

Building Digital UK (BDUK) Gigabit Infrastructure Subsidy

Contract Reference	C0186
The Authority	The Secretary of State of Digital, Culture, Media and Sport
The Authority's Address	100 Parliament Street, London SW1A 2BQ
The Supplier	<i>Freedom Fibre Ltd</i>
Supplier Address	<i>One St Peter's Square, Manchester, United Kingdom, M2 3DE</i>
DUNS Number	22-643-1140



DPS Schedule 1 (Call-Off Award Form)

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1 Applicable DPS Contract

This Call-Off Award Form is for the award of funding for the carrying out of the Works and provision of Outputs and is dated

It is issued under the DPS Contract with the reference number C0186.

2 Incorporated terms

The following documents are incorporated into this Call-Off Contract. If the documents conflict, the following order of precedence applies:

1. This Call-Off Award Form;
2. Core Terms;
3. Joint Schedule 1 (Definitions and Interpretation);
4. Call-Off Schedule 1 (Specification);
5. The following Schedules in equal order of precedence:

Schedule Number	Schedule Name
Joint Schedule 2	Change Forms
Joint Schedule 3	Cost Categories
Joint Schedule 4	Commercially Sensitive Information



Joint Schedule 5	Key Subcontractors
Joint Schedule 6	Financial Distress
Joint Schedule 7	Cyber Security
Joint Schedule 8	Rectification Plan Template
Joint Schedule 9	Key Personnel
Call-Off Schedule 3	Guarantee
Call-Off Schedule 4	Financial Schedule (except for Annex 1)
Call-Off Schedule 5	Project Plan and Testing

6. Annexe 1 of Call-Off Schedule 4 (Financial Schedule)

7. Call-Off Schedule 2 (Tender).

3 Contract dates

Minimum notice period for no-fault Authority termination under Clause 22.6 (Ending the Contract for convenience):	30 Days
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4 Insurance

Insurance Type	Minimum limit "in the aggregate"
N/A	N/A

5 Operational Integration

The supplier will support operational synergies in resourcing multiple contracts awarded whilst maintaining the reporting and contract management obligations, respectively.

Other Call-Off Contracts	Applicability of Operational Integration
N/A	N/A



6 Stage One (Network Detailed Design and Due Diligence) approach

Select whether the Supplier will be carrying out a full Stage One (Network Detailed Design and Due Diligence) or an expedited Stage One (Network Detailed Design and Due Diligence):

Full

7 Build Unit for Stage Two (Build)

Select Build Unit to be used for the calculation of Stage Two (Build) Funding Payments:

Premises Passed

8 Social Value

Select Social Value policy area to be included in the Social Value Plan.

PSV 1	PSV 2	PSV 3	PSV 4	PSV 5
Tackling economic inequality	Fighting climate change			

9 Authority invoicing details

Invoicing address details:

Name	Role	Email Address	Address
REDACTED UNDER FOIA SECTION 40: PERSONAL INFORMATION	REDACTED UNDER FOIA SECTION 40: PERSONAL INFORMATION	REDACTED UNDER FOIA SECTION 40: PERSONAL INFORMATION	100 Parliament Street, London SW1A 2BQ

Authority Representative:

Name	Role	Email Address	Address
REDACTED UNDER FOIA SECTION 40: PERSONAL INFORMATION	REDACTED UNDER FOIA SECTION 40: PERSONAL INFORMATION	REDACTED UNDER FOIA SECTION 40: PERSONAL INFORMATION	100 Parliament Street, London SW1A 2BQ



10 Supplier's contact details

Supplier Representative:

Name	Role	Email Address	Address
REDACTED UNDER FOIA SECTION 40: PERSONAL INFORMATION	REDACTED UNDER FOIA SECTION 40: PERSONAL INFORMATION	REDACTED UNDER FOIA SECTION 40: PERSONAL INFORMATION	One St Peter's Square, Manchester, United Kingdom, M2 3DE

Supplier Contract Manager:

Name	Role	Email Address	Address
REDACTED UNDER FOIA SECTION 40: PERSONAL INFORMATION	REDACTED UNDER FOIA SECTION 40: PERSONAL INFORMATION	REDACTED UNDER FOIA SECTION 40: PERSONAL INFORMATION	One St Peter's Square, Manchester, United Kingdom, M2 3DE

11 Key Subcontractors

The following entities are Key Subcontractors for the purposes of this Call-Off Contract:

REDACTED UNDER FOIA SECTION 43: COMMERCIALLY SENSITIVE

12 Key Personnel

The following people are Key Personnel for the purposes of this Call-Off Contract, in addition to any Key Personnel specified in Joint Schedule 9 (Key Personnel): REDACTED UNDER FOIA SECTION 40: PERSONAL INFORMATION

13 Monitored Company

The following entities are Monitored Companies for the purposes of Joint Schedule 6 (Financial Distress):

REDACTED UNDER FOIA SECTION 43: COMMERCIALLY SENSITIVE	REDACTED UNDER FOIA SECTION 43: COMMERCIALLY SENSITIVE	
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14 Average Connection Life

For the purpose of calculating the Final Active Services Take-up Clawback Amounts and the Final Passive Services Take-up Clawback Amounts, the Average Connection Life is set out below:

Technology	Connection Life	Number of Premises													
REDACTED UNDER FOIA SECTION 43: COMMERCIALLY SENSITIVE	REDACTED UNDER FOIA SECTION 43: COMMERCIA LLY SENSITIVE	REDACTED UNDER FOIA SECTION 43: COMMERCIALLY SENSITIVE													
Total:	REDACTED UNDER FOIA SECTION 43: COMMERCIA LLY SENSITIVE	REDACTED UNDER FOIA SECTION 43: COMMERCIALLY SENSITIVE													
Average Connection Life (rounded up to the nearest Quarter):			REDACTED D UNDER FOIA SECTION 43: COMMER CIALLY SENSITIV E												
Average Connection Life = Connection Life for each technology multiplied by the Total Number of Eligible Premises of that Technology Type divided by the Total Number of Eligible Premises															
Example 1:															
<table><tr><th>Technology Type</th><th>Connection Life</th><th>Number of Eligible Premises</th></tr><tr><td>Technology Type 1</td><td>10 years</td><td>1,000</td></tr><tr><td>Technology Type 2</td><td>20 years</td><td>4,000</td></tr><tr><td>Technology Type 3</td><td>30 years</td><td>2,000</td></tr></table>			Technology Type	Connection Life	Number of Eligible Premises	Technology Type 1	10 years	1,000	Technology Type 2	20 years	4,000	Technology Type 3	30 years	2,000	
Technology Type	Connection Life	Number of Eligible Premises													
Technology Type 1	10 years	1,000													
Technology Type 2	20 years	4,000													
Technology Type 3	30 years	2,000													
$Average\ Connection\ Life = \frac{10*1,000+20*4,000+30*2,000}{1,000+4,000+2,000} = \frac{150,000}{7,000} = 21.$ <div>42→21</div>															
The final step is rounding up to the nearest quarter															
Example 2:															



Technology Type	Connection Life	Number of Eligible Premises		
Technology Type 1	10 years	2,000		
Technology Type 2	20 years	0		
Technology Type 3	30 years	3,500		
$???? = \frac{10 \times 2,000 + 20 \times 0 + 30 \times 3,500}{2,000 + 0 + 3,500} = \frac{125,000}{5,500} = 22.72 \rightarrow 22 \text{ } ????$ <p>The final step is rounding up to the nearest quarter</p>				

15 Minimum Sub-Superfast Percentage

For the purposes of Clause 7.1(e), the Minimum Sub-Superfast Percentage is 11.70%

For and on behalf of the Supplier:		For and on behalf of the Authority:	
Signature:		Signature:	
Name:		Name:	
Role:		Role:	
Date:		Date:	



Department for
Digital, Culture,
Media & Sport

Annex 1 – Intervention Area

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Building Digital UK (BDUK)

Gigabit Infrastructure Subsidy

Core Terms



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Background

- A The Authority is implementing a Government market intervention activity to support the rollout of gigabit capable broadband infrastructure to the whole of the UK.
- B The Supplier is a leading supplier of broadband infrastructure.
- C Following a procurement process, the Authority selected the Supplier to carry out the Works and provide the Outputs.
- D Both Parties agree that it is in both Parties' interest to enter into this Contract. The Supplier shall receive the Funding Payments for carrying out the Works and providing the Outputs in accordance with the Contract and it is in the Authority's interest for the fulfilment of its policy objectives.
- E Both Parties have agreed to contract with each other in accordance with the terms and conditions set out below.

1 Definitions used in the Contract

Interpret this Contract using Joint Schedule 1 (Definitions and Interpretation).

2 How the Contract works

- 2.1 Subject to Clauses 2.10 and 2.11, the Supplier is eligible for the award of Call-Off Contracts during the DPS Contract Period.
- 2.2 The Authority doesn't guarantee the Supplier any exclusivity, quantity or value of work under the DPS Contract.
- 2.3 The Authority has paid one (1) penny to the Supplier legally to form the DPS Contract. The Supplier acknowledges this payment.
- 2.4 If the Authority decides to award a Call-Off Contract under the DPS it must use DPS Schedule 2 (Call-Off Procedure) and must state its requirements using DPS Schedule 1 (Call-Off Award Form). If allowed by the PCR Regulations, the Authority can:
 - (a) make changes to DPS Schedule 1 (Call-Off Award Form);
 - (b) create new Call-Off Contract Schedules; and
 - (c) exclude any optional template Call-Off Contract Schedules.
- 2.5 Each Call-Off Contract:
 - (a) is a separate Contract from the DPS Contract;
 - (b) is between a Supplier and the Authority;

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- (c) includes Core Terms, Schedules and any other changes or items in the completed Call-Off Award Form; and
 - (d) survives the termination of the DPS Contract, with the DPS Contract terms remaining intact.
- 2.6 The Supplier acknowledges it will have all the information required to perform its obligations under each prospective Call-Off Contract before entering into such Call-Off Contract. When information is provided by the Authority no warranty of its accuracy is given to the Supplier.
- 2.7 The Supplier won't be excused from any obligation, or be entitled to additional costs or an increase to any Funding Payments because it failed to either:
 - (a) verify the accuracy of the Due Diligence Information; or
 - (b) properly perform its own adequate checks.
- 2.8 The Authority will not be liable for errors, omissions or misrepresentation of any information to the extent permitted by Law and excluding fraudulent misrepresentation.
- 2.9 A Call-Off Contract can only be created using the electronic procedures described in the Contract Notice and/or other procurement documents as required by the PCR Regulations.
- 2.10 A Supplier can only be awarded a Call-Off Contract under the DPS Contract:
 - (a) while it:
 - (i) meets the basic access requirements for the DPS stated in the Contract Notice;
 - (ii) is complying with its obligations under Clause 19.8 (Supply chain) regarding the payment of Subcontractors;
 - (iii) is complying with the Access to Infrastructure Code;
 - (iv) is complying with the obligation to provide a DPS Annual Self Certification;
 - (v) continues to satisfy the selection criteria set out in the SQ; and
 - (vi) is complying with its obligations in respect of funding awards as set out in Clause 11 (Subsidy Control Regime);
 - (b) provided that the Authority only exercised the right to terminate described in Clause 22.2 (Termination at the end of Stage One (Network Detailed Design and Due Diligence)) in less than three (3) Call-Off Contracts to which the Supplier is or has been a Party;



- (c) provided that the Authority has not exercised its right to suspend the Supplier's eligibility for the award of Call-Off Contracts in accordance with Clause 2.11; and
 - (d) subject to Clauses 2.10(b) and 2.11, where the Authority has exercised the right to terminate described in Clause 22.2 (Termination at the end of Stage One (Network Detailed Design and Due Diligence)) on more than one (1) occasion under any Call-Off Contract to which the Supplier is or has been a party, it can demonstrate to the Authority's satisfaction that all statements made and documents, including the Supplier's tender, submitted as part of the procurement process for that Call-Off Contract:
 - (i) have been prepared in accordance with Good Industry Practice and the relevant provisions of ISO 9000; and
 - (ii) have been certified by a chartered accountant or a person of similar suitable qualification or authority within the Supplier's organisation acting with express authority as being accurate and not misleading.
- 2.11** Without prejudice to Clauses 2.10(b), and 22.8(n) (Termination for Supplier Default), if following receipt of a Stage One Output, the Authority reasonably believes or suspects that the Supplier has, on more than one (1) occasion, knowingly submitted an unachievable tender as part of the procurement process in respect of any Call-Off Contract to which the Supplier is or has been a party with the intent to materially change this during Stage One (Network Detailed Design and Due Diligence), the Authority has the right to suspend the Supplier's eligibility for the award of Call-Off Contracts for a period of up to three (3) years following receipt of the relevant Stage One Output.

3 Funding purpose

Funding offer

- 3.1 In consideration of the Supplier's involvement in Gigabit Infrastructure Subsidy and otherwise complying with the terms and conditions set out in this Contract, the Authority agrees to provide funding only for the amount, period and purposes set out in this Contract.

Purpose and extent of the Funding Payments

- 3.2 The Supplier:
- (a) shall not use the Funding Payments for any activities other than to carry out the Works as set out in this Contract in order to assist the Authority with the implementation of Gigabit Infrastructure Subsidy, or as otherwise approved in writing by the Authority; and
 - (b) shall use the Funding Payments only on the terms and conditions set out in this Contract.



- 3.3 The Funding Payments are made by the Authority under Section 13A of the Industrial Development Act 1982. The Authority's financial processes and procedures in connection with this Contract will be carried out in accordance with HM Treasury guidance: "Managing Public Money" (ref: <https://www.gov.uk/government/publications/managing-public-money>) and other HM Treasury Guidance in effect from time to time.
- 3.4 The Supplier accepts responsibility for the proper use and administration of all Funding Payments provided under this Contract.
- 3.5 Funding Payments must not be used to support activity intended to:
- (a) influence or attempt to influence the UK Parliament, Government or political parties;
 - (b) influence or attempt to influence the awarding or renewal of contracts and grants by the Government; or
 - (c) influence or attempt to influence legislative or regulatory action in the UK.
- 3.6 The Supplier shall not apply to a third party for public funding to cover costs relating to Gigabit Infrastructure Subsidy. Where the Supplier has received public funding prior to the DPS Effective Date that will contribute to costs relating to Gigabit Infrastructure Subsidy, it shall provide the Authority with details of the amount and how that funding will contribute towards Gigabit Infrastructure Subsidy.
- 3.7 The Supplier agrees and accepts that it will not apply for duplicate funding in respect of any part of Gigabit Infrastructure Subsidy or any related administration costs that the Authority is funding in full under this Contract and that it may be prosecuted for fraud should it dishonestly and intentionally make such an application.

4 What needs to be carried out

Works and Outputs

- 4.1 The Supplier shall carry out the Works and provide the Outputs and shall ensure they:
- (a) comply in all respects with the Specification, the Supplier Solution and the other relevant terms of this Contract;
 - (b) are provided in accordance with the Project Plan; and
 - (c) are provided to a professional standard.
- 4.2 The Supplier must perform its obligations under this Contract, including in relation to the carrying out of the Works and the provision of the Outputs in accordance with:
- (a) all Law;
 - (b) Good Industry Practice; and

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- (c) its own policies, processes and internal quality control measures as long as they don't conflict with the Contract.

Specification and Supplier Solution

- 4.3 The Supplier agrees that the Supplier Solution in Call-Off Schedule 2 (Tender) shall not relieve the Supplier of its responsibility for ensuring compliance with the Specification.
- 4.4 Where a higher standard or greater commitment is specified in the Call-Off Schedule 2 (Tender) than specified in the Specification the Supplier shall be obliged to deliver to that higher standard or greater commitment at its own cost.
- 4.5 If either Party becomes aware of any conflict, inconsistency or ambiguity between the Specification and the Call-Off Schedule 2 (Tender), that Party shall as soon as reasonably practicable and in any event within ten (10) Working Days:
 - (a) notify the other Party of such conflict, inconsistency or ambiguity; and
 - (b) following receipt by the other Party of such notification, the Parties shall endeavour (acting reasonably) to promptly resolve such conflict, inconsistency or ambiguity and if necessary amend the Call-Off Schedule 2 (Tender) using the Changing the Contract Procedure at no cost to the Authority.

5 Requests for mapping and other deployment data

The Supplier shall provide, at the request of the Authority from time to time or as otherwise expressly stated within this Contract, all supporting mapping and other deployment data to a granular level (including down to a UPRN level, End User Premises level and Structure level) of actual or planned Works in the Intervention Area (or parts thereof), as reasonably required in order to enable the Authority to audit, validate and reasonably satisfy itself that the actual provision and roll out of the Network and Works are or will be provided in accordance with the terms of this Contract.

6 Rights and protections

Warranties

- 6.1 The Supplier warrants and represents that:
 - (a) it has full capacity and authority to enter into and to perform this Contract;
 - (b) this Contract is executed by its authorised representative;
 - (c) it is a legally valid and existing organisation incorporated in the place it was formed;
 - (d) there are no known legal or regulatory actions, suits, proceedings or investigations before any court, administrative body or arbitration tribunal pending or threatened against it or its Affiliates that might affect its ability to perform this Contract;

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- (e) its execution, delivery and performance of its obligations under this Contract will not constitute a breach of any Law or obligation applicable to it and will not cause or result in a default under any agreement by which it is bound;
- (f) its obligations under this Contract constitute its legal, valid and binding obligations, enforceable in accordance with their respective terms subject to applicable bankruptcy, reorganisation, insolvency, moratorium or similar Laws affecting creditors' rights generally and subject, as to enforceability, to equitable principles of general application (regardless of whether enforcement is sought in a proceeding in equity or law);
- (g) where the total Funding Payments payable under this Contract are or are likely to exceed five million pounds sterling (£5,000,000) at any point during the relevant Contract Period, it has notified the Authority in writing of any Occasion of Tax Non-Compliance and any litigation in which it is involved that is in connection with any Occasion of Tax Non-Compliance;
- (h) it has all necessary rights, authorisations, licences, regulatory approvals and consents to perform its obligations under this Contract, save for those which can only be obtained by the Supplier after the Effective Date as part of the carrying out of the Works and the provision of the Outputs;
- (i) it doesn't have any contractual obligations which are likely to have a material adverse effect on its ability to perform this Contract;
- (j) it has all necessary rights in and to the Supplier's Existing IPR and any other materials made available by the Supplier (and/or any Subcontractor) to the Authority which are necessary for the performance of the Supplier's obligations under this Contract and/or receipt and benefit from the Works, Outputs and the Supplier's obligations under this Contract;
- (k) it is not impacted by an Insolvency Event;
- (l) within the previous twelve (12) Months, no Financial Distress Events have occurred or are subsisting (or any events that would be deemed to be Financial Distress Events under this Contract had this Contract been in force) and there are currently no matters that it is aware of that could cause a Financial Distress Event to occur or subsist; and
- (m) all statements made and documents, including the Supplier's tender, submitted as part of the procurement of the Works and Outputs are and remain true and accurate and not misleading.

6.2 If at any time the Supplier becomes aware that a representation or warranty given by it under this Contract has been breached, is untrue or is misleading, it shall immediately notify the Authority of the relevant occurrence in sufficient detail.



- 6.3 Each of the representations and warranties set out in Clause 6.1 shall be construed as a separate representation and warranty and shall not be limited or restricted by reference to, or inference from, the terms of any other representation, warranty or any other undertaking in this Contract.
- 6.4 For the avoidance of doubt, the fact that any provision within this Contract is expressed as a warranty shall not preclude any right of termination which the Authority may have in respect of breach of that provision by the Supplier.
- 6.5 Except as expressly stated in this Contract, all warranties and conditions whether express or implied by statute, common law or otherwise are hereby excluded to the extent permitted by Law.

Supplier covenants

- 6.6 The Supplier shall:
- (a) at all times comply with the Access to Infrastructure Code;
 - (b) at all times comply with the Subsidy Control Regime and its obligations under Clause 11 (Subsidy Control Regime);
 - (c) at all times allocate sufficient resources with the appropriate technical expertise to carry out the Works and provide the Outputs in accordance with this Contract;
 - (d) obtain and maintain throughout the Contract Period, all the necessary rights, authorisations, licences, regulatory approvals and consents to perform its obligations under this Contract;
 - (e) ensure that it shall continue to have all necessary rights in and to the Supplier's Existing IPR, New IPR and any other materials made available by the Supplier (and/or any Subcontractor) to the Authority which are necessary for the performance of the Supplier's obligations under this Contract and/or receipt and benefit from the Works, Outputs and the Supplier's obligations under this Contract;
 - (f) provide the Authority with such assistance as the Authority may require during the Contract Period in respect of the Works and Outputs;
 - (g) gather, collate and provide such information and co-operation as the Authority may request for the purpose of ascertaining the Supplier's compliance with its obligations under this Contract;
 - (h) ensure all reports, outputs and information submitted to the Authority under this Contract are true, accurate, comprehensive and have been prepared in accordance with Good Industry Practice;



- (i) ensure all statements and documents submitted to the Authority in response to the Authority's request in accordance with Clause 5 (Requests for mapping and other deployment data) are true and accurate at the time of submission;
- (j) notify the Authority in writing within ten (10) Working Days of their occurrence, of any actions, suits or proceedings or regulatory investigations before any court, administrative body or arbitration tribunal pending, or to its knowledge, threatened against it that might affect its ability to perform its obligations under this Contract;
- (k) ensure that neither it, nor its Affiliates, embarrasses the Authority (including by causing negative press coverage) or otherwise brings the Authority into disrepute by engaging in any act or omission which is reasonably likely to diminish the trust that the public places in the Authority, regardless of whether or not such act or omission is related to the Supplier's obligations under this Contract;
- (l) use all reasonable endeavours without incurring additional expenditure to carry out all the necessary Planning Activities to perform its obligations under this Contract; and
- (m) where the broadband network is owned and operated (at a wholesale level) by a public authority (or in house company), ensure that it:
 - (i) limits its activities to the Intervention Area;
 - (ii) limits its activity to maintaining and granting access to the passive infrastructure, and does not engage in competition at the retail level with commercial operators; and
 - (iii) has accounting separation between the funds used for the operation of the networks and the other funds at the disposal of the public authority.

6.7 An obligation on the Supplier to do, or refrain from doing any act or thing shall include an obligation upon the Supplier to procure that all Subcontractors and Supplier Staff also do, or refrain from doing, such act or thing.

6.8 Without affecting Clauses 6.9 and 20.7 (Intellectual Property Rights (IPRs)) and any other rights and remedies of the Authority however arising, the Supplier shall:

- (a) remedy any breach of its obligations in Clauses 6.6(d) (except for breaches of obligations in respect of street works, wayleaves and planning permission consents, approvals and/or licences) and 6.6(e) within three (3) Working Days of becoming aware of the breach or being notified of the breach by the Authority where practicable or within such other time period as may be agreed with the Authority (taking into the account the nature of the breach that has occurred);
- (b) remedy any breach of its obligations in Clauses 6.6(b) and 6.6(f) to 6.6(i) within twenty (20) Working Days of becoming aware of the breach or being notified of the breach by the Authority; and

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- (c) meet all the costs of, and incidental to, the performance of such remedial work,
- and any failure of the Supplier to comply with its obligations under this Clause 6.8 within the specified or agreed time frame shall constitute a Rectification Plan Trigger Event.

Indemnities

- 6.9 The Supplier indemnifies the Authority against each of the following events:
- (a) any wilful misconduct of the Supplier and/or Supplier Staff that impacts this Contract;
 - (b) any wilful misconduct of any Subcontractor that impacts this Contract; and
 - (c) any non-payment by the Supplier of any tax or National Insurance.
- 6.10 All claims indemnified under this Contract must use Clause 50 (Dealing with Claims).

Change of Control

- 6.11 The Supplier shall notify the Authority in writing as soon as reasonably possible and in any event within one (1) Month of a Change of Control taking place.
- 6.12 Following receipt of the notice under Clause 6.11 the Authority may, subject to Clause 6.13;
- (a) give its written consent to the particular Change of Control; or
 - (b) object to the particular Change of Control by serving notice of its objection and giving reasons for its objection within six (6) Months of the later of the date on which the Change of Control took place or the date on which the Authority was given notice of the Change of Control.
- 6.13 The Authority may, acting reasonably, object to a Change of Control if it considers that the Change of Control may:
- (a) prejudice the carrying out of the Works and/or provision of the Outputs;
 - (b) be contrary to the Authority's interests;
 - (c) be inconsistent with the policies of Gigabit Infrastructure Subsidy and/or the terms of this Contract; and/or
 - (d) cause the Supplier and/or its Affiliates to be considered a High Risk Entity.

The grounds upon which the Authority may reasonably object to a Change of Control set out in this Clause 6.13 are not exhaustive.

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7 Project Plan, delays and Planning Activities

Project Plan

7.1 The Supplier shall:

- (a) subject to Clauses 38 (Circumstances beyond your control), 39 (Relief Events) and 40 (Exceptional Engineering Difficulties), ensure that each Milestone is Achieved on or before its Milestone Date. For the avoidance of doubt, where a new Milestone Date is agreed with the Authority, in accordance with the provisions of a Call-Off Contract following the occurrence of the events described in the Clauses referenced in this Clause 7.1, the Supplier shall not be entitled to relief from this Clause 7.1;
- (b) be responsible for the overall management and carrying out of the Works and provision of the Outputs and the Project Plan;
- (c) identify and manage the resolution of any problems encountered in relation to the Works and the Outputs in order to ensure the timely and effective completion of each task;
- (d) provide updates on delivery risks and issues during Stage One (Network Detailed Design and Due Diligence) and Stage Two (Build) in each Status Report in accordance with Clause 15.3 (Call-Off Contract Reports); and
- (e) ensure that by the end of each Build Year after Year One, the total number of Sub-Superfast Premises which have achieved Premises Passed status in the respective Build Year and all previous Build Years (if applicable but excluding Year One) is greater than or equal A where:

A = Minimum Sub-Superfast Percentage % * total number of Eligible Premises included in the Supplier's Project Plan for that Build Year.

Examples:

		Example 1	Example 2	Example 3
Eligible Premises in the Intervention Area		5000	8000	10000
Minimum percentage Sub-Superfast to be completed in each year after Year One		25%	25%	25%
Year One Build	Planned	1000	1000	1000
Of which Minimum Sub-Superfast	No minimum required			

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Year Two Build	Planned	4000	7000	8000
Of which Minimum Sub-Superfast	25%	1000	1750	2000
Year Three Build	Planned			1000
Of which Minimum Sub-Superfast	25%			250
Total Premises Passed		5000	8000	10000

Delays

- 7.2 As soon as the Supplier becomes aware that there is, or there is reasonably likely to be, a delay in the Achievement of a Milestone by its Milestone Date it shall:
- (a) notify the Authority in accordance with Clause 18 (Rectification Plan Process);
 - (b) comply with the Rectification Plan Process in order to address the impact of the delay or anticipated delay; and
 - (c) use all reasonable endeavours without incurring additional expenditure to eliminate or mitigate the consequences of any delay or anticipated delay.

Planning Activities

- 7.3 Without prejudice to Clause 7.2, the Supplier may request additional support from the Authority if the Supplier becomes aware of any significant issue with the Planning Activities which cannot be resolved using Good Industry Practice and provided that a reasonably competent supplier of good standing carrying out similar works would also not be able to resolve the issue ("**Planning Activity Issue**"). One example of a Planning Activity Issue is where the Supplier is unable to agree a wayleave with a private third party in a timely manner which impacts or is reasonably likely to impact the carrying out of the Works and the provision of the Outputs. The example provided in this Clause 7.3 is not exhaustive and is for illustrative purposes only.
- 7.4 Where the Supplier requests additional support in accordance with Clause 7.3, it shall provide to the Authority in a timely and reasonable fashion, in accordance with Good Industry Practice:
- (a) as much advance notice as possible under the circumstances for any such request;
 - (b) full details of the Planning Activity Issue;

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- (c) the actual or anticipated effect of the Planning Activity Issue;
 - (d) any steps which the Authority can take to eliminate or mitigate the consequences and impact of the Planning Activity Issue; and
 - (e) written evidence of the steps that the Supplier has already taken and/or proposes to take to remedy or mitigate the effects of the Planning Activity Issue, including timescales.
- 7.5 The Authority shall meet with the Supplier within ten (10) Working Days, where reasonably practicable, to agree a plan for the provision of additional support in respect of the Planning Activity Issue, provided that:
- (a) the Supplier has provided the information set out in Clause 7.4;
 - (b) the Supplier has complied with Clause 6.6(l) (Supplier covenants); and
 - (c) the Supplier has used all reasonable endeavours without incurring additional expenditure to eliminate or mitigate the consequences and impact of the Planning Activity Issue in accordance with Good Industry Practice.
- 7.6 Any plan agreed between the Parties in accordance with Clause 7.5 may result in:
- (a) a reduction in the number of Premises in the scope of the Call-Off Contract;
 - (b) amendments to Milestone Dates; and/or
 - (c) amendments to the Funding Payments, provided that the Supplier can demonstrate to the satisfaction of the Authority that any additional costs to be incurred are necessary and cannot be mitigated in accordance with Good Industry Practice or absorbed within the overall forecast Eligible Expenditure.
- For the avoidance of doubt, the Changes described in this Clause 7.6 are for illustrative purposes only and are not exhaustive.
- 7.7 Any Change pursuant to Clause 7.6 shall be implemented in accordance with the Changing the Contract Procedure, save that where a Change includes a reduction in the number of Premises in the scope of the Call-Off Contract, the Supplier shall:
- (a) not be entitled to request additional funding; and
 - (b) use all reasonable endeavours without incurring additional expenditure to minimise any costs associated with such reduction,
- unless the Supplier can demonstrate and evidence to the Authority's satisfaction that such reduction cannot take place without additional funding.



8 Testing and Achievement of Milestones

- 8.1 The Parties shall comply with the provisions of Call-Off Schedule 5 (Project Plan and Testing) in relation to the procedures to determine whether a Milestone has been Achieved and/or a Test has been successfully completed.
- 8.2 Where Paragraph 6 (Stage One (Network Detailed Design and Due Diligence) approach) of the Call-Off Award Form specifies that the Supplier will be carrying out a full Stage One (Network Detailed Design and Due Diligence), the Supplier shall not carry out any Stage Two (Build) Works prior to the Stage Two (Build) Commencement Date.

9 Operational Integration

- 9.1 If a Supplier has been awarded more than one Call-Off Contract under the DPS, the Supplier shall work with the Authority to explore and where reasonably practicable, maximise the efficiency of operations and any savings as a result ("**Operational Integration**").
- 9.2 The principles of Operational Integration are:
- (a) each Call-Off Contract shall remain as a separate contract. As such, the Clauses, Schedules and Annexes contained in each shall be created, maintained and operated individually, in accordance with the terms of the respective Call-Off Contract;
 - (b) the primary goal of Operational Integration shall be for the Parties to work together to maximise efficiencies where reasonably practicable between the Call-Off Contracts taking into account overlap between those contracts with a view to reducing Supplier and Authority expenditure (in comparison to keeping the operation of the such contracts entirely distinct from each other);
 - (c) the Parties shall work together (acting reasonably and in good faith) and enter into such further arrangements as are necessary to achieve such integration and alignment (including any changes to the Call-Off Contracts if agreed by both Parties to be necessary for such purpose), as soon as is reasonably practicable; and
 - (d) expenditure for the same Works or Outputs may not be claimed under more than one (1) Call-Off Contract.
- 9.3 Examples of Operational Integration activities include:
- (a) governance: consolidate governance arrangements;
 - (b) key personnel: as far as reasonably practicable, seeking to use the same key personnel across the Contract; and
 - (c) project management: consolidating project management arrangements (although individual programme plans will still be required as a contract management tool).

The examples provided in this Clause 9.3 are not exhaustive and are for illustrative purposes only.

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- 9.4 Each Party shall be responsible for its own respective costs of implementing Operational Integration.
- 10 Completion of Stage One (Network Detailed Design and Due Diligence)**
- 10.1 This Clause 10 only applies where Paragraph 6 (Stage One (Network Detailed Design and Due Diligence) approach) of the Call-Off Award Form specifies that the Supplier will be carrying out a full Stage One (Network Detailed Design and Due Diligence) and is without prejudice to the Authority's right to terminate a Call-Off Contract in accordance with Clause 22.2 (Termination at the end of Stage One (Network Detailed Design and Due Diligence)), and such right shall continue to apply irrespective of whether a Party has referred a disputed matter for resolution by the Dispute Resolution Procedure in accordance with Clause 10.2.
- 10.2 The Parties shall within twenty (20) Working Days following the Authority's receipt of the Stage One Output provided in accordance with Paragraph 2.3 (Stage One (Network Detailed Design and Due Diligence)) of Call-Off Schedule 1 (Specification), meet to review and discuss the contents of any proposed Change Request and supporting evidence included in the Stage One Output.
- 10.3 The Authority shall only consider granting approval of a Change Request to increase funds or extend Milestone Dates where the Supplier reasonably evidences (in sufficient detail to allow assessment and assurance by the Authority) that all of the following apply:
- (a) the proposed increase in funds or amendment to Milestone Dates has occurred as result of a hazard or obstacle that a competent supplier, using Good Industry Practice could not have foreseen prior to carrying out the Survey;
 - (b) such hazard or obstacle is not due directly or indirectly, to any act or omission of the Supplier, its Subcontractors and/or agents; and
 - (c) as a consequence of such hazard or obstacle, the Supplier's costs and/or timetable for provision of the Network are impacted to an extent that cannot be mitigated through Good Industry Practice and that the corresponding changes reflect that impact only.
- 10.4 The Parties shall use their respective reasonable endeavours to agree within forty five (45) Working Days, unless otherwise agreed, what, if any, Changes are required to the Call-Off Contract, provided that either Party may refer any disputed matters for resolution by Dispute Resolution Procedure at any time.
- 10.5 Following an agreement in accordance with Clause 10.2, the Authority shall raise a Change Request based on the proposed change agreed with the Supplier. Such Change Request may include:
- (a) the Authority making available additional funds to satisfy some or all of any proposed increased costs, provided that such costs have been detailed and evidenced to the Authority's satisfaction in the Stage One Output;



- (b) a reduction in the number of Premises in the scope of the Call-Off Contract;
- (c) amendments to the Specification, the Supplier Solution and/or any other term of this Contract; and/or
- (d) amendments to the Milestone Dates.

10.6 Any Change pursuant to Clause 10.5 shall be implemented in accordance with the Changing the Contract Procedure save that:

- (a) any amendments to the Financial Model shall be consistent with (and shall not exceed) the changes proposed by the Supplier in the Stage One Output; and
- (b) where a Change includes a reduction in the number of Premises in the scope of the Call-Off Contract, the Supplier shall:
 - (i) not be entitled to request additional funding; and
 - (ii) use all reasonable endeavours without incurring additional expenditure to minimise any costs associated with such reduction,

unless the Supplier can demonstrate and evidence to the Authority's satisfaction that such reduction cannot take place without additional funding.

11 Subsidy Control Regime

11.1 Both the Supplier and the Authority acknowledge that:

- (a) any Funding Payments by the Authority to the Supplier pursuant to this Contract can only be made in accordance with the terms of this Contract and the Subsidy Control Regime;
- (a) all requirements under the Subsidy Control Regime relating to a Funding Payment will be satisfied and the Parties shall cooperate in good faith to ensure all such requirements are satisfied in a timely and reasonable fashion (noting the Supplier's obligations to the Authority in Clause 11.2 below); and
- (b) without limitation to the general obligations in Clause 11.1(b) above, in respect of any Funding Payment granted by the Authority, certain information including but not limited to the amount, duration, purpose and recipient of the Funding Payment will be made publicly available on a transparency database ("**Transparency Notice**") within six (6) Months ("**Transparency Notice Period**") from the date granted.

