incremental cost) per customer unit or kilometre (as appropriate for the relevant Wholesale Passive Product) as set out in section 6 of the Outputs section of the Financial Model. Where steady state refers to a year other than the initial connection year;
"Indemnified Party"	a Party having (or claiming to have) the benefit of an indemnity under this Contract;
"Indemnifier"	a Party from whom an indemnity is sought under this Contract;
"Information"	has the meaning given under section 84 of the Freedom of Information Act 2000;
"Initial Scope"	means: <ul style="list-style-type: none">(a) Drawdown 1 (Initial Scope);(b) Drawdown 2 (Initial Scope);(c) Drawdown 3 (Initial Scope); and(d) Drawdown 4 (Initial Scope);
"Initial Drawdown"	means as the context requires: <ul style="list-style-type: none">(a) Drawdown 4 (Initial Scope); or



	(f) Drawdown 1 (Deferred Scope);
"Innovation Business Case"	has the meaning set out in Clause 60.1;
"Insolvency Event"	<p>in respect of a person:</p> <ul style="list-style-type: none">(a) a proposal is made for a voluntary arrangement within Part I of the Insolvency Act 1986 or of any other composition scheme, restructuring plan, reconstruction and arrangement or arrangement with, or assignment for the benefit of, its creditors;(b) a shareholders' meeting is convened for the purpose of considering a resolution that it be wound up or a resolution for its winding-up is passed (other than as part of, and exclusively for the purpose of, a bona fide reconstruction or amalgamation);(c) a petition is presented for its winding up (which is not dismissed within fourteen (14) Working Days of its service) or an application is made for the appointment of a provisional liquidator or a creditors' meeting is convened pursuant to section 98 of the Insolvency Act 1986;(d) a receiver, administrative receiver, monitor or similar officer is appointed over the whole or any part of its business or assets;(e) an application is made either for the appointment of an administrator or for an administration order, an administrator is appointed, or notice of intention to appoint an administrator is given;(f) it is or becomes insolvent within the meaning of section 123 of the Insolvency Act 1986;(g) being a "small company" within the meaning of section 382(3) of the Companies Act 2006, a moratorium comes into force pursuant to Schedule A1 of the Insolvency Act 1986;(h) where the person is an individual or partnership, any event analogous to those listed in limbs (a) to (g) (inclusive) occurs in relation to that individual or partnership; or(i) any event analogous to those listed in limbs (a) to (h) (inclusive) occurs under the law of any other jurisdiction;



"Insurances"	has the meaning set out in Clause 30.1 (The Insurances required);
"Intellectual Property Rights" or "IPR"	<ul style="list-style-type: none">(a) 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 or business names, goodwill, designs, Know-How, trade secrets and other rights in Confidential Information;(b) 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(c) all other rights having equivalent or similar effect in any country or jurisdiction;
"Intervention Area"	refers to the specified Premises or geographical area set out in Annex 1 (Premises and Intervention Areas) of the Specification;
"IPR Claim"	any claim of infringement or alleged infringement (including the defence of such infringement or alleged infringement) of any IPR, used to provide the Outputs or otherwise provided and/or licensed by the Supplier (or to which the Supplier has provided access) to the Authority in the fulfilment of its obligations under this Contract;
"ITT"	the invitation to tender for the provision of certain network deployment and broadband related works/outputs issued by the Authority to the tenderers in respect of the Contract (as may have been updated by the Authority during the procurement process);
"Key Milestone"	means the milestone identified in the Project Plan as a key milestone;
"Key Personnel"	those individuals listed in Paragraph 2 (Key Personnel) of Schedule 10 (Key Personnel) or as amended from time to time in accordance with Clause 19.23 (Key Personnel);
"Key Subcontract"	each Subcontract with a Key Subcontractor;
"Key Subcontractor"	means: <ul style="list-style-type: none">(a) the Subcontractors identified in Schedule 14 (Key Subcontractors); and/or(b) any Subcontractor which in the opinion of the Authority, performs (or would perform if appointed) an essential role in the provision of all or part of the Stage One (Network Detailed



	Design and Due Diligence) Works and/or Stage Two (Build) Works;
"Know-How"	all ideas, concepts, schemes, information, knowledge, techniques, methodology, and anything else in the nature of know-how relating to the Outputs but excluding any know-how already in the other Party's possession before the applicable Effective Date;
"Law"	any applicable statute, subordinate legislation, byelaw, regulation, order, or applicable judgement of a relevant court of law;
"LCIA Rules"	has the meaning set out in Clause 61.10 (Agreeing to go to LCIA arbitration);
"LCIA"	the London Court of International Arbitration;
"Line Plant Associated with Fibre Route"	fibre cable laid within ducts, buried underground, installed overhead or similar which connects from an exchange or handover point to a fibre distribution point, cabinet, joint box or other form of Network infrastructure from which End User Premises are directly connected;
"Local Authority"	<p>means each of the local authorities and/or local councils within the UK borders as set out in the following lists:</p> <p>(a) https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/791684/List_of_councils_in_England_2019.pdf;</p> <p>(b) https://www.cosla.gov.uk/councils;</p> <p>(c) https://www.wlga.wales/welsh-local-authority-links; and</p> <p>(d) https://www.nidirect.gov.uk/contacts/local-councils-in-northern-ireland,</p> <p>including successors to those bodies' functions and organisations created to deliver their functions and objectives;</p>
"Losses"	all losses, liabilities, damages, costs, expenses (including legal fees), disbursements, costs of investigation, litigation, settlement, judgment, interest and penalties whether arising in contract, tort (including negligence), breach of statutory duty, misrepresentation or otherwise and "Loss" shall be interpreted accordingly;
"Maximum Stage One Funding Payment"	the maximum sum payable by way of Funding Payments to the Supplier in respect of Stage One (Network Detailed Design and Due Diligence) for an Authorised Drawdown as set out in section 1.1 of the Outputs section of the relevant Financial Model;



"Maximum Stage Two Funding Payment"	means the maximum sum payable by way of Funding Payments to the Supplier in respect of Stage Two (Build) for an Authorised Drawdown as set out in section 1.2 of the Outputs section of the relevant Financial Model;
"Measurement Period"	has the meaning set out in Clause 15.3 (How the Supplier's performance will be measured);
"Mediation Notice"	has the meaning set out in Clause 61.5 (Commercial negotiations);
"Metres of Line Plant Associated with Fibre Route Complete"	means the length in metres of Line Plant Associated with Fibre Route deployed through the funded Network which has resulted in one (1) or more Eligible Premises Passed as evidenced to the Authority's satisfaction;
"Milestone Criteria"	the criteria for the Achievement of each Key Milestone and Build Milestone as specified in Annex 2 (Milestone Criteria) of Schedule 6 (Project Plan and Testing);
"Milestone Date"	the target date set out against the relevant Key Milestone or Build Milestone in the Project Plan by which the Milestone must be Achieved;
"Milestone Template"	means the template for the Milestones set out in Annex 1 (Milestone Template) of Schedule 6 (Project Plan and Testing);
"Milestone"	each of the Key Milestones and Build Milestones set out in the Project Plan;
"Minimum Sub-Superfast Percentage"	means (as the context requires): REDACTED UNDER FOIA SECTION 43: COMMERCIALLY SENSITIVE
"Modern Slavery Helpline"	as defined at Clause 47.4 (What we expect from our Suppliers);
"Monitored Company"	means the following entities: REDACTED UNDER FOIA SECTION 43: COMMERCIALLY SENSITIVE any Guarantor in accordance with Paragraph 4.2 (Request for a Guarantee and financial information) of Schedule 7 (Financial Distress), and 'Monitored Company' shall mean any one (1) of them;
"Month"	a calendar month and "Monthly" shall be interpreted accordingly;



"National Competence Centre"	means Building Digital UK (BDUK) (or any successor) acting in its capacity as national competence centre (NCC) with responsibilities including the central coordination of subsidy control aspects of the Gigabit Infrastructure Subsidy;
"National Insurance"	contributions required by the National Insurance Contributions Regulations 2012 (SI 2012/1868) made under section 132A of the Social Security Administration Act 1992;
"Net Additional Active Services Take-up"	has the meaning set out in Paragraph 3.2 (Annual clawback payments) of Schedule 3 (Financial Schedule);
"Net Additional Passive Services Take-up"	has the meaning set out in Paragraph 4.2 (Annual passive services clawback amounts) of Schedule 3 (Financial Schedule);
"Network Detailed Design"	a network detailed design which meets the requirements set out in Paragraph 3.3(b) (Stage One (Network Detailed Design and Due Diligence) of Schedule 4 (Specification));
"Network Services Data"	means data about actual or planned Works in the Intervention Area (or parts thereof) including at a granular level, (down to a seven (7) digit post code level, End User Premise level and Structure level) to the extent it may comprise Personal Data in relation to End Users (excluding Pre-Program Data and Take-Up Data);
"Network"	<p>an electronic communications network comprising:</p> <ul style="list-style-type: none">(a) a set of communications nodes and links;(b) all main equipment, ancillary equipment and systems which comprise a core network;(c) Backhaul;(d) middle mile; and(e) access network, <p>which shall be constructed, deployed, commissioned and operated by the Supplier, as specified for the Works, in accordance with this Contract;</p>
"New IPR"	<ul style="list-style-type: none">(a) IPR in items created by the Supplier (or by a third party on behalf of the Supplier) specifically for the purposes of the Contract and updates and amendments of these items including (but not limited to) database schema; and/or