11.2 The Supplier shall provide such assistance, information and/or support as the Authority may require from time to time in connection with the Authority's responsibilities under the Subsidy Control Regime, or with any action, examination and/or investigation (which for the avoidance of doubt includes any legal proceedings brought in connection with a Funding Payment) as may, in the Authority's view, be necessary and relevant, but for the avoidance of doubt shall



not require the Supplier to provide legal advice subject to privilege to the Authority, and the Supplier shall be given adequate time to provide the information.

Supplier in receipt of unlawful funding under, or using funding in a manner incompatible with, the Subsidy Control Regime

11.3 If a Regulatory Body or court finds:

- (a) the Supplier to be a beneficiary of unlawful funding under the Subsidy Control Regime and issues a recovery decision; and/or
- (b) the Supplier has used any part of any Funding Payment in a manner which is incompatible with the Subsidy Control Regime (whether or not a recovery decision is issued),

then the Authority shall issue a written notice to the Supplier (with such notice including a copy of the relevant Regulatory Body decision or court determination) and the Supplier shall pay without delay and in any event not later than twenty (20) Working Days from the date of such written notice, an amount equivalent to:

- (i) the unlawful funding of which the Supplier is beneficiary (plus interest, calculated from the date when the unlawful funding was first provided to the Supplier, as applicable), which a Regulatory Body or court requires to be repaid pursuant to its decision or determination; and/or
- (ii) the part of any Funding Payment (plus interest, as applicable) which a Regulatory Body or court decides or determines has been used in a manner which is incompatible with the Subsidy Control Regime,

into a blocked account to which neither Party has unilateral access pending either:

- (iii) the expiry of the deadlines for the Supplier to bring proceedings challenging the decision or determination without the Supplier having brought such proceedings before such expiry; or, where the Supplier has brought proceedings before such expiry; or
- (iv) the final outcome of those proceedings including any appeals, provided that where a Regulatory Body's decision or court's determination does not specify the precise amount of funding as described in Clause 11.3(a) and/or Clause 11.3(b) to be recovered, the Parties shall (acting reasonably) calculate and agree upon the precise amount to be repaid.

11.4 If a Regulatory Body or court under the Subsidy Control Regime issues a decision or determination in accordance with Clause 11.3 in connection with this Contract naming the Supplier as beneficiary, the Supplier acknowledges that Clause 11.3 shall apply regardless of whether:



- (a) the Supplier is in Default and irrespective of the Supplier's financial circumstances, save to the extent, the Subsidy Control Regime requires otherwise; and
 - (b) in the Authority's view, as previously indicated to the Supplier, the funding awarded in connection with this Contract complies with the Subsidy Control Regime.
- 11.5 If the Supplier fails to bring proceedings in respect of the decision or determination before the expiry of the deadlines for those proceedings or loses any proceedings and fails to the extent possible to bring an appeal against that loss:
 - (a) the Supplier shall immediately give its consent for the funding as described in Clause 11.3(a) and/or Clause 11.3(b) (plus interest, as applicable) to be released from the blocked account to the Authority and/or to such other public sector body as the Authority may direct;
 - (b) without prejudice to any other remedy available to the Supplier at law (subject always to Clause 26 (Liability)), the Authority shall make no payment to the Supplier to indemnify the Supplier for the recovery of the funding described in Clause 11.3(a) and/or Clause 11.3(b); and
 - (c) subject to Paragraph 1.2 (General) of Call-Off Schedule 4 (Financial Schedule) and Clause 11.5(b), the Parties shall deal with the effect on this Contract of the repayment of the funding described in Clause 11.3(a) and/or Clause 11.3(b) in accordance with the Changing the Contract Procedure.

12 Liquidated damages

- 12.1 If the Stage Two (Build) Complete Milestone has not been Achieved on or before its relevant Milestone Date, the Supplier shall pay to the Authority liquidated damages on a per Working Day basis (with any part Working Day's delay counting as a Working Day):
 - (a) at the rate of five hundred pounds sterling (£500) for each Working Day; and
 - (b) from (but excluding) the Milestone Date for the Stage Two (Build) Complete Milestone to (and including) the earlier of:
 - (i) the date on which the Stage Two (Build) Complete Milestone is Achieved; or
 - (ii) the date which is fifty per cent (50%) of the number of days in Stage Two (Build) after the Milestone Date for the Stage Two (Build) Complete Milestone.
- 12.2 With effect from the first 1 April following the Call-Off Contract Effective Date and each anniversary of such date thereafter ("**Review Date**"), the sum payable for liquidated damages set out at Clause 12.1(a) shall increase by a figure equal to the percentage increase (if any) between:
 - (a) the amount of the latest Relevant Index published by the Review Date; and

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- (b) the amount of the Relevant Index being the latest published at the more recent of the 1 April and the preceding Review Date (as appropriate).
- 12.3 For the purposes of Clause 12.1(b)(ii), the number of days in Stage Two (Build) is the number of days from and including the Stage Two (Build) Commencement Date to and including the Milestone Date for the Stage Two (Build) Complete Milestone.
- 12.4 Liquidated damages are the sole financial remedy for the failure to Achieve the Stage Two (Build) Complete Milestone unless:
 - (a) the Stage Two (Build) Complete Milestone is not Achieved by the date calculated in accordance with Clause 12.1(b); or
 - (b) the Authority exercises a right to terminate in accordance with Clauses 22.8 (Termination for Supplier Default) to 22.15 (Public procurement termination events), Clause 24 (Termination for force majeure) or in respect of a repudiatory breach by the Supplier.
- 12.5 In order to protect the legitimate interests of the Authority, including the timely implementation of Gigabit Infrastructure Subsidy, ensuring value for money, and the recovery of losses, the Parties acknowledge and agree, having been advised by independent legal experts that the rate for liquidated damages set out in Clause 12.1:
 - (a) is proportionate and reasonable to protect the Authority's legitimate interests;
 - (b) represent a commercially justifiable position which reflects the effect of the failure to meet the Milestone Date for the Stage Two (Build) Complete Milestone; and
 - (c) is not a penalty.
- 12.6 Where liquidated damages are payable in accordance with Clause 12.1, the Authority shall determine in its absolute discretion and without notice, either:
 - (a) to raise an invoice for sums due as soon as practicable after the date specified in Clause 12.1(b). The invoice shall be payable by the Supplier within twenty (20) Working Days of receipt; or
 - (b) to set off any payment of liquidated damages by the Supplier to the Authority against any remaining Funding Payments to be made to the Supplier by the Authority.
- 12.7 For the avoidance of doubt, nothing in this Clause 12, shall prohibit the Authority from exercising any right it has to:
 - (a) withhold Funding Payments;
 - (b) recover any element of any Funding Payment which has been deemed unlawful or incompatible funding under the Subsidy Control Regime; and



- (c) clawback Funding Payments in accordance with Paragraph 3 (Active services clawback) and Paragraph 4 (Passive services clawback) of Call-Off Schedule 4 (Financial Schedule).

13 Working with Local Authorities

- 13.1 The Supplier acknowledges that it will need to liaise with the relevant Local Authority to obtain the information, access and permissions required to carry out the Works and provide the Outputs including but not limited to wayleaves.
- 13.2 Without prejudice to Clause 13.1, the Authority shall provide reasonable assistance to the Supplier in liaising with the relevant Local Authority where the Supplier demonstrates to the Authority's satisfaction that it:
 - (a) does not require assistance over and above what would be required by a reasonably competent supplier of good standing carrying out similar works; and
 - (b) has complied with the Working with Local Authority Guidance.

14 Governance and Governance Meetings

- 14.1 The Parties agree to manage their relationship and this Contract in accordance with the Authority's governance policies and the Supplier Code of Conduct.

Representatives

- 14.2 Both Parties shall ensure their respective Representatives shall have the authority to act on behalf of the respective Party on the matters pursuant to this Contract. Either Party may, by prior written notice to the other Party, revoke or amend the authority of its Representative or appoint a new or an alternate Representative. The Parties shall ensure that any change to the Representatives in accordance with this Clause is evidenced in a Change Authorisation Note.
- 14.3 The respective Representatives shall be sufficiently senior within the organisation of the appointing Party, and granted sufficient authority by that Party, to ensure full co-operation in relation to the operation and the management of this Contract.

Governance

- 14.4 The location of the Governance Meetings shall be at the Authority's premises unless otherwise agreed between the Parties.
- 14.5 The Authority shall determine in its absolute discretion the specific dates and time of the Governance Meetings.
- 14.6 The Authority shall set the agenda for each Governance Meeting and circulate the proposed agenda to the Supplier in advance.

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- 14.7 The Governance Meetings shall be attended by, as a minimum, the Authority Representative and the Supplier Representative and, where applicable, the attendees set out in the "Attendees" column of the tables set out in Clauses 14.13 to 14.15.
- 14.8 The Supplier shall provide any reports or documents requested by the Authority for consideration at the Governance Meeting five (5) Working Days before such meeting or other period agreed between the Parties.
- 14.9 The Supplier shall provide any assistance required by the Authority in relation to the Governance Meetings, including providing access to Supplier Staff and a summary comparison of the Supplier's recent performance against its performance reviewed at previous Governance Meetings (if applicable).
- 14.10 Without prejudice to Clause 14.5, the Supplier shall attend any ad-hoc meetings requested by the Authority on reasonable notice.
- 14.11 Where a Supplier has entered into more than one (1) Call-Off Contract, the Parties may agree (such agreement not to be unreasonably withheld or delayed) to combine a Call-Off Contract Meeting under this Call-Off Contract with a Call-Off Contract Meeting under any or all Call-Off Contracts with the Supplier.

Delegates

- 14.12 If the Authority Representative or the Supplier Representative is not able to attend a Governance Meeting, each Party shall use all reasonable endeavours to ensure that:
- (a) a delegate attends in their place who (wherever possible) is properly briefed, prepared and empowered; and
 - (b) that the Authority Representative or the Supplier Representative is debriefed by such delegate who attended in their place after the meeting.

Call-Off Contract Meetings

- 14.13 Throughout the Call-Off Contract Period the Parties shall attend the following meetings listed in the table set out in this Clause 14.13:

Meeting	Purpose	Frequency	Reports	Attendees
Supplier Management Board	The Supplier shall provide the meeting slide pack prior to the meeting to review and discuss: a) the Supplier's performance under the Call-Off Contract and review of:	Monthly (unless otherwise agreed by the Authority)	Call-Off Contract Reports (as applicable)	Authority: <ul style="list-style-type: none">• Local Authority Representative (as required)• Deputy Director Commercial• Head of Commercial



	<ul style="list-style-type: none"> a. delivery against Milestones; b. Funding Payments; and c. Rectification Plans and status (if relevant); <p>b) review of status of any Contract Change Requests;</p> <p>c) risk and issue management by review of:</p> <ul style="list-style-type: none"> a. any risks and issues raised; b. dispute log; c. financial liquidity; d. resource availability; and e. Wholesale Access Prices Benchmarking ; <p>d) the Supplier's commercial build plan;</p> <p>e) strategy and pipeline review; and</p> <p>f) continuous improvement.</p>			<ul style="list-style-type: none"> • Deputy Director of Local Relationships & Partnering • Head of Local Relationships & Partnering • Head of Contract Management • Head of Commercial Finance • Head of Supplier Relationship Management <p>Supplier:</p> <ul style="list-style-type: none"> • Account Director • Supplier Project/Programme Lead • Head of Commercial • Other Supplier representatives as required
Senior Executive Review	review and discuss any escalations from the Supplier Management Board.	As required by the Authority	Call-Off Contract Reports (as applicable)	<p>Authority:</p> <ul style="list-style-type: none"> • CEO (or delegate) • Deputy Director Commercial



				<ul style="list-style-type: none"> Deputy Director Strategy Deputy Director Local Relationships & Partnering Head of Supplier Relationship Management <p>Supplier:</p> <ul style="list-style-type: none"> CEO (or delegate) Account Director Project/Programme Director Other Supplier representatives as required
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14.14 From the Call-Off Contract Effective Date and ending on the date which the Stage Two (Build) Complete Milestone is Achieved, the Parties shall attend the following meeting listed in the table set out in this Clause 14.14:

Meeting	Purpose	Frequency	Reports	Attendees
Progress Meeting	<p>The Supplier shall provide the meeting slide pack prior to the meeting to review and discuss:</p> <p>On a monthly basis:</p> <p>a) the Supplier's performance under the Call-Off Contract;</p> <p>b) review of the Project Plan and the Supplier's progress against the Milestones, including discussions relating to items listed in the Milestone Criteria;</p> <p>c) any Rectification Plans (as applicable);</p>	Monthly / Quarterly / Annual, as set out	Call-Off Contract Reports (as applicable)	<p>Authority:</p> <ul style="list-style-type: none"> Contract Leads/ Managers Commercial Finance Lead Local Delivery Lead DPS Manager (as required) Local Authority representatives (as required) <p>Supplier:</p> <ul style="list-style-type: none"> Project/Programme Manager Supplier Contract/ Commercial Lead Other Supplier representatives (as required)

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	<ul style="list-style-type: none">d) recently submitted Call-Off Contract Reports;e) any proposed or open Change Requests;f) risks and issue management, including review of the Risk and Issue Register and any Disputes;g) any outstanding Funding Payments or Claims;h) any outstanding complaints;i) upcoming key activities, including changes to Supplier business, supply chain and Key Personnel or Subcontractors;j) any intended use or publication of the Supplier's performance under the Call-Off Contract in accordance with Clause 33.4 (When you can share information); andk) any open actions from previous meetings. <p>On a quarterly basis, as well as the items listed above (a)-(k) on a monthly basis:</p> <ul style="list-style-type: none">a) Social Value and Supply Chain Report as set out Clause 15.3; andb) any other recently submitted DPS Reports.			
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	<p>On an annual basis, as well as the items listed above (a)-(k) on a monthly basis and (a)-(b) on a quarterly basis:</p> <p>a) Confirm that all Changes evidenced in Change Authorisation Notes have been incorporated into the Contract and review the updated Contract; and</p> <p>b) Confirm the Supplier has submitted the DPS Annual Self Certification and discussions relating to the same.</p>			
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14.15 From the date which the Stage Two (Build) Complete Milestone is Achieved and ending on the End Date, the Parties shall attend the following meeting listed in the table set out in this Clause 14.15:

Meeting	Purpose	Frequency	Reports	Attendees
Annual Progress Meeting	<p>The Supplier shall provide the meeting slide pack prior to the meeting to review and discuss:</p> <p>a) the Supplier's performance under the Call-Off Contract including review of previously submitted Stage Three Reports and expectations of future Take-up and plans to increase demand;</p> <p>b) outstanding clawback payments;</p> <p>c) upcoming key activities, including changes to Supplier business and Key Personnel; and</p>	Annually	Call-Off Contract Reports (as applicable)	<p>Authority:</p> <ul style="list-style-type: none">• Contract Leads/ Managers• Commercial Finance Lead• Local Delivery Lead• DPS Manager (as required)• Local Authority representatives (as required) <p>Supplier:</p> <ul style="list-style-type: none">• Supplier Project/Programme Lead• Supplier Contract/ Commercial Lead

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	d) any open actions from previous meetings.			<ul style="list-style-type: none">• Other Supplier representatives (as required)
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15 Reports

DPS Reports

15.1 Throughout the DPS Contract Period, the Supplier shall produce and provide to the Authority by their corresponding delivery dates the reports listed in the table set out in this Clause 15.1:

Report name	Description	Frequency	Start date	When to be provided
DPS Annual Self Certification	A certificate in the format of the "Annual Certification Form Template" set out in the Platform.	Annually	First (1 st) anniversary of the DPS Effective Date	Supplier
Financial Standing Report	The report shall be in the format of the "Financial Standing Template" set out in the Platform and shall include any updates to the Supplier's financial position.	Annually	First (1 st) anniversary of the DPS Effective Date	No later than the fifth (5 th) Working Day following the anniversary of the DPS Effective Date
DPS Quarterly Feedback Report	The report shall be in the format of the "Quarterly Feedback Template" set out in the Platform and including the Supplier's feedback on: <ul style="list-style-type: none">• on the pipeline and upcoming Requirements Releases; and• risks and issues in respect of performing the Contract.	Quarterly	DPS Effective Date	No later than the fifth (5 th) Working Day of the first (1 st) Month of each Quarter

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15.2 The Supplier shall prepare and deliver any other reports as expressly set out in this DPS Contract.

Call-Off Contract Reports

15.3 Throughout the Call-Off Contract Period, the Supplier shall produce and provide to the Authority by their corresponding delivery dates the reports listed in the table set out in this Clause 15.3:

Report name	Description	Frequency	Start Date	When to be provided
Status Report	<p>The reports shall be in the format of the Project Plan and Risk and Issue Register with additional commentary and shall include updates on:</p> <ul style="list-style-type: none"> • additional commentary on the progress against the Milestones; • the updated Project Plan; • an updated Risk and Issue Register; • the Wayleave Report; and • additional commentary on risks and issues, <p>during Stage One (Network Detailed Design and Due Diligence) and Stage Two (Build).</p>	Monthly	Call-Off Contract Effective Date	No later than the fifth (5 th) Working Day of each Month
Stage One Output - only to be provided where Paragraph 6 (Stage One (Network Detailed Design and Due Diligence) approach) of the Call-Off Award Form specifies that the Supplier will be carrying out a full Stage One (Network	<p>The Stage One Output shall consist of the following items:</p> <ul style="list-style-type: none"> • completed Stage One Output Report based on the Stage One Output Report Template, including the follow: <ul style="list-style-type: none"> o r.Build Plan – Infrastructure: <ul style="list-style-type: none"> ▪ Survey dates of core infrastructure nodes and costs incurred identified by Level 1 Cost Categories; o r.Build Plan – Network links: <ul style="list-style-type: none"> ▪ Comments and justification for any updates to network design; 	Once	NA	On or before the Milestone Date for the Stage One (Network Detailed Design and Due Diligence) Complete Milestone

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Detailed Design and Due Diligence)	<ul style="list-style-type: none">o r.Build Plan – Premises:<ul style="list-style-type: none">▪ Survey dates of Premises; and▪ identification of any Premises for which the completion in respect of which the delivery of the Works and Outputs would not represent a Step Change;o r. Eligible Cost - Stage One:<ul style="list-style-type: none">▪ a list of the costs incurred, identified by Level 1 and Level 2 Cost Categories and supporting detail, each assigned to the core infrastructure node(s) to which the cost is attributed, including a unique reference number and dates on which the cost was incurred and paid; ando Cover sheet and declaration:<ul style="list-style-type: none">▪ confirmation in the Stage One Output Report that the Stage One (Network Detailed Design and Due Diligence) Works have been carried out in accordance with Paragraph 2 (Stage One (Network Detailed Design and Due Diligence)) of Call-Off Schedule 1 (Specification) and the Supplier Solution; and▪ a certification in the Stage One Output Report by a chartered accountant or a person of similar suitable qualification or authority within the Supplier's organisation acting with express authority certifying that the Stage One Output is:<ul style="list-style-type: none">• complete;• has been prepared in conformity with International Financial Reporting Standards (IFRS); and			
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	<ul style="list-style-type: none"> that each element of the Stage One Output is accurate and not misleading; and where applicable, the Stage One Output shall also include supporting evidence for the Change including: <ul style="list-style-type: none"> a copy of the Financial Model updated to reflect any changes required following Stage One (Network Detailed Design and Due Diligence) including detailed justification for any changes to funding, coverage and scope, or milestones; a copy of the Project Plan updated to reflect any changes required following Stage One (Network Detailed Design and Due Diligence); and a copy of the Network Detailed Design updated to reflect any changes required following Stage One (Network Detailed Design and Due Diligence). 			
Stage Two Progress Report	<p>The report shall consist of a completed Stage Two Progress Report Template, including the following:</p> <p>The following to be updated each time the report is submitted (monthly)</p> <ul style="list-style-type: none"> r.Build Plan – Infrastructure: <ul style="list-style-type: none"> Connection dates of core infrastructure nodes and costs incurred identified by Level 1 Cost Categories, and Access to Infrastructure information; r.Build Plan – Network Links: <ul style="list-style-type: none"> Details of the cumulative number of Build Units completed build of Line Plant Associated with Fibre Route; r.Build Plan – Premises <ul style="list-style-type: none"> Details of the cumulative number of Build Units completed. Passed dates of premises; 	Monthly	Stage Two (Build) Commencement Date	On the last Working Day of each Month or no later than the seventh (7 th) Working Day of the following Month



	<ul style="list-style-type: none">• r. Eligible Cost - Stage Two:<ul style="list-style-type: none">o a list of the costs incurred, identified by Level 1 and Level 2 Cost Categories and supporting detail, each assigned to the core infrastructure node(s) to which the cost is attributed, including a unique reference number and dates on which the cost was incurred and paid; and• Cover sheet and declaration:<ul style="list-style-type: none">o confirmation in the Stage Two Progress Form that the Stage Two (Build) Works to date have been carried out in accordance with Paragraph 3 (Stage Two (Build)) of Call-Off Schedule 1 (Specification) and the Supplier Solution;o confirmation in the Stage Two Progress Form that the Supplier has opted to re-use existing infrastructure where technically and commercially feasible;o a self-certification in the Stage Two Progress Form that evidence of each cost incurred in carrying out the relevant Stage Two (Build) Works has been retained and could be provided if requested by the Authority;o a self-certification that Testing has been carried out in accordance with Call-Off Schedule 5 (Project Plan and Testing) on all Test Items by an appropriately qualified engineer of the Supplier and that			
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	<p>evidence of Testing in the form of a certification by the engineer who carried out the Testing has been retained; and</p> <ul style="list-style-type: none">o a certification in the Stage Two Progress Form by a chartered accountant or a person of similar suitable qualification and authority within the Supplier's organisation acting with express authority certifying that the Stage Two Progress Report is:<ul style="list-style-type: none">▪ complete; and▪ has been prepared in conformity with International Financial Reporting Standards (IFRS); and▪ that each element of the Stage Two Progress Report is accurate and not misleading. <p>The information provided each Month will be cumulative.</p> <p>The following to be updated at least once every four times the report is submitted (quarterly)</p> <ul style="list-style-type: none">• r. Products and Services:<ul style="list-style-type: none">o a complete list of the Wholesale Access Product and Services and Wholesale Passive Products available;• r. Take-up – Connections:<ul style="list-style-type: none">o Take-up by Wholesale Access Product and Services and Wholesale Passive Products;• r. Take-up – Disconnections			
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	<ul style="list-style-type: none"> o End User disconnection by Wholesale Access Product and Services and Wholesale Passive Products; • r.Access Requests: <ul style="list-style-type: none"> o a summary of access requests made by access seekers in the Month; o number of access requests granted and declined in the Month; o rationale for granting or declining each access request in the Month; and o a list of the RSPs offering services across the Supplier's network in the areas relating to this Contract. <p>In addition to the above information, the following shall be included in the final Stage Two Progress Report submitted by the Supplier and which the Supplier shall inform the Authority at the time of submission that it is the final Stage Two Progress Report:</p> <ul style="list-style-type: none"> • confirmation that Wholesale Access Products and Services with Access Line Speeds that provide Gigabit Capable Connectivity are available in accordance with the Specification; and • in the cover sheet and declaration confirmation in the Stage Two Progress Form that the Stage Two (Build) Works completed have been carried out in accordance with Paragraph 3 (Stage Two (Build)) of Call-Off Schedule 1 (Specification) and the Supplier Solution. 			
Social Value and Supply Chain Report	The report shall be in a form acceptable to the Authority and shall consist of the following items:	Quarterly	Stage Two (Build) Commenc	No later than fifth (5 th) Working



	<ul style="list-style-type: none"> a summary of the Supplier's compliance with Clause 19.8(a) (Supply chain) including: <ul style="list-style-type: none"> evidence of the payment of any undisputed sums which are due from it to a Subcontractor within thirty (30) days from receipt of a valid and undisputed invoice; and a certification by a chartered accountant or a person of similar suitable qualification and authority within the Supplier's organisation acting with express authority certifying the data provided as accurate and not misleading. a summary of the progress the Supplier has made against the Social Value Plan. The level of detail to which this progress must be reported must be agreed between the Supplier and the Authority before the Stage Two (Build) Commencement Date; and a summary of its engagement with, and the opportunities made available to SMEs in accordance with Clause 44.2 (Small and medium-sized enterprises (SMEs)). 		ement Date	Day of the first (1 st) Month of each Quarter
Stage Three Report	<p>The report shall consist of a completed Stage Three Report Template, including the following:</p> <p>The following to be updated each time the report is submitted (quarterly)</p> <ul style="list-style-type: none"> r. Products and Services: <ul style="list-style-type: none"> a complete list of the Wholesale Access Product and Services and Wholesale Passive Products available; r. Take-up – Connections: 	Quarterly	Stage Two (Build) Complete Milestone Date	For the first (1 st) Stage Three Report, no later than the last



	<ul style="list-style-type: none"> o Take-up by Wholesale Access Product and Services and Wholesale Passive Products; • r.Take-up – Disconnections: <ul style="list-style-type: none"> o End User disconnection by Wholesale Access Product and Services and Wholesale Passive Products; • r.Access Requests: <ul style="list-style-type: none"> o a summary of access requests made by access seekers in the Month; o number of access requests granted and declined in the Month; o rationale for granting or declining each access request in the Month; o a list of the RSPs offering services across the Supplier's network in the areas relating to this Contract; and <p>Any complaints, formal or otherwise, made by a RSP and received by the Supplier; and</p> <ul style="list-style-type: none"> • Cover sheet and declaration: <ul style="list-style-type: none"> o marketing activities undertaken in the Quarter and how the marketing activities undertaken in the Quarter will increase demand in the areas relating to this Contract; o planned marketing activities for the next Quarter and how the marketing activities planned for the next Quarter will increase 			<p>Working Day of the Quarter in which the Stage Two (Build) Complete Milestone Date occurs.</p> <p>For all subsequent Stage Three Reports, no later than the last Working Day of each Quarter</p>
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	<p>demand in the areas relating to this Contract; and</p> <ul style="list-style-type: none">o a certification in the Stage Three Form by a chartered accountant or a person of similar suitable qualification, by any member of the Supplier's senior management team acting with express authority certifying that the Stage Three Report is:<ul style="list-style-type: none">▪ complete; and▪ has been prepared in conformity with International Financial Reporting Standards (IFRS); and▪ that each element of the Stage Three Report is accurate and not misleading. <p>The following to be updated at least once every four times the report is submitted (annually)</p> <ul style="list-style-type: none">• r.Upfront Product Costs:<ul style="list-style-type: none">o a breakdown of the actual cost incurred provided to at least the level of detail as the corresponding input table in the Financial Model;• r.Recurring Product Costs:<ul style="list-style-type: none">o a breakdown of the actual cost incurred provided to at least the level of detail as the corresponding input table in the Financial Model; and• r.In-Life Network Costs:<ul style="list-style-type: none">o a breakdown of the actual cost incurred provided to at least the			
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	level of detail as the corresponding input table in the Financial Model.			
Wholesale Access Prices Benchmarking Report	The report as set out in Paragraphs 5.7 to 5.8 (Wholesale Access Prices Benchmarking Report) of Call-Off Schedule 4 (Financial Schedule).	Annually	Call-Off Contract Effective Date	Within twenty (20) Working Days of carrying out a Wholesale Access Prices Benchmarking (or such other period as the Parties may agree)

15.4 The Supplier shall:

- (a) prepare and deliver any other reports as expressly set out in the Call-Off Contract; and
- (b) if requested by the Authority, provide evidence of costs incurred in carrying out the relevant Stage One (Network Detailed Design and Due Diligence) Works and Stage Two (Build) Works at any time during Stage One (Network Detailed Design and Due Diligence) and Stage Two (Build).

How the Supplier's performance will be measured

15.5 At the end of each Month the Authority shall measure the Supplier's performance against its obligations to provide to the Authority the Call-Off Contract Reports during the preceding three (3) Months ("**Measurement Period**").

15.6 If in each of the Months in that Measurement Period, the Supplier fails to provide one (1) or more Call-Off Contract Reports by its corresponding delivery date in accordance with Clause 15.3, then the Supplier shall comply with the Rectification Plan Process.

Worked examples:

Example One:

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On 31 January, the Authority measures whether the Supplier has provided reports on time during January, December and November.

- 1. The Supplier shall be required to follow the Rectification Plan Process where:*
 - a. November – 1 report is late;*
 - b. December – 1 report is late; and*
 - c. January – 1 report is late.*
- 2. The Supplier shall NOT be required to follow the Rectification Plan Process where:*
 - a. November – 2 reports are late;*
 - b. December – 0 reports are late; and*
 - c. January – 1 report is late.*

Example Two:

On 28 February, the Authority measures whether the Supplier has provided reports on time during February, January and December.

- 1. The Supplier shall NOT be required to follow the Rectification Plan Process where:*
 - a. December – 0 report is late;*
 - b. January – 1 report is late; and*
 - c. February – 1 report is late.*
- 2. The Supplier shall NOT be required to follow the Rectification Plan Process where:*
 - a. December – 0 reports are late;*
 - b. January – 1 report is late; and*
 - c. February – 2 reports are late.*

15.7 Subject to Clause 33.8, the Authority reserves the right to use and publish the performance of the Supplier against its obligations to provide to the Authority the Call-Off Contract Reports by their corresponding delivery dates in accordance with Clause 15.3 without restriction.

Changes to reports

15.8 The Authority may update or amend report templates or the contents of the reports listed in Clauses 15.1 and 15.3 from time to time. The Parties shall ensure that any amendment to the



report templates or their contents in accordance with this Clause is evidenced in a Change Authorisation Note.

- 15.9 The Supplier shall implement any amendments to the report templates and/or content of the reports proposed by the Authority.
- 15.10 The Supplier may, acting reasonably, propose amendments to the report templates or contents of the reports listed in Clauses 15.1 and 15.3 for the Authority's consideration and approval (in its sole discretion). The Parties shall ensure that any amendment to the report templates or their contents in accordance with this Clause is evidenced in a Change Authorisation Note.

16 Updates to the Financial Model

- 16.1 Any amendments to the Financial Model shall be:
- (a) implemented in accordance with the instructions set out in the Financial Model; and
 - (b) agreed in accordance with the Changing the Contract Procedure.

17 Records and Audits

Records

- 17.1 The Supplier shall, and shall procure that its Subcontractors shall during the Contract Period and for a period of seven (7) years following the End Date, keep and maintain full and accurate records (including financial and accounting records) and accounts in relation to the Contract. These financial and accounting records shall include, original invoices, receipts, accounts, deeds, bank records, reports and any other relevant documentation whether in written or electronic form.

Audit rights

- 17.2 The Authority, acting by itself or through its Auditor shall have the right to carry out an audit to assess compliance by the Supplier and/or its Key Subcontractors of the Supplier's obligations under this Contract, including for the following purposes:
- (a) to verify the accuracy of all contract accounts and records of everything to do with the Contract;
 - (b) to verify the accuracy of the information provided to the Authority which is used to calculate the Funding Payments;
 - (c) to verify the costs of the Supplier (including the costs of all Subcontractors and any third party suppliers) in connection with the carrying out of the Works and/or the provision of the Outputs;



- (d) to verify the accuracy of the information provided by the Supplier which is used in the calculation of the clawback in accordance with Paragraphs 3 (Active services clawback) and 4 (Passive services clawback) of Call-Off Schedule 4 (Financial Schedule);
- (e) to verify whether the Supplier meets the access requirements as set out in Clause 2.10(a)(i) (How the Contract works);
- (f) where the Authority is acting in its capacity as the National Competence Centre, to verify whether the Supplier is compliant with its obligations set out in Clause 11 (Subsidy Control Regime);
- (g) to verify the Supplier's and each Subcontractor's compliance with the Law;
- (h) to identify or investigate actual or suspected breach of Clauses 45 (Social Value) and 51 (Preventing fraud, bribery and corruption) to 58 (Reporting a breach of the Contract), impropriety or accounting mistakes or any breach or threatened breach of security and in these circumstances the Authority shall have no obligation to inform the Supplier of the purpose or objective of its investigations;
- (i) to verify whether the Wholesale Access Products and Services and Wholesale Passive Products requirements are being complied with in accordance with Paragraph 8 of the Specification;
- (j) to identify or investigate any circumstances which may impact upon the financial stability of the Supplier, any Guarantor, and/or any Subcontractors or their ability to carry out the Works and/or provide the Outputs;
- (k) to obtain such information as is necessary to fulfil the Authority's obligations to supply information for parliamentary, ministerial, judicial or administrative purposes including the supply of information to the Comptroller and Auditor General;
- (l) to review any books of account and the internal contract management accounts kept by the Supplier in connection with the Contract;
- (m) to carry out the Authority's internal and statutory audits and to prepare, examine and/or certify the Authority's annual and interim reports and accounts;
- (n) to enable the National Audit Office to carry out an examination pursuant to Section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which the Authority has used its resources;
- (o) to verify the accuracy and completeness of any reports delivered or required by the Contract;
- (p) to verify whether any Testing has been carried out in accordance with the provisions of Call-Off Schedule 5 (Project Plan and Testing); and/or



- (q) to obtain such information as is necessary to fulfil the Authority's obligations in relation to any Request for Information.

17.3 If the Authority, acting by itself or through its Auditor has the right to carry out an audit or if an audit is imposed on the Authority and/or this Contract by any Regulatory Body at any time during the Contract Period and for a period of eighteen (18) Months following the End Date the provisions set out in Clauses 17.4 to 17.14 shall apply.

Conduct of Audit

17.4 The Authority (or its Auditor) or the relevant Regulatory Body (and/or its agents or representatives) may perform any such audit in accordance with Clauses 17.5 to 17.15.

17.5 There shall be no restriction on the frequency of such audits and the Authority shall endeavour, but shall not be obliged, and shall use reasonable endeavours to procure that its Auditor or the relevant Regulatory Body (or where applicable its agents or representatives) shall endeavour, but shall not be obliged, to provide at least fifteen (15) Working Days' notice of the intention to conduct such audit.

17.6 The Authority shall use reasonable endeavours to procure that the conduct of any such audit does not unreasonably disrupt the Supplier and/or its Key Subcontractors or delay the performance of this Contract.

17.7 The Supplier shall provide and shall procure that its Key Subcontractors provide the Authority (and/or its Auditor) or the relevant Regulatory Body (and/or its agents or representatives) with all such reasonable co-operation and assistance as is reasonably necessary in relation to any such audit, including provision of:

- (a) such relevant information requested (as applicable):
 - (i) by the Authority (and/or its Auditor) within the permitted scope of the audit; or
 - (ii) the relevant Regulatory Body (and/or its agents or representatives) within the scope of the audit imposed by the Regulatory Body (provided that the Authority shall use reasonable endeavours to procure that the Regulatory Body shall limit the scope of any audit to the information provided or maintained pursuant to this Clause 17 and the verification of such information), with the Supplier acknowledging and procuring that its Key Subcontractors acknowledge that the relevant powers and duties of the Regulatory Body cannot be fettered and that the Regulatory Body may request additional information pursuant to this Clause; and
- (b) reasonable access to:
 - (i) any premises and/or sites controlled by the Supplier or any Key Subcontractor (including any Network implementation or maintenance works conducted pursuant to this Contract);

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- (ii) any equipment or IT systems used (whether exclusively or non-exclusively) in the carrying out of the Works and/or the provision of the Outputs; and/or
- (iii) Supplier Staff,

in each case where the scope of the relevant audit cannot be satisfied by the provision of the information provided pursuant to Clause 17.7(a).

17.8 The Parties agree that:

- (a) the provision of information by electronic means shall be used to satisfy an audit pursuant to Clauses 17.2 to 17.14 unless in the Authority's (or its Auditor's) or relevant Regulatory Body's (or its agent's or representative's) reasonable opinion this will not satisfy the audit requirement; and
- (b) where the inspection at any premises or site controlled by the Supplier or any Key Subcontractor is required, such inspection shall be subject to the Supplier's or the Key Subcontractor's (as applicable) then current standard security policies to the extent notified to the Authority (or where applicable its Auditor) or the relevant Regulatory Body (or where applicable its agents or representatives) in advance of the relevant inspection.

17.9 The Supplier shall bear its own costs and expenses incurred in respect of compliance with Clauses 17.7 to 17.8.

17.10 The Authority shall procure that the relevant Regulatory Body (and where applicable its agents and representatives) shall bear its own costs and expenses incurred in respect of compliance with Clauses 17.7 to 17.8.

17.11 The Authority shall bear its own costs and expenses incurred in respect of compliance with Clauses 17.7 to 17.8, unless the audit identified a material Default by the Supplier in which case the Supplier shall reimburse the Authority for all the Authority's reasonable costs incurred in connection with the audit.

Use of Supplier's internal Audit team

17.12 As an alternative to the Authority's right pursuant to Clause 17.2 to exercise an audit either itself or through its Auditor, the Authority may require in writing that an audit is undertaken by the Supplier's own internal audit function for any of the purposes set out in Clause 17.2, at the Authority's cost. The scope, cost and terms of such audit shall be agreed between the Parties in advance of the relevant audit.

17.13 Following the receipt of a request from the Authority under Clause 17.12 above, the Supplier shall procure that the relevant audit is undertaken as soon as reasonably practicable and that the Authority has unfettered access to:

- (a) the resultant audit reports; and



- (b) all relevant members of the Supplier's internal audit team for the purpose of understanding such audit reports.

Response to Audit

17.14 Where as a consequence of any audit or re-audit carried out pursuant to Clauses 17.4 to 17.14 the Authority (or its Auditor) or relevant Regulatory Body (or its agents or representatives) reasonably considers that a re-audit is required, then such re-audit shall be carried out in accordance with Clauses 17.4 to 17.14 and Clauses 17.9 to 17.11 shall apply again to any costs and expenses incurred in respect of such re-audit.

17.15 If an audit undertaken pursuant to Clauses 17.4 to 17.14 identifies that:

- (a) the Supplier has committed a Default, the Authority may (without prejudice to any rights and remedies the Authority may have) require the Supplier to correct such Default (including where relevant repaying any part of any Funding Payment necessary) as soon as reasonably practicable and, if such Default constitutes a Rectification Plan Trigger Event, to comply with the Rectification Plan Process; and/or
- (b) there is an error in a record and/or a report, the Supplier shall promptly rectify the error.

18 Rectification Plan Process

Rectification Plan Trigger Events

18.1 In the event that:

- (a) there is, or there is likely to be, a delay in the Achievement of a Milestone by its Milestone Date;
- (b) in any Measurement Period, the Supplier fails to provide the Call-Off Contract Reports in accordance with Clause 15.6 (How the Supplier's performance will be measured);
- (c) the Supplier commits a material breach of the Subsidy Control Regime obligations set out in Clause 11 (Subsidy Control Regime);
- (d) the Supplier commits a material breach of its obligations to pay its Subcontractors within thirty (30) days from receipt of a valid and undisputed invoice;
- (e) the Supplier fails to comply with its obligations under Clause 6.8(a) or Clause 6.8(b) (Supplier covenants) within the specified or agreed time frame;
- (f) the Supplier commits a material Default which is capable of remedy (and for these purposes a material Default may be a single material Default or a number of Defaults or repeated Defaults (whether of the same or different obligations and regardless of



whether such Defaults are remedied) which taken together constitute a material Default); and/or

(g) there is, or is likely to be a breach of Clause 7.1(e),

(each a "**Rectification Plan Trigger Event**") the Supplier shall notify the Authority of the Rectification Plan Trigger Event as soon as practicable but in any event within three (3) Working Days of becoming aware of the Rectification Plan Trigger Event detailing the actual or anticipated effect of the Rectification Plan Trigger Event and, unless the Rectification Plan Trigger Event also constitutes a Rectification Plan Failure or other event listed in Clauses 22.8 to 22.13 (Termination for Supplier Default), the Authority may not terminate this Contract on the grounds of the Rectification Plan Trigger Event without following the Rectification Plan Process.

Notification

18.2 If:

- (a) the Supplier notifies the Authority pursuant to Clause 18.1 that a Rectification Plan Trigger Event has occurred; or
- (b) the Authority notifies the Supplier that it considers a Rectification Plan Trigger Event has occurred (setting out sufficient detail so that it is reasonably clear what the Supplier has to rectify),

then, the Parties shall meet to discuss the Rectification Plan Trigger Event and whether the Rectification Plan Process is appropriate at the earlier of the next Progress Meeting or within five (5) Working Days of such notification. Then, unless the Rectification Plan Trigger Event also constitutes an event listed in Clauses 22.8 to 22.13 (Termination for Supplier Default) and the Authority serves a Termination Notice, if the Authority (in its sole discretion and having considered the Supplier's representations) considers that there is value in proceeding with the Rectification Plan Process, the Supplier shall comply with the Rectification Plan Process.

18.3 The Rectification Plan Process shall be as set out in Clauses 18.4 to 18.15.

Submission of the draft Rectification Plan

18.4 The Supplier shall provide the Authority with a draft Rectification Plan without delay (even, where relevant, if the Supplier disputes whether or not it has committed a Rectification Plan Trigger Event) and in any event no later than ten (10) Working Days (or such other period as the Parties may agree) after the original notification pursuant to Clause 18.2.

18.5 The Supplier shall ensure each draft Rectification Plan is valid for a minimum of one (1) Month from the date submitted to the Authority.

18.6 The Supplier shall ensure that each Rectification Plan is in the format of the Rectification Plan template set out in Joint Schedule 8 (Rectification Plan Template) and:

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- (a) includes full details of the Rectification Plan Trigger Event that has occurred, including root cause analysis;
 - (b) includes the actual or anticipated effect of the Rectification Plan Trigger Event;
 - (c) specifies the steps that the Supplier proposes to take to rectify the Rectification Plan Trigger Event (if applicable) and to prevent such Rectification Plan Trigger Event from re-occurring, including timescales for such steps and for the rectification of the Rectification Plan Trigger Event (where applicable); and
 - (d) is in sufficient detail for it to be properly evaluated by the Authority.
- 18.7 The Supplier shall promptly provide to the Authority any further documentation that the Authority requires to assess the draft Rectification Plan, including an updated Project Plan where the Rectification Plan Trigger Event is in respect of a failure to Achieve a Milestone. The Supplier shall not be entitled to postpone, alter or request an alteration to any Milestone or its associated Milestone Date set out in the Project Plan (except in accordance with Clauses 7.3 to 7.7 (Planning Activities), 10 (Completion of Stage One (Network Detailed Design and Due Diligence)), 38 (Circumstances beyond your control), 39 (Relief Events) and 40 (Exceptional Engineering Difficulties).

Agreement of the Rectification Plan

- 18.8 The Authority shall notify the Supplier whether it consents to the draft Rectification Plan or a revised draft Rectification Plan as soon as reasonably practicable or in any case within twenty (20) Working Days of receipt of the draft Rectification Plan or revised draft Rectification Plan (as applicable).
- 18.9 The Authority may reject the draft Rectification Plan if it considers that the draft Rectification Plan is inadequate, for example because the draft Rectification Plan:
- (a) is insufficiently detailed to be capable of proper evaluation;
 - (b) will take too long to complete;
 - (c) will not prevent the reoccurrence of the Rectification Plan Trigger Event;
 - (d) will rectify the Rectification Plan Trigger Event but in a manner which is unacceptable to the Authority; and/or
 - (e) will not sufficiently address the issues which caused the Rectification Plan Trigger Event.
- 18.10 If the Authority rejects the draft Rectification Plan, the Authority shall give reasons for its decision and may at its sole discretion either:
- (a) request that the Supplier provides a revised draft Rectification Plan; or



- (b) escalate any issues with the draft Rectification Plan using the Dispute Resolution Procedure.
- 18.11 If the Supplier disagrees with the Authority's rejection under Clause 18.10 and further discussion has not resolved such disagreement within five (5) Working Days, the Supplier may escalate the issue using the Dispute Resolution Procedure.
- 18.12 Where the Authority requests a revised draft Rectification Plan pursuant to Clause 18.10(a) the Supplier shall within ten (10) Working days of the request (or such other period as the Parties may agree):
 - (a) produce a revised draft Rectification Plan;
 - (b) provide any further documentation as the Authority may require; and
 - (c) take into account the Authority's reasons for rejecting the draft Rectification Plan when preparing a revised draft Rectification Plan.

Implementing the Rectification Plan

- 18.13 If the Authority consents to the Rectification Plan:
 - (a) the Supplier shall comply with the Rectification Plan and the Supplier must immediately start work on the actions in the Rectification Plan at its own cost, unless agreed otherwise by the Parties; and
 - (b) provided that a Rectification Plan Failure has not occurred, the Authority may not terminate this Contract in whole or in part on the grounds of the relevant Rectification Plan Trigger Event.
- 18.14 The Supplier shall provide to the Authority, in accordance with the relevant timescales agreed in each Rectification Plan:
 - (a) regular updates on the implementation of the Rectification Plan; and
 - (b) evidence, either documentary or demonstrative as the Authority may reasonably require, of the implementation of the Rectification Plan.

Failure to implement the Rectification Plan

- 18.15 If the Supplier fails to implement the Rectification Plan in accordance with its terms then the Authority may, at its sole discretion:
 - (a) give the Supplier a further opportunity to resume full implementation of the Rectification Plan (in accordance with such timescales as the Authority may require); or



- (b) escalate any issues arising out of the failure to implement the Rectification Plan using the Dispute Resolution Procedure.

Rectification Plan Failure

18.16 A Rectification Plan Failure means:

- (a) on the third (3rd) occurrence of any of the following events:
 - (i) the Supplier failing to submit and/or resubmit a draft Rectification Plan to the Authority in respect of the same Rectification Plan Trigger Event within the timescales specified in Clauses 18.4 (Submission of the draft Rectification Plan) and 18.12 (Agreement of the Rectification Plan) respectively; and/or
 - (ii) the Authority rejecting a draft and/or revised draft Rectification Plan submitted by the Supplier in respect of the same Rectification Plan Trigger Event pursuant to Clauses 18.4 (Submission of the draft Rectification Plan) and 18.12 (Agreement of the Rectification Plan) respectively;
- (b) on the third (3rd) occurrence:
 - (i) the Supplier failing to implement an agreed Rectification Plan in respect of the same Rectification Plan Trigger Event within the timescales specified in Clause 18.15 (Failure to implement the Rectification Plan); and
 - (ii) the Supplier has not otherwise remedied the Rectification Plan Trigger Event which gave rise to the Rectification Plan;
- (c) following the successful implementation of a Rectification Plan, the same Rectification Plan Trigger Event reoccurring within a period of three (3) months for the same (or substantially the same) root cause as that of the original Rectification Plan Trigger Event;
- (d) the Supplier failing to rectify a material Default within the later of:
 - (i) thirty (30) Working Days of a notification made pursuant to Clause 18.1(d) (Rectification Plan Trigger Events); or
 - (ii) where the Parties have agreed a Rectification Plan in respect of that material Default and the Supplier can demonstrate that it is implementing the Rectification Plan in good faith, the date specified in the Rectification Plan by which the Supplier must rectify the material Default; and
- (e) the Supplier not Achieving the Stage Two (Build) Complete Milestone by the expiry of the date calculated in accordance with Clause 12.1(b)(ii) (Liquidated damages).



- 18.17 If a Rectification Plan Failure occurs, the Authority may serve notice to terminate this Contract in accordance with Clauses 22.8(f) or 22.10(a) (Termination for Supplier Default) as applicable.
- 18.18 If a Rectification Plan Failure occurs in respect of the Rectification Plan Trigger Event set out at Clause 18.1(g), the Authority may, in its absolute discretion and without prejudice to Clause 18.17, withhold any further Funding Payments until the Supplier has remedied the Rectification Plan Trigger Event which gave rise to the Rectification Plan.

General

18.19 If:

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

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

19 Supplier Staff and Subcontractors

Supplier Staff

19.1 The Supplier Staff involved in the performance of each Contract must:

- (a) be appropriately trained and qualified;
- (b) be subject to pre-employment checks and vetting procedures in accordance with Good Industry Practice; and
- (c) comply with all conduct and security requirements as notified to the Supplier when on the Authority's premises.

19.2 For each of the Supplier Staff who, in carrying out the Works and/or providing the Outputs, has, will have or is likely to have access to children, vulnerable persons, or other members of the public to whom the Authority and/or the relevant Local Authority owes a special duty of care, the Supplier shall (unless and to the extent agreed otherwise by the Authority in writing):

- (a) carry out appropriate checks in accordance with Good Industry Practice in relation to Convictions (including conducting a Criminal Records Bureau check where to conduct such a check would be consistent with Good Industry Practice); and



- (b) conduct such questioning and investigation as is reasonable regarding any Convictions, where the above required checks reveal a Conviction.

- 19.3 The Supplier shall not (and shall ensure that a Subcontractor shall not) engage or continue to utilise in the carrying out of the Works and/or in the provisions of the Outputs of those Works and/or Outputs involving or which are likely to involve access to children, vulnerable persons, or other members of the public to whom the Authority and/or the relevant Local Authority owes a special duty of care, any member of the Supplier Staff whose Conviction means it would reasonably be regarded as inappropriate for them to be conducting such activity.
- 19.4 For the purpose of Clauses 19.2 to 19.3, references to "access" shall not include incidental access to members of the public due to carrying out of the Works on or about a public highway.
- 19.5 If requested, the Supplier must replace any person whose acts or omissions have caused the Supplier to breach Clause 51 (Preventing fraud, bribery and corruption).
- 19.6 The Supplier indemnifies the Authority against all claims brought by any person employed by the Supplier caused by an act or omission of the Supplier or any Supplier Staff.

Supply chain

- 19.7 The Supplier shall ensure that any supply chain sourcing or procurement or its Key Subcontractors conduct for the purposes of carrying out the Works and/or providing the Outputs will be undertaken in accordance with the Supplier's or Key Subcontractor's (as applicable) standard procurement policies and will be consistent with Clause 44 (Small and medium-sized enterprises (SMEs)).
- 19.8 The Supplier shall:
 - (a) pay any undisputed sums which are due from it to a Subcontractor within thirty (30) days from receipt of a valid and undisputed invoice; and
 - (b) include in the Social Value and Supply Chain Report a summary of its compliance with Clause 19.8(a), such data to be certified each Quarter by a director of the Supplier as being accurate and not misleading.
- 19.9 If the Supplier notifies the Authority (whether in the Social Value and Supply Chain Report or otherwise) that the Supplier has failed to pay a Subcontractor's undisputed invoice within thirty (30) days of receipt, or the Authority otherwise discovers the same, subject to Clause 33.8, the Authority shall be entitled to publish the details of the late or non-payment (including on Government and Local Authority websites and in the press).

Subcontractors

- 19.10 At the Effective Date the Supplier represents and warrants that it has not entered into (and shall not enter into at any time during the Contract Period), any form of exclusivity



arrangement with any Subcontractor that would be detrimental to the level of competition for any other broadband contract that may be procured by the Authority or any Local Authorities.

- 19.11 If the Authority asks the Supplier for details about Subcontractors, the Supplier must provide details of Subcontractors at all levels of the supply chain including:
- (a) their name;
 - (b) the scope of their appointment;
 - (c) the duration of their appointment;
 - (d) description of the relevant subset of the Works and/or any Outputs and/or nature of the activities performed by the Subcontractor; and
 - (e) any other details that the Authority reasonably requires (e.g. the value of the Subcontract).
- 19.12 Except where the Authority has given its prior written consent, the Supplier shall ensure that any Subcontract awarded by the Supplier will include terms:
- (a) requiring the Supplier to pay any undisputed sums which are due from it to the Subcontractor within thirty (30) days from receipt of a valid and undisputed invoice;
 - (b) subject to Clause 33.8, giving the Authority a right to publish the Supplier's compliance with its obligation to pay undisputed invoices within thirty (30) days from receipt of a valid and undisputed invoice;
 - (c) requiring the Supplier to consider and verify any invoices for payment submitted by the Subcontractor in a timely fashion and that undue delay in doing so is not to be sufficient justification for failing to regard an invoice as valid and undisputed; and
 - (d) requiring the Subcontractor to include in any subcontract, which it in turn awards for the purpose of performing or contributing to the performance of the whole or any part of this Contract, requirements to the same effect as those required by this Clause 19.12.

This Clause does not affect any contractual or statutory provision under which any payment is to be made earlier than the time required by that clause or statute.

- 19.13 At the Authority's request, the Supplier must terminate, or where relevant, partially terminate, any Subcontract if any of the following events occur:
- (a) where any acts or omissions of the Subcontractor has led to a material Default of this Contract which is irremediable by the Supplier;



- (b) a Subcontractor or its Affiliates embarrasses the Authority (including by causing negative press coverage) or brings into disrepute or diminishes public trust in the Authority;
- (c) a Subcontractor has failed to comply in the performance of its Subcontract with the Law, including legal obligations in the fields of environmental, social, or labour law; and/or
- (d) the proposed Subcontractor should be excluded in accordance with Clause 19.23.

Key Subcontractors

19.14 The Supplier is entitled to subcontract its obligations under the DPS Contract to the Key Subcontractors identified in Joint Schedule 5 (Key Subcontractors).

19.15 The Supplier is entitled to subcontract its obligations under a Call-Off Contract to Key Subcontractors identified in Joint Schedule 5 (Key Subcontractors) who are specifically nominated in the Call-Off Award Form.

19.16 The Supplier shall ensure that each Key Subcontract shall include:

- (a) obligations no less onerous on the Key Subcontractor than those imposed on the Supplier under this Contract in respect of:
 - (i) data protections requirements set out in Clause 30 (Data protection);
 - (ii) FOIA requirements set out in Clause 33 (When you can share information); and
 - (iii) the obligation not to embarrass the Authority (including by causing negative press coverage) or otherwise bring the Authority into disrepute as set out in Clause 6.6(k) (Supplier covenants); and
- (b) a provision requiring the Key Subcontractor to:
 - (i) promptly notify the Supplier and the Authority in writing of a Key Subcontractor Financial Distress Event or any fact, circumstance or matter which could cause a Key Subcontractor Financial Distress Event (and in any event, provide such notification within ten (10) Working Days of the date on which the Key Subcontractor first becomes aware of the Key Subcontractor Financial Distress Event or the fact, circumstance or matter which could cause the Key Subcontractor Financial Distress Event);
 - (ii) co-operate with the Supplier and the Authority in order to give full effect to the provisions of Paragraph 3 (What happens if there is a Financial Distress Event) of Joint Schedule 6 (Financial Distress), including meeting with the Supplier and the Authority to discuss and review the effect of the Key Subcontractor Financial Distress Event on the continued performance and

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carrying out of the Works and/or the provision of the Outputs and/or the security of public funding already granted (or to be granted) pursuant to this Contract, and contributing to and complying with the Financial Distress Service Continuity Plan; and

- (iii) support the Supplier to discharge all its reporting obligations under this Contract.

19.17 Where during the Contract Period the Supplier wishes to:

- (a) enter into a new Key Subcontract;
- (b) replace a Key Subcontractor; or
- (c) terminate or materially amend a Key Subcontract to the extent this could adversely affect the Supplier's compliance with its obligations under this Contract,

then the Supplier must prior to carrying out any of the activities in Clauses 19.17(a) to 19.17(c) above, notify the Authority in writing and the Supplier shall, at the time of such notice, provide the Authority with the information detailed in Clause 19.18. This provision shall not apply to restrict amendments to Key Subcontracts to the extent these represent changes that would ordinarily occur in the normal course of business.

19.18 The Supplier shall provide the Authority with the following information in respect of the proposed Key Subcontractor:

- (a) the proposed Key Subcontractor's name, registered office and company registration number;
- (b) the scope/description of the relevant subset of the Works and/or any Outputs to be provided by the proposed Key Subcontractor;
- (c) the same level of information in respect of Key Subcontractors as requested in the ITT;
- (d) where the proposed Key Subcontractor is an Affiliate of the Supplier, evidence that demonstrates to the satisfaction of the Authority that the proposed Key Subcontract has been agreed on "arm's-length" terms;
- (e) the Key Subcontract price expressed as a percentage of the total projected Funding Payments over the Call-Off Contract Period; and
- (f) where requested by the Authority, the credit rating of the Key Subcontractor.

19.19 Following receipt of the notice under Clause 19.17, the Authority may within sixty (60) Working Days object to an appointment of a Key Subcontractor or amendment to a Key Subcontract (by serving notice of its objection and giving reasons for its objection) where the Authority considers that:

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- (a) the appointment of a proposed Key Subcontractor or amendment to a Key Subcontract may:
 - (i) prejudice the carrying out of the Works and/or the provision of the Outputs;
 - (ii) inhibit the carrying out of the Works and/or the provision of the Outputs, including where the Authority considers the proposed Key Subcontractor may be unreliable and/or the appointment may result in resourcing or capacity issues;
 - (iii) be contrary to the Authority's interests; and/or
 - (iv) be inconsistent with the policies of Gigabit Infrastructure Subsidy and/or the terms of this Contract;
- (b) the proposed Key Subcontractor should be excluded in accordance with Clause 19.23; and/or
- (c) the proposed Key Subcontractor is a High Risk Entity.

The grounds upon which the Authority may object to an appointment of a Key Subcontractor or amendment to a Key Subcontract set out in this Clause 19.19 are not exhaustive.

19.20 Where the Authority serves a notice of objection in accordance with Clause 19.19 the Supplier shall not proceed with the proposed appointment of the Key Subcontractor or amendment to the Key Subcontract (as applicable).

19.21 A new Key Subcontractor will be added to Joint Schedule 5 (Key Subcontractors) and/or the Call-Off Award Form (as applicable) where the Authority has not served a notice of objection pursuant to Clause 19.19. The Parties shall ensure that any change to a Key Subcontractor in accordance with this Clause 19 is evidenced in a Change Authorisation Note.

Retention of legal obligations

19.22 In spite of the Supplier's right to subcontract under this Clause 19, the Supplier shall remain responsible for all acts and omissions of its Subcontractors and the acts and omissions of those employed or engaged by the Subcontractors as if they were its own.

Exclusion of Subcontractors

19.23 Where the Authority considers there are grounds for the exclusion of a Subcontractor under Regulation 57 of the PCR Regulations, then:

- (a) if the Authority finds there are compulsory grounds for exclusion, the Supplier shall replace or shall not appoint the Subcontractor; or



- (b) if the Authority finds there are non-compulsory grounds for exclusion, the Authority may require the Supplier to replace or not to appoint the Subcontractor and the Supplier shall comply with such a requirement.

The Parties shall ensure that any change to a Subcontractor in accordance with this Clause 19.23 is evidenced in a Change Authorisation Note.

Key Personnel

- 19.24 The Supplier shall obtain the prior written consent of the Authority (but without affecting the Supplier needing to take any action as may reasonably be required in accordance with its employment procedures) before any member of the Key Personnel is removed or replaced from their corresponding role during the Contract Period, and, where possible, at least three (3) Months' written notice shall be provided by the Supplier of its intention to replace any member of Key Personnel from their corresponding role. The Parties shall ensure that any change to Key Personnel in accordance with this Clause 19.24 is evidenced in a Change Authorisation Note.
- 19.25 The Supplier acknowledges that the Key Personnel are essential to the proper carrying out of the Works and provision of the Outputs. The Supplier shall ensure that the role of any Key Personnel is not vacant for any longer than ten (10) Working Days (unless otherwise agreed by the Authority) and that any replacement shall be as or more qualified and experienced as the previous incumbent of such role to carry out the tasks assigned to the role of the member of Key Personnel whom he or she has replaced.
- 19.26 The Supplier shall ensure that each of the Key Personnel shall work for such a period of time in the provision of the Outputs and carrying out of the Works that is commensurate with and sufficient to perform the obligation of that person's role (which shall be at least for the expected duration of the role set out in Joint Schedule 9 (Key Personnel) and the Call-Off Award Form (as applicable)), unless the Authority otherwise gives its prior written consent. To the extent that it can do so without disregarding its statutory obligations, the Supplier shall take such steps as are reasonably necessary to ensure that it retains the services of all the Key Personnel.
- 19.27 The Authority may identify any of the roles performed by Supplier Staff as Key Personnel for agreement by the Supplier (such agreement not to be unreasonably withheld or delayed), who will then be included on the list of Key Personnel by the Supplier in accordance with the Changing the Contract Procedure. The Authority may also require the Supplier to remove any member of the Key Personnel that the Authority considers in any respect unsatisfactory and the Supplier shall take such action as may reasonably be required in accordance with its employment procedures. The Parties shall ensure that any change to Key Personnel in accordance with this Clause is evidenced in a Change Authorisation Note.
- 19.28 The Authority shall not be liable for the cost of appointing any member or replacing any member appointed, to a Key Personnel role.



20 Intellectual Property Rights (IPRs)

- 20.1 Each Party keeps ownership of its own Existing IPRs.
- 20.2 Where a Party acquires ownership of IPRs incorrectly under this Contract it must do everything reasonably necessary to complete a transfer assigning them in writing to the other Party on request and at its own cost.
- 20.3 Neither Party has the right to use the other Party's IPR, including any use of the other Party's names, logos or trademarks, except as provided in this Clause 20 or otherwise agreed in writing.
- 20.4 The Supplier grants to the Authority a non-exclusive, perpetual, royalty free, irrevocable, transferable worldwide licence to:
- (a) copy or otherwise use (including the right to distribute to and allow Authority staff, Local Authorities and Central Government Bodies to copy or otherwise use) the Supplier's Existing IPR and New IPR contained in any Output or other information, document, specification, drawing or plan made available to the Authority for the purposes of:
 - (i) receiving and benefitting from the Works, Outputs and the Supplier's obligations provided under this Contract;
 - (ii) performing responsibilities in connection with Gigabit Infrastructure Subsidy and any future similar programmes which enhance, develop or replace it; and
 - (iii) the Authority performing its obligations under this Contract; and
 - (b) in addition to Clause 20.4(a) above and subject to Clause 20.5 below, where the Authority terminates the Contract in accordance with Clauses 22.8 to 22.13 (Termination for Supplier Default) prior to the Achievement of the Stage Two (Build) Complete Milestone, to copy or otherwise use (including the right to distribute to and allow any Replacement Supplier to copy or otherwise use) the Supplier's Existing IPR and New IPR contained in any Output or other information, document, specification, drawing or plan made available to the Authority for the purposes of procuring or providing any Replacement Works.
- 20.5 For the avoidance of doubt, no Commercially Sensitive Information (except for the items required in accordance with and for the purposes set out in Clause 27.1(a) (Exit management)) shall be disclosed to a Replacement Supplier, for any purposes and no right or license is given permitting such disclosure.
- 20.6 The Authority grants to the Supplier a royalty free non-exclusive, non-transferable licence during the Contract Period to use (and to allow its Subcontractors to use) any of the Authority's Existing IPRs and Government Data solely to the extent necessary for the purpose of fulfilling its obligations under this Contract.



- 20.7 If there is an IPR Claim, the Supplier indemnifies the Authority and the entities listed in Clause 20.4 against all claims, demands, actions, awards, judgments, settlements, costs, expenses, liabilities, damages and losses (including all interest, fines, penalties, management time and legal and other professional costs and expenses) incurred by the Authority, its Supplier Staff, the Local Authorities or Central Government Bodies as a result.
- 20.8 If an IPR Claim is made or anticipated the Supplier must at its own expense and the Authority's sole option, either:
- (a) obtain for the Authority the rights in Clause 20.4 without infringing any third party IPR; or
 - (b) replace or modify the relevant item with substitutes that don't infringe IPR without adversely affecting the functionality or performance of the Works and the Outputs.

21 Term and termination

Term

- 21.1 The Contract takes effect on the Effective Date and ends on the End Date or earlier if required by law.
- 21.2 The Authority has the right to extend the DPS Contract for the DPS Optional Extension Period by giving the Supplier at least three (3) Months' written notice before the DPS Contract expires.

22 When the Authority can end a Contract

Termination at the end of Stage One (Network Detailed Design and Due Diligence)

- 22.1 Clauses 22.2 and 22.4 only apply where Paragraph 6 (Stage One (Network Detailed Design and Due Diligence) approach) of the Call-Off Award Form specifies that the Supplier will be carrying out a full Stage One (Network Detailed Design and Due Diligence).
- 22.2 Notwithstanding Clause 10 (Completion of Stage One (Network Detailed Design and Due Diligence)), the Authority has the right to terminate a Call-Off Contract following receipt of the Stage One Output, provided that the Authority issues a Termination Notice to the Supplier within thirty (30) days of the date the Authority identifies information in the Stage One Output which causes the Authority to consider whether to terminate the Call-Off Contract.
- 22.3 Where a Supplier submits a Change Request in accordance with Clause 10.2, that results in an increase of costs which a competent supplier using Good Industry Practice could have foreseen prior to a Survey, the Authority may, at its sole discretion, determine the reduction it shall make in the Stage One (Network Detailed Design and Due Diligence) Payment for all work done before termination. The Supplier may escalate any issues it has with the reduction using the Dispute Resolution Procedure.



- 22.4 The Authority intends that the termination right in Clause 22.2 would be used in particular circumstances including where the Authority determines that the statements made and/or documents submitted as part of the procurement of the Works and Outputs, including its tender were materially incorrect as a result of incorrect estimating. The example provided in this Clause 22.4 is not exhaustive and is for illustrative purposes only. Its inclusion in this Contract is not intended to limit the Authority's right to exercise the right in Clause 22.2.

Ending the Contract for convenience

- 22.5 The Authority has the right to terminate the DPS Contract at any time without reason or liability by giving the Supplier at least thirty (30) days' notice.
- 22.6 The Authority has the right to terminate a Call-Off Contract at any time by giving the Supplier not less than the minimum period of notice specified in the Call-Off Award Form. Under such circumstances the Authority agrees to pay reasonable, proven and unavoidable costs incurred and to which the Supplier is committed up to the date of termination which are:
- (a) of a type which fall within Stage One Eligible Cost Categories and are Eligible Stage One Expenditure (where the Authority terminates the Contract under this Clause 22.6 during Stage One (Network Detailed Design and Due Diligence)); or
 - (b) of a type which fall within Stage Two Eligible Cost Categories and are Eligible Stage Two Expenditure (where the Authority terminates the Contract under this Clause 22.6 during Stage Two (Build)),

provided that the Supplier has used all reasonable endeavours without incurring additional expenditure to minimise such costs and such costs have not already been recovered through any payments made by the Authority to the Supplier. The Supplier will give the Authority a fully itemised list of such costs, with supporting evidence that these are of the types set out in Clauses 22.6(a) or 22.6(b) (as appropriate) and meet the requirements of this Clause 22.6, to support their claim for payment. Both Parties shall work together to minimise costs incurred by the Supplier and to which the Supplier is committed up to the date of termination but are not recoverable in accordance with this Clause.

- 22.7 Where the Authority terminates for convenience under Clause 22.6, the Supplier shall ensure that it performs whatever steps are necessary to ensure that the Network is physically secure and that any obligations of the Supplier relating to applicable health and safety law in respect of the Network have been fulfilled.

Termination for Supplier Default

- 22.8 The Authority has the right to immediately terminate the DPS Contract by issuing a Termination Notice to the Supplier where:
- (a) for three (3) consecutive Quarters, the Supplier does not provide the DPS Quarterly Feedback Report to the Authority in accordance with Clause 15.1 (DPS Reports);



- (b) the Supplier does not provide the DPS Annual Self Certification in accordance with Clause 15.1 (DPS Reports);
- (c) a DPS Annual Self Certification submitted by the Supplier demonstrates that the Supplier no longer satisfies the selection criteria set out in the SQ;
- (d) there is an Insolvency Event in respect of the Supplier or a Guarantor;
- (e) there is any material Default of the Contract which is irremediable;
- (f) there is a Rectification Plan Failure;
- (g) there is a Default of any of the following Clauses or Schedule:
 - (i) 3.2 (Purpose and extent of the Funding Payments);
 - (ii) 3.5 (Purpose and extent of the Funding Payments);
 - (iii) 3.6 (Purpose and extent of the Funding Payments);
 - (iv) 3.7 (Purpose and extent of the Funding Payments);
 - (v) 6.6(i) (Supplier covenants);
 - (vi) 6.6(j) (Supplier covenants);
 - (vii) 20 (Intellectual Property Rights (IPRs));
 - (viii) 30 (Data protection);
 - (ix) 31 (Where Authority is Controller and Supplier is its Processor);
 - (x) 32(What you must keep confidential);
 - (xi) 51 (Preventing fraud, bribery and corruption);
 - (xii) 56 (Conflict of Interest); or
 - (xiii) Joint Schedule 7 (Cyber Security);
- (h) the representation and warranty given by the Supplier pursuant to Clause 6.1(g) (Warranties) being materially untrue or misleading;
- (i) the Supplier commits a material Default under Clause 55.3 (Tax) or failing to provide details of the steps being taken and mitigating factors pursuant to Clause 55.3 (Tax) which in the reasonable opinion of the Authority are acceptable;
- (j) there is a Change of Control of the Supplier unless:



- (A) the Authority has given its written consent to the particular Change of Control, which subsequently takes place as proposed in accordance with Clause 6.12 (Change of Control); or
 - (B) the Authority has not served its notice of objection in accordance with Clause 6.12(b) (Change of Control);
 - (k) there is a Change to the Contract which cannot be agreed using Clause 47(Changing the Contract Procedure);
 - (l) the Authority discovers that the Supplier was in one of the situations in Regulation 57(1) or 57(2) of the PCR Regulations at the time the Contract was awarded;
 - (m) a right to terminate is expressly set out in Paragraph 5.1 (When the Authority can terminate for financial distress) of Joint Schedule 6 (Financial Distress); or
 - (n) the Authority reasonably believes or suspects that the Supplier has, on more than one (1) occasion, knowingly submitted an unachievable tender as part of the procurement process in respect of any Call-Off Contract to which the Supplier is or has been a party with the intent to materially change this during Stage One (Network Detailed Design and Due Diligence).
- 22.9 If the Authority terminates the DPS Contract for any of the reasons listed in Clause 22.8(a) to 22.8(n) in respect of the DPS Contract, the Authority also has the right to terminate any and all Call-Off Contracts.
- 22.10 The Authority has the right to immediately terminate a Call-Off Contract by issuing a Termination Notice to the Supplier:
- (a) for any of the reasons set out in Clauses 22.8(d) to 22.8(n) (inclusive) in respect of that Call-Off Contract;
 - (b) where there is a Default of either of the following Clauses:
 - (i) 3.2 (Purpose and extent of the Funding Payments); or
 - (ii) 3.5 (Purpose and extent of the Funding Payments);
 - (c) where the Funding Payments are found to be unlawful under the Subsidy Control Regime; and
 - (d) where a right to terminate is expressly set out in Paragraph 5.2 (When the Authority can terminate for financial distress) of Joint Schedule 6 (Financial Distress).
- 22.11 If the Authority terminates a Call-Off Contract for any of the reasons listed in Clause 22.10 it also has the right to terminate the DPS Contract.