	<p>(b) IPR in or arising as a result of the performance of the Supplier's obligations under the Contract and all updates and amendments to the same,</p> <p>but shall not include the Supplier's Existing IPR;</p>
"NCSC High Risk Vendors Guidance"	<p>means:</p> <p>(a) the guidance issued by the National Cyber Security Centre in January 2020 concerning the use of equipment from high risk vendors in UK telecoms networks which is available (at the Effective Date) at https://www.ncsc.gov.uk/guidance/ncsc-advice-on-the-use-of-equipment-from-high-risk-vendors-in-uk-telecoms-networks; and</p> <p>(b) any other guidance relating to the involvement of high risk vendors in UK telecoms networks as published by the National Cyber Security Centre from time to time;</p>
"Occasion of Tax Non-Compliance"	<p>(a) any tax return of the Supplier submitted to a Relevant Tax Authority on or after 1 October 2012 that is found on or after 1 April 2013 to be incorrect as a result of:</p> <p>(i) a Relevant Tax Authority successfully challenging the Supplier under the General Anti-Abuse Rule or the Halifax Abuse Principle or under any tax rules or legislation that have an effect equivalent or similar to the General Anti-Abuse Rule or the Halifax Abuse Principle; and/or</p> <p>(ii) the failure of an avoidance scheme which the Supplier was involved in, and which was, or should have been, notified to a Relevant Tax Authority under the DOTAS or any equivalent or similar regime; and/or</p> <p>(b) any tax return of the Supplier submitted to a Relevant Tax Authority on or after 1 October 2012 that gives rise on or after 1 April 2013 to a criminal conviction in any jurisdiction for tax related offences which is not spent at the Effective Date or to a civil penalty for fraud or evasion;</p>
"Ofcom"	<p>means The Office of Communications and is the government-approved regulatory and competition authority for the broadcasting and telecommunications industries of the UK;</p>



"Open Market Review" or "OMR"	means the market engagement process through which the Authority will request information about the supply market's commercial build plans in order to determine levels of intervention required;
"Output"	an item or feature delivered or to be delivered to the Authority by the Supplier or a Subcontractor at any stage of the Contract;
"Parliament"	takes its natural meaning as interpreted by Law;
"Party"	the Authority or the Supplier, "Parties" shall mean both of them where the context permits;
"Passive Services Exposure to Clawback"	has the meaning set out in Paragraph 4.3 (Annual passive services clawback amounts) of Schedule 3 (Financial Schedule);
"Passive Services Take-up"	<ul style="list-style-type: none">(a) for Wholesale Passive Products measured by distance, each kilometre of Network adopted by a third party in the Intervention Area; or(b) for Wholesale Passive Products measured by customer units, each unit of Network adopted by a third party in the Intervention Area;
"PCR Regulations"	the Public Contracts Regulations 2015 and/or the Public Contracts (Scotland) Regulations 2015 (as the context requires);
"Personal Data Breach"	means a breach of security leading to the accidental or unlawful destruction, loss, alteration, unauthorised disclosure of, or access to, Personal Data transmitted, stored or otherwise Processed;
"Personal Data"	means any information relating to a Data Subject;
"Planning Activities"	the planning activities undertaken by the Supplier during Stage One (Network Detailed Design and Due Diligence) and Stage Two (Build) in order to prepare for the carrying out of the Works and provision of the Outputs;
"Planning Activity Issue"	has the meaning set out in Clause 7.3 (Planning Activities);
"Platform"	the online application operated on behalf of the Authority to facilitate the technical operation of the Contract;
"Premises Passed"	means an End User Premises:



	<p>(a) which has achieved Customer Ready For Service (as defined in the Specification); or</p> <p>(b) where the Supplier can demonstrate to the Authority's satisfaction in respect of that End User Premises:</p> <p>(i) that it is not legally possible, including in the event of a ransom strip; and/or</p> <p>(ii) where the Supplier will incur disproportionate expenditure,</p> <p>to achieve Customer Ready For Service (as defined in the Specification), unless the Supplier knew or ought to have known of the issues described in limbs (a) and (b) above during Stage One (Network Detailed Design and Due Diligence) and such End User Premises should have been identified in the Stage One Output and de-scoped from the relevant Authorised Drawdown;</p>
"Premises"	an address as identified by UPRN in Annex 1 (Premises and Intervention Areas) of the Specification;
"Pre-Program Data"	means data about planned network development by the Supplier to be provided to the Authority, including down to a seven (7) digit post code level, End User Premise level and structure level, to the extent it comprises Personal Data;
"Prescribed Person"	a legal adviser, an MP or an appropriate body which a whistle-blower may make a disclosure to as detailed in 'Whistleblowing: list of prescribed people and bodies', 24 November 2016, available online at: https://www.gov.uk/government/publications/blowing-the-whistle-list-of-prescribed-people-and-bodies--2/whistleblowing-list-of-prescribed-people-and-bodies ;
"Processing"	means any operation or set of operations which is performed on Personal Data or on sets of Personal Data, whether or not by automated means, such as collection, recording, organisation, structuring, storage, adaptation or alteration, retrieval, consultation, use, disclosure by transmission, dissemination or otherwise making available, alignment or combination, restriction, erasure or destruction and "Process" shall be construed accordingly;
"Processor"	means an entity which Processes Personal Data on behalf of a Controller;
"Progress Meeting"	the meeting between the Supplier and the Authority as described in Clause 14.15 (Governance Meetings);



"Prohibited Act"	<p>(a) to directly or indirectly offer, promise or give any person working for or engaged by the Authority or any other public body a financial or other advantage to:</p> <p>(i) induce that person to perform improperly a relevant function or activity; or</p> <p>(ii) reward that person for improper performance of a relevant function or activity;</p> <p>(b) 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 the Contract; or</p> <p>(c) committing any offence:</p> <p>(i) under the Bribery Act 2010 (or any legislation repealed or revoked by such Act); or</p> <p>(ii) under legislation or common law concerning fraudulent acts; or</p> <p>(iii) defrauding, attempting to defraud or conspiring to defraud the Authority or other public body; or</p> <p>(d) any activity, practice or conduct which would constitute one of the offences listed under (c) above if such activity, practice or conduct had been carried out in the UK;</p>
"Project Plan"	the Supplier's project plan in respect of either the Initial Scope or the Deferred Scope (as the context requires), which shall comply with Paragraph 1 (Project Plan) of Part 1 of Schedule 6 (Project Plan and Testing) and which at the Effective Date is set out in Schedule 5 (Tender);
"Purposes"	as defined in Exhibit A to the Contract;
"Quarter"	each sequential three (3) month period aligned with the Authority's fiscal year;
"Quarterly Feedback Report"	means the Supplier's report of that name containing Supplier feedback and as described in the table in Clause 15.1 (Reports);
"Rating Agency"	means the rating agency stated in Annex 1 (Rating Agency) of Schedule 7 (Financial Distress);



"Recipient"	the Party which receives or obtains directly or indirectly Confidential Information;
"Rectification Plan Failure"	as set out at Clause 18.16 (Rectification Plan Failure);
"Rectification Plan Process"	the process set out in Clause 18 (Rectification Plan Process);
"Rectification Plan Trigger Event"	has the meaning set out in Clause 18 (Rectification Plan Process);
"Rectification Plan"	the Supplier's plan (or revised plan) to rectify its breach using the template in Schedule 13 (Rectification Plan Template);
"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 and UK regulatory (as applicable), 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 (including Processing of Personal Data) 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 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;
"Relevant Index"	the Consumer Prices Index published by the Office for National Statistics in the United Kingdom, or any index substituted from time to time by the Office for National Statistics or its successors;
"Relevant Requirements"	all Law relating to bribery, corruption and fraud, including the Bribery Act 2010 and any guidance issued by the Secretary of State pursuant to section 9 of the Bribery Act 2010;
"Relevant Tax Authority"	HMRC, or, if applicable, the tax authority in the jurisdiction in which the Supplier is established;
"Relief Event"	has the meaning set out in Clause 40.1 (Relief Events);
"Relief Notice"	a notice provided by the Supplier in accordance with Clause 40.3 (Relief Events);