22.12 The Authority may also terminate any or all other Call-Off Contracts if the Authority terminates a Call-Off Contract for:

- (a) any of the reasons listed in Clauses 22.10(b) or 22.10(c); and/or
- (b) a Default of any of the following Clauses:
 - (i) 3.6 (Purpose and extent of the Funding Payments);
 - (ii) 3.7 (Purpose and extent of the Funding Payments);
 - (iii) 20 (Intellectual Property Rights (IPRs));
 - (iv) 30 (Data protection); or
 - (v) 32 (What you must keep confidential),

provided that:

- (c) the Authority reasonably believes that such events are likely to occur in respect of the relevant Call-Off Contract; and
- (d) prior to exercising this right, the Authority has met with the Supplier to discuss what evidence and representations it can provide to demonstrate to the Authority's satisfaction that such events are not occurring under such Call-Off Contract.

22.13 Where the Supplier provides evidence and representations in accordance with Clause 22.12(d), the Authority shall take reasonable account of such evidence and representations but shall determine the matter in its sole discretion and shall provide written notice of its decision to the Supplier. The Authority shall not unreasonably exercise its right to terminate under Clause 22.12.

Subsidy Control Regime termination event

22.14 The Authority has the right to immediately terminate a Call-Off Contract or by issuing a Termination Notice to the Supplier where there is a successful challenge by any third party pursuant to Article 3.7 of the TCA in respect of information published for the purposes of Article 3.7 of the TCA concerning the Call-Off Contract. If the Authority terminates a Call-Off Contract under this Clause 22.14 it also has the right to terminate the DPS Contract.

Public procurement termination events

22.15 If either of the events in 73(1)(a) or (b) of the PCR Regulations happen, the Authority has the right to immediately terminate the Contract.



23 When the Supplier can end a Call-Off Contract

Termination for Authority Default

23.1 The Supplier can issue a Reminder Notice if the Authority does not pay an undisputed invoice on time. The Supplier can terminate a Call-Off Contract if the Authority fails to pay an undisputed invoice sum due within sixty (60) days of the date of the Reminder Notice.

24 Termination for force majeure

Either Party may terminate this Contract by issuing a Termination Notice to the other Party if the carrying out of the Works and/or provision of the Outputs is materially affected by a Force Majeure Event which lasts for ninety (90) days continuously.

25 What happens if the Contract ends

25.1 Where this Contract:

(a) terminates or expires for any reason:

- (i) the Parties shall consult with the National Competence Centre to ensure that any public funding paid under the Contract is not rendered unlawful under the Subsidy Control Regime as a result of the early termination of the Contract (which the Parties acknowledge for such purpose may include the application of certain ongoing requirements in respect of the Network following the early termination of the Contract). Any respective rights and obligations of either Party agreed pursuant to such consultation shall be set out in a written document and executed by duly authorised representatives of each Party;
- (ii) each Party shall pay to the other any outstanding and undisputed payments which are properly due and payable prior to the date of termination or expiry in accordance with the terms of this Contract;
- (iii) the Supplier shall promptly delete or return the Government Data except where required to retain copies by law and Subsidy Control Regime obligations;
- (iv) the Supplier shall promptly return any of the Authority property provided under the terminated or expired Contract;
- (v) the licence granted under Clause 20.6 (Intellectual Property Rights (IPRs)) shall terminate and the Supplier shall cease to use the Authority IPR and the Government Data;
- (vi) accumulated rights of the Parties are not affected; and
- (vii) the Supplier shall ensure that it performs whatever steps are necessary to ensure that the Network is physically secure and that any obligations of the

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Supplier relating to applicable health and safety law in respect of the Network have been fulfilled; or

- (b) terminates in accordance with Clause 24 (Termination for force majeure), each Party shall bear its own costs in relation to termination; or
 - (c) terminates in accordance with Clauses 22.8 to 22.13 (Termination for Supplier Default) prior to the Achievement of the Stage Two (Build) Complete Milestone, the Supplier shall provide exit assistance and shall cooperate with the Authority and/or any Replacement Supplier to ensure a smooth and orderly transition of the Works and/or the Outputs in line with the Exit Plan. Such assistance and cooperation shall be provided by the Supplier at commercially reasonable rates and in accordance with Good Industry Practice.
- 25.2 Where the Contract terminates in accordance with Clauses 22.6 (Ending the Contract for convenience) to 24 (Termination for force majeure), from and including the Stage Two (Build) Commencement Date, the Parties shall comply with Paragraphs 3 (Active services clawback) and 4 (Passive services clawback) of Call-Off Schedule 4 (Financial Schedule).
- 25.3 The following provisions of this Contract shall survive the end of this Contract, Clauses 6.9 and 6.10 (Indemnities), 11 (Subsidy Control Regime), 17.1 (Records and Audits), 19.6 (Supplier Staff), 20 (Intellectual Property Rights (IPRs)), 22 (When the Authority can end a Contract), 25 (What happens if the Contract ends), 26 (Liability), 27 (Exit management), 28.1 (Obeying the Law), 30 (Data protection), 32(What you must keep confidential), 33 (When you can share information), 35 (Invalid parts of the Contract), 36 (No other terms apply), 37 (Other people's rights in a contract), 55 (Tax), 59 (Governing Law and resolving Disputes), and the provisions of Joint Schedule 1 (Definitions and Interpretation), Joint Schedule 6 (Financial Distress), Joint Schedule 7 (Cyber Security) and Paragraphs 3 (Active services clawback) and 4 (Passive services clawback) of Call-Off Schedule 4 (Financial Schedule) together with any Clauses and Schedules which are expressly or by implication intended to continue.

26 Liability

- 26.1 Neither Party limits or excludes liability for any of the following:
- (a) death or personal injury caused by its negligence, or that of its employees, agents or Subcontractors;
 - (b) bribery or fraud or fraudulent misrepresentation by it or its employees;
 - (c) breach of any obligation as to title implied by section 12 of the Sale of Goods Act 1979 or section 2 of the Supply of Goods and Services Act 1982; and/or
 - (d) any other liability that cannot be excluded by law.
- 26.2 The Supplier's liability for the indemnities given in Clauses 6.9(a) and 6.9(c) (Indemnities), 19.6 (Supplier Staff), 20.7 (Intellectual Property Rights (IPRs)), 28.1 (Obeying the Law), 30.9(g) (Supplier obligations) and 55.4(b) (Tax) is unlimited.

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26.3 Subject to Clauses 26.1 and 26.2:

- (a) each Party's total liability in each Contract Year under the DPS Contract (whether in tort, contract or otherwise) is no more than one hundred thousand pounds sterling (£100,000);
- (b) the Supplier's aggregate liability under each Call-Off Contract in respect of loss of or damage to the Authority premises or other real property, assets, equipment or infrastructure of the Authority or a third party that is caused by Defaults of the Supplier shall in no event exceed ten million pounds sterling (£10,000,000) per incident;
- (c) the Supplier's aggregate liability under each Call-Off Contract in respect of the indemnity given in Clause 6.9(b) shall in no event exceed the greater of:
 - (i) ten million pounds sterling (£10,000,000); or
 - (ii) two hundred per cent (200%) of the aggregate Funding Payments paid, due or which would have been payable in the future under the Call-Off Contract;
- (d) the Supplier's aggregate liability under each Call-Off Contract in respect of all other claims, losses or damages, whether arising from tort (including negligence), breach of contract or otherwise (other than in respect of any liability of the type referred to in Clauses 26.1 and 26.2) shall in no event exceed one hundred and fifty per cent (150%) of the aggregate Funding Payments paid, due or which would have been payable in the future under this Contract, provided that where any claims, losses or damages referred to in this Clause 26.3(d) have been incurred by the Authority as a result of the Supplier's abandonment of the Call-Off Contract or the Supplier's wilful default, wilful breach of a fundamental term of the Call-Off Contract or wilful repudiatory breach of the Call-Off Contract, and the reference in this Clause 26.3(d) to one hundred and fifty per cent (150%) shall be deemed to be a reference to two hundred per cent (200%); and
- (e) without prejudice to the Authority's obligations to make any Funding Payment under a Call-Off Contract, the Authority's liability under each Call-Off Contract whether arising from tort (including negligence) breach of contract, or otherwise (other than in respect of any liability of the type referred to in Clauses 26.1 and 26.2) shall in no event exceed fifty per cent (50%) of the aggregate Funding Payment paid, due or which would have been payable in the future under the Call-Off Contract.

26.4 Any repayment of all or part of any Funding Payment by the Supplier to the Authority in accordance with Paragraph 3 (Active services clawback) and Paragraph 4 (Passive services clawback) of Call-Off Schedule 4 (Financial Schedule) or as a result of such Funding Payment having been deemed to be unlawful or incompatible funding under the Subsidy Control Regime shall not be taken into account when determining whether the Supplier's liability caps set out in this Clause 26 have been exceeded.

26.5 Neither Party is liable to the other for:

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- (a) any indirect Losses; and
 - (b) Loss of profits, turnover, savings, business opportunities or damage to goodwill (in each case whether direct or indirect).
- 26.6 Notwithstanding Clause 26.5 but subject to Clauses 26.3(a), 26.3(b), 26.3(c) and 26.3(d), the Supplier acknowledges that the Authority may, amongst other things, recover from the Supplier the following Losses incurred by the Authority to the extent that they arise as a result of a Default by the Supplier:
- (a) any additional operational and/or administrative costs and expenses incurred by the Authority, including costs relating to time spent by or on behalf of the Authority in dealing with the consequences of the Default;
 - (b) any wasted expenditure or charges, including any expenditure related to any cost of advertising undertaken by the Authority to encourage Take-up;
 - (c) the additional cost of procuring a Replacement Supplier and Replacements Works for the remainder of the Contract Period which shall include any incremental costs associated with such Replacement Supplier and Replacement Works above those which would have been payable under this Contract;
 - (d) any compensation or interest paid to a third party by the Authority; and
 - (e) any fine or penalty incurred by the Authority pursuant to Law and any costs incurred by the Authority in defending any proceedings which result in such fine or penalty.
- 26.7 Each Party must use all reasonable endeavours to mitigate any Loss or damage which it suffers under or in connection with each Contract, including any indemnities.

27 Exit management

- 27.1 Within twenty (20) Working Days of receipt of a Termination Notice issued by the Authority in accordance with Clauses 22.8 to 22.13 (Termination for Supplier Default) prior to the Achievement of the Stage Two (Build) Complete Milestone, the Supplier shall provide the Authority with an exit plan which:
- (a) subject to Clause 20.5 (Intellectual Property Rights (IPRs)), includes all activities and information which are reasonably required to ensure an orderly transition and enable a Replacement Supplier to take over and complete the Works and/or Outputs, including:
 - (i) up-to-date copies of the Project Plan and the Network Detailed Design;
 - (ii) any relevant technical information, instructions and manuals reasonably required to enable a smooth transition from the Supplier; and
 - (iii) an update on the Supplier's progress against the Project Plan; and

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(b) could be implemented immediately by the Authority and/or a Replacement Supplier, (the "**Exit Plan**").

28 Obeying the Law

28.1 The Supplier indemnifies the Authority against any costs resulting from any Default by the Supplier relating to any Law to do with a Contract.

28.2 The Supplier must appoint a Compliance Officer who must be responsible for ensuring that the Supplier complies with Law, Clause 28.1 and Clause 45 (Social Value) and Clauses 51 (Preventing fraud, bribery and corruption) to 56 (Conflict of Interest).

29 Insurance

The Insurances required

29.1 The Supplier shall take out and maintain, or procure the taking out and maintenance of:

- (a) the following standard insurance cover from the DPS Effective Date:
 - (i) professional indemnity insurance to a minimum cover of not less than one million pounds sterling (£1,000,000) per event and in the annual aggregate;
 - (ii) public liability insurance with cover (for a single event or a series of related events and in the aggregate) of not less than five million pounds sterling (£5,000,000);
 - (iii) employers' liability insurance with cover (for a single event or a series of related events and in the aggregate) of not less than five million pounds sterling (£5,000,000); and
 - (iv) product liability insurance with cover of not less than five million pounds sterling (£5,000,000) per event and in the annual aggregate; and
- (b) any additional insurances required under a Call-Off Contract (specified in the Call-Off Award Form) ("**Additional Insurances**") and any other insurances as may be required by Law,

(together the "**Insurances**").

29.2 The Supplier shall ensure that each of the Insurances is effective no later than:

- (a) the DPS Effective Date in respect of those Insurances set out in the Clause 29.1(a) and those required by Law; and
- (b) the Call-Off Contract Effective Date in respect of the Additional Insurances.



29.3 The Insurances shall be:

- (a) maintained in accordance with Good Industry Practice;
- (b) (so far as is reasonably practicable) on terms no less favourable than those generally available to a prudent contractor in respect of risks insured in the international insurance market from time to time;
- (c) taken out and maintained with insurers of good financial standing and good repute in the international insurance market; and
- (d) maintained for at least six (6) years after the End Date.

29.4 The Supplier shall ensure that the public and products liability policy contain an indemnity to principals clause under which the Authority shall be indemnified in respect of claims made against the Authority in respect of death or bodily injury or third party property damage arising out of or in connection with the Outputs and/or the Works and for which the Supplier is legally liable.

How to manage the insurance

29.5 Without limiting the other provisions of this Contract, the Supplier shall:

- (a) take or procure the taking of all reasonable risk management and risk control measures in relation to the performance of its obligations under this Contract as it would be reasonable to expect of a prudent contractor acting in accordance with Good Industry Practice, including the investigation and reports of relevant claims to insurers;
- (b) promptly notify the insurers in writing of any relevant material fact under any Insurances of which the Supplier is or becomes aware; and
- (c) hold all policies in respect of the Insurances and cause any insurance broker effecting the Insurances to hold any insurance slips and other evidence of placing cover representing any of the Insurances to which it is a party.

What happens if you aren't insured

29.6 The Supplier shall not take any action or fail to take any action or (insofar as is reasonably within its power) permit anything to occur in relation to it which would entitle any insurer to refuse to pay any claim under any of the Insurances.

29.7 Where the Supplier has failed to purchase or maintain any of the Insurances in full force and effect, the Authority may elect (but shall not be obliged) following written notice to the Supplier to purchase the relevant Insurances and recover the reasonable premium and other reasonable costs incurred in connection therewith as a debt due from the Supplier.

Evidence of insurance you must provide

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- 29.8 The Supplier shall upon the Effective Date and within fifteen (15) Working Days after the renewal of each of the Insurances, provide evidence, in a form satisfactory to the Authority, that the Insurances are in force and effect and meet in full the requirements of this Clause 29.

Making sure you are insured to the required amount

- 29.9 The Supplier shall ensure that any Insurances which are stated to have a minimum limit "in the aggregate" are maintained at all times for the minimum limit of indemnity specified in this Contract and if any claims are made which do not relate to this Contract then the Supplier shall notify the Authority and provide details of its proposed solution for maintaining the minimum limit of indemnity.

Cancelled insurance

- 29.10 The Supplier shall notify the Authority in writing at least five (5) Working Days prior to the cancellation, suspension, termination or non-renewal of any of the Insurances.
- 29.11 The Supplier shall ensure that nothing is done which would entitle the relevant insurer to cancel, rescind or suspend any insurance or cover, or to treat any insurance, cover or claim as voided in whole or part. The Supplier shall use all reasonable endeavours to notify the Authority (subject to third party confidentiality obligations) as soon as practicable when it becomes aware of any relevant fact, circumstance or matter which has caused, or is reasonably likely to provide grounds to, the relevant insurer to give notice to cancel, rescind, suspend or void any insurance, or any cover or claim under any insurance in whole or in part.

Insurance claims

- 29.12 The Supplier shall promptly notify to insurers any matter arising from, or in relation to, the Outputs and/or the Works, or each Contract for which it may be entitled to claim under any of the Insurances. In the event that the Authority receives a claim relating to or arising out of a Contract or the Outputs and/or the Works, the Supplier shall co-operate with the Authority and assist it in dealing with such claims including without limitation providing information and documentation in a timely manner.
- 29.13 Except where the Authority is the claimant party, the Supplier shall give the Authority notice within twenty (20) Working Days after any insurance claim in excess of ten per cent (10%) of the sum required to be insured pursuant to Clause 29.1 relating to or arising out of the carrying out of the Works and/or the provision of the Outputs or this Contract on any of the Insurances or which, but for the application of the applicable policy excess, would be made on any of the Insurances and (if required by the Authority) full details of the incident giving rise to the claim.
- 29.14 Where any Insurance requires payment of a premium, the Supplier shall be liable for and shall promptly pay such premium.
- 29.15 Where any Insurance is subject to an excess or deductible below which the indemnity from insurers is excluded, the Supplier shall be liable for such excess or deductible. The Supplier



shall not be entitled to recover from the Authority any sum paid by way of excess or deductible under the Insurances whether under the terms of this Contract or otherwise.

30 Data protection

Government Data

- 30.1 The Supplier must not remove any ownership or security notices in or relating to the Government Data.
- 30.2 The Supplier shall not store, copy, disclose or use Government Data except as necessary for the performance of its obligations under this Contract or as otherwise authorised in writing by the Authority.
- 30.3 The Supplier must make accessible back-ups of all Government Data, stored in an agreed off-site location and send the Authority copies every six (6) Months.
- 30.4 The Supplier must ensure that any Supplier system holding any Government Data, including back-up data, is a secure system and complies with the Security Policy and any other terms of this Contract.
- 30.5 The Supplier shall take responsibility for preserving the integrity of the Government Data and preventing the corruption and loss of Government Data as is reasonable in accordance with Good Industry Practice and taking account of the sensitivity of such Government Data.
- 30.6 If at any time the Supplier suspects or has reason to believe that the Government Data provided under this Contract is corrupted, lost or sufficiently degraded, then the Supplier must immediately notify the Authority and suggest remedial action and provide the Authority with such assistance as the Authority requires in respect of the corrupted, lost or sufficiently degraded Government Data.
- 30.7 If the Government Data is corrupted, lost or sufficiently degraded so as to be unusable the Authority may either:
 - (a) tell the Supplier to restore or arrange for the restoration of Government Data as soon as practical but no later than five (5) Working Days from the earlier of the date that the Authority receives notice, or the Supplier finds out about the issue; or
 - (b) restore the Government Data itself or using a third party.
- 30.8 The Supplier must pay each Party's reasonable costs of complying with Clause 30.7 unless the Authority is at fault.
- 30.9 The Supplier:
 - (a) shall only Process Government Data for the purposes of this Contract;



- (b) must provide the Authority with all Government Data in an agreed open format within ten (10) Working Days of a written request;
- (c) shall not Process or transfer, or cause to be transferred Government Data outside the United Kingdom without the written consent of the Authority;
- (d) must have documented processes to guarantee prompt availability of Government Data if the Supplier stops trading;
- (e) must securely and using Good Industry Practice:
 - (i) delete all Government Data from storage media once such storage media is no longer used for the purposes of this Contract; and
 - (ii) destroy all storage media that has held Government Data at the end of life of that media;
- (f) shall securely erase all Government Data and any copies it holds when asked to do so by the Authority unless required by Law to retain it; and
- (g) indemnifies the Authority against any and all Losses incurred if the Supplier breaches this Clause 30 or Clause 31 (Where Authority is Controller and Supplier is its Processor) and any Data Protection Legislation.

30.10 For the avoidance of doubt, references in Clauses 30.1 to 30.9 (inclusive) to Government Data shall not include Pre-Program Data, Network Services Data or Take-up Data that are not provided by the Authority to the Supplier and in respect of which the Supplier acts as an independent Controller.

Data Processing commitments (UK GDPR)

Status of the Parties

30.11 Except to the extent the Supplier acts as Processor in respect of Services Data, the Parties agree that for the purposes of this Contract and the Processing of Personal Data in connection with this Contract (e.g. the Processing of Government Data, Pre-Program Data, Network Services Data and Take-up Data), each Party acts as a Controller.

30.12 These Clauses 30.11 to 30.14 set out each Party's responsibilities to the other in relation to the Processing of Personal Data where each Party acts as a Controller. Clause 31 (Where Authority is Controller and Supplier is its Processor) sets out the obligations of the Parties where the Supplier acts as a Processor in respect of the Services Data.

Data Processing principles

30.13 When the Parties Process Personal Data in connection with this Contract, each Party agrees that it shall:



- (a) comply with Data Protection Legislation, including by providing any privacy notices required and responding to any requests or enquiries regarding its Processing of Personal Data from any Data Subject or Regulatory Body;
- (b) provide the other Party with reasonable details of any enquiry, complaint, notice or other communication it receives from any Regulatory Body relating to its own Processing of Personal Data in connection with this Contract and provide reasonable cooperation to the other Party in respect of any such enquiry, complaint, notice or communication by providing further information reasonably requested by the other Party in connection with the same and taking account of any reasonable comments, input or direction the other Party provides in respect to how that Party should respond to the same; and
- (c) provide the information and co-operation as the other Party may reasonably request to allow that other Party to comply with its obligations under Data Protection Legislation in relation to the Processing of Personal Data in connection with this Contract, particularly regarding notifications of a Personal Data Breach or responding to Data Subject Rights Requests.

Supplier obligations

30.14 When Processing Personal Data in connection with this Contract, the Supplier shall:

- (a) maintain appropriate technical and organisational measures to ensure security of the Personal Data including protection against unauthorised or unlawful Processing, and comply with the Security Policy;
- (b) promptly inform the Authority of any Personal Data Breach that occurs in the course of the Supplier's Processing of Personal Data in connection with this Contract (including any Processing by Subcontractors); and
- (c) ensure any contract with Subcontractors appointed in accordance with Clause 19 (Supplier Staff and Subcontractors) have appropriate data protection clauses including Processor clauses as required by Data Protection Legislation.

31 Where Authority is Controller and Supplier is its Processor

- 31.1 The Parties acknowledge that Services Data will be Processed by the Supplier as a Processor in connection with the performance of this Contract. Where and to the extent the Supplier acts as a Processor for the purposes of any such Processing under this Contract, the Supplier shall comply with the provisions of this Clause 31.
- 31.2 Where Supplier is a Processor, the only processing that it is authorised to do is listed in Exhibit A (Processing Personal Data).
- 31.3 The Supplier shall notify the Authority immediately if it considers that any of the Authority's instructions infringe the Data Protection Legislation.



31.4 The Supplier shall provide all reasonable assistance to the Authority in the preparation of any Data Protection Impact Assessment prior to commencing any processing. Such assistance may, at the discretion of the Authority, include:

- (a) a systematic description of the envisaged processing operations and the purpose of the Processing;
- (b) an assessment of the necessity and proportionality of the processing operations in relation to the Contract;
- (c) an assessment of the risks to the rights and freedoms of Data Subjects; and
- (d) the measures envisaged to address the risks, including safeguards, security measures and mechanisms to ensure the protection of Services Data.

31.5 The Supplier shall, in relation to any Services Data processed in connection with its obligations under this Contract:

- (a) process that Services Data only in accordance with Exhibit A (Processing Personal Data), unless the Supplier is required to do otherwise by Law. If it is so required the Supplier shall promptly notify the Authority before processing the Services Data unless prohibited by Law;
- (b) maintain appropriate technical and organisational measures to ensure security of the Personal Data including protection against unauthorised or unlawful Processing, and comply with the Security Policy;
- (c) ensure that the Supplier Staff do not process Personal Data except in accordance with this Contract (and in particular Exhibit A (Processing Personal Data));
- (d) it takes all reasonable steps to ensure the reliability and integrity of any Supplier Staff who have access to the Services Data and ensure that they:
 - (i) are aware of and comply with the Supplier's duties under this Clause and Clause 32 (What you must keep confidential);
 - (ii) are subject to appropriate confidentiality undertakings with the Supplier or any sub-processor;
 - (iii) are informed of the confidential nature of the Services Data and do not publish, disclose or divulge any of the Services Data to any third party unless directed in writing to do so by the Authority or as otherwise permitted by this Contract; and
 - (iv) have undergone adequate training in the use, care, protection and handling of Services Data;



- (e) not transfer Services Data outside of the UK, unless the prior written consent of the Authority has been obtained and the following conditions are fulfilled:
 - (i) the Authority or the Supplier has provided appropriate safeguards in relation to the transfer (whether in accordance with UK GDPR Article 46 or DPA 2018 Section 75) as determined by the Authority;
 - (ii) the Data Subject has enforceable rights and effective legal remedies;
 - (iii) the Supplier complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Services Data that is transferred (or, if it is not so bound, uses its best endeavours to assist the Authority in meeting its obligations); and
 - (iv) the Supplier complies with any reasonable instructions notified to it in advance by the Authority with respect to the Processing of the Services Data; and
- (f) at the written direction of the Authority, delete or return Services Data (and any copies of it) to the Authority on termination of the Contract unless the Supplier is required by Law to retain the Services Data. For the avoidance of doubt, this Clause shall not oblige the Supplier to delete any Personal Data (including Pre-Program Data, Network Services Data and Take-up Data) in respect of which the Supplier acts as a Controller.

31.6 Subject to Clause 31.7, the Supplier shall notify the Authority immediately if it:

- (a) receives a Data Subject Rights Request (or purported Data Subject Rights Request);
- (b) receives a request to rectify, block or erase any Services Data;
- (c) receives any other request, complaint or communication relating to either Party's obligations under the Data Protection Legislation;
- (d) receives any communication from the Information Commissioner or any other regulatory authority in connection with Services Data processed under this Contract;
- (e) receives a request from any third party for disclosure of Services Data where compliance with such request is required or purported to be required by Law; or
- (f) becomes aware of a Data Loss Event.

31.7 The Supplier's obligation to notify under Clause 31.6 shall include the provision of further information to the Authority in phases, as details become available.

31.8 Taking into account the nature of the processing, the Supplier shall provide the Authority with reasonable assistance in relation to the Authority's:



- (a) obligations under Data Protection Legislation and any complaint, communication or request made under Clause 31.6 (and insofar as possible within the timescales reasonably required by the Authority) including by promptly providing:
 - (i) the Authority with full details and copies of the complaint, communication or request;
 - (ii) such assistance as is reasonably requested by the Authority to enable it to comply with a Data Subject Rights Request within the relevant timescales set out in the Data Protection Legislation;
 - (iii) the Authority, at its request, with any Services Data it holds in relation to a Data Subject;
 - (iv) assistance as requested by the Authority following any Data Loss Event; and/or
 - (v) assistance as requested by the Authority with respect to any request from the Information Commissioner's Office, or any consultation by the Authority with the Information Commissioner's Office.
- 31.9 The Supplier shall maintain complete and accurate records and information to demonstrate its compliance with this Clause. This requirement does not apply where the Supplier employs fewer than two hundred and fifty (250) staff, unless:
- (a) the Authority determines that the Processing is not occasional;
 - (b) the Authority determines the Processing includes special categories of data as referred to in Article 9(1) of the UK GDPR or Personal Data relating to criminal convictions and offences referred to in Article 10 of the UK GDPR; or
 - (c) the Authority determines that the Processing is likely to result in a risk to the rights and freedoms of Data Subjects.
- 31.10 The Supplier shall allow for audits of its Processing activity by the Authority or the Authority's designated auditor.
- 31.11 The Supplier shall designate a Data Protection Officer if required by the Data Protection Legislation.
- 31.12 Before allowing any sub-processor to process any Services Data related to this Contract, the Supplier must:
- (a) notify the Authority in writing of the intended sub-processor and Processing;
 - (b) obtain the written consent of the Authority;



- (c) enter into a written agreement with the sub-processor which give effect to the terms set out in this Clause such that they apply to the sub-processor; and
- (d) provide the Authority with such information regarding the sub-processor as the Authority may reasonably require.

31.13 The Supplier shall remain fully liable for all acts or omissions of any of its sub-processors.

31.14 The Authority may, at any time on not less than thirty (30) Working Days' notice, revise this Clause by replacing it with any applicable Authority to Supplier standard clauses or similar terms forming part of an applicable certification scheme (which shall apply when incorporated by attachment to this Contract).

31.15 The Parties agree to take account of any guidance issued by the Information Commissioner's Office. The Authority may on not less than thirty (30) Working Days' notice to the Supplier amend this Contract to ensure that it complies with any guidance issued by the Information Commissioner's Office.

32 What you must keep confidential

32.1 Except to the extent set out in this Clause 32 or where disclosure is expressly permitted elsewhere in this Contract, the Recipient shall:

- (a) treat the Disclosing Party's Confidential Information and keep it secure;
- (b) not disclose, use or exploit the Disclosing Party's Confidential Information without the Disclosing Party's prior written consent, except for the purposes anticipated under the Contract; and
- (c) immediately notify the Disclosing Party if it suspects or becomes aware of any unauthorised access, copying, use or disclosure of the Disclosing Party's Confidential Information.

32.2 In spite of Clause 32.1, the Recipient may disclose Confidential Information of the Disclosing Party in any of the following instances:

- (a) where disclosure is required by Law or by a court with the relevant jurisdiction if the Recipient notifies the Disclosing Party of the full circumstances, the affected Confidential Information and extent of the disclosure;
- (b) to its auditors or for the purposes of regulatory requirements;
- (c) on a confidential basis, to its professional advisers on a need-to-know basis; or
- (d) to the Serious Fraud Office where the Recipient has reasonable grounds to believe that the Disclosing Party is involved in activity that may be a criminal offence under the Bribery Act 2010.



32.3 The Supplier may disclose Confidential Information of the Authority in the following instances:

- (a) on a confidential basis only to Supplier Staff on a need-to-know basis to allow the Supplier to meet its obligations under the Contract. The Supplier Staff must enter into a direct confidentiality agreement with the Authority at the Authority's reasonable request; and
- (b) on a confidential basis to any lender or funder notified in writing to the Authority prior to the Effective Date.

32.4 The Authority may disclose Confidential Information of the Supplier in any of the following cases:

- (a) on a confidential basis to the employees, agents, consultants and contractors of the Authority;
- (b) on a confidential basis to a Local Authority and/or Devolved Administration (solely in relation to Supplier Confidential Information in connection with the region of that Local Authority and/or Devolved Administration);
- (c) on a confidential basis to any other Central Government Body, any successor body to a Central Government Body or any company that the Authority transfers or proposes to transfer all or any part of its business to;
- (d) the Competition and Markets Authority (CMA) and any successors or assigns. Such disclosure shall only be made on a confidential basis where disclosure of the Confidential Information is voluntary by the Authority and not where disclosure is mandatory by Law;
- (e) if the Authority, acting reasonably, considers disclosure necessary or appropriate to carry out its public functions;
- (f) on a confidential basis for the purpose of the exercise of its rights under this Contract, including Audit rights;
- (g) where requested by Parliament; or
- (h) under Clause 33 (When you can share information).

32.5 For the purposes of Clauses 32.2 to 32.4 references to disclosure on a confidential basis means disclosure under a confidentiality agreement or arrangement including terms as strict as those required in this Clause 32.

32.6 Transparency Information is not Confidential Information.

32.7 If a Party notifies the other Party that it suspects or knows that there may be a breach of this Clause 32, the other Party shall respond as soon as reasonably practicable and in any event



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

32.8 All Confidential Information and copies on termination of a Contract, or at the Authority's request, at any time during the Contract Period, must be:

- (a) given back to the Disclosing Party; or
- (b) irretrievably deleted including all Confidential Information and copies of the Confidential Information in whatever form in the Recipient's possession or control and the media on which the Confidential Information is stored.

32.9 Nothing in this Clause 32 shall prevent a Recipient from using any techniques, ideas, Know-How gained during the performance of this Contract in the course of its normal business to the extent that this use does not result in disclosure of the Disclosing Party's Confidential Information or an infringement of IPRs.

33 **When you can share information**

33.1 The Supplier must tell the Authority within three (3) Working Days if it receives a Request For Information.

33.2 Within the required timescales the Supplier must give the Authority full co-operation and information needed so that they can:

- (a) publish the Transparency Information;
- (b) comply with any Freedom of Information Act (FOIA) request; and
- (c) comply with any Environmental Information Regulations (EIR) request.

33.3 Despite any other term of this Contract, the Supplier hereby gives its consent for the Authority to publish to the general public:

- (a) this Contract;
- (b) any Change; and
- (c) the reports provided by the Supplier to the Authority under this Contract in their entirety,

but with any information which is exempt from disclosure in accordance with the FOIA redacted. The Supplier shall assist and co-operate with the Authority to enable the Authority to publish the foregoing.

33.4 The Authority reserves the right to use and publish the performance of the Supplier under this Contract, provided that the Authority gives the Supplier reasonable notice of such publication. The Supplier acknowledges that this Clause 33.4 is designed to allow the Authority to



communicate the progress of Gigabit Infrastructure Subsidy to the general public and to ensure the general public can obtain a fair view on how the Contract is being performed and that discussion of any use or publication at a Progress Meeting held prior to publication shall constitute reasonable notice for the purpose of this Clause 33.4.

- 33.5 The Authority may talk to the Supplier to help it decide whether to publish information under this Clause 33. However, the extent, content and format of the disclosure is the Authority's decision, which does not need to be reasonable.
- 33.6 The Supplier acknowledges that the Authority may be required under the FOIA and EIRs to disclose Information (including Commercially Sensitive Information) without consulting or obtaining consent from the Supplier. The Authority shall take reasonable steps to notify the Supplier of a Request For Information (in accordance with the Secretary of State's section 45 Code of Practice on the Discharge of the Functions of Public Authorities under Part 1 of the FOIA) to the extent that it is permissible and reasonably practical for it to do so but (notwithstanding any other provision in this Contract) the Authority shall be responsible for determining in its absolute discretion whether any Commercially Sensitive Information and/or any other information is exempt from disclosure in accordance with the FOIA and EIRs.
- 33.7 The Authority may share this Contract with a Local Authority and/or Devolved Administration (solely where this Contract is in connection with the region of that Local Authority and/or Devolved Administration).
- 33.8 The Authority acknowledges and agrees that the right to use and publish information and/or details about the Supplier's performance under this Contract shall provide a fair view to the general public taking account of, and making clear in any such publication as the Authority considers appropriate in its absolute discretion:
- (a) any comments or statement made by the Supplier; and/or
 - (b) where the Supplier is:
 - (i) not itself in Default; and/or
 - (ii) in any dispute over whether the Supplier is in Default under the Contract.

34 **Publicity and branding**

- 34.1 The Supplier shall comply at all times with the Authority's Brand and Communication Instructions.
- 34.2 The Supplier must not:
- (a) make any press announcements or publicise in relation to Gigabit Infrastructure Subsidy or this Contract or its contents in any way; or
 - (b) use the Authority's name or branding in any promotion or marketing,

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without the prior written consent of the Authority and must take all reasonable steps to ensure that Supplier Staff and/ or its Subcontractors do not either.

- 34.3 Each Party acknowledges to the other that nothing in this Contract either expressly or by implication constitutes an endorsement of any products or services of the other Party and each Party agrees not to conduct itself in such a way as to imply or express any such approval or endorsement.

35 **Invalid parts of the Contract**

If any part of a Contract is prohibited by Law or judged by a court to be unlawful, void or unenforceable, it must be read as if it was removed from that Contract as much as required and rendered ineffective as far as possible without affecting the rest of the Contract, whether it's valid or enforceable.

36 **No other terms apply**

The provisions incorporated in each Contract are the entire agreement between the Parties. The Contract replaces all previous statements and agreements whether written or oral relating to its subject matter. No other provisions apply.

37 **Other people's rights in a contract**

No third parties may use the Contracts (Rights of Third Parties) Act (CRTPA) to enforce any term of the Contract unless stated (referring to CRTPA) in the Contract. This does not affect third party rights and remedies that exist independently from CRTPA.

38 **Circumstances beyond your control**

- 38.1 Any Party affected by a Force Majeure Event is excused from performing its obligations under a Contract while the inability to perform continues, if it both:

- (a) provides a Force Majeure Notice to the other Party as soon as reasonably practicable, which shall include:
 - (i) details of the Force Majeure Event;
 - (ii) its effect on the obligations on the Affected Party; and
 - (iii) any action the Affected Party proposes to take to mitigate its effect; and
- (b) uses all reasonable endeavours practical without incurring additional expenditure to reduce the impact of the Force Majeure Event.

- 38.2 If the carrying out of the Works and/or provision of the Outputs is materially affected by a Force Majeure Event which lasts for ninety (90) days continuously then either Party may terminate this Contract in accordance with Clause 24 (Termination for force majeure) and Clause 25.1(b) (What happens if the Contract ends) shall apply.

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39 Relief Events

39.1 Relief Events are set out in the table below:

ID	Description of Relief Event	Qualifying Period	Expected Impact of Relief Event
1	<p>Any legal challenge, action and/or formal investigation relating to Stage One (Network Detailed Design and Due Diligence) or Stage Two (Build) which is commenced and/or upheld prior to the Achievement of the Stage One (Network Detailed Design and Due Diligence) Complete Milestone or Stage Two (Build) Complete Milestone (as applicable) and which is brought:</p> <p>(a) before a national court or by the Government under the Subsidy Control Regime including against the Authority; or</p> <p>(b) against the Authority for breach of statutory duty including the duty owed under Regulation 89 of the Public Contracts Regulations 2015,</p> <p>which materially affects either the carrying out of the Works, the provision of the Outputs and/or the viability of the Funding Payments (in whole or part as appropriate) used to help pay for the carrying out of the Works and/or the provision of the Outputs.</p>	<p>Stage One (Network Detailed Design and Due Diligence)</p> <p>Stage Two (Build)</p>	<p>Suspension of Stage One (Network Detailed Design and Due Diligence) Works or Stage Two (Build) Works (as applicable) (in whole or part as appropriate) in the Intervention Area or the part of the Intervention Area materially affected by such Relief Event. 'Materially affected' means any risk arising or impact on the validity of the Funding Payments for such Works.</p>
2	<p>Where a Local Planning Authority or Local Highways Authority within the Intervention Area fails to provide any relevant consent, decision or response within the statutory or published time period, provided that the Supplier ensured that the application was submitted in a timely fashion, was of an accurate and high standard and was presented in such a way as to allow prompt determination.</p>	<p>Stage One (Network Detailed Design and Due Diligence)</p> <p>Stage Two (Build)</p>	<p>a) Change in timescales to deliver Build Milestones</p> <p>b) Change to cost only where it is demonstrated by the Supplier such changes to costs cannot be mitigated in accordance with Good Industry Practice and/or cannot be absorbed within the overall forecast Eligible Expenditure set out in the Financial Model</p>



			c) Reduction in number of Premises in-scope of the Call-Off Contract
3	Strike by Local Authority personnel, which directly delays surveying, planning, or deployment.	Stage One (Network Detailed Design and Due Diligence) Stage Two (Build)	a) Change in timescales to deliver Build Milestones b) Change to cost only where it is demonstrated by the Supplier such changes to costs cannot be mitigated in accordance with Good Industry Practice and/or cannot be absorbed within the overall forecast Eligible Expenditure set out in the Financial Model c) Reduction in number of Premises in-scope of the Call-Off Contract
4	<p>Without affecting the operation of Clauses 2.6 to 2.8 (How the Contract Works), any requirement for permits, consents or notices from the Local Authority (or anyone acting on the Authority's behalf) where details were provided as part of the ITT but have subsequently changed from what was provided including:</p> <p>(a) any classification of works as major works under the Construction (Design and Management) Regulations 2015; and/or</p> <p>(b) any classification as traffic sensitive, Road Category 0-2, or major works pursuant to any permit scheme under the Traffic Management Act 2004,</p> <p>provided that the Supplier has taken reasonable steps to ensure that applications under the relevant permit, consent and/or notice applications (as applicable) are submitted in a timely fashion, are of an accurate and high standard, and presented in such a way which will allow prompt determination of the relevant application/request.</p>	Stage One (Network Detailed Design and Due Diligence) Stage Two (Build)	a) Change in timescales to deliver Build Milestones b) Change to cost only where it is demonstrated by the Supplier such changes to costs cannot be mitigated in accordance with Good Industry Practice and/or cannot be absorbed within the overall forecast Eligible Expenditure set out in the Financial Model c) Reduction in number of Premises in-scope of the Call-Off Contract



5	<p>Local Authority delays and/or refusals in granting wayleaves on reasonable terms (being consistent with those terms the Local Authority otherwise sets for commercial deployments) where the wayleaves are required from the Local Authority, provided that the Supplier has taken reasonable steps to ensure that requests for wayleaves are submitted in a timely fashion, are of an accurate and high standard, and presented in such a way which will allow prompt determination of the relevant request.</p> <p>Private landlord delays and/or refusals in granting wayleaves on reasonable terms where the wayleaves are required from the private landlord, provided that the Supplier has taken reasonable steps to ensure that requests for wayleaves are submitted in a timely fashion, are of an accurate and high standard, and presented in such a way which will allow prompt determination of the relevant request.</p>	<p>Stage One (Network Detailed Design and Due Diligence)</p> <p>Stage Two (Build)</p>	<p>a) Change in timescales to deliver Build Milestones</p> <p>b) Change to cost only where it is demonstrated by the Supplier such changes to costs cannot be mitigated in accordance with Good Industry Practice and/or cannot be absorbed within the overall forecast Eligible Expenditure set out in the Financial Model</p> <p>c) Reduction in number of Premises in-scope of the Call-Off Contract</p>
6	<p>Acts or omissions of third parties directly impacting delivery of the project, where these are: (i) under the direct control of the Authority; and (ii) not under the control of the Supplier, save where such acts or omissions reflect steps being taken by the Authority to comply with Law and/or its duties as a public body.</p>	<p>Stage One (Network Detailed Design and Due Diligence)</p> <p>Stage Two (Build)</p>	<p>a) Change in timescales to deliver Build Milestones</p> <p>b) Change to cost only where it is demonstrated by the Supplier such changes to costs cannot be mitigated in accordance with Good Industry Practice and/or cannot be absorbed within the overall forecast Eligible Expenditure set out in the Financial Model</p> <p>c) Reduction in number of Premises in-scope of the Call-Off Contract</p>

The reliefs listed in the column titled "Expected Impact of Relief Events" in the table above are for illustrative purposes only and are not intended to be exhaustive and, for the avoidance of doubt, the Authority is under no obligation to grant such reliefs.

39.2 If the Supplier is unable to comply with its obligations under the Contract (a "**Supplier Non-Performance**") and can demonstrate that the Supplier Non-Performance happened as a direct result of the occurrence of a Relief Event then (subject to the Supplier fulfilling its



obligations under this Clause 39) the Authority shall grant any one or more of the following reliefs (taking into account the Supplier's representations in the Relief Notice, including the proposed relief):

- (a) the Supplier shall not be treated as being in breach of the Contract (to the extent the Supplier Non-Performance was caused by the Relief Event);
- (b) where the Supplier Non-Performance constitutes a failure to Achieve a Milestone by its Milestone Date, the Milestone Date shall be postponed by a reasonable time taking into account the likely effect of the delay caused by the Relief Event;
- (c) Funding Payments may be amended, provided that the Supplier can demonstrate to the satisfaction of the Authority that any additional costs to be incurred are necessary and cannot be mitigated in accordance with Good Industry Practice or absorbed within the overall forecast Eligible Expenditure; and/or
- (d) the Specification, the Supplier Solution or any other term of this Contract may be amended (including a reduction in the number of Premises in the scope of the Call-Off Contract).

39.3 The reliefs set out in Clause 39.2, shall only be available if:

- (a) the Relief Event occurs within the Qualifying Period set out in Clause 39.1;
- (b) as soon as practicable after the Supplier becomes aware that a Relief Event has, will, or is reasonably likely to cause a Supplier Non-Performance, it gives a notice to the Authority (a "**Relief Notice**") setting out:
 - (i) a description of the Relief Event and the date of occurrence;
 - (ii) likely duration and the impact or likely impact on the Supplier's ability to meet its obligations under this Contract;
 - (iii) any steps which the Authority can take to eliminate or mitigate the consequences and impact of the Relief Event;
 - (iv) the Supplier's proposals for remedying or mitigating the effects of the Relief Event; and
 - (v) the Supplier's claim for relief from its obligations under this Contract;
- (c) the Supplier has used all reasonable endeavours to eliminate or mitigate the consequences and impact of the Relief Event in accordance with Good Industry Practice and without incurring additional expenditure; and
- (d) the Supplier has used all reasonable endeavours to perform the relevant obligations affected by the Relief Event without incurring additional expenditure.

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- 39.4 Within ten (10) Working Days following receipt of a Relief Notice, the Authority shall consider the Supplier's representations in the Relief Notice and shall:
- (a) notify the Supplier that it agrees with the Supplier's assessment in the Relief Notice; or
 - (b) request additional information and/or request the Supplier attends a meeting with the Authority in order to clarify the Relief Notice.
- 39.5 The Supplier shall provide such additional information and/or attend any meetings with the Authority as the Authority may require for clarifying the Relief Notice including evidence to justify any proposed amendments to the Funding Payments and/or to the Milestone Dates of Milestones.
- 39.6 The Supplier shall continue to use all reasonable endeavours without incurring additional expenditure to eliminate or mitigate the consequences and impact of a Relief Event in accordance with Good Industry Practice.
- 39.7 Any amendment required to the Milestones, the Funding Payments or the Specification as a result of a Relief Event shall be implemented in accordance with the Changing the Contract Procedure. For the avoidance of doubt:
- (a) the Authority shall not be liable for any additional costs incurred by the Supplier in carrying out of the Works and/or the provision of the Outputs prior to the Authority's approval of such costs in accordance with this Clause 39;
 - (b) where there is a reduction in the number of Premises in scope of the Call-Off Contract, the Supplier shall not be entitled to any increase in the Funding Payments, unless the Supplier can demonstrate and evidence to the Authority's satisfaction that such reduction cannot take place without additional funding.
- 39.8 Without affecting Clause 39.2, if the Relief Event relating to a legal challenge, action and/or investigation occurs, the Parties shall within three (3) Working Days of becoming aware of the Relief Event meet to discuss:
- (a) the potential materiality of such legal challenge, action and/or investigation;
 - (b) the potential impact of the same on the Contract; and
 - (c) likely relief options to be applied (if any are available),
- following which, the Supplier shall provide a Relief Notice (if still required) in accordance with this Clause 39.

40 **Exceptional Engineering Difficulties**

- 40.1 If an Exceptional Engineering Difficulty occurs during Stage Two (Build), the Supplier shall notify the Authority of the Exceptional Engineering Difficulty as soon as practicable but in any



event within five (5) Working Days of becoming aware of the Exceptional Engineering Difficulty, detailing the Exceptional Engineering Difficulty and the date of occurrence.

- 40.2 The Supplier shall provide the Authority with a draft Exceptional Engineering Difficulty Plan without delay and in any event no later than twenty (20) Working Days (or such other period as the Parties may agree) after the original notification pursuant to Clause 40.1.
- 40.3 The Supplier shall be entitled to claim relief in accordance with this Clause 40 where an Exceptional Engineering Difficulty occurs during Stage Two (Build) and as a direct result the Supplier is unable to comply with its obligations under this Contract.
- 40.4 In order to claim relief, the Supplier shall include in the Exceptional Engineering Difficulty Plan:
- (a) the likely duration and the actual or anticipated effect of the Exceptional Engineering Difficulty, including any impact on the Supplier's ability to meet its obligations under this Contract;
 - (b) the Supplier's proposals for remedying or mitigating the effects of the Exceptional Engineering Difficulty;
 - (c) the relief claimed by the Supplier; and
 - (d) any additional costs required to carry out the Works and/or provide the Outputs as a direct result of the Exceptional Engineering Difficulty (together with supporting evidence).
- 40.5 Within twenty (20) Working Days following receipt of the Exceptional Engineering Difficulty Plan, the Authority shall consider the nature of the Exceptional Engineering Difficulty and take into account the Supplier's representations in the Exceptional Engineering Difficulty Plan and shall:
- (a) notify the Supplier whether it agrees with the Supplier's assessment set out in the Exceptional Engineering Difficulty Plan as to the effect of the Exceptional Engineering Difficulty and impact on the costs; or
 - (b) request the Supplier attends a meeting with the Authority or request additional information relating to the costs required to carry out the Works and/or provide the Outputs in the event the proposed relief requires amendments to the Specification, the Supplier Solution and/or (subject to Clause 40.7(g)(ii)(B) and Paragraph 1.2 (General) of Call-Off Schedule 4 (Financial Schedule)) any other term of this Contract (including reducing the number of Premises in the scope of the Call-Off Contract).
- 40.6 The Supplier shall provide such additional information and/or attend any meetings with the Authority as the Authority may require for clarifying the Exceptional Engineering Difficulty Plan and as requested in accordance with Clause 40.5(b).
- 40.7 If the Supplier can demonstrate to the Authority's satisfaction that:

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- (a) an Exceptional Engineering Difficulty has occurred during Stage Two (Build);
- (b) it has provided the Exceptional Engineering Difficulty notice and Exceptional Engineering Difficulty Plan in accordance with Clauses 40.1, 40.2, 40.4 and any additional information requested by the Authority in accordance with Clause 40.6;
- (c) it has used all reasonable endeavours to eliminate or mitigate the consequences and impact of the Exceptional Engineering Difficulty in accordance with Good Industry Practice and without incurring additional expenditure; and
- (d) it has used reasonable endeavours to perform the relevant obligations affected by the Exceptional Engineering Difficulty without incurring additional expenditure, including by implementing any changes to the Project Plan that do not impact on the Milestones,

then the Authority shall grant any one or more of the following reliefs (taking into account the Supplier's representations in the Exceptional Engineering Difficulty Plan, including the proposed relief):

- (e) the Supplier shall not be treated as being in Default of this Contract to the extent that such Default is a direct result of the Exceptional Engineering Difficulty;
- (f) if as a direct consequence of the Exceptional Engineering Difficulty the Supplier is unable to Achieve a Milestone by the relevant Milestone Date, the Milestone Date shall be postponed by a reasonable time taking into account the likely effect of the delay caused by the Exceptional Engineering Difficulty; and
- (g) to the extent that the consequences of an Exceptional Engineering Difficulty:
 - (i) materially adversely affect (or are likely to materially adversely affect) the provision of the Outputs and/or the carrying out of the Works for a sustained and indeterminate period; and
 - (ii) cannot be addressed solely by a change to the Project Plan without using the Changing the Contract Procedure, then the Authority shall decide (taking into account the Supplier's representations in the Exceptional Engineering Difficulty Plan, including the proposed relief):
 - (A) that any increased costs incurred by the Supplier in carrying out the Works and/or the provision of the Outputs can be absorbed within the existing Funding Payment arrangements, for example where the Supplier has incurred less cost in other areas of carrying out the Works, without amendment to the Milestones;
 - (B) to amend the timings and/or frequency of the Funding Payments provided that the aggregate Funding Payments from time to time shall not exceed the aggregate Funding Payments agreed at the Effective Date;

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- (C) to amend the Specification, the Supplier Solution and/or (subject to Clause 40.7(g)(ii)(B) and Paragraph 1.2 (General) of Call-Off Schedule 4 (Financial Schedule)) any other term of this Contract (including a reduction in the number of Premises in the scope of the Call-Off Contract); and/or
- (D) only in exceptional circumstances, to make available additional funds to satisfy some or all of any increased costs provided that such costs have been provided to and evidenced to the Authority's satisfaction in accordance with Clause 40.6.

40.8 Any Change pursuant to Clause 40.7 shall be implemented in accordance with the Changing the Contract Procedure. For the avoidance of doubt, the Authority shall not be liable for any additional costs incurred by the Supplier in carrying out of the Works and/or the provision of the Outputs prior to the Authority's written approval of such costs.

40.9 For the avoidance of doubt, where there is a reduction in the number of Premises in the scope of the Call-Off Contract in accordance with Clause 40.7(g)(ii)(C), the Supplier shall not be entitled to request additional funding, unless the Supplier can demonstrate and evidence to the Authority's satisfaction that such reduction cannot take place without additional funding.

40.10 In respect of all claims for Exceptional Engineering Difficulty and Relief Events, the aggregate additional funds made available by the Authority shall be up to a threshold determined by the Authority.

41 Relationships created by the Contract

Nothing in this Contract, nor any actions taken by the Parties under this Contract, shall create a partnership, joint venture or relationship of employer and employee or principle and agent between the Parties, or authorise either Party to make representations or enter into any commitments for or on behalf of any other Party.

42 Giving up contract rights

42.1 A partial or full waiver or relaxation of the terms of a Contract is only valid if it is stated to be a waiver in writing to the other Party.

42.2 Any failure to exercise or any delay in exercising a right or remedy by either Party shall not constitute a waiver of that right or remedy or of any other rights or remedies.

42.3 Unless otherwise provided in this Contract, rights and remedies under this Contract are cumulative and do not exclude any rights or remedies provided by law, in equity or otherwise.

43 Transferring responsibilities

43.1 The Supplier cannot assign novate or otherwise dispose of or create any trust in relation to any or all of its rights, obligations or liabilities under this Contract without the Authority's prior written consent.

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- 43.2 The Authority can assign, novate or otherwise transfer any or all of its rights, obligations and liabilities under this Contract and/or any associated licences to any Central Government Body, public or private sector body which performs any of the functions previously performed by the Authority.
- 43.3 When the Authority uses its rights under Clause 43.2 the Supplier must enter into a novation agreement in the form that the Authority specifies.
- 43.4 The Supplier can terminate a Contract novated under Clause 43.2 to a private sector body that is experiencing an Insolvency Event.
- 43.5 The Supplier remains responsible for all acts and omissions of the Supplier Staff as if they were its own.

44 Small and medium-sized enterprises (SMEs)

- 44.1 The Supplier shall implement such processes and measures as may be appropriate so as to ensure that, where the Supplier is proposing to subcontract any of the Works prior to or at any time during the Contract Period, SMEs (when compared with other potential Subcontractors) are given fair, equal and proportionate access to the subcontracting opportunity. At a minimum, the Supplier shall:
- (a) to the extent practicable, advertise its subcontracting opportunities in a form which is accessible by all potential Subcontractors including SMEs (for example, on the Government's Contracts Finder website); and
 - (b) propose to potential Subcontractors that are SMEs, such commercial, financial and technical terms and conditions that are, where appropriate and proportionate to the nature, size and capacity of the proposed Subcontractor and having regard to the services to be subcontracted, no more onerous than the relevant terms and conditions proposed by the Supplier to other potential Subcontractors.
- 44.2 The Supplier shall report on its engagement with, and the opportunities made available to, SMEs pursuant to this Clause 44 in the Social Value and Supply Chain Report in accordance with Clause 14 (Governance and Governance Meetings). The Supplier shall be entitled to withhold specific details about the relevant SMEs to the extent this would place the Supplier in breach of confidentiality obligations owed by the Supplier to such SMEs.
- 44.3 Nothing in this Clause 44 shall require the Supplier to disrupt or not utilise contracted supply chain arrangements which are in place for the purposes of the Supplier's wider business and which are in effect prior to, or which come into effect after, the Effective Date, provided that the Supplier can demonstrate to the satisfaction of the Authority that such supply chain arrangements are consistent with the SME objectives set out in this Clause 44.

45 Social Value

The Supplier shall comply with the Social Value Plan.



46 What we expect from our Suppliers

- 46.1 The Authority expects its suppliers and subcontractors to meet the standards set out in the Supplier Code of Conduct. In addition, the Authority expects its suppliers and subcontractors to comply with the standards set out in this Contract.
- 46.2 The Supplier acknowledges that the Authority may have additional requirements in relation to corporate social responsibility. The Authority expects that the Supplier and its Subcontractors will comply with such corporate social responsibility requirements as the Authority may notify the Supplier from time to time.

Equality and accessibility

- 46.3 In addition to legal obligations, the Supplier shall support the Authority in fulfilling its public sector Equality Duty under S149 of the Equality Act 2010 by ensuring that it fulfils its obligations under each Contract in a way that seeks to:
- (a) eliminate discrimination, harassment or victimisation of any kind; and
 - (b) advance equality of opportunity and good relations between those with a protected characteristic (age, disability, gender reassignment, pregnancy and maternity, race, religion or belief, sex, sexual orientation, and marriage and civil partnership) and those who do not share it.

Modern slavery, child labour and inhumane treatment

- 46.4 **"Modern Slavery Helpline"** means the mechanism for reporting suspicion, seeking help or advice and information on the subject of modern slavery available online at <https://www.modernslaveryhelpline.org/report> or by telephone on 08000 121 700.
- 46.5 The Supplier:
- (a) shall not use, nor allow its Subcontractors to use forced, bonded or involuntary prison labour;
 - (b) shall not require any Supplier Staff or Subcontractor staff to lodge deposits or identity papers with the employer and shall be free to leave their employer after reasonable notice;
 - (c) warrants and represents that it has not been convicted of any slavery or human trafficking offences anywhere around the world;
 - (d) warrants that to the best of its knowledge it is not currently under investigation, inquiry or enforcement proceedings in relation to any allegation of slavery or human trafficking offences anywhere around the world;



- (e) shall make reasonable enquires to ensure that its officers, employees and Subcontractors have not been convicted of slavery or human trafficking offences anywhere around the world;
- (f) shall have and maintain throughout the Contract Period its own policies and procedures to ensure its compliance with the Modern Slavery Act and include in its contracts with its Subcontractors anti-slavery and human trafficking provisions;
- (g) shall implement due diligence procedures to ensure that there is no slavery or human trafficking in any part of its supply chain performing obligations under a Contract;
- (h) shall prepare and deliver to the Authority as part of the DPS Annual Self Certification, an annual slavery and human trafficking report setting out the steps it has taken to ensure that slavery and human trafficking is not taking place in any of its supply chains or in any part of its business with its annual certification of compliance with Clauses 46.4 and 46.5;
- (i) shall not use, nor allow its employees or Subcontractors to use physical abuse or discipline, the threat of physical abuse, sexual or other harassment and verbal abuse or other forms of intimidation of its employees or Subcontractors;
- (j) shall not use or allow child or slave labour to be used by its Subcontractors; and
- (k) shall report the discovery or suspicion of any slavery or trafficking by it or its Subcontractors to the Authority and Modern Slavery Helpline.

Income security

46.6 The Supplier shall:

- (a) ensure that all wages and benefits paid for a standard working week meet, at a minimum, national legal standards in the country of employment;
- (b) ensure that all Supplier Staff are provided with written and understandable information about their employment conditions in respect of wages before they enter;
- (c) ensure that all workers are provided with written and understandable information about their employment conditions in respect of wages before they enter employment and about the particulars of their wages for the pay period concerned each time that they are paid;
- (d) not make deductions from wages:
 - (i) as a disciplinary measure;
 - (ii) except where permitted by law; or
 - (iii) without expressed permission of the worker concerned;

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- (e) record all disciplinary measures taken against Supplier Staff; and
- (f) ensure that Supplier Staff are engaged under a recognised employment relationship established through national law and practice.

Working hours

46.7 The Supplier shall:

- (a) ensure that the working hours of Supplier Staff comply with national laws, and any collective agreements;
- (b) ensure that the working hours of Supplier Staff, excluding overtime, shall be defined by contract, and shall not exceed forty eight (48) hours per week unless the individual has agreed in writing; and
- (c) ensure that use of overtime is used responsibly, taking into account:
 - (i) the extent;
 - (ii) frequency; and
 - (iii) hours worked;by individuals and by the Supplier Staff as a whole;

46.8 The total hours worked in any seven (7) day period shall not exceed sixty (60) hours, except where covered by Clause 46.9 below.

46.9 Working hours may exceed sixty (60) hours in any seven (7) day period only in exceptional circumstances where all of the following are met:

- (a) this is allowed by national law;
- (b) this is allowed by a collective agreement freely negotiated with a workers' organisation representing a significant portion of the workforce;
- (c) appropriate safeguards are taken to protect the workers' health and safety; and
- (d) the employer can demonstrate that exceptional circumstances apply such as unexpected production peaks, accidents or emergencies.

46.10 All Supplier Staff shall be provided with at least one (1) day off in every seven (7) day period or, where allowed by national law, two (2) days off in every fourteen (14) day period.



47 Changing the Contract Procedure

- 47.1 Subject to the remainder of this Clause 47, either Party can request a Change which they shall initiate by issuing a Change Request in accordance with Clauses 47.4 and 47.5. A Change is only effective if agreed by both Parties via the Change Forms and both Parties have signed a Change Authorisation Note.
- 47.2 Save where such a requirement would reasonably involve undue delay in progressing the Change concerned, proposed Changes should be subject to reasonable consideration through the governance arrangements set out in Clause 14 (Governance and Governance Meetings) prior to issue of a Change Request and the Parties will decide through the governance arrangements whether Clause 47.1 can apply.
- 47.3 When complying with this Clause 47:
- (a) both Parties must act in a timely way and without undue delay; and
 - (b) the Supplier shall perform its obligations professionally and in accordance with Good Industry Practice.

Change Request

- 47.4 If the Supplier issues a Change Request the Supplier must provide a Change Impact Assessment to the Authority as soon as reasonably practicable but in any event within ten (10) Working Days of the date of issuing the Change Request. The Supplier shall ensure the Change Impact Assessment is valid for a minimum of seventy (70) Working Days from the date submitted to the Authority.
- 47.5 If the Authority issues the Change Request, the Supplier shall not be entitled to reject the proposed Change, except in accordance with Clauses 47.27 to 47.30. The Supplier shall provide as soon as reasonably practicable and in any event within ten (10) Working Days of the date of receiving the Change Request, an estimate ("**Change Impact Assessment Estimate**") of the cost of preparing a Change Impact Assessment and a timetable for preparing it within the time limits included in the Change Request. The Supplier shall ensure the Change Impact Assessment Estimate is valid for a minimum of one hundred and seventy (170) Working Days from the date submitted to the Authority. For the avoidance of doubt, in no event shall the cost of preparing a Change Impact Assessment exceed one thousand pounds sterling (£1,000) in accordance with Clause 47.19(b)(iii).
- 47.6 The Supplier shall include in a Change Impact Assessment Estimate:
- (a) reasonable supporting information;
 - (b) a detailed breakdown of costs; and
 - (c) an outline resource plan including personnel activities on a day-to-day basis.

Acceptance of the Change Impact Assessment Estimate or Change Impact Assessment

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- 47.7 Within ten (10) Working Days of receipt of a Change Impact Assessment Estimate or Change Impact Assessment (as applicable), the Authority shall review the same and shall do one of the following:
- (a) notify the Supplier that it accepts the Change Impact Assessment Estimate or Change Impact Assessment, in which case the Parties shall follow the procedure set out in Clauses 47.14 to 47.17(as applicable);
 - (b) notify the Supplier that it, subject to Clause 47.26, rejects the Change Impact Assessment Estimate or Change Impact Assessment; or
 - (c) where it requires further information to properly evaluate the Change Impact Assessment Estimate or Change Impact Assessment or where it reasonably believes the Change Impact Assessment Estimate or Change Impact Assessment contains errors or omissions, it shall notify the Supplier of this fact and detail the additional information that it requires ("**Additional Information**") and/or require the Supplier to modify the relevant document accordingly.
- 47.8 Where the Authority requests Additional Information or requires the Supplier to modify a Change Impact Assessment Estimate or Change Impact Assessment in accordance with Clauses 47.7(c), the Supplier shall provide such Additional Information and/or re-issue the relevant document within five (5) Working Days of the request.
- 47.9 Within five (5) Working Days of receipt of such Additional Information or the modified Change Impact Assessment Estimate or Change Impact Assessment (as applicable), the Authority shall review the same and shall do one of the following:
- (a) notify the Supplier that it accepts the Change Impact Assessment Estimate or Change Impact Assessment, in which case the Parties shall follow the procedure set out in Clause 47.14 to 47.17 (as applicable);
 - (b) notify the Supplier that it, subject to Clause 47.26, rejects the Change Impact Assessment Estimate or Change Impact Assessment; or
 - (c) request further Additional Information from the Supplier and/or require the Supplier to modify the relevant document accordingly.
- 47.10 Where the Authority requests further Additional Information or requires the Supplier to modify a Change Impact Assessment Estimate or Change Impact Assessment in accordance with Clause 47.9(c), the Supplier shall provide such Additional Information and/or re-issue the relevant document within five (5) Working Days of the request.
- 47.11 The provisions of Clauses 47.9 and 47.10 shall apply again to any further request for Additional Information or modified documents, except that following receipt of the third (3rd) set of Additional Information or the third (3rd) modified Change Impact Assessment Estimate or Change Impact Assessment (as applicable), the Authority shall not be permitted to request any further Additional Information and shall notify the Supplier that it either accepts or rejects



the relevant Change Impact Assessment Estimate or Change Impact Assessment in accordance with Clause 47.9(a).

- 47.12 Where the Authority accepts a Change Impact Assessment Estimate and has notified the Supplier of such acceptance, the Supplier shall provide a Change Impact Assessment to the Authority as soon as reasonably practicable but in any event within ten (10) Working Days of the date of receipt of such notification and the process described in Clauses 47.7 to 47.11 shall be repeated in respect of the Change Impact Assessment.
- 47.13 Where a Change includes a change in the number of Premises in the scope of a Call-Off Contract in accordance with the terms of this Contract, the Supplier shall re-calculate the Average Connection Life and include the proposed change to the Average Connection Life in the Change Impact Assessment.

Change Authorisation Note

- 47.14 Where the Authority accepts a Change Impact Assessment and has notified the Supplier of such acceptance and provided the Change has not been rejected by the Supplier in accordance with Clauses 47.27 to 47.30, the Supplier shall prepare two (2) copies of a Change Authorisation Note which it shall sign and deliver to the Authority for its signature within five (5) Working Days of the date of receipt of such notification.
- 47.15 If the Supplier does not prepare and deliver to the Authority two (2) signed copies of a Change Authorisation Note within five (5) Working Days then the Authority may refer the matter to be determined in accordance with the Dispute Resolution Procedure.
- 47.16 Following receipt by the Authority of the Change Authorisation Note, it shall sign (including by electronic signature) both copies and return one copy to the Supplier.
- 47.17 If the Authority does not sign the Change Authorisation Note within ten (10) Working Days, then the Supplier shall have the right to notify the Authority and if the Authority does not sign the Change Authorisation Note within five (5) Working Days of such notification, then the Supplier may refer the matter to be determined in accordance with the Dispute Resolution Procedure.
- 47.18 Upon signature by both Parties, a Change Authorisation Note shall constitute a binding variation to a Contract. The Parties acknowledge that Change Authorisation Notes may be signed (including by electronic signature) in two (2) counterparts. Such signature shall be effective when the signing Party delivers its signed Change Authorisation Note to the other Party by email in scanned PDF format or by hand or post.

Costs

- 47.19 Subject to Clause 47.20:
- (a) each Party shall be responsible for its own costs and expenses incurred in compliance with this Clause 47; and



- (b) the costs incurred by the Supplier in the preparation of a Change Impact Assessment shall be borne by the Party making the Change Request provided that the Authority shall not be required to pay any such costs if:
 - (i) the Change Request relates to a Change in Law;
 - (ii) the Change Request relates to any Change pursuant to Clause 10 (Completion of Stage One (Network Detailed Design and Due Diligence));
 - (iii) such costs exceed one thousand pounds sterling (£1,000);
 - (iv) such costs exceed those in the accepted Change Impact Assessment Estimate (unless the Supplier is able to provide reasonable justification for the cost increase and provide supporting information to the Authority's satisfaction);
 - (v) in the Authority's opinion, such costs are unreasonable; and/or
 - (vi) the Supplier is able to undertake the Change Impact Assessment by using resources already and ordinarily used in the carrying out of the Works and in the provision of the Outputs.
- 47.20 Both Parties' costs incurred in respect of any use of this Changing the Contract Procedure as a result of any error or Default of the Supplier shall be paid by the Supplier.
- 47.21 Where the Authority accepts a Change Impact Assessment and has notified the Supplier of such acceptance, the Supplier shall be entitled to invoice the Authority for the costs incurred by the Supplier in the preparation of a Change Impact Assessment, provided such costs are in accordance with Clause 47.19. Each invoice shall be accompanied by supporting information.
- 47.22 The Supplier shall provide to the Authority any other supporting information reasonably required by the Authority from time to time to substantiate an invoice.
- 47.23 The Authority shall make payment to the Supplier within thirty (30) days of a valid and undisputed invoice.
- 47.24 Where the Authority rejects a Change Impact Assessment and has notified the Supplier of such rejection, the Supplier shall be entitled to invoice the Authority on the Achievement of the Stage Two (Build) Complete Milestone for the costs incurred by the Supplier in the preparation of such rejected Change Impact Assessment, provided such costs are in accordance with Clause 47.19 and the invoice is accompanied by supporting information.

Failure to agree a Change to a Contract

- 47.25 If a Change to a Contract cannot be agreed within forty five (45) Working Days of the Authority notifying the Supplier that it rejects a Change Impact Assessment Estimate or a



Change Impact Assessment (as applicable) in accordance with Clause 47.11, the Authority can either:

- (a) agree that the Contract continues without the Change;
- (b) terminate the affected Contract in accordance with Clause 22.8(k) (Termination for Supplier Default), unless in the case of a Call-Off Contract, the Supplier has already provided part or all of the Outputs and has partially carried out or fully carried out the Works, or where the Supplier can show evidence of substantial work being carried out to provide them; or
- (c) refer the Dispute to be resolved using Clause 59 (Governing Law and resolving Disputes).

Authority's right to reject a Change Request

47.26 The Authority:

- (a) is not required to accept a Change Request made by the Supplier, a Change Impact Assessment Estimate or a Change Impact Assessment; and
- (b) shall not reject any proposed Change to the extent the Change is necessary for the Supplier or the Works and/or the Outputs to comply with any Change in Law.

Supplier's right to reject a Change Request

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

- (a) require the provision of the Outputs and/or the carrying out of the Works to be performed in a way that infringes any Law; and/or
- (b) subject to Clause 47.29, materially and adversely impacts:
 - (i) the Supplier's ability to fully carry out the Works and/or provide the Outputs; and/or
 - (ii) the financial risk profile underpinning the Works and/or Outputs,

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

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

47.29 Clause 47.27(b) shall not permit the Supplier to reject any proposed Change to the extent the Change:



- (a) is necessary for the Authority to comply with any Change In Law; and/or
- (b) relates to any Change pursuant to Clause 10 (Completion of Stage One (Network Detailed Design and Due Diligence)).