"Reminder Notice"	a notice sent in accordance with Clause 24.1 (Termination for Authority Default) given by the Supplier to the Authority providing notification that a payment has not been received on time;
"Replacement Supplier"	any third party providing Replacement Works appointed by the Authority from time to time (or where the Authority is providing replacement Works or Outputs for its own account, the Authority);
"Replacement Works"	any works or outputs which are the same as or substantially similar to any of the Works and/or Outputs and which the Authority receives in substitution for any of the Works and/or Outputs following the expiry or termination of this Contract, whether those services are provided by the Authority internally and/or by any third party;
"Reports"	the reports that the Supplier must produce and provide to the Authority as set out in Clause 15 (Reports) and "Report" shall mean any one (1) of them;
"Representative"	the Authority Representative or the Supplier Representative as the context requires;
"Request For Information"	a Request for Information or an apparent Request for Information under the FOIA or the EIRs;
"Requirements Release"	the point at which the Authority will publish a collection of UPRNs, located in a defined area, to the Suppliers to submit tenders for;
"Retail Service Provider" or "RSP"	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;
"Risk and Issue Register"	the Supplier's risk and issue register which at the Effective Date is set out in Schedule 5 (Tender) and updated from time to time in accordance with the table in Clause 15.1 (Reports);
"Schedules"	any attachment to the Contract which contains important information specific to each aspect of the Contract;
"Second Escalation Point of Contact"	means the individual identified by that name in Schedule 10 (Key Personnel);
"Security Policy"	the Authority's security policy which is in force throughout the Contract Period, as updated from time to time and notified to the Supplier;
"Senior Executive Review"	the meeting between the Supplier and the Authority as described in Clause 14.14 (Governance Meetings);



"Serious Fraud Office"	the Government body named as such as may be renamed or replaced by an equivalent body from time to time;
"Services Data"	means the Personal Data in respect of which the Supplier acts as a Processor as defined in Exhibit A to the Contract;
"SME"	an enterprise falling within the category of small and medium sized enterprises defined by Section 382 and 465 of the Companies Act 2006;
"Social Value and Supply Chain Report"	the means the Supplier's report on Social Value and the supply chain as further described in the table in Clause 15.1 (Reports);
"Social Value Plan"	means the Supplier's Social Value plan set out in Schedule 5 (Tender);
"Social Value"	wider social, economic and environmental benefits that can be secured through the delivery of a public contract and detailed within The Public Services (Social Value) Act which came into force on 31 January 2013;
"Specific Change in Law"	a Change in Law that relates specifically to the business of the Authority and which would not affect a Comparable Supply where the effect of that Specific Change in Law on the Works and/or Outputs is not reasonably foreseeable at the Effective Date;
"Specification"	the specification set out in Schedule 4 (Specification);
"SQ"	means the Supplier Selection Questionnaire response submitted to the Authority in relation to the Gigabit Infrastructure Subsidy procurement;
"Stage One (Network Detailed Design and Due Diligence) Complete Milestone"	means the Milestone of that name for an Authorised Drawdown set out in the Project Plan;
"Stage One (Network Detailed Design and Due Diligence) Cost"	has the meaning set out in section 3.1 of the Outputs section of the Financial Model for the relevant Authorised Drawdown;
"Stage One (Network Detailed Design and Due Diligence) Payment"	means the payment calculated in accordance with Paragraph 1.7 (Stage One (Network Detailed Design and Due Diligence) Payment) of Schedule 3 (Financial Schedule);