47.30 The Supplier shall not, in any event and without limitation to Clause 47.27, be entitled to reject any Authority proposed Change relating to a reduction in the number of Premises in the scope of the Call-Off Contract, including where the de-scoping arises in respect of another operator's verified coverage plans and/or to ensure compliance with Law. Under such circumstances the Supplier shall submit for the Authority's consideration and approval any reasonable unavoidable and proven Eligible Expenditure incurred to which the Supplier is committed up to the date the relevant Change Request is submitted, which are:

- (a) of a type which fall within Stage One Eligible Cost Categories and are Eligible Stage One Expenditure (where the relevant Change Request is submitted during Stage One (Network Detailed Design and Due Diligence)); or
- (b) of a type which fall within Stage Two Eligible Cost Categories and are Eligible Stage Two Expenditure (where the relevant Change Request is submitted during Stage Two (Build)),

provided that the Supplier has used all reasonable endeavours without incurring additional expenditure to minimise such costs and such costs have not already been recovered through any payments made by the Authority to the Supplier. The Supplier will give the Authority a fully itemised list of such costs, with supporting evidence that these are of the types set out in Clauses 47.30(a) or 47.30(b) (as appropriate) and meet the requirements of this Clause 47.30, to support their claim for payment. Both Parties shall work together to minimise costs incurred by the Supplier and to which the Supplier is committed up to the date the relevant Change Request is submitted but are not recoverable in accordance with this Clause.

Fast track Changes

47.31 The Parties acknowledge that in order to ensure operational efficiency there may be circumstances where it is desirable to expedite the processes set out in this Clause 47. If the Parties agree in writing that such circumstances apply in relation to a proposed Change then the Parties shall agree an accelerated process in order to affect the Change ("**Fast Track Change Procedure**").

48 Change in Law

48.1 If there is a General Change in Law, the Supplier must bear the risk of the change and is not entitled to ask for an increase to the Funding Payments.

48.2 If there is a Specific Change in Law or one is likely to happen during the Contract Period the Supplier must give the Authority notice of the likely effects of the changes as soon as reasonably practicable. They must also say if they think any Change is needed to the Outputs or carrying out of the Works, Funding Payments or a Contract and provide evidence:



(a) that the Supplier has kept costs as low as possible, including Subcontractor costs;
and

(b) of how it has affected the Supplier's costs.

48.3 Any change in the Funding Payments or relief from the Supplier's obligations because of a Specific Change in Law must be implemented using the Changing the Contract Procedure.

48.4 For the avoidance of doubt, the Supplier shall not be entitled to a change in Funding Payments or relief from the Supplier's obligations in accordance with this Clause 48 if any changes in the Regulator regulated prices occur, regardless of whether they are categorised as Specific Changes in Law or General Changes in Law.

49 How to communicate about the Contract

49.1 All notices under the Contract must be in writing and are considered effective on the Working Day of delivery as long as they're delivered before 5:00pm on a Working Day. Otherwise the notice is effective on the next Working Day. An email is effective when sent unless an error message is received.

49.2 Notices to the Authority and the Supplier, in respect of the DPS Contract, must be sent to the Authority Representative's address or Supplier Representative's address respectively, as indicated in the DPS Appointment Form.

49.3 Notices to the Authority and the Supplier, in respect of the Call-Off Contract, must be sent to the Authority Representative's address or Supplier Representative's address respectively, as indicated in the Call-Off Award Form.

49.4 This Clause 49 does not apply to the service of legal proceedings or any documents in any legal action, arbitration or dispute resolution.

50 Dealing with Claims

50.1 If an Indemnified Party is notified of a Claim then it must notify the Indemnifier as soon as reasonably practicable and no later than ten (10) Working Days.

50.2 At the Indemnifier's cost the Indemnified Party must both:

(a) allow the Indemnifier to conduct all negotiations and proceedings to do with a Claim;
and

(b) give the Indemnifier reasonable assistance with the claim if requested.

50.3 The Indemnified Party must not make admissions about the Claim without the prior written consent of the Indemnifier which cannot be unreasonably withheld or delayed.

50.4 The Indemnifier must consider and defend the Claim diligently using competent legal advisors and in a way that doesn't damage the Indemnified Party's reputation.

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- 50.5 The Indemnifier must not settle or compromise any Claim without the Indemnified Party's prior written consent which it must not unreasonably withhold or delay.
- 50.6 Each Indemnified Party must take all reasonable steps to minimise and mitigate any losses that it suffers because of the Claim.
- 50.7 If the Indemnifier pays the Indemnified Party money under an indemnity and the Indemnified Party later recovers money which is directly related to the Claim, the Indemnified Party must immediately repay the Indemnifier the lesser of either:
- (a) the sum recovered minus any legitimate amount spent by the Indemnified Party when recovering this money; or
 - (b) the amount the Indemnifier paid the Indemnified Party for the Claim.

51 Preventing fraud, bribery and corruption

- 51.1 The Supplier represents and warrants that neither it, nor to the best of its knowledge any Supplier Staff, have at any time prior to the Effective Date:
- (a) committed a Prohibited Act or been formally notified that it is subject to an investigation or prosecution which relates to an alleged Prohibited Act; and/or
 - (b) been listed by any government department or agency as being debarred, suspended, proposed for suspension or debarment, or otherwise ineligible for participation in government procurement programmes or contracts on the ground of a Prohibited Act.
- 51.2 The Supplier must not during any Contract Period:
- (a) commit a Prohibited Act or any other criminal offence in the PCR Regulations 57(1) and 57(2); or
 - (b) do or allow anything which would cause the Authority, including any of their employees, consultants, contractors, Subcontractors or agents to breach any of the Relevant Requirements or incur any liability under them.
- 51.3 The Supplier must during the Contract Period:
- (a) create, maintain and enforce adequate policies and procedures to ensure it complies with the Relevant Requirements to prevent a Prohibited Act and require its Subcontractors to do the same;
 - (b) have in place reasonable prevention measures (as defined in section 45(3) and 46(4) of the Criminal Finance Act 2017) to ensure that Associated Persons of the Supplier do not commit tax evasion facilitation offences as defined under the Act;
 - (c) keep full records to show it has complied with its obligations under this Clause 51 and give copies to the Authority on request;



- (d) take account of any guidance about preventing facilitation of tax evasion offences which may be published and updated in accordance with Section 47 of the Criminal Finances Act 2017; and
 - (e) if required by the Authority, within twenty (20) Working Days of the Effective Date, and then annually, certify in writing to the Authority, that they have complied with this Clause 51, including compliance of Supplier Staff, and provide reasonable supporting evidence of this on request, including its policies and procedures.
- 51.4 The Supplier must immediately notify the Authority if it becomes aware of any breach of Clauses 51.1 or 51.3 or has any reason to think that it, or any of the Supplier Staff, has either:
 - (a) been investigated or prosecuted for an alleged Prohibited Act;
 - (b) been debarred, suspended, proposed for suspension or debarment, or is otherwise ineligible to take part in procurement programmes or contracts because of a Prohibited Act by any government department or agency;
 - (c) received a request or demand for any undue financial or other advantage of any kind related to a Contract; or
 - (d) suspected that any person or Party directly or indirectly related to a Contract has committed or attempted to commit a Prohibited Act.
- 51.5 If the Supplier notifies the Authority as required by Clause 51.4, the Supplier must respond promptly to their further enquiries, co-operate with any investigation and allow the Audit of any books, records and relevant documentation.
- 51.6 In any notice the Supplier gives under Clause 51.5 it must specify the:
 - (a) Prohibited Act;
 - (b) identity of the Party who it thinks has committed the Prohibited Act; and
 - (c) action it has decided to take.
- 51.7 If the Supplier is in Default under Clause(s) 51.1 and/or 51.2, the Authority may by notice:
 - (a) require the Supplier to remove from performance of this Contract any Supplier Staff whose acts or omissions have caused the Default; or
 - (b) immediately terminate this Contract.
- 52 **Equality, diversity and human rights**
- 52.1 The Supplier must follow all applicable equality Law when they perform their obligations under the Contract, including:



- (a) protections against discrimination on the grounds of race, sex, gender reassignment, religion or belief, disability, sexual orientation, pregnancy, maternity, age or otherwise; and
- (b) any other requirements and instructions which the Authority imposes related to equality Law.

52.2 The Supplier must take all necessary steps, and inform the Authority of the steps taken, to prevent anything that is considered to be unlawful discrimination by any court or tribunal, or the Equality and Human Rights Commission (or any successor organisation) when working on a Contract.

53 **Health and safety**

53.1 The Supplier must perform its obligations meeting the requirements of all Law regarding health and safety.

53.2 The Supplier and the Authority must as soon as possible notify the other of any health and safety incidents or material hazards they are aware of that relate to the performance of the Contract.

54 **Environment**

54.1 When working on site the Supplier must perform its obligations under the Authority's Environmental Policy.

54.2 The Supplier must ensure that Supplier Staff are aware of the Authority's Environmental Policy.

55 **Tax**

55.1 Payments made under this Contract are out of scope for the purposes of Value Added Tax.

55.2 The Supplier must not breach any tax or social security obligations and must enter into a binding agreement to pay any late contributions due, including where applicable, any interest or any fines. Where the Supplier has not paid a minor tax or social security contribution, the Authority cannot terminate a Contract for such reason.

55.3 Where the Funding Payments payable under a Contract are or are likely to exceed five million pounds sterling (£5,000,000) at any point during the relevant Contract Period, and an Occasion of Tax Non-Compliance occurs at any point during the Contract Period, the Supplier must notify the Authority of it within five (5) Working Days including:

- (a) the steps that the Supplier is taking to address the Occasion of Tax Non-Compliance and any mitigating factors that it considers relevant; and
- (b) other information relating to the Occasion of Tax Non-Compliance that the Authority may need.

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- 55.4 Where the Supplier or any Supplier Staff are liable to be taxed or to pay National Insurance contributions in the UK relating to payment received under a Call-Off Contract, the Supplier must both:
- (a) comply with the Income Tax (Earnings and Pensions) Act 2003 and all other statutes and regulations relating to income tax, the Social Security Contributions and Benefits Act 1992 (including IR35) and National Insurance contributions; and
 - (b) indemnify the Authority against any Income Tax, National Insurance and social security contributions and any other liability, deduction, contribution, assessment or claim arising from or made during or after the Contract Period in connection with the carrying out of the Works and/or the provision of the Outputs by the Supplier or any of the Supplier Staff.
- 55.5 If any of the Supplier Staff are Workers who receive payment relating to the Outputs or Works, then the Supplier must ensure that its contract with the Worker contains the following requirements:
- (a) the Authority may, at any time during the Contract Period, request that the Worker provides information which demonstrates they comply with Clause 55.4, or why those requirements do not apply, the Authority can specify the information the Worker must provide and the deadline for responding;
 - (b) the Worker's contract may be terminated at the Authority's request if the Worker fails to provide the information requested within the time specified by the Authority;
 - (c) the Worker's contract may be terminated at the Authority's request if the Worker provides information which the Authority considers isn't good enough to demonstrate how it complies with Clause 55.4 or confirms that the Worker is not complying with those requirements; and
 - (d) the Authority may supply any information they receive from the Worker to HMRC for revenue collection and management.
- 56 **Conflict of Interest**
- 56.1 The Supplier must take action to ensure that neither the Supplier nor the Supplier Staff are placed in the position of an actual or potential Conflict of Interest.
- 56.2 The Supplier must promptly notify and provide details to the Authority if a Conflict of Interest happens or is expected to happen.
- 56.3 The Authority can terminate its Contract immediately by giving notice in writing to the Supplier or take any steps it thinks are necessary where there is or may be an actual or potential Conflict of Interest.



57 High risk vendors

The Supplier shall:

- (a) take full account of matters concerning network security and resilience in the selection and management of Subcontractors; and
- (b) comply with the NCSC High Risk Vendors Guidance.

58 Reporting a breach of the Contract

58.1 As soon as it is aware of it the Supplier and Supplier Staff must report to any actual or suspected breach of:

- (a) Law;
- (b) Clause 45 (Social Value); and
- (c) Clauses 51 (Preventing fraud, bribery and corruption) to 57 (High risk vendors).

58.2 The Supplier must not retaliate against any of the Supplier Staff who in good faith reports a breach listed in Clause 58.1 to the Authority or a Prescribed Person.

59 Innovation

59.1 The Supplier may, at any time during Stage One (Network Detailed Design and Due Diligence) or Stage Two (Build), prepare and submit to the Authority a proposal for:

- (a) additional funding from the Authority; and/or
- (b) the re-allocation of an underspend

in respect of an innovation for the purposes of fulfilling the Supplier's obligations under the Contract (an '**Innovation Business Case**').

59.2 Any Innovation Business Case submitted to the Authority must:

- (a) be in the form specified by the Authority from time to time;
- (b) propose an innovation that will deliver a reduction in either:
 - (i) the time and cost; or
 - (ii) the cost

required to fulfil the Supplier's obligations under the Contract which exceeds the cost of the innovation, together with supporting evidence that



demonstrates, to the Authority's satisfaction, that such innovation supports the Authority's value for money principles;

- (c) include at least one quantifiable metric or set of metrics which accurately reflects the nature of the efficiency that the innovation is expected to deliver along with a detailed description, with examples, of how the Supplier will track this metric or set of metrics to demonstrate that the promised reduction in time and/or cost has been achieved. Examples of appropriate metrics could include:
 - (i) cost per meter for a specific dig type;
 - (ii) cost per node for a specific node type; and
 - (iii) time between planning and completion for a specific node type and associated cost;
- (d) propose remedies where the Supplier fails to deliver the reductions described in Clause 59.2(b);
- (e) only request additional funding or re-allocation of an underspend in respect of costs to be incurred by the Supplier which are capable of being capitalised under Generally Accepted Accounting Principles and for which payment can be made in accordance with the Subsidy Control Regime;
- (f) not propose the creation of Intellectual Property Rights which will be used by the Supplier for purposes other than fulfilling its obligations under the Agreement, unless specific representations are made by the Supplier as to why the creation of such Intellectual Property Rights should be considered; and
- (g) not alter the risk/reward balance between the Parties;

59.3 The Authority reserves the right not to consider any Innovation Business Case which does not comply with the criteria set out in Clause 59.2.

59.4 Where the Supplier submits an Innovation Business Case, the Authority may request further information or assistance from the Supplier including the provision of additional evidence to support the Innovation Business Case or requiring the Supplier to attend ad-hoc meetings or governance boards.

59.5 Within a reasonable time period after the later of the date of receipt of an Innovation Business Case (or the date of receipt, to the satisfaction of the Authority, of any information or assistance requested in accordance with Clause 59.4), the Authority shall, acting in its sole and absolute discretion, notify the Supplier in writing whether it approves or rejects the Innovation Business Case.

59.6 The Supplier acknowledges and agrees that:

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- (a) the Supplier shall be responsible for monitoring the reductions in time and cost set out in Clause 59.2(b) and at any time when the monitoring demonstrates that the Supplier has not or will not achieve the proposed reductions, it shall immediately repay to the Authority any additional funding made available by the Authority in respect of the Innovation Business Case; and
- (b) the Authority will not approve an Innovation Business Case if the Parties have not agreed appropriate provisions in the relevant Change Request to implement the principle described in Clause 59.6(a).

59.7 Where the Authority approves an Innovation Business Case:

- (a) any amendments to the Contract must be made in accordance with the Changing the Contract Procedure, and the relevant Change Request will be deemed to be initiated by the Supplier;
- (b) where the Authority has accepted representations from the Supplier regarding the creation of Intellectual Property Rights as described in Clause 59.2(f), the Change Request will contain provisions regarding the ownership of such Intellectual Property Rights; and
- (c) unless otherwise agreed by the Authority in writing, the Supplier acknowledges and agrees that the innovation will be deemed to be Good Industry Practice for the purposes of the Agreement and other agreements between the Supplier and any Crown Body.

59.8 The Supplier shall not be relieved of its obligations under the Contract while the Authority is considering any Innovation Business Case.

59.9 The Parties shall bear their own costs in respect of the preparation and review of any Innovation Business Case.

60 Governing Law and resolving Disputes

Which law applies

60.1 English law governs this Contract and any issues and matters arising out of or in connection with it.

Starting the formal Dispute Resolution Procedure

60.2 If either Party wants to start the formal dispute resolution procedure under this Clause 60, it must send the other Party a written notice ("**Dispute Notice**") setting out in reasonable detail:

- (a) the nature of the Dispute;
- (b) the facts it relies upon; and

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- (c) the relief it seeks (including the amount of any damages it seeks).

Continuing to perform the Contract

- 60.3 Unless agreed otherwise in writing, both Parties must continue to comply with their obligations under this Contract regardless of the nature of any Dispute, the sending of a Dispute Notice and any commercial negotiations, mediation, court proceedings or arbitration about the Dispute under this Clause 60.

Commercial negotiations

- 60.4 The Parties must use all reasonable endeavours to resolve any Dispute as soon as possible through good faith commercial negotiations. Unless agreed otherwise in writing, such negotiations must be kept strictly private and confidential and conducted without prejudice. Any resolution discussed in such negotiations shall not be final and binding until agreed in writing and signed by authorised representatives of both Parties.
- 60.5 Within ten (10) Working Days after sending a Dispute Notice, the Parties must meet to attempt to resolve the Dispute. In such meeting(s), each Party must be represented initially by the First Escalation Point of Contact authorised to settle the Dispute. If the Dispute has not been resolved by the First Escalation Points of Contact within twenty (20) Working Days after sending a Dispute Notice, it must be escalated by the Parties to negotiations between the Second Escalation Points of Contact authorised to settle the Dispute. If the Dispute has not been resolved by the Second Escalation Points of Contact within thirty (30) Working Days after sending a Dispute Notice, subject to Clause 60.6, the Dispute must be referred to mediation in accordance with Clause 60.8. Either Party may start a mediation by sending a written notice to the other ("**Mediation Notice**").
- 60.6 If a Dispute has not been resolved by the Second Escalation Points of Contact within thirty (30) Working Days after sending a Dispute Notice and has a value greater than or equal to fifteen per cent (15%) of the aggregate of the Maximum Stage One Funding Payment and the Maximum Stage Two Funding Payment, or concerns a non-quantifiable material issue (for example, reputational risk to either Party), the Parties may agree to refer the Dispute to the Gigabit Infrastructure Subsidy Independent Dispute Avoidance Panel as an alternative to mediation in accordance with the process set out below:
- (a) within fourteen (14) days of the Parties agreeing to refer the Dispute to the GIS IDAP, each Party shall provide to the GIS IDAP a written statement setting out in sufficient detail the facts of the Dispute together with any information on which it intends to rely;
 - (b) within the timescales set out in the GIS IDAP Terms of Reference, the GIS IDAP Chair will determine in his/her absolute discretion whether the Dispute is suitable for consideration by the GIS IDAP;
 - (c) where the GIS IDAP Chair determines that the Dispute is suitable for consideration by the GIS IDAP, the GIS IDAP Chair shall:



- (i) determine the appropriate GIS IDAP panel member or members to consider the Dispute, taking into account the nature of the Dispute and the relevant skills of the panel members;
 - (ii) decide the procedure and timescales to be followed in the determination;
- (d) the GIS IDAP shall be requested to make its determination in accordance with the timescales set out in the GIS IDAP Terms of Reference;
- (e) the Parties shall assist and provide any other documentation or assistance that the GIS IDAP requires for the purpose of the determination;
- (f) the GIS IDAP will act in accordance with the GIS IDAP Terms of Reference;
- (g) the GIS IDAP process shall be conducted in private and shall be confidential;
- (h) the GIS IDAP's determination shall not be final and binding on the Parties; and
- (i) the GIS IDAP process must end automatically if:
 - (i) either Party issues court proceedings about the Dispute under Clause 60.9;
or
 - (ii) the Parties agreed to resolve the Dispute by arbitration under Clause 60.10.

60.7 If the GIS IDAP Chair deems that the Dispute is not suitable for referral to the GIS IDAP, the Dispute must then be referred to mediation in accordance with Clause 60.8.

Using mediation

- 60.8 Within five (5) Working Days after sending the Mediation Notice, the Parties must jointly appoint a single mediator. If they cannot agree on a mediator within those five (5) Working Days, either Party may ask the Centre for Effective Dispute Resolution (CEDR) to appoint a mediator. Any mediation must follow CEDR's Model Mediation Procedure. However, the mediation must end automatically if:
- (a) either Party issues court proceedings about the Dispute under Clause 60.9; or
 - (b) the Parties agreed to resolve the Dispute by arbitration under Clause 60.10.

Going to court

- 60.9 Subject to Clause 60.10, the Parties irrevocably agree that the English courts have exclusive jurisdiction to settle any Dispute. Save for any urgent applications for interim relief, the Parties must not issue court proceedings about a Dispute before sending a Mediation Notice under Clause 60.5.



Agreeing to go to LCIA arbitration

60.10 At any time:

- (a) after sending a Mediation Notice and/or referring the Dispute to the GIS IDAP for determination; and
- (b) before issuing court proceedings in accordance with Clause 60.9,

the Parties may agree in writing that a Dispute be finally resolved by arbitration in London before three arbitrators under the London Court of International Arbitration's Arbitration Rules from time to time in force (the "**LCIA Rules**"). This Clause incorporates the LCIA Rules except where they conflict with its express terms. For the avoidance of doubt, if either Party issues court proceedings in respect of a Dispute then that Dispute cannot be resolved by arbitration



Exhibit A: Processing Personal Data

Description	Details
Identity of Controller	The Authority is Controller and the Supplier is Processor in respect of the Services Data.
Subject Matter of Processing	The subject matter of the Processing of Services Data is set out in this Contract.
Duration of Processing	The duration of the Processing of the Services Data is for the Term of this Contract.
Nature and purposes of Processing	Processing of Services Data in relation to the calculation of the clawback as set out in Paragraph 3 (Active services clawback) and Paragraph 4 (Passive services clawback) of Call-Off Schedule 4 (Financial Schedule) (the " Purposes ").
Type of Personal Data	Government Data, Network Services Data and Take-up Data only where, and to the extent, such data is Processed by the Supplier for the Purposes (" Services Data ").
Categories of Data Subject	End User Premises owners and/or occupants.
Plan for return and destruction of the data once the processing is complete UNLESS requirement under Law to preserve that type of data	To be deleted in accordance with the Contract.



Annex 1 – GIS IDAP Terms of Reference

Gigabit Infrastructure Subsidy Independent Dispute Avoidance Panel – Terms of Reference

1 Overview

- 1.1 The Gigabit Infrastructure Subsidy Independent Dispute Avoidance Panel (GIS IDAP) has been established to facilitate Dispute avoidance in both the Local Supplier Call-Off Contracts, called off under the Dynamic Purchasing System reference number: C0028, and the Regional Supplier Contracts, between Building Digital UK (BDUK) as the Authority and the Supplier. The GIS IDAP supports a single, consistent approach to Dispute resolution throughout all Gigabit Infrastructure Subsidy (GIS) contracts.

2 Purpose and principles

- 2.1 The purpose of the GIS IDAP is to provide both Parties with the opportunity to refer a Dispute for review by a panel of experts, subject to the minimum criteria as set out in paragraph 3.1 being met.
- 2.2 These Terms of Reference (ToR) should be read in conjunction with Clause 60 of the Core Terms of the Local Supplier Call-Off Contract or Clause 61 of the Terms and Conditions of the Regional Supplier Contract. To the extent of any conflict or inconsistencies between the Core Terms/Terms and Conditions and these ToR, the Core Terms/Terms and Conditions will take priority. Unless otherwise stated, words and expressions that are used in these ToR shall have the meanings and application as defined in the Contracts.

3 Scope

- 3.1 The application of the GIS IDAP is only for Disputes quantified in excess of 15% of either the aggregate of the Maximum Stage One Funding Payment and the Maximum Stage Two Funding Payment (Local Supplier Contract) or the aggregate Maximum Stage One Funding Payments and Maximum Stage Two Funding Payments for all Drawdowns in the Initial Scope (Regional Supplier Contract) or other non-quantifiable Disputes, for example, reputational damage. Following referral of a Dispute to the GIS IDAP, the GIS IDAP Chair will determine whether the Dispute meets the criteria for referral. A Dispute can be referred to the GIS IDAP at any point following Contract award, provided that all prior steps in the Dispute Resolution

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Procedure have been undertaken as set out in the relevant Contract, for any Local Supplier Call-Off Contract or Regional Supplier Contract.

4 Constitution

4.1 Timing

4.1.1 The GIS IDAP Chair will be appointed within six months of award of any Local Supplier Call-Off Contract or Regional Supplier Contract. An introductory/induction meeting will be arranged by the BDUK Head of Contracts between BDUK and the GIS IDAP Chair and panel members, when they are appointed.

4.1.2 Where the GIS IDAP has issued its determination on a matter, the GIS IDAP cannot be invoked again to review the same Dispute.

4.2 Chairperson

4.2.1 The GIS IDAP will have a Chairperson (the Chair) who will be appointed (and replaced where necessary) by BDUK. The Chair must be independent from BDUK and the Supplier and have sector-relevant experience. BDUK will ensure there is no conflict of interest between the Chair, the Supplier and BDUK. If a Supplier believes there is a conflict of interest then this must be brought to BDUK's attention at the earliest opportunity. BDUK will then review the circumstances and determine the appropriate course of action.

4.2.2 The Chair will be responsible for the following activities, as well as being a working member of the GIS IDAP:

- (a) appointing the panel members and, when necessary, replacing a member or adding to the number of members;
- (b) ensuring that both the Chair and the members have signed a BDUK standard confidentiality agreement;
- (c) determining in their absolute discretion whether the Dispute is suitable for consideration by the GIS IDAP prior to the start of the process based on the detail of the Dispute and the threshold limits (Local Supplier Call-Off Contract - Clause 60.6 (b), Regional Supplier Contract - Clause 61.6 (b));
- (d) determining the appropriate GIS IDAP panel member or members to consider the Dispute, taking into account the nature of the Dispute and the relevant skills of the panel members and ensuring the panel members have no conflict of interest (Local Supplier Call-Off Contract - Clause 60.6 (c), Regional Supplier Contract - Clause 61.6 (c));
- (e) capturing and recording the GIS IDAP decisions in a timely and transparent manner and communicating them formally in writing to all stakeholders;



- (f) deciding the procedure and timescales to be followed in the determination, which will be based on the complexity of the Dispute;
- (g) communicating with BDUK and the Supplier if further information is required in order to make a determination about a Dispute; and
- (h) attending a quarterly meeting with the BDUK Head of Contracts, if required.

4.3 Membership

- 4.3.1 The Chair will appoint panel members who are individuals with understanding or experience in a range of the core sectors of gigabit-capable network provision, including: telecommunications technology; infrastructure build; public contracts and finance; commercial and contract management; and the UK telecommunications sector overall, including regulation where appropriate. The panel members will be appointed for an initial fixed term of 12 Months.
- 4.3.2 Unless otherwise agreed between the Parties, the Chair must appoint at least 1 panel member per Dispute. The Parties agree the Chair can make a determination on their own.
- 4.3.3 If for any reason a panel member needs to be replaced or removed from working on a Dispute or the GIS IDAP, then this decision will solely be made by the Chair, although either Party can provide the Chair with information as to why they believe a replacement is required. However, the decision on whether they are replaced is at the sole discretion of the Chair.
- 4.3.4 The panel members will be required to carry out the following activities:
 - (a) attend an introduction meeting with BDUK (costs covered by BDUK);
 - (b) work on any Disputes that are allocated to them by the Chair (costs covered by BDUK); and
 - (c) declare any actual or perceived conflict of interest.
- 4.3.5 The Chair may appoint alternate panel members where a panel member is unable to attend meeting. Where an alternate is also an existing panel member, the Chair will confirm that they have sufficient experience and competence.
- 4.3.6 The Chair must notify BDUK and the Supplier/s of each panel member appointment to enable BDUK/the Supplier to conduct due diligence in terms of any potential conflict of interest.

4.4 Independence

- 4.4.1 All panel members will be independent of The Department for Digital, Culture, Media & Sport (DCMS), BDUK and the Supplier and it is the Chair's responsibility to ensure that they have no conflict of interest that might impede their ability to act impartially in relation to the Contracts.



5 Procedure to be followed in the event of a Dispute

- 5.1 Both Parties can agree to refer a Dispute to the GIS IDAP as per the process set out in the Contract, meaning the threshold has been met and all previous steps in the Dispute Resolution Procedure have been followed (Local Supplier Call-Off Contract - Clause 60.6, Regional Supplier Contract - Clause 61.6). Following this agreement the following steps must be completed:
- 5.1.1 within 14 days of the Parties agreeing to refer the Dispute to the GIS IDAP, each Party shall provide to the GIS IDAP a written statement setting out in sufficient detail the facts of the Dispute together with any information on which it intends to rely (Local Supplier Call-Off Contract - Clause 60.6 (a), Regional Supplier Contract - Clause 61.6 (a)).
- 5.1.2 following receipt of the information the Chair shall within 10 Working Days, unless otherwise agreed:
- (a) determine in their absolute discretion whether the Dispute is suitable for consideration by the GIS IDAP; or
 - (b) where necessary, request further information which must be provided by both Parties without delay (Local Supplier Call-Off Contract - Clause 60.6 (b), Regional Supplier Contract - Clause 61.6 (b)).
- 5.1.3 if the Chair determines that the Dispute is suitable for consideration by the GIS IDAP, the Chair shall:
- (a) determine the appropriate GIS IDAP panel member or members to consider the Dispute, taking into account the nature of the Dispute and the relevant skills of the panel members (Local Supplier Call-Off Contract - Clause 60.6 (c)(i), Regional Supplier Contract - Clause 61.6 (c)(i));
 - (b) decide the procedure and timescales to be followed in the determination (Local Supplier Call-Off Contract - Clause 60.6 (c)(ii), Regional Supplier Contract - Clause 61.6 (c)(ii));
 - (c) communicate the process, including the procedure and timescales, to both Parties. This will be on a case by case basis based on the complexity of the Dispute. However, it would include expectation in terms of attendance at meetings, assistance required and a clear timescale that a determination would be made in.
- 5.1.4 during the determination period as specified by the Chair, and provided both Parties have provided the assistance required for the purpose of the determination (Local Supplier Call-Off Contract - Clause 60.6 (e), Regional Supplier Contract - Clause 61.6 (e)) then:
- (a) the panel member or members shall discuss and agree, with the Chair, a suitable determination. The Chair may choose to hold a vote where a determination cannot be reached unanimously. Where the panel members cannot agree by majority on a review outcome, the Chair shall have the casting vote; and



- (b) the GIS IDAP will provide a written report to both Parties of the panel's determination (Local Supplier Call-Off Contract - Clause 60.6 (d), Regional Supplier Contract - Clause 61.6 (d)).
- 5.1.5 the GIS IDAP process must end automatically if: the Parties resolve the Dispute; the Parties agree to resolve the Dispute by other means such as arbitration; or either Party issues court proceedings about the Dispute (Local Supplier Call-Off Contract - Clause 60.6 (i), Regional Supplier Contract - Clause 61.6 (i)).
- 5.1.6 in reaching its conclusions the GIS IDAP must have regard to contract-specific and wider policy and legal considerations, including as relevant:
 - (a) Good Industry Practice;
 - (b) coherence with relevant Government guidance including Procurement Policy Notices, the Supplier Code of Conduct and the Sourcing Playbook;
 - (c) prevailing UK economic conditions;
 - (d) BDUK's consistency of handling similar issues with other similar suppliers where appropriate (subject to the relevant obligations of confidentiality that governed such similar issues);
 - (e) the prevailing Government policy context;
 - (f) any relevant legislative or regulatory changes; and
 - (g) the Subsidy Control Regime.

6 Recommendation

- 6.1 The Chair will promptly inform stakeholders of the panel's determination in writing and the Parties will then acknowledge the determination in writing to the Chair. The GIS IDAP's determination shall not be final and binding on the Parties. Following the outcome either Party may request the Dispute be resolved by arbitration or through court proceedings, in accordance with the Dispute Resolution Procedure in the Contracts (Local Supplier Call-Off Contract - Clause 60.9 & 60.10, Regional Supplier Contract - Clause 61.9 & 61.10).

7 Confidentiality

- 7.1 If a Dispute is suitable for consideration by the GIS IDAP then unless otherwise agreed in writing, such negotiations will be kept strictly private and confidential and conducted without prejudice to future proceedings (Local Supplier Call-Off Contract - Clause 60.4, Regional Supplier Contract - Clause 61.4).



8 Fees and Expenses

- 8.1 BDUK will fund the time taken for the following activities that the Chair and panel members are required to undertake along with any travel related costs, where approved by BDUK in advance:
- (a) a single introductory meeting between the Chair and BDUK as detailed in paragraph 4.1.1.
 - (b) an introductory meeting between the panel members, as and when new members are appointed, and BDUK as detailed in paragraph 4.1.1.
 - (c) a quarterly meeting between the Chair and the BDUK Head of Contracts, if required as detailed in paragraph 4.2.2.
 - (d) time spent working on any Disputes at agreed predetermined rates.
- 8.2 For the avoidance of doubt, BDUK will not reimburse Suppliers' costs for attendance at meetings or preparation of materials in relation to any Dispute or meetings initiated by Suppliers with IDAP members prior to a Dispute process being commenced.



Joint Schedule 1 (Definitions and Interpretation)

- 1.1 In each 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 each 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 Core Terms 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;



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- (k) the headings in each Contract are for ease of reference only and shall not affect the interpretation or construction of a 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 a Call-Off Contract in respect of the relevant matter.