"Diligence) Payment"	
"Stage One (Network Detailed Design and Due Diligence) True-Up Amount"	has the meaning set out in Paragraph 1.6(a) (Stage One (Network Detailed Design and Due Diligence) Payment) of Schedule 3 (Financial Schedule);
"Stage One (Network Detailed Design and Due Diligence) Works"	those works to be carried out during Stage One (Network Detailed Design and Due Diligence) of the relevant Authorised Drawdown as set out at Paragraph 3 (Stage One (Network Detailed Design and Due Diligence)) of the Specification;
"Stage One (Network Detailed Design and Due Diligence)"	for each Authorised Drawdown, the period from the relevant Authorised Drawdown Commencement Date to and including the date on which the Stage One (Network Detailed Design and Due Diligence) Complete Milestone is Achieved for the Authorised Drawdown;
"Stage One (PMO) Cost"	has the meaning set out in section 3.1 of the Outputs section of the Financial Model for the relevant Authorised Drawdown;
"Stage One (PMO) True-up Amount"	has the meaning set out in Paragraph 1.6(b) (Stage One (Network Detailed Design and Due Diligence) Payment) of Schedule 3 (Financial Schedule);
"Stage One Eligible Cost Categories"	those categories of costs which may be incurred by the Supplier during Stage One (Network Detailed Design and Due Diligence) and for which a Funding Payment may be made (subject to the submission of a valid claim in accordance with Paragraph 1 (Funding Payments) of Schedule 3 (Financial Schedule)), as specifically detailed in Schedule 2 (Cost Categories);
"Stage One Output Report"	means the report provided by the Supplier as part of the Stage One Output based on the format of the Stage One Output Report Template set out on the Platform;
"Stage One Output"	for each Authorised Drawdown, the output provided by the Supplier evidencing completion of Stage One (Network Detailed Design and Due Diligence) and as further described in the table in Clause 15.1 (Reports);
"Stage One PMO Cost Categories"	those categories of costs which may be incurred by the Supplier during Stage One (Network Detailed Design and Due Diligence) in respect of



	project management office activity as specifically detailed in Schedule 2 (Cost Categories);
"Stage Three (Monitor and Clawback)"	the period commencing on the date on which the first (1 st) Premises is available for Take-up and ending on the Expiry Date;
"Stage Three (Monitor and Clawback) Commencement Date"	means the date on which the Stage Two (Build) Complete Milestone is Achieved;
"Stage Three Report"	means the report provided by the Supplier summarising the actual pricing for the Wholesale Access Products and Services and Wholesale Passive Products and Take-up and in life operating costs to date for the Wholesale Access Products and Services and Wholesale Passive Products, as further described in the table in Clause 15.1 (Reports) and based on the format of the Stage Three Report Template set out on the Platform;
"Stage Two (Build) Commencement Date"	means the date on which the Authority notifies the Supplier that the Stage Two (Build) Works can commence;
"Stage Two (Build) Complete Milestone"	the milestone of that name for an Authorised Drawdown set out in the Project Plan;
"Stage Two (Build) Complete Milestone Date"	the date on which the Stage Two (Build) Complete Milestone is Achieved;
"Stage Two (Build) Cost"	has the meaning set out in section 3.2 of the Outputs section of the Financial Model for the relevant Authorised Drawdown;
"Stage Two (Build) Key Milestone Payment"	means the payment calculated in accordance with Paragraph 1.13 (Stage Two (Build) Key Milestone Payment) of Schedule 3 (Financial Schedule);
"Stage Two (Build) Regular Payment"	means the payment calculated in accordance with Paragraphs 1.10 and 1.11 (Stage Two (Build) Regular Payments) of Schedule 3 (Financial Schedule);



"Stage Two (Build) True-Up Amount"	has the meaning set out in Paragraph 1.12(a) (Stage Two (Build) Key Milestone Payment) of Schedule 3 (Financial Schedule);
"Stage Two (Build) Works"	those works to be carried out during Stage Two (Build) of the relevant Authorised Drawdown set out at Paragraph 4 (Stage Two (Build)) of the Specification;
"Stage Two (Build)"	for each Authorised Drawdown, the period commencing on the Stage Two (Build) Commencement Date to and including the date on which the Stage Two (Build) Complete Milestone is Achieved for an Authorised Drawdown;
"Stage Two (PMO) Cost"	has the meaning set out in section 3.1 of the Outputs section of the Financial Model for the relevant Authorised Drawdown;
"Stage Two (PMO) True-Up Amount"	has the meaning set out in Paragraph 1.12(b) (Stage Two (Build) Key Milestone Payment) of Schedule 3 (Financial Schedule);
"Stage Two Eligible Cost Categories"	those categories of costs which may be incurred by the Supplier during Stage Two (Build) and for which a Funding Payment may be made (subject to the submission of a valid claim in accordance with Paragraph 1 (Funding Payments) of Schedule 3 (Financial Schedule), as specifically detailed in Schedule 2 (Cost Categories);
"Stage Two PMO Cost Categories"	those categories of costs which may be incurred by the Supplier during Stage Two (Build) in respect of project management office activity, as specifically detailed in Schedule 2 (Cost Categories);
"Stage Two Progress Form"	means the form provided by the Supplier as part of the Stage Two Progress Report based on the format of the Stage Two Progress Form Template set out on the Platform;
"Stage Two Progress Report"	means the report provided by the Supplier summarising the delivery progress of the Build Units and as further described in the table in Clause 15.1 (Reports);
"Status Report"	means the Supplier's report summarising the status of Stage One (Network Detailed Design and Due Diligence) and Stage Two (Build) as further described in the table in Clause 15.1 (Reports);
"Step Change"	change meeting the requirements of Paragraph 6.8 (General Wholesale Access Requirements) of the Specification;
"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;



"Sub-Superfast Premises"	an Eligible Premises which is indicated in the Financial Model, table i. Build Plan - Premises of the relevant Financial Model as being a sub-superfast premises;
"Subcontract"	<p>any contract or agreement (or proposed contract or agreement), other than the Contract, pursuant to which a third party:</p> <ul style="list-style-type: none">(a) carries out the Works and/or provides the Outputs (or any part of them);(b) provides facilities or services necessary for the carrying out of the Works and/or the provision of the Outputs (or any part of them); and/or(c) is responsible for the management, direction or control of the carrying out of the Works and/or the provision of the Outputs (or any part of them);
"Subcontractor"	any person other than the Supplier, who is a party to a Subcontract and the servants or agents of that person;
"Subsequent Drawdown"	means any Drawdown for the Initial Scope or the Deferred Scope (as the context requires) which has not been deemed an Authorised Drawdown;
"Subsidy Control Regime"	the primary (Acts of Parliament) or secondary (Delegated) legislation in UK Law setting out regulations relevant to the award and control of Funding Payments to the Supplier in connection with the Purpose of the Contract including those giving effect to relevant aspects of the TCA;
"Supplier Code of Conduct"	<p>means the following Supplier Code of Conduct published by HM Government in February 2019 setting out the standards and behaviours expected of suppliers who work with government:</p> <p>https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/779660/20190220-Supplier_Code_of_Conduct.pdf;</p>
"Supplier ITT Response"	the Supplier's response to the ITT (including any supplementary clarifications, answers and other provided information) submitted to the Authority;
"Supplier Management Board"	the meeting between the Supplier and the Authority as described in Clause 14.14 (Governance Meetings);
"Supplier Non-Performance"	has the meaning set out in Clause 40.2 (Relief Events);



"Supplier Representative"	the representative appointed by the Supplier as set out in Schedule 10 (Key Personnel);
"Supplier Solution"	the Supplier's solution to the Specification as set out in Schedule 5 (Tender);
"Supplier Staff"	all directors, officers, employees, agents, consultants and contractors of the Supplier and/or of any Subcontractor engaged in the performance of the Supplier's obligations under the Contract from time to time;
"Supplier Technical Solution"	the Supplier's technical solution set out in Paragraph 3 (Supplier Technical Solution) of Schedule 5 (Tender);
"Supplier"	the person, firm or company identified as such in Paragraph 2 of the Parties Clause on page 1 of the Contract;
"Survey"	an exercise undertaken by the Supplier in Stage One (Network Detailed Design and Due Diligence) to provide sufficiently comprehensive information on all relevant environmental factors impacting on the Works, that would be feasible for a reasonably competent supplier of good standing carrying out similar works in accordance with Good Industry Practice to undertake during Stage One (Network Detailed Design and Due Diligence);
"Take-up Data"	means data provided at a granular level (including down to a seven (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"	means Active Services Take-up and/or Passive Services Take-up as the context requires;
"TCA"	the Trade and Cooperation Agreement between the European Union and the European Atomic Energy Community, of the one part, and the United Kingdom of Great Britain and Northern Ireland, of the other part, dated 24 December 2020;
"Termination Notice"	a written notice of termination given by one Party to the other, notifying the Party receiving the notice of the intention of the Party giving the notice to terminate the Contract on a specified date and setting out the grounds for termination;
"Terms and Conditions"	means the document by that name under this Contract;