1.4 In each 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 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;

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Defined Term	Definition
	(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: (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 Call-Off Schedule 4 (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 47.7(c) (Acceptance of the Change Impact Assessment Estimate or Change Impact Assessment);
"Additional Insurances"	has the meaning set out in Clause 29.1(b) (The Insurances required);
"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;



Defined Term	Definition
"Annual Active Services Take-up Clawback Amount"	has the meaning set out in Paragraph 3.4 (Annual clawback payments) of Call-Off Schedule 4 (Financial Schedule);
"Annual Passive Services Take-up Clawback Amount"	has the meaning set out in Paragraph 4.4 (Annual passive services clawback amounts) of Call-Off Schedule 4 (Financial Schedule);
"Annual Progress Meeting"	the meeting between the Supplier and the Authority as described in Clause 14.15 (Call-Off Contract 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;(e) the Authority's statutory or regulatory auditors;(f) the Comptroller and Auditor General, their staff and/or any appointed representatives of the National Audit Office;(g) HM Treasury or the Cabinet Office;(h) any party formally appointed by the Authority to carry out audit or similar review functions; and(i) successors or assignees of any of the above;
"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 named in the DPS Appointment Form, or later defined in a Call-Off Contract;
"Authority"	the entity identified as such in the DPS Appointment Form or the Call-Off Award Form (as the context requires);



Defined Term	Definition
"Average Connection Life"	means the average connection life as specified in Paragraph 14 (Average Connection Life) of the Call-Off Award Form;
"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 Call-Off Contract Tender and amended in accordance with Paragraph 5.4 (Wholesale Access Prices Benchmarking) of Call-Off Schedule 4 (Financial Schedule);
"Brand and Communication 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 in the Call-Off Award Form which is either:</p> <p>(a) Weighted Eligible Premises Passed; and</p> <p>(e) Metres of Line Plant Associated with Fibre Route Complete,</p> <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>as the context requires:</p> <p>(a) the twelve (12) Month period commencing on the Stage Two (Build) Commencement Date; and</p> <p>(f) each 12 Month period thereafter, save that the final Build Year shall end on the Milestone Date for the Stage Two (Build) Complete Milestone;</p>



Defined Term	Definition
"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;
"Call-Off Award Form Template"	the form of the Call-Off Award Form set out in DPS Schedule 1 (Call-Off Award Form);
"Call-Off Award Form"	a completed Call-Off Award Form Template used to create a Call-Off Contract;
"Call-Off Award Procedure"	the process for awarding a Call-Off Contract pursuant to Clause 2 (How the Contract works) and DPS Schedule 2 (Call-Off Award Procedure);
"Call-Off Contract Award Criteria"	the award criteria set out in Paragraph 6 of DPS Schedule 2 (Call-Off Award Procedure);
"Call-Off Contract Effective Date"	the date on which the final Party has signed the Call-Off Award Form;
"Call-Off Contract Expiry Date"	<p>means the date on which:</p> <ul style="list-style-type: none">(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 Call-Off Schedule 4 (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 Call-Off Schedule 4 (Financial Schedule); and(a) 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 Call-Off Schedule 4 (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 Call-Off Schedule 4 (Financial Schedule);
"Call-Off Contract Meetings"	<p>means each of the following:</p> <ul style="list-style-type: none">(a) Progress Meeting;(b) Annual Progress Meeting;



Defined Term	Definition
	(c) Supplier Management Board; and (d) Senior Executive Review; (e) any ad-hoc meetings requested by the Authority in accordance with Clause 14.10 (Governance Meetings);
"Call-Off Contract Period"	the Contract Period in respect of the Call-Off Contract;
"Call-Off Contract Reports"	means the reports which the Supplier must produce and provide to the Authority during the Call-Off Contract Period in accordance with Clause 15.3 (Call-Off Contract Reports);
"Call-Off Contract Tender"	the tender submitted by the Supplier following a Call-Off Award Procedure;
"Call-Off Contract"	the contract between the Authority and the Supplier (entered into pursuant to the provisions of the DPS Contract), which consists of the terms set out and referred to in the Call-Off Award Form;
"CEDR"	the Centre for Effective Dispute Resolution, International Dispute Resolution Centre, 70 Fleet Street, London, EC4Y 1EU;
"Central Government Body"	a body listed in one of the following sub-categories 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: (a) Government Department; (j) Non-Departmental Public Body or Assembly Sponsored Public Body (advisory, executive, or tribunal); (k) Non-Ministerial Department; or (l) Executive Agency;
"Change Authorisation Note"	Part 3 of the Change Forms executed by the Parties in accordance with Clause 47 (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 Joint Schedule 2 (Change Forms), Parts 1, 2 and 3;



Defined Term	Definition
"Change Impact Assessment Estimate"	has the meaning set out in Clause 47.5 (Change Request);
"Change Impact Assessment"	Part 2 of the Change Forms completed by the Supplier in accordance with Clause 47 (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"	Part 1 of the Change Forms completed by a Party in accordance with Clause 47 (Changing the Contract Procedure);
"Change"	any change to the terms of this Contract;
"Changing the Contract Procedure"	the procedure set out in Clause 47 (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 Joint Schedule 4 (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"	means: (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: (i) the Disclosing Party Group; or



Defined Term	Definition
	<p>(ii) the operations, business, affairs, developments, intellectual property rights, trade secrets, know-how, personnel and of the Disclosing Party Group;</p> <p>(m) 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;</p> <p>(n) 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</p> <p>(o) Information derived from any of the above, but not including any Information which:</p> <p>(i) was in the possession of the Recipient without obligation of confidentiality prior to its disclosure by the Disclosing Party;</p> <p>(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;</p> <p>(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;</p> <p>(iv) was independently developed without access to the Confidential Information; or</p> <p>(v) relates to the Supplier's:</p> <p>(A) performance under this Contract (including in accordance with Clause 33.4 (When you can</p>



Defined Term	Definition
	share information) and 15.6 (How the Supplier's performance will be measured)); or (B) failure to pay any Subcontractor, as required pursuant to Clause 19.9 (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 a 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 Call-Off Contracts for the provision of certain network deployment and broadband related services issued by the Authority;
"Contract Period"	the term of either a DPS Contract or Call-Off Contract from the earlier of the applicable Effective Date until the applicable End Date;
"Contract Year"	(a) a period of twelve (12) Months commencing on the DPS Effective Date; or (a) thereafter a period of twelve (12) Months commencing on each anniversary of the DPS Effective Date; provided that the final Contract Year shall end on the DPS Contract Period;
"Contract"	either the DPS Contract or the Call-Off Contract, 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);
"Core Terms"	means the document by that name under this Contract;



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Defined Term	Definition
"Cost Categories"	the levels of granular cost details as described in Joint Schedule 3 (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;

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Defined Term	Definition
"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 a 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 a Contract and in respect of which the Supplier is liable to the Authority;
"Devolved Administration"	means each of the following: (a) the National Assembly for Wales; (b) the Scottish Government; and (c) the Northern Ireland Assembly and Executive Committee, 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;
"Disclosing Party Group"	(a) where the Disclosing Party is the Supplier, the Supplier and any Affiliate of the Supplier; and (p) 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"	the Party directly or indirectly providing or making available Confidential Information to the other Party in accordance with Clause 32 (What you must keep confidential);
"Dispute Notice"	has the meaning set out in Clause 60.2 (Starting the formal Dispute Resolution Procedure);



Defined Term	Definition
"Dispute Resolution Procedure"	the dispute resolution procedure set out in Clause 60 (Governing Law and resolving Disputes);
"Dispute"	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;
"DOTAS"	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 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;
"DPS Annual Self Certification"	means the Supplier's annual certification as further described in the table in Clause 15.1 (DPS Reports);
"DPS Appointment Form"	the document outlining the DPS Incorporated Terms and crucial information required for the DPS Contract, to be executed by the Supplier and the Authority and subsequently held on the Platform;
"DPS Contract Period"	the period from the DPS Effective Date until the End Date or earlier termination of the DPS Contract;
"DPS Contract"	the dynamic purchasing system access agreement established between the Authority and the Supplier in accordance with Regulation 34 of the PCR Regulations by the DPS Appointment Form for the carrying out of the Works and the provision of the Outputs to the Authority by the Supplier pursuant to the Contract Notice;
"DPS Effective Date"	the date on which the final Party has signed the DPS Appointment Form;
"DPS Expiry Date"	the date of the end of the DPS Contract as stated in the DPS Appointment Form;



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Defined Term	Definition
"DPS Incorporated Terms"	the contractual terms applicable to the DPS Contract specified in the DPS Appointment Form;
"DPS Initial Period"	the initial term of the DPS Contract as specified in the DPS Appointment Form;
"DPS Optional Extension Period"	such period or periods beyond which the DPS Initial Period may be extended up to a maximum of the number of years in total specified in the DPS Appointment Form;
"DPS Quarterly Feedback Report"	means the Supplier's report containing Supplier feedback and as described in the table in Clause 15.1 (DPS Reports);
"DPS Reports"	means the reports which the Supplier must produce and provide to the Authority during the DPS Contract Period in accordance with Clause 15.1 (DPS Reports);
"DPS"	the dynamic purchasing system operated by BDUK in accordance with Regulation 34 that this DPS Contract governs access to;
"Due Diligence Information"	any information supplied to the Supplier by or on behalf of the Authority prior to the Effective Date;
"Effective Date"	in the case of the DPS Contract, the date on which the final Party has signed the DPS Appointment Form, and in the case of a Call-Off Contract, the date on which the final Party has signed the Call-Off Award Form;
"EIR"	the Environmental Information Regulations 2004, together with any guidance and/or codes of practise 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 (q) 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;

COMMERCIALLY SENSITIVE



Defined Term	Definition
"Eligible Stage One Expenditure"	is that Supplier expenditure which: <ul style="list-style-type: none">(a) can be reasonably allocated or apportioned to this Contract;(r) is incremental to the Supplier's cost base that would otherwise have been incurred;(s) is incurred in accordance with this Contract;(t) is directly attributable to the Stage One (Network Detailed Design and Due Diligence) Works; and(u) is capable of being capitalised under Generally Accepted Accountancy Principles;
"Eligible Stage Two Expenditure"	is that Supplier expenditure which: <ul style="list-style-type: none">(a) can be reasonably allocated or apportioned to this Contract;(v) is incremental to the Supplier's cost base that would otherwise have been incurred;(w) is incurred in accordance with this Contract;(x) is directly attributable to the Stage Two (Build) Works; and(y) is capable of being capitalised under Generally Accepted Accountancy Principles;
"End Date"	the earlier of: <ul style="list-style-type: none">(a) the Expiry Date (as extended by any Extension Period exercised by the Authority under Clause 21.2 (Term)); or(z) if a 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



Defined Term	Definition
	environmental policy of the Authority as 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 40 (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 Call-Off Contract Effective Date that unavoidably impacts on the performance costs of the Call-Off Contract and which, if unaddressed would render the Call-Off Contract 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 27.1 (Exit management);
"Expiry Date"	the DPS Expiry Date or the Call-Off Contract Expiry Date (as the context dictates);
"Fast Track Change Procedure"	has the meaning given in Clause 47.31 (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 Call-Off Schedule 4 (Financial Schedule);



Defined Term	Definition
"Final Passive Services Take-up Clawback Amount"	has the meaning set out in Paragraph 4.11 (Final passive services clawback amount) of Call-Off Schedule 4 (Financial Schedule);
"Financial Distress Event"	<p>means the occurrence or one or more of the following events:</p> <ul style="list-style-type: none">(a) the credit rating of the Monitored Company dropping below the applicable Credit Rating Threshold;(aa) 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;(bb) there being a public investigation into improper financial accounting and reporting, suspected fraud or any other impropriety of the Monitored Party;(cc) Monitored Company committing a material breach of covenant to its lenders;(dd) 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(ee) 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 any Contract and delivery of the Outputs and the carrying out of the Works in accordance</p>



Defined Term	Definition
	with any Call-Off Contract and/or puts at risk public funding already granted (or to be granted) pursuant to a Call-Off Contract;
"Financial Distress Service Continuity Plan"	means a plan setting out how the Supplier will: <ul style="list-style-type: none">(a) remedy the potential adverse impact of the relevant Financial Distress Event; and(ff) ensure:<ul style="list-style-type: none">(i) the continued performance of this Contract;(ii) the security of public funding already granted (or to be granted);(iii) the continued performance of each Call-Off Contract, including the continued provision of the Outputs and carrying out of the Works in accordance with each Call-Off Contract; and(iv) 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 model set out in Annex 1 of Call-Off Schedule 4 (Financial Schedule) as amended from time to time in accordance with Clause 16 (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 (DPS 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 Joint Schedule 9 (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;



Defined Term	Definition
"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 a 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:<ul style="list-style-type: none">(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;(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(iii) any failure or delay caused by a lack of funds, <p>but excluding, in the case of the Supplier:</p> <ul style="list-style-type: none">(a) an event to the extent it is capable of being mitigated by any of the Works;(gg) 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;(hh) 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



Defined Term	Definition
	(ii) 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;
"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"	(a) the legislation in Part 5 of the Finance Act 2013; and (jj) any future legislation introduced into parliament to counteract tax advantages arising from abusive arrangements to avoid National Insurance contributions;
"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 1Gbps 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 Core Terms and as updated from time to time;



Defined Term	Definition
"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 each of the following: (a) DPS Meeting; and (b) Call-Off Contract Meeting;
"Government Data"	(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: (i) are supplied to the Supplier by or on behalf of the Authority; or (ii) the Supplier is required to generate, process, store or transmit pursuant to a Contract; or (kk) any Personal Data for which the Authority is the Data Controller;
"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 of Call-Off Schedule 3 (Guarantee) in relation to a Call-Off Contract;



Defined Term	Definition
"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> <ul style="list-style-type: none">(a) which any involvement or association may:<ul style="list-style-type: none">(i) prejudice the carrying out of the Works and/or provision of the Outputs;(ii) be contrary to the Authority's interests;(iii) be inconsistent with the policies of Gigabit Infrastructure Subsidy and/or the terms of this Contract;(iv) cause reputational damage to the Authority and/or Gigabit Infrastructure Subsidy or otherwise bring the Authority and/or 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(II) identified by the Authority as unsuitable in relation to the carrying out of the Works and/or provision of the Outputs;
"HMRC"	Her 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;



Defined Term	Definition
"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;
"Innovation Business Case"	has the meaning set out in Clause 59.1 (Innovation);
"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;(mm) 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);(nn) 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;(oo) a receiver, administrative receiver, monitor or similar officer is appointed over the whole or any part of its business or assets;(pp) 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;(qq) it is or becomes insolvent within the meaning of section 123 of the Insolvency Act 1986;(rr) 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;(ss) 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



Defined Term	Definition
	(tt) 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 29.1 (The Insurances required);
"Intellectual Property Rights" or "IPR"	<p>(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;</p> <p>(uu) 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</p> <p>(vv) all other rights having equivalent or similar effect in any country or jurisdiction;</p>
"Intervention Area"	refers to the specified Premises or geographical area as set out in the Financial Model, table i.Build Plan - Premises;
"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 a 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 DPS Contract or a Call-Off Contract, as applicable (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 Joint Schedule 9 (Key Personnel) appointed by the Supplier as at the DPS Effective Date and those individuals (if any) identified in the Call-Off Award Form (as the context requires) or as amended from time to time in accordance with Clause 19.24 (Key Personnel);
"Key Subcontract"	each Subcontract with a Key Subcontractor;
"Key Subcontractor"	means:



Defined Term	Definition
	<p>(a) in respect of the DPS Contract, the Subcontractors identified in Joint Schedule 5 (Key Subcontractors);</p> <p>(b) in respect of a Call-Off Contract, the Key Subcontractors specifically nominated in the Call-Off Award Form; and/or</p> <p>(c) 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;</p>
"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 judgment of a relevant court of law;
"LCIA Rules"	has the meaning set out in Clause 60.10 (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>(a) https://www.cosla.gov.uk/councils;</p> <p>(b) https://www.wlga.wales/welsh-local-authority-links; and</p> <p>(ww) 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>



Defined Term	Definition
"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) as set out in section 1.1 of the Outputs section of the 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) as set out in section 1.2 of the Outputs section of the Financial Model;
"Measurement Period"	has the meaning set out in Clause 15.5 (How the Supplier's performance will be measured);
"Mediation Notice"	has the meaning set out in Clause 60.5 (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 of Call-Off Schedule 5 (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 of Call-Off Schedule 5 (Project Plan and Testing);
"Milestone"	each of the Key Milestones and Build Milestones set out in the Project Plan;
"Minimum Sub-Superfast Percentage"	means the percentage set out at Paragraph 15 (Minimum Sub-Superfast Percentage of the Call Off Award Form;
"Modern Slavery Helpline"	as defined at Clause 46.4 (What we expect from our Suppliers);



Defined Term	Definition
"Monitored Company"	means the entities set out in the Call-Off Award Form and any Guarantor in accordance with Paragraph 4.2 (Request for a Guarantee and financial information) of Joint Schedule 6 (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 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 Call-Off Schedule 4 (Financial Schedule);
"Net Additional Passive Services Take-up"	has the meaning set out in Paragraph 4.2 (Annual passive services clawback amounts) of Call-Off Schedule 4 (Financial Schedule);
"Network Detailed Design"	a network detailed design which meets the requirements set out in Paragraph 2 (Stage One (Network Detailed Design and Due Diligence) of the 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"	an electronic communications network comprising: <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,



Defined Term	Definition
	which shall be constructed, deployed, commissioned and operated by the Supplier, as specified for the Works, in accordance with this Contract;
"New IPR"	<p>(a) IPR in items created by the Supplier (or by a third party on behalf of the Supplier) specifically for the purposes of a Contract and updates and amendments of these items including (but not limited to) database schema; and/or</p> <p>(xx) IPR in or arising as a result of the performance of the Supplier's obligations under a 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>(iv) 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>(v) 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>(g) any tax return of the Supplier submitted to a Relevant Tax Authority on or after 1 October 2012 that gives rise on or after</p>



Defined Term	Definition
	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;
"Ofcom"	means The Office of Communications and is the government-approved regulatory and competition authority for the broadcasting and telecommunications industries of the UK;
"Operational Integration"	has the meaning set out in Clause 9 (Operational Integration);
"Output"	an item or feature delivered or to be delivered to the Authority by the Supplier or a Subcontractor at any stage during the performance of the DPS Contract or a Call-Off 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 in Paragraph 4.3 (Annual passive services clawback amounts) of Call-Off Schedule 4 (Financial Schedule);
"Passive Services Take-up"	(a) for Wholesale Passive Products measured by distance, each kilometre of Network adopted by a third party in the Intervention Area; or (yy) 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;



Defined Term	Definition
"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 DPS;
"Premises Passed"	<p>means an End User Premises which has achieved Customer Ready For Service (as defined in the Specification) or where the Supplier can demonstrate to the Authority's satisfaction in respect of that End User Premises:</p> <p>(a) that it is not legally possible, including in the event of a ransom strip; and/or</p> <p>(a) where the Supplier will incur disproportionate expenditure, 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 Call-Off Contract;</p>
"Premises"	an address as identified by UPRN in table i.Build Plan - Premises of the Financial Model;
"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"	<p>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:</p> <p>https://www.gov.uk/government/publications/blowing-the-whistle-list-of-prescribed-people-and-bodies--2/whistleblowing-list-of-prescribed-people-and-bodies;</p>
"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;



Defined Term	Definition
"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 14.14 (Call-Off Contract Meetings);
"Prohibited Act"	<ul style="list-style-type: none">(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:<ul style="list-style-type: none">(i) induce that person to perform improperly a relevant function or activity; or(ii) reward that person for improper performance of a relevant function or activity;(h) 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 each Contract; or(i) committing any offence:<ul style="list-style-type: none">(i) under the Bribery Act 2010 (or any legislation repealed or revoked by such Act); or(ii) under legislation or common law concerning fraudulent acts; or(iii) defrauding, attempting to defraud or conspiring to defraud the Authority or other public body; or(j) 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;
"Project Plan"	the Supplier's project plan, which shall comply with Paragraph 1 (Project Plan) of Part 1 of Call-Off Schedule 5 (Project Plan and Testing) and which at the Call-Off Contract Effective Date is set out in Call-Off Schedule 2 (Tender);
"Purposes"	as defined in Exhibit A to the Contract;
"Quarter"	each sequential three (3) Month period aligned with the Authority's fiscal year;
"Rating Agency"	means the rating agency stated in Annex 1 (Rating Agency) of Joint Schedule 6 (Financial Distress);



Defined Term	Definition
"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 Joint Schedule 8 (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 39.1 (Relief Events);
"Relief Notice"	a notice provided by the Supplier in accordance with Clause 39.3 (Relief Events);



Defined Term	Definition
"Reminder Notice"	a notice sent in accordance with Clause 23 (When the Supplier can end a Call-Off Contract) 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;
"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 DPS for 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 Call-Off Contract Effective Date is set out in Call-Off Schedule 2 (Tender) and updated from time to time in accordance with Clause 15.3 (Call-Off Contract Reports);
"Schedules"	any attachment to the DPS Contract or a Call-Off 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 Joint Schedule 9 (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 14.13 (Call-Off Contract Meetings);



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Defined Term	Definition
" 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 15.3 (Call-Off Contract Reports);
" Social Value Plan "	means the Supplier's Social Value plan set out in the Call-Off Contract 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 Call-Off Schedule 1 (Specification);
" SQ "	means the Supplier Selection Questionnaire response submitted to the Authority in relation to Gigabit Infrastructure Subsidy procurement;
" Stage One (Network Detailed Design and Due Diligence) Complete Milestone "	means the Milestone of that name 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;

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Defined Term	Definition
"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 Call-Off Schedule 4 (Financial Schedule);
"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 Call-Off Schedule 4 (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) as set out at Paragraph 2 (Stage One (Network Detailed Design and Due Diligence)) of the Specification;
"Stage One (Network Detailed Design and Due Diligence)"	the period from the Call-Off Contract Effective Date to and including the date on which the Stage One (Network Detailed Design and Due Diligence) Complete Milestone is Achieved;
"Stage One (PMO) Cost"	has the meaning set out in section 3.1 of the Outputs section of the Financial Model;
"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 Call-Off Schedule 4 (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 Call-Off Schedule 4 (Financial Schedule)), as specifically detailed in Joint Schedule 3 (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;



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Defined Term	Definition
"Stage One Output"	means 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 15.3 (Call-Off Contract 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 Joint Schedule 3 (Cost Categories);
"Stage Three (Monitor and Clawback) Commencement Date"	means the date on which the Stage Two (Build) Complete Milestone is Achieved;
"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 Report"	means the report provided by the Supplier summarising the actual pricing for the Wholesale Access Product and Services and Wholesale Passive Products and Take-up and in life operating costs to date for the Wholesale Access Product and Services and Wholesale Passive Products, as further described in the table in Clause 15.3 (Call-Off Contract 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 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;

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Defined Term	Definition
"Stage Two (Build) Key Milestone Payment"	means the payment calculated in accordance with Paragraph 1.13 (Stage Two (Build) Key Milestone Payment) of Call-Off Schedule 4 (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 Call-Off Schedule 4 (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 Call-Off Schedule 4 (Financial Schedule);
"Stage Two (Build) Works"	those works to be carried out during Stage Two (Build) set out at Paragraph 3 (Stage Two (Build)) of the Specification;
"Stage Two (Build)"	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;
"Stage Two (PMO) Cost"	has the meaning set out in section 3.2 of the Outputs section of the Financial Model;
"Stage Two (PMO) True-Up Amount"	has the meaning set out in Paragraph 1.12(b) (Stage Two (Build) Key Milestone Payment) of Call-Off Schedule 4 (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 Call-Off Schedule 4 (Financial Schedule), as specifically detailed in in Joint Schedule 3 (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 in Joint Schedule 3 (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 15.3 (Call-Off Contract Reports);



Defined Term	Definition
"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 Clause 15.3 (Call-Off Contract Reports);
"Step Change"	change meeting the requirements of Paragraph 5.8 (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 Financial Model as being a sub-superfast premises;
"Subcontract"	any contract or agreement (or proposed contract or agreement), other than a Call-Off Contract or the DPS Contract, pursuant to which a third party: (a) carries out the Works and/or provides the Outputs (or any part of them); (zz) 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 (aaa) 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;
"Subsidy Control Regime"	the primary (Acts of Parliament) and/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"	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: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/779660/20190220-Supplier_Code_of_Conduct.pdf ;
"Supplier Contract Manager"	the person identified in the Call-Off Award Form appointed by the Supplier to oversee the operation of the Call-Off Contract and any alternative person whom the Supplier intends to appoint to the role, provided that the Supplier informs the Authority prior to the appointment;



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Defined Term	Definition
"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 14.13 (Call-Off Contract Meetings);
"Supplier Marketing Contact"	shall be the person identified in the DPS Appointment Form;
"Supplier Non-Performance"	has the meaning set out in Clause 39.2 (Relief Events);
"Supplier Representative"	the representative appointed by the Supplier named in the DPS Appointment Form, or later defined in a Call-Off Contract;
"Supplier Solution"	the Supplier's proposed solution to the Authority's requirement that forms the subject of a Call-Off Award Procedure;
"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 a Contract from time to time;
"Supplier Technical Solution"	the Supplier's technical solution set out in Paragraph 3 (Supplier Technical Solution) of the Call-Off Schedule 2 (Tender);
"Supplier"	the person, firm or company identified as such in the DPS Appointment Form or the Call-Off Award Form (as the context requires);
"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;

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Defined Term	Definition
"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 a Contract on a specified date and setting out the grounds for termination;
"Test Issue Management Log"	a log for the management of Test issues as described in Paragraph 8 (Test Issue Management Log) of Part 2 of Call-Off Schedule 5 (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 Call-Off Schedule 2 (Tender);
"Test Report"	the reports to be provided by the Supplier setting out the results of the Tests in accordance with Paragraph 7 (Test Reports) of Part 2 of Call-Off Schedule 5 (Project Plan And Testing);
"Test Strategy"	the strategy for Testing set out in Call-Off Schedule 2 (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 6 (Auditing the quality of the Test) of Part 2 of Call-Off Schedule 5 (Project Plan and Testing);
"Testing"	the performance of Tests in accordance with Part 2 of Call-Off Schedule 5 (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> <p>(a) any information which is exempt from disclosure in accordance with the provisions of the FOIA, which shall be determined by the Authority; and</p> <p>(bbb) Commercially Sensitive Information;</p>



Defined Term	Definition
"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;
"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 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 Call-Off Schedule 4 (Financial Schedule);
"Wholesale Access Prices Benchmarking"	has the meaning set out in Paragraph 5.2 (Wholesale Access Prices Benchmarking) of Call-Off Schedule 4 (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 Call-Off Schedule 2 (Tender);
"Wholesale Passive Products"	the passive wholesale access products and services as set out in the Call-Off Schedule 2 (Tender);



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Defined Term	Definition
"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 in the Call-Off Award Form;
"Working with Local Authority Guidance"	means: (a) the guidance issued by the Department for Digital, Culture, Media & Sport 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 (ccc) any other guidance relating to working with local authorities as published by the Department for Digital, Culture, Media & Sport 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, the Call-Off Contract Tender and Project Plan, Network deployment and the Wholesale Access Products and Services and Wholesale Passive Products;
"Year One"	the twelve (12) Month period commencing on the Stage Two (Build) Commencement Date.

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Joint Schedule 2 (Change Forms)

These Change Forms are to be used in order to change a Contract in accordance with Clause 47 (Changing the Contract Procedure). Words and expressions in these Change Forms shall have the meanings given to them in the Contract.

Part 1 : Change Request

CHANGE REQUEST	
CONTRACT NO:	[Drop down of live Contracts]
CHANGE NO:	[Please state]
DATE RAISED:	[Please state]
CHANGE INITIATED BY:	[Please state Authority or Supplier]
DESCRIPTION OF THE PROPOSED CHANGE: [Please state]	
FAST TRACK CHANGE PROCEDURE PROPOSED IN RELATION TO CHANGE?	[Yes/No]
CHANGE IMPACT ASSESSMENT ESTIMATE TO BE PROVIDED WITHIN:	[Authority to state period within ten (10) Working Days of the date of the Change Request / Not applicable]* * Change Impact Assessment Estimate is only required to be provided by the Supplier where the Authority issues the Change Request
CHANGE IMPACT ASSESSMENT TO BE PROVIDED WITHIN:	[Authority to state period]
PROPOSED DATE FOR CHANGE:	[Please state]
SUBMITTED TO:	[Please state]
REQUESTING PARTY:	[Please state]
SIGNED:	
NAME:	[Please state]
DATE:	[Please state]



: Change Impact Assessment

CHANGE IMPACT ASSESSMENT	
CONTRACT NO:	[Please state]
CHANGE NO:	[Please state]
SUPPLIER'S CHANGE IMPACT ASSESSMENT:	
Descriptive Summary:	[Please state]
Proposed drafting Changes:	[Please state]
Proposed change to the Average Connection Life (if applicable):	[Please state]
Details of the impacts of proposed Changes:	[Please state]
Details of impact on risk, reward and liability:	[Please state]
Compliance with applicable Change in Law:	[Please state]
Reasonable level justification and evidence:	[Please state]
SUBMITTED TO:	[Please state]
SUPPLIER:	[Please state]
SIGNED:	
NAME:	[Please state]
DATE:	[Please state]



Part 2 : Change Authorisation Note

CHANGE AUTHORISATION							
CONTRACT NO:	<i>[Please state]</i>						
CHANGE NO:	<i>[Please state]</i>						
FINANCIAL VARIATION:	<table border="1"><tr><td>Original contract value:</td><td>£ [pre-populates]</td></tr><tr><td>Additional cost due to variation:</td><td>£ [insert amount]</td></tr><tr><td>New contract value:</td><td>£ [calculates]</td></tr></table>	Original contract value:	£ [pre-populates]	Additional cost due to variation:	£ [insert amount]	New contract value:	£ [calculates]
Original contract value:	£ [pre-populates]						
Additional cost due to variation:	£ [insert amount]						
New contract value:	£ [calculates]						
ON BEHALF OF THE SUPPLIER							
SIGNED:							
NAME:	<i>[Please state]</i>						
DATE:	<i>[Please state]</i>						
ON BEHALF OF THE AUTHORITY							
SIGNED:							
NAME:	<i>[Please state]</i>						
DATE:	<i>[Please state]</i>						

The Contract, including any previous Changes, shall remain effective and unaltered except as amended by this Change.



Joint Schedule 3 (Cost Categories)

1 Purpose

- 1.1 This Schedule defines levels of cost transparency required for each Call-Off Contract.
- 1.2 The Supplier agrees it shall describe costs at a level of detail that corresponds to the Level 1 and Level 2 Categories set out in the tables in Paragraph 2 (Categories) when responding to any Call-Off Award Procedure.

2 Categories

- 2.1 The following cost categories are applicable to Stage One (Network Detailed Design and Due Diligence) and Stage Two (Build):

Internal / External	Level 1	Level 2	Units
Internal External	Project Management	Materials	meters
	Planning	Construction Equipment	Unit (one item)
	Civil Engineering	Network Equipment	Level 1 Infrastructure Units
	Network Engineering	Vehicles	Level 2 Infrastructure Units
	Other	Worker	Level 3 Infrastructure Units
		Manager	Level 4 Infrastructure Units
		Third Party Contract	Level 5 Infrastructure Units
		Network Rent	Premises Passed
		Wayleaves	Premises Connected
		Traffic Management	Working Day
			Calendar Day

- 2.2 The following cost categories are applicable to in-life costs relating to the connection of Premises:

Internal / External	Level 1	Level 2	Units
Internal External	Labour	Sales & Marketing	Units to match the product/service billing units the Supplier has used to forecast Take-up
	Equipment	Equipment Installation	
	Materials		



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- 2.3 The following cost categories are applicable to in-life costs relating to the maintenance of customer connections:

Internal / External	Level 1	Level 2	Units
Internal External	Labour Equipment Materials	Maintenance & Repair	Units to match the product/service billing units the Supplier has used to forecast Take-up

- 2.4 The following cost categories are applicable to network operation and maintenance:

Internal / External	Level 1	Level 2	Units
Internal External	Labour Equipment Materials Other	Maintenance & Repair Equipment Installation Contractual Reporting Network Rent Business Rates	Level 1 Infrastructure Units Level 2 Infrastructure Units Level 3 Infrastructure Units Level 4 Infrastructure Units Level 5 Infrastructure Units



Joint Schedule 4 (Commercially Sensitive Information)

1 What is the Commercially Sensitive Information

- 1.1 In this Schedule, the Parties have sought to identify the Supplier's Confidential Information that is genuinely commercially sensitive and the disclosure of which would be the subject of an exemption under the FOIA and the EIRs.
- 1.2 Where possible, the Parties have sought to identify when any relevant Information will cease to fall into the category of Information to which this Schedule applies in the table below.
- 1.3 Without affecting the Authority's obligation to disclose Information in accordance with FOIA or Clause 33 (When you can share information), the Authority will, in its sole discretion, seek to apply the relevant exemption set out in the FOIA to the following Information:

Supplier Name: Freedom Fibre LTD

INFORMATION	BASIS OF COMMERCIAL SENSITIVITY	PERIOD CLASSED AS COMMERCIALLY SENSITIVE INFORMATION
<p>Detailed Supplier cost information as set out in the following tables in the Financial Model:</p> <ul style="list-style-type: none">i.Build Plan - Infra Levelsi.Build Plan - Infrastructurei.Build Plan - Network Linksi.Products and Servicesi.Take up - Connectionsi.Take up - Disconnectionsi.Eligible Cost - Stage Onei.Eligible Cost - Stage Twoi.Upfront Product Costsi.Recurring Product Costs	<p>Price points may give away a competitive advantage of a given supplier.</p>	<p>For the Call-Off Contract Period.</p>

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INFORMATION	BASIS OF COMMERCIAL SENSITIVITY	PERIOD CLASSED AS COMMERCIAL SENSITIVE INFORMATION
<ul style="list-style-type: none">i.In-Life Network Costs		
Financial Distress Event information	This information if made public may be damaging to Supplier's reputation/business (incl. share price).	The period that the information remains confidential under the terms of this Contract.
Supplier Technical Solution	This information if made public may give a commercial advantage to competitors.	The period that the information remains confidential under the terms of this Contract. Information detailing the as-built Network for Stage Two (Build) shall not be Commercially Sensitive Information from the date the Stage Two (Build) Complete Milestone is Achieved.
Wholesale Access Prices Benchmarking data, including identifying which Benchmark Data has been identified against which Wholesale Access Products and Services and Wholesale Passive Products in this Contract. Unless and to the extent such information may need to be published to meet any transparency requirements under the Subsidy Control Regime and/or may need to be disclosed as part of responding to a formal Subsidy Control Regime complaint, inquiry, investigation or other enforcement action.	This information if made public may give a commercial advantage to the competitors of the Supplier.	The period that the information remains confidential under the terms of this Contract.
Supplier information concerning its economic and financial standing, technical and professional ability and compliance with legislation and standards, as provided as part of its ITT response.	This information if made public may be damaging to Supplier's reputation/business (incl. share price).	The period that the information remains confidential under the terms of this Contract.
Records of governance discussions and other written information obtained by the Authority pursuant to the Contract but only to the extent to which they comprise (i.e.	See applicable row(s) above.	The period that the information remains confidential under the



INFORMATION	BASIS OF COMMERCIAL SENSITIVITY	PERIOD CLASSED AS COMMERCIAL SENSITIVE INFORMATION
include) Commercially Sensitive Information identified in the above rows of this table.		terms of this Contract.
(a) take-up data specified to the level of individually identified End User Premises; or (b) fully comprehensive or other large scale release of take-up data identified against Structure for the Network (noting that it is recognised that the Authority is likely to release ad hoc single or Structure cluster take-up details as part of publicity or marketing efforts).	This information if made public may: (a) give a commercial advantage to competitors; and/or (b) create unintended expectation/reliance by third parties.	The period that the information remains confidential under the terms of this Contract.



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Joint Schedule 5 (Key Subcontractors)

1 Introduction

This Schedule sets out the Key Subcontractors for the purpose of this Contract and should be read in conjunction with Clauses 19.14 to 19.23 (Key Subcontractors).

2 Key Subcontractors

REDACTED UNDER FOIA SECTION 43: COMMERCIALLY SENSITIVE

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Joint Schedule 6 (Financial Distress)

1 When this Schedule applies

- 1.1 The Parties shall comply with the provisions of this Schedule in relation to the assessment of the financial standing of the Monitored Companies and the consequences of a change to that financial standing.
- 1.2 The terms of this Schedule shall survive termination or expiry of this Contract.