"Test Issue Management Log"	a log for the management of Test issues as described in Paragraph 10 (Test Issue Management Log) of Part 2 of Schedule 6 (Project Plan and Testing);
"Test Item"	an item or Works (or part of) identified in the Test Strategy as being subject to Testing;
"Test Plan"	a plan for the Testing of the Test Items set out in Schedule 5 (Tender);
"Test Report"	the reports to be provided by the Supplier setting out the results of the Tests in accordance with Paragraph 9 (Test Reports) of Part 2 of Schedule 6 (Project Plan And Testing);
"Test Strategy"	the strategy for Testing set out in Schedule 5 (Tender);
"Test Success Criteria"	the test success criteria for each Test as specified in the Test Strategy;
"Test"	a test performed by the Supplier in respect of a Test Item, in accordance with the Test Strategy and the Test Plans;
"Testing Quality Audit"	has the meaning set out in Paragraph 8 (Auditing the quality of the Test) of Part 2 of Schedule 6 (Project Plan and Testing);
"Testing"	the performance of Tests in accordance with Part 2 of Schedule 6 (Project Plan and Testing);
"Transparency Information"	<p>the content of this Contract, including any changes to this Contract agreed from time to time, except for:</p> <ul style="list-style-type: none">(a) any information which is exempt from disclosure in accordance with the provisions of the FOIA, which shall be determined by the Authority; and(b) Commercially Sensitive Information;
"Transparency Notice"	has the meaning set out in Clause 11.1(d) (Subsidy Control Regime);
"Transparency Notice Period"	has the meaning set out in Clause 11.1(d) (Subsidy Control Regime);
"UK"	United Kingdom;
"UK GDPR"	means GDPR as it forms part of the law of England and Wales, Scotland and Northern Ireland by virtue of the European Union (Withdrawal) Act 2018;



"Updated Deferred Scope"	has the meaning set out in Clause 6.1(a) (Deferred Scope Authorisation);
"Updated Financial Models"	has the meaning set out in Clause 6.1(b)(ii) (Deferred Scope Authorisation);
"Updated Network Designs"	has the meaning set out in Clause 6.1(b)(iii) (Deferred Scope Authorisation);
"Updated Project Plan"	has the meaning set out in Clause 6.1(b) (Deferred Scope Authorisation);
"UPRN"	Unique Property Reference Number;
"VAT"	value added tax in accordance with the provisions of the Value Added Tax Act 1994;
"Wayleave Report"	means the report on wayleaves provided to the Supplier as part of the Status Report and the Stage One Output based on the format and including the details set out in the "Wayleave Report Template" set out on the Platform;
"Weighted Eligible Premises Passed"	the calculation of the number of Eligible Premises Passed using the weighting assigned to each UPRN in the relevant Financial Model;
"Wholesale Access Prices Benchmarking Report"	means a written report produced by the Supplier in respect of the Wholesale Access Prices Benchmarking as further as described in Paragraph 5.8 (Wholesale Access Prices Benchmarking Report) of Schedule 3 (Financial Schedule);
"Wholesale Access Prices Benchmarking"	has the meaning set out in Paragraph 5.2 (Wholesale Access Prices Benchmarking) of Schedule 3 (Financial Schedule);
"Wholesale Access Prices"	means the prices (expressed in pound sterling and exclusive of VAT) set out in i.Products and Services table in the Financial Model in respect of the Wholesale Access Products and Services and Wholesale Passive Products;
"Wholesale Access Products and Services"	the wholesale access products and services in respect of the Network to be leased to RSPs as set out in Schedule 5 (Tender);



"Wholesale Passive Products"	the passive wholesale access products and services as set out in Schedule 5 (Tender);
"Worker"	any one of the Supplier Staff which the Authority, in its opinion, considers is an individual to which Procurement Policy Note 08/15 (Tax Arrangements of Public Appointees) (https://www.gov.uk/government/publications/procurement-policy-note-0815-tax-arrangements-of-appointees) applies in respect of the Works and/or the Outputs;
"Working Day"	any day other than a Saturday or Sunday or public holiday in England and Wales unless specified otherwise in writing by the Parties;
"Working with Local Authority Guidance"	means: (a) the guidance issued by the Department for Science, Innovation and Technology in December 2018 setting out steps to take when engaging with local authorities which is available (at the Effective Date) at https://www.gov.uk/guidance/working-with-local-authorities ; and (b) any other guidance relating to working with local authorities as published by the Department for Science, Innovation and Technology from time to time;
"Works Environment"	the environment within which the Works shall be carried out and/or connected to including all relevant land, property, buildings, carriageways, highways, infrastructure, networks and airspace;
"Works"	all or any part of the obligations to be performed by the Supplier to cover the Eligible Premises within the Intervention Area in accordance with the Specification and Project Plan, Network deployment and the Wholesale Access Products and Services and Wholesale Passive Products;
"Year One of the Initial Drawdown"	the twelve (12) month period commencing on the Stage Two (Build) Commencement Date of the Initial Drawdown.