2 What happens when your credit rating changes

- 2.1 The Supplier warrants and represents to the Authority that as at the Effective Date the credit rating issued for the Monitored Companies by the Rating Agency is as set out in Annex 2.
- 2.2 The Supplier shall promptly (and in any event within ten (10) Working Days) notify the Authority in writing if there is any downgrade in the credit rating issued by the Rating Agency for a Monitored Company which means that the credit rating for the Monitored Company falls below the Credit Rating Threshold.
- 2.3 If there is any such downgrade credit rating issued by the Rating Agency for a Monitored Company the Supplier shall at the Authority's request ensure that the Monitored Company's auditors thereafter provide the Authority within ten (10) Working Days of the end of each Contract Year and within ten (10) Working Days of written request by the Authority (such requests not to exceed four (4) in any Contract Year) with written calculations of the quick ratio for the Monitored Company as at the end of each Contract Year or such other date as may be requested by the Authority. For these purposes the "quick ratio" on any date means:

$$\frac{A + B + C}{D}$$

where:

- A is the value at the relevant date of all cash in hand and at the bank of the Monitored Company;
- B is the value of all marketable securities held by the Monitored Company determined using closing prices on the Working Day preceding the relevant date;
- C is the value at the relevant date of all account receivables of the Monitored Company; and
- D is the value at the relevant date of the current liabilities of the Monitored Company.
- 2.4 The Supplier shall:
- (a) regularly monitor the credit ratings of each Monitored Company with the Rating Agency; and



- (b) promptly notify (or shall procure that its auditors promptly notify) the Authority in writing following the occurrence of a Financial Distress Event or any fact, circumstance or matter which could cause a Financial Distress Event and in any event, ensure that such notification is made within ten (10) Working Days of the date on which the Supplier first becomes aware of the Financial Distress Event or the fact, circumstance or matter which could cause a Financial Distress Event.

2.5 For the purposes of determining whether a Financial Distress Event has occurred the credit rating of the Monitored Company shall be deemed to have dropped below the applicable Credit Rating Threshold if the Rating Agency has rated the Monitored Company at or below the applicable Credit Rating Threshold.

3 What happens if there is a Financial Distress Event

3.1 In the event of a Financial Distress Event then, immediately upon notification of the Financial Distress Event (or if the Authority becomes aware of the Financial Distress Event without notification and brings the event to the attention of the Supplier), the Supplier shall have the obligations and the Authority shall have the rights and remedies as set out in Paragraphs 3.3 to 3.6 and 4.1 (Request for a Guarantee and financial information).

3.2 In the event that a Financial Distress Event arises due to a Key Subcontractor notifying the Authority that the Supplier has not satisfied any sums properly due under a specified invoice and not subject to a genuine dispute then, the Authority shall not exercise any of its rights or remedies under Paragraph 3.3 without first giving the Supplier ten (10) Working Days to:

- (a) rectify such late or non-payment; or
- (b) demonstrate to the Authority's satisfaction that there is a valid reason for late or non-payment.

3.3 The Supplier shall and shall procure that the other Monitored Companies shall:

- (a) at the request of the Authority meet the Authority as soon as reasonably practicable (and in any event within three (3) Working Days of the initial notification (or awareness) of the Financial Distress Event) to review the effect of the Financial Distress Event on the continued performance of each Contract and the delivery of the Outputs and performance of the Works in accordance with each Call-Off Contract; and
- (b) where the Authority believes (taking into account the discussions and any representations made under Paragraph 3.3(a)) that the Financial Distress Event could impact on the continued performance of each Contract and the delivery of the Outputs and performance of the Works in accordance with each Call-Off Contract:
 - (i) submit to the Authority for its approval, a draft Financial Distress Service Continuity Plan as soon as reasonably practicable (and in any event, within ten (10) Working Days of the initial notification (or awareness) of the Financial Distress Event); and



- (ii) provide such financial information relating to the Monitored Company as the Authority may require.

- 3.4 If the Authority does not approve the draft Financial Distress Service Continuity Plan, it shall inform the Supplier of its reasons and the Supplier shall take those reasons into account in the preparation of a further draft Financial Distress Service Continuity Plan, which shall be resubmitted to the Authority within five (5) Working Days of the rejection of the first (1st) or subsequent (as the case may be) drafts. This process shall be repeated until the Financial Distress Service Continuity Plan is approved by the Authority or referred to the Dispute Resolution Procedure.
- 3.5 If the Authority considers that the draft Financial Distress Service Continuity Plan is insufficiently detailed to be properly evaluated, will take too long to complete or will not remedy the relevant Financial Distress Event, then it may either agree a further time period for the development and agreement of the Financial Distress Service Continuity Plan or escalate any issues with the draft Financial Distress Service Continuity Plan using the Dispute Resolution Procedure.
- 3.6 Following approval of the Financial Distress Service Continuity Plan by the Authority, the Supplier shall:
- (a) on a regular basis (which shall not be less than Monthly), review the Financial Distress Service Continuity Plan and assess whether it remains adequate and up to date to ensure the continued performance of each Contract and provision of the Outputs and carrying out of the Works in accordance with each Call-Off Contract;
 - (b) where the Financial Distress Service Continuity Plan is not adequate or up to date in accordance with Paragraph 3.6(a), submit an updated Financial Distress Service Continuity Plan to the Authority for its approval, and the provisions of Paragraphs 3.5 and 3.6 shall apply to the review and approval process for the updated Financial Distress Service Continuity Plan; and
 - (c) comply with the Financial Distress Service Continuity Plan (including any updated Financial Distress Service Continuity Plan).
- 3.7 Where the Supplier reasonably believes that the relevant Financial Distress Event (or the circumstance or matter which has caused or otherwise led to it) no longer exists, it shall notify the Authority and subject to the agreement of the Parties, the Supplier may be relieved of its obligations under Paragraph 3.6.

4 Request for a Guarantee and financial information

- 4.1 Without affecting the Supplier's obligations and the Authority's rights and remedies set out in Paragraphs 3.3 to 3.6 (What happens if there is a Financial Distress Event), if a Financial Distress Event occurs, the Supplier shall, if the Authority requires (in its absolute discretion) and so notifies the Supplier in writing:
- (a) deliver to the Authority:



- (i) an executed Guarantee from a Guarantor acceptable to the Authority; and
 - (ii) a certified copy extract of the board minutes and/or resolution of the Guarantor approving the execution of the Guarantee; and/or
- (b) deliver to the Authority:
 - (i) an up-to-date forecast of the Supplier's financial contribution amounts required to Achieve the Stage One (Network Detailed Design and Due Diligence) Complete Milestone and Stage Two (Build) Complete Milestone; and
 - (ii) evidence to the satisfaction of the Authority that the Supplier is able to:
 - (A) 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; and
 - (B) ensure the continued provision of the Outputs and carrying out of the Works in accordance with each Call-Off Contract.

Such evidence must be in a form acceptable to the Authority and/or from a third party acceptable to the Authority (as applicable). Examples of such evidence may include:

- (C) a letter of credit;
- (D) a committed loan facility;
- (E) a cash collateral account; or
- (F) an equity support agreement between the Supplier and a third party acceptable to the Authority.

The examples provided in this Paragraph (b)(ii) are not exhaustive and are for illustrative purposes only.

- 4.2 For the purposes of this Schedule, where the Authority exercises its right to request a Guarantee in accordance with Paragraphs 4.1 and 5.2(a) (When the Authority can terminate for financial distress) the Guarantor shall be deemed a Monitored Company.

5 When the Authority can terminate for financial distress

- 5.1 The Authority shall be entitled to terminate this Contract for material Default if:

- (a) the Supplier fails to notify the Authority of a Financial Distress Event in accordance with Paragraph 2.4 (What happens when your credit rating changes);



- (b) the Authority and the Supplier fail to agree a Financial Distress Service Continuity Plan (or any updated Financial Distress Service Continuity Plan) in accordance with Paragraphs 3.3 to 3.5 (What happens if there is a Financial Distress Event); and/or
- (c) the Supplier fails to comply with the terms of the Financial Distress Service Continuity Plan (or any updated Financial Distress Service Continuity Plan) in accordance with Paragraph 3.6(c) (What happens if there is a Financial Distress Event).

5.2 The Authority shall be entitled to terminate the Call-Off Contract for a material Default:

- (a) where:
 - (i) the Supplier fails to provide the documentation required by Paragraph 4.1(a) (Request for a Guarantee and financial information) by the date so specified by the Authority;
 - (ii) the Guarantor withdraws the Guarantee for any reason whatsoever;
 - (iii) the Guarantor is in breach or anticipatory breach of the Guarantee;
 - (iv) an Insolvency Event occurs in respect of the Guarantor;
 - (v) a Financial Distress Event occurs in respect of the Guarantor; or
 - (vi) the Guarantee becomes invalid or unenforceable for any reason whatsoever;

and in each case the Guarantee is not replaced by an alternative guarantee agreement in the form set out in Annex 1 of Call-Off Schedule 3 (Guarantee) from a replacement guarantor acceptable to the Authority at the Authorities request; or

- (b) where the Supplier fails to provide the financial information required by Paragraph 4.1(b) (Request for a Guarantee and financial information) by the date so specified by the Authority.

6 What happens if your credit rating is still good

6.1 Without affecting the Supplier's obligations and the Authority's rights and remedies under Paragraph 5 (When the Authority can terminate for financial distress), if following the occurrence of a Financial Distress Event, the Rating Agency reviews and reports subsequently that the credit rating does not drop below the relevant Credit Rating Threshold, then, except where the Authority requires the Supplier to deliver to the Authority the documentation and/or financial information in accordance with Paragraph 4.1 (Request for a Guarantee and financial information):

- (a) the Supplier shall be relieved automatically of its obligations under Paragraphs 3.3 to 3.6 (What happens if there is a Financial Distress Event); and
- (b) the Authority shall not be entitled to require the Supplier to provide financial information in accordance with Paragraph 3.3(b)(ii) (What happens if there is a Financial Distress Event).



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Annex 1: Rating Agency

Dun & Bradstreet (D&B)

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Annex 2: Credit ratings & Credit Rating Thresholds

Entity	Credit rating (D&B Failure Rating)	Credit Rating Threshold
REDACTED UNDER FOIA SECTION 40: COMMERCIALLY SENSITIVE	REDACTED UNDER FOIA SECTION 40: COMMERCIALLY SENSITIVE	REDACTED UNDER FOIA SECTION 40: COMMERCIALLY SENSITIVE
REDACTED UNDER FOIA SECTION 40: COMMERCIALLY SENSITIVE	REDACTED UNDER FOIA SECTION 40: COMMERCIALLY SENSITIVE	REDACTED UNDER FOIA SECTION 40: COMMERCIALLY SENSITIVE



Joint Schedule 7 (Cyber Security)

1 What certification you need

- 1.1 Where the Authority requires that the Supplier provides evidence of having taken steps to mitigate risks from cyber security threats prior to award of the first (1st) Call-Off Contract, the Supplier shall provide to the Authority:
- (a) a valid Cyber Essentials Certificate or Cyber Essentials Plus Certificate; or
 - (b) evidence (to the satisfaction of the Authority) that it has implemented and complies with the 10 Steps to Cyber Security.
- 1.2 Where the Supplier fails to comply with Paragraph 1.1, it shall be prohibited from commencing the carrying out of Works or the provision of Outputs under any Call-Off Contract until such time as the Supplier has evidenced to the Authority its compliance with Paragraph 1.1.
- 1.3 Where the Supplier continues to process data during the Call-Off Contract Period, the Supplier shall deliver to the Authority:
- (a) where it provided a Cyber Essentials Certificate or Cyber Essentials Plus Certificate under Paragraph 1.1(a), evidence of renewal of the Cyber Essentials Certificate or Cyber Essentials Plus Certificate on each anniversary of the first (1st) applicable certificate obtained by the Supplier under Paragraph 1.1(a); or
 - (b) where it provided evidence of implementation of and compliance with the 10 Steps to Cyber Security under Paragraph 1.1(b), evidence of continued compliance of the same on each anniversary of the date the evidence was first provided under Paragraph 1.1(b).
- 1.4 Where the Supplier is due to process data after the Call-Off Contract Effective Date of the first (1st) Call-Off Contract but before the end of the DPS Contract Period or Call-Off Contract Period of the last Call-Off Contract, the Supplier shall deliver to the Authority evidence of:
- (a) a valid and current Cyber Essentials Certificate or evidence that the Supplier has implemented and complies with the 10 Steps to Cyber Security before the Supplier processes any such Cyber Essentials Scheme Data; and
 - (b) either:
 - (i) renewal of the valid Cyber Essentials Certificate on each anniversary of the first (1st) Cyber Essentials Scheme certificate obtained by the Supplier under Paragraph 1.1(a); or
 - (ii) evidence of continued compliance of the same, on each anniversary of the date the evidence was first provided under Paragraph 1.4(a),

as appropriate.



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- 1.5 In the event that the Supplier fails to comply with Paragraphs 1.3 or 1.4 (as applicable) the Authority reserves the right to terminate this Contract for material Default.
- 1.6 The Supplier shall ensure that all Subcontracts with Subcontractors who Process Cyber Essential Scheme Data contain provisions no less onerous on the Subcontractors than those imposed on the Supplier under this Contract in respect of the Cyber Essentials Scheme under Paragraph 1.1 of this Schedule.
- 1.7 This Schedule shall survive termination or expiry of this DPS Contract and each and any Call-Off Contract.



Joint Schedule 8 (Rectification Plan Template)

Request for [Revised] Rectification Plan		
Details of the Rectification Plan Trigger Event:	[Supplier Guidance: Explain the details of the Rectification Plan Trigger Event, with clear schedule and clause references as appropriate]	
Deadline for receiving the [Revised] Rectification Plan:	[add date (minimum 10 Working Days from request or such other period as the Parties may agree)]	
Signed by the Authority:		Date:
Supplier [Revised] Rectification Plan		
Cause of the Rectification Plan Trigger Event	[add cause (including root cause analysis)]	
Anticipated impact assessment:	[add impact]	
Actual effect of Rectification Plan Trigger Event:	[add effect]	
Steps to be taken to rectification:	Timescale:	
1.	[date]	
2.	[date]	
3.	[date]	
4.	[date]	
[...]	[date]	
Timescale for complete rectification of Rectification Plan Trigger Event:	[X] Working Days	
Steps taken to prevent recurrence of Rectification Plan Trigger Event:	Timescale:	
1.	[date]	
2.	[date]	
3.	[date]	
4.	[date]	
[...]	[date]	
Signed by the Supplier:		Date:
Review of Rectification Plan by the Authority		
Outcome of review:	[Plan Accepted] [Plan Rejected] [Revised Plan Requested] [Escalated issues with Plan using the Dispute Resolution Procedure]	
Reason for Rejection (if applicable)	[add reasons]	
Signed by the Authority:		Date:



Joint Schedule 9 (Key Personnel)

1 Introduction

This Schedule sets out the Key Personnel for the purpose of this Contract and should be read in conjunction with Clauses 19.24 to 19.28 (Key Personnel) inclusive.

2 Key Personnel

Name	Role	Responsibilities	Employer	Full Time or Part Time	Expected Duration of Role
REDACTED UNDER FOIA SECTION 40: COMMERCIAL SENSITIVE	Supplier Contract / Commercial Lead	Responsible for ensuring: <ul style="list-style-type: none">commercial terms adhered to;Contract Changes updated and Contract revised; andaccurate and timely production of reports.	Freedom Fibre Ltd	Full Time	Contract Period
REDACTED UNDER FOIA SECTION 40: COMMERCIAL SENSITIVE	Supplier Project/Programme Lead	Responsible for Supplier delivery, including that each Milestone is Achieved on or before its Milestone Date.	Freedom Fibre Ltd	Full Time	Contract Period
REDACTED UNDER FOIA SECTION 40: COMMERCIAL SENSITIVE	Supplier Finance Director / Lead	<ul style="list-style-type: none">Assuring accurate and updated Financial Model and cost model; and	Freedom Fibre Ltd	Full Time	Contract Period



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		<ul style="list-style-type: none">accountable for payments, cost submissions and invoicing.			
REDACTED UNDER FOIA SECTION 40: COMMERCIALLY SENSITIVE	Supplier Technical Lead	Responsible for ensuring the Supplier Technical Solution is delivered in accordance with this Contract	Freedom Fibre Ltd	Full Time	Contract Period
REDACTED UNDER FOIA SECTION 40: COMMERCIALLY SENSITIVE	First Escalation Point Of Contact	Responsible for attempting to resolve a Dispute at the first (1 st) escalation point in accordance with Clause 60 (Governing Law and resolving Disputes)	Freedom Fibre Ltd	Full Time	Contract Period

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Call-Off Schedule 1 (Specification)

1 Definitions

- 1.1 Capitalised terms in this Schedule that are not defined in Joint Schedule 1 (Definitions and Interpretation) shall have the following meanings:

"Actual Data Speeds"	the download and upload speeds for: (a) Gigabit Capable Connectivity; and (b) Ultrafast Capable Connectivity;
"Antenna Aperture"	a mounting position on a telecom mast or other structure with a sufficient aperture (in azimuth and elevation) to allow effective wireless communications (e.g. for coverage or backhaul, etc.);
"Automated Retail Online Platform"	a range of interfaces, systems and processes which allow Communications Providers to deliver, maintain, cease or transfer an End User's retail broadband service, through the inputs needed to build a broadband access service;
"Bit-stream"	a telecommunications service provided to other providers and/or customers via the transfer of a stream of information bits (representations of 1's and 0's) typically over a standardised interface like Ethernet (IEEE 802.3) or similar, rather than provision of a basic physical, optical, electrical or wireless connection which could support other communication methods in addition to Bit-streams;
"BSS"	business support systems and software that support product management, order management, revenue management and customer management;
"Cabinet"	a free-standing (usually metal) enclosure which is weatherproof with ventilation and cable entry holes, usually placed outdoors and often on the side of the street, and has at least one (1) lockable door that may accommodate powered or house active equipment, electronic and optical telecommunications equipment, power supplies, and possibly air conditioning equipment to keep other equipment cool;
"Communications Provider" ("CP")	a provider of wholesale or retail internet services or other communications services to other communications providers, Retail Service Providers and/or End Users;



"Customer Ready for Service" ("CRFS")	a service can be ordered by a Communications Provider for an End User Premises with no excess construction charges being applied to the CP directly or indirectly, unless and to the extent that such excess construction charges are incurred due to a reason directly attributable to the private land of the End User or of any landlord of the End User, in accordance with Paragraph 4.6 (Stage Three (Monitor and Clawback));
"Dark Fibre"	optical telecommunication fibre that is unlit which requires a CP to provide network equipment at both ends in order to light it for use;
"Duct Standards"	<p>comprises:</p> <ul style="list-style-type: none">(a) Duct guidance (for external infrastructure): National Joint Utilities Group – Guidelines on the Positioning and Colour Coding of Utilities' Apparatus – April 2003;(b) the Building Regulations (in England, Wales and Northern Ireland) or the Building Standards (in Scotland) as appropriate. British Standards as appropriate with respect to Electrical Installations and Telecommunications Systems;(c) Highways Agency (or the Scottish Executive in Scotland) standards for man hole covers, man hole frames and ducting under roads for England, Wales and Northern Ireland or the Scottish Executive in Scotland;(d) CP 312-1: 1973 Code of practice for plastics pipe works (thermoplastics material) – General principles and choice of material. Reference to the appropriate guidance for the specifications of conduit systems for cable management. BS EN 50086-2.4 is a particular requirement for conduit systems underground; and(e) data ducting for new homes - https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/11496/dataducting.pdf



"Ducts"	a protective conduit (including joints and junctions between ducts) containing optical fibres, copper wires and/or smaller sub-ducts, installed in accordance with the relevant Duct Standards and excluding any conduit containing any non-communications services (e.g. water, gas, mains electricity etc.);
"Final Drop"	the final optical fibre or wireless connection from the nearest Point of Flexibility to End User Premises;
"Gigabit Gold Standard"	a download Access Line Speed capability of at least 1Gbps, with: (a) a Minimum Download Speed of at least thirty three percent (33%) of this download speed; and (b) an upload Technology Assessment Form speed of at least twenty percent (20)% of Minimum Download Speed;
"Gigabit Capable Technologies"	wholesale infrastructure which will support Gigabit Capable Connectivity for downstream wholesale and retail services directly or via third-party providers without restriction, as defined in the Technology Assessment Form for Gigabit Capable Solutions;
"Industry Standards"	manufacturers', network architecture, industry bodies' standards and industry accepted service levels, whether open or proprietary, as well as all relevant British, European and international standards including NICC, 3GPP, IEEE, IETF, ESTI, ITU, GSMA;
"Lead-to-Cash Process"	process which starts with a sales dialogue between a buyer and supplier which establishes that a product or service will meet the buyer's needs and ends when this need is fulfilled, the service is available to use and the supplier has been paid;
"Legacy Networks"	means any pre-existing broadband networks whether commercial or subsidised;
"MACD"	moves, adds, changes and disconnects;
"Mast"	a free-standing tall structure upon which telecom infrastructure (typically wireless antennae) are mounted including, where present, any co-sited cabinets and other ancillary equipment (powered or unpowered, power supplies, electricity generators, batteries, safety equipment, security equipment and cables) and structures (foundations, steelworks, guylines, cabins, fuel tanks,



	boundary fencing, gates and purpose-built access roads) etc.;
"Mbps"	megabits per second;
"Minimum Download Speed"	The minimum download speed measured with standard tools, which should be achieved for ninety five percent (95%) of measurements in the Busiest Hours in accordance with standard industry practice which is normal operating procedure, using such measurement methods which exclude degradations caused by factors outside of the Supplier's control, for example bottlenecks in the RSP's network, and/or variable Wi-Fi performance at the End User's site;
"Network Availability"	Ninety-nine point five percent (99.5%) being the percentage of time measured over any period (typically one (1) Month or year) where network services are available to a customer or group of customers;
"Network Levels"	means the levels of the Network as described by the Supplier and set out in the Financial Model;
"Network Upgrades"	hardware and/or software upgrades or modification to the Network including to CPE, backhaul and other core and access network components;
"NICC"	NICC Standards Limited, being a technical forum for the UK communications sector that develops interoperability standards for public communications networks and services in the UK. It is an independent organisation owned and run by its members;
"Nodes"	elements of the Network which aggregate or distribute network traffic via network links either to other Nodes and/or to End User Premises and as specified in the Financial Model;
"Open Access"	separation of access to the network from delivery of services, where the owner or operator of the network allows other Communication Providers to make use of the facilities for the provision of Wholesale Access Products and Services on terms which are fair and non-discriminatory in respect of pricing, technical availability, service levels and other commercial terms between the other communication providers and the owner or operator of the Network;



"OSS"	operational support system which comprises software applications (and relevant hardware) that support back-office activities in a telecommunications service provider's network including processes such as maintaining network inventory, provisioning services (the process of preparing and equipping a network to allow it to provide services to its users), configuring network components, and managing faults. The OSS layer contains the infrastructure for technical network management;
"Point of Presence"	a location that exists within a core telecommunications network or backhaul network including data centres, exchanges and similar network aggregation points which would normally provide mains power for use by CPs;
"Points of Flexibility"	<p>points of aggregation, distribution or interconnection (with other providers and/or customers) within a network, including, but not limited to, the following, and equivalents irrespective of the nomenclature used:</p> <ul style="list-style-type: none">(a) originating and terminating nodes;(b) points of presence;(c) exchanges;(d) aggregation nodes;(e) splitter nodes;(f) distribution nodes/points;(g) distribution frames;(h) patch panels;(i) cabins/cabinets(j) chambers;(k) footway boxes;(l) splice pits;(m) joints; and(n) junctions;



"Pole"	a free-standing (e.g. on the ground) or mounted (e.g. on a building) long, usually-cylindrical object upon which telecom infrastructure (typically cables or wireless antennae) are mounted;
"Reasonable Demand"	meaning: <ul style="list-style-type: none">(a) the access seeker provides a coherent business plan which justifies the development of the wholesale product on the funded Network;(b) no comparable wholesale product is already offered in the same geographic area by another Service Provider at equivalent prices to those of more densely populated areas; and(c) the introduction of the new wholesale product should deliver sustainable and effective competition in the downstream market(s);
"Reference Offer"	the following information for each of the Supplier's Wholesale Access Products and Wholesale Access Products and Services: <ul style="list-style-type: none">(a) a basic product description;(b) process and how to order information;(c) functional specifications;(d) contractual details of any agreement between the Supplier and the Service Provider; and(e) pricing information;
"Service Level Agreement"	the Suppliers committed service levels and standards for each of its Wholesale Access Products and Services and Wholesale Passive Products, as suitable for the market in which it operates which describe, including but not limited to the following; <ul style="list-style-type: none">(a) the information provided in a Reference Offer;



	<ul style="list-style-type: none">(b) any obligations on the Service Provider when ordering (i.e. how to order);(c) specification and service quality;(d) availability;(e) performance targets;(f) metrics/measurement methods/reporting;(g) service credits;(h) contract terms (including the responsibilities between the Supplier and Service Providers);(i) pricing;(j) termination conditions; and(k) dispute escalation/resolution;
"Service Levels"	the service levels set out in Paragraph 10 (Service Levels);
"Service Providers"	means each of the following: <ul style="list-style-type: none">(a) a Communications Provider; or(b) Retail Service Provider;
"Shared Antennae Systems"	wireless antennae systems where multiple Service Providers feed radio signals to the same antennas;
"Symmetrical"	the capability of the network devices to transmit and receive data at equal rates;
"Traffic Shaping"	is a bandwidth management technique that delays the flow of certain types of network packets in order to ensure network performance for higher priority applications;
"Ultrafast Capable Connectivity"	ultrafast download speeds of at least 300Mbps delivered across the Network;
"Ultrafast Gold Standard"	a download Access Line Speed capability of at least 300 Mbps with: <ul style="list-style-type: none">(a) a Minimum Download Speed of at least thirty three percent (33%) of this download speed; and



	(b) an upload speed of at least twenty percent (20%) of Minimum Download Speed;
"VULA"	Virtual Unbundled Local Access; and
"Wholesale Access Requirements"	the wholesale access requirements which the Supplier must meet as set out in Paragraphs 5 (General Wholesale Access Requirements) to 7 (General forms of Network access).

2 Stage One (Network Detailed Design and Due Diligence)

2.1 Paragraphs 2.2 and 2.3 apply where Paragraph 6 (Stage One (Network Detailed Design and Due Diligence) approach) of the Call-Off Award Form specifies that the Supplier will be carrying out a full Stage One (Network Detailed Design and Due Diligence).

2.2 The overall outcome of Stage One (Network Detailed Design and Due Diligence) is completion of a network detailed design, due diligence, surveying and project planning for Stage Two (Build) in accordance with the Project Plan.

2.3 On or before the Milestone Date for the Stage One (Network Detailed Design and Due Diligence) Complete Milestone, the Supplier shall:

(a) provide confirmation that it has completed the Network Detailed Design through a Survey of the Works Environment and shall provide Survey documentation that will evidence Achievement in accordance with the Stage One (Network Detailed Design and Due Diligence) Complete Milestone Milestone Criteria;

(b) provide a network detailed design which:

- (i) is capable of providing the required Access Line Speeds to all End User Premises in the Intervention Area in accordance with the Specification and the Supplier Solution;
- (ii) demonstrates there is sufficient capacity to meet the Supplier's Take-up forecast set out in the Supplier ITT Response and is capable of meeting the future capacity upgrade requirements set out in this Specification;
- (iii) demonstrates that all Wholesale Access Requirements set out in this Specification will be met;
- (iv) shall be in a format that is accessible to the Authority and shall comprise a suitably detailed diagrammatic representation of the Network that will be deployed as part of the Works and shall demonstrate that the Network:
 - (A) fully aligns to the Network elements for the corresponding Network Levels set out in the Financial Model;



- (B) identifies each Node on the Network, with each Node having a corresponding unique Node identifier and Network Level associated with it;
 - (C) demonstrates all End User Premises are connected to Nodes and other Network elements that will be built as part of the Network and are fully aligned to the Financial Model;
 - (D) will provide the relevant Access Line Speeds to all End User Premises in the Intervention Area;
 - (E) has sufficient capacity to meet the Supplier's Take-up forecast;
 - (F) will meet all of the Wholesale Access Requirements; and
 - (G) can be built in accordance with the Project Plan;
 - (c) provide all of the information required in accordance with the Stage One Output as set out in Clause 15.3 (Call-Off Contract Reports); and
 - (d) carry out any applicable Planning Activities in accordance with the Project Plan.
- 2.4 Paragraph 2.5 applies where Paragraph 6 (Stage One (Network Detailed Design and Due Diligence) approach) of the Call-Off Award Form specifies that the Supplier will be carrying out an expedited Stage One (Network Detailed Design and Due Diligence).
- 2.5 On or before the Milestone Date for the Stage One (Network Detailed Design and Due Diligence) Complete Milestone, the Supplier shall, provide written confirmation to the Authority that any relevant network design activities that the Supplier intended to carry out during the expedited Stage One (Network Detailed Design and Due Diligence) are complete and remain in accordance with the Project Plan as at the Effective Date.
- 3 Stage Two (Build)**
- 3.1 The overall outcome of Stage Two (Build) is to complete the Stage Two (Build) Works in accordance with this Specification, the Supplier Solution and the terms of the Contract to deliver an operationally ready Network in respect of all End User Premises in the Intervention Area.
- 3.2 On or before the Milestone Date for the Stage Two (Build) Complete Milestone, the Supplier shall:
- (a) complete the Network and evidence it meets each of the requirements set out in Paragraph 2.3(b) (Stage One (Network Detailed Design and Due Diligence));
 - (b) confirm and evidence that the applicable Tests have been successfully completed in accordance with Call-Off Schedule 5 (Project Plan and Testing) including Customer Ready for Service (CRFS) for each End User Premises in the Intervention Area;



- (c) provide test data to sufficiently demonstrate proof of full functionality of the Supplier's OSS and BSS systems including demonstrating that at least one (1) available Wholesale Access Product and Service is available to Retail Service Providers through the OSS and BSS systems;
 - (d) demonstrate that each End User Premises in the Intervention Area is available and visible to Retail Service Providers on the Suppliers' RSP interface systems so that retail services can be sold by RSPs;
 - (e) provide all of the information required in accordance with the Stage Two Progress Report as set out in Clause 15.3 (Call-Off Contract Reports); and
 - (f) carry out any applicable Planning Activities in accordance with the Project Plan.
- 3.3 The Supplier shall provide upon request of the Authority copies of 'As-built' documentation (including reasonable access to that documentation) for the applicable Network infrastructure. Any such 'As built' documentation shall contain an updated inventory of Network sub-components and locations sufficient to comply with corresponding Subsidy Control Regime requirements.
- 4 **Stage Three (Monitor and Clawback)**
 - 4.1 The overall outcome of Stage Three (Monitor and Clawback) is:
 - (a) to monitor:
 - (i) the Supplier's compliance to the Wholesale Access Requirements;
 - (ii) Take-up of Wholesale Access Products and Services and Wholesale Passive Products; and
 - (iii) the Service Levels; and
 - (b) to calculate any clawback required under and in accordance with the terms of the Contract.
 - 4.2 The Supplier shall ensure that Wholesale Access Products and Services and Wholesale Passive Products are made available, operated and maintained for the duration of each Call-Off Contract, providing Access Line Speeds at the required speeds specified in each Call-Off Contract to all End User Premises in accordance with the Specification and Supplier Solution.
 - 4.3 The Supplier shall maintain operational OSS and BSS systems, providing Service Providers the ability to access all Wholesale Access Products and Services and Wholesale Passive Products.
 - 4.4 The Supplier shall ensure that each End User Premises can be provisioned (if a Service Provider orders corresponding Wholesale Access Products and Services) with any Wholesale Access Product and Service as set out in the i.Products and Services table of the Financial



Model or subsequent r.Products and Services tables as part of the Stage Two Progress Report and Stage Three Report.

- 4.5 The Supplier shall ensure that the minimum download speeds identified in Paragraphs 8.3 and 8.4 (Wholesale Access Products and Services and Wholesale Passive Products requirements) are maintained for each Wholesale Access Product and Service for the duration of each Call-Off Contract. In the event that such minimum download speeds are regulated by a new minimum set by the Regulator, or in accordance with Good Industry Practice, such new minimum download speeds shall apply for the duration of each Call-Off Contract. On becoming aware of the new minimum download speeds, the Supplier shall promptly provide confirmation of such to the Authority for its written approval.
- 4.6 The Supplier shall ensure that no End User Premises will be subject to any excess construction charges, unless and to the extent that such excess construction charges are incurred due to a reason directly attributable to the private land of the End User or of any landlord of the End User, for the provision of Wholesale Access Products and Services, levied by the Supplier upon the Service Provider, such that such Service Provider can provide Gigabit Capable Connectivity, or where applicable Ultrafast Capable Connectivity, to End Users based on its standard installation charges for similar services.
- 4.7 The Supplier shall ensure that Wholesale Passive Products are made available and maintained for the duration of each Call-Off Contract at the required Service Levels in accordance with the Specification and Supplier Solution.
- 4.8 The Supplier shall ensure that the Wholesale Passive Products meet the Wholesale Access Requirements in perpetuity.
- 4.9 The Supplier shall ensure that for the duration of each Call-Off Contract, all Service Levels are maintained for all Wholesale Access Products and Services and Wholesale Passive Products and that the Network is maintained in accordance with the Specification and to the required Industry Standards.
- 4.10 The Supplier shall provide all of the information required in accordance with the Stage Two Progress Report, Stage Three Report and the Wholesale Access Prices Benchmarking Report as set out in Clause 15.3 (Call-Off Contract Reports).

5 General Wholesale Access Requirements

- 5.1 The Supplier Solution must be compliant with the terms of this Contract and this Specification.
- 5.2 The Supplier Solution must provide a Gigabit Capable Connectivity Network utilising qualifying Gigabit Capable Technologies, or where allowable only where specified by the Authority in the Call-Off Contract, an Ultrafast Capable Connectivity Network that can deliver broadband services in accordance with the requirements in this Specification.
- 5.3 Subject to Paragraph 6.2, the Supplier shall provide access to all Wholesale Access Products and Services and Wholesale Passive Products across the Network without limitation under fair and non-discriminatory conditions and for any reasonable purpose (for example mobile backhaul, private circuits and CCTV services):



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- (a) to all Service Providers who request it without delay or restriction; and
 - (b) to any individual or other organisation who can reasonably demonstrate that it has the necessary competence to utilise the Wholesale Access Products and Services and Wholesale Passive Services requested in a lawful manner.
- 5.4 The Supplier shall provide to Service Providers and any individual or organisation as set out in Paragraph 5.3:
 - (a) Wholesale Access Products and Services for at least seven (7) years following Achievement of the Stage Two (Build) Complete Milestone; and
 - (b) Wholesale Passive Products in perpetuity.
- 5.5 If the Network or any part of it is sold or otherwise transferred to the ownership of a third-party, other than the Supplier, then subject to the Change of Control provisions set out at Clauses 6.11 to 6.13 (Change of Control), all obligations in respect of wholesale access must be transferred to the new owner of the Supplier and/or of the Network and shall apply for the required period as set out in this Specification.
- 5.6 Where the Supplier also operates as a Retail Service Provider either directly or through another group or subsidiary company, it shall ensure a Reference Offer is transparently published to the market and made available to Service Providers at least six (6) months prior to its own Retail Service Provider commencing the marketing, sale and installation of retail services to End Users.
- 5.7 Where Paragraph 5.6 applies, the Supplier and its associated Retail Service Provider shall ensure at all times full accounting separation is in place between each organisation including ensuring the transfer pricing of Wholesale Access Products and Services from the Supplier to its associated Retail Service Provider occurs on a fully transparent and non-discriminatory basis.
- 5.8 The Supplier Solution must deliver a Network which represents a Step Change in terms of broadband availability. This can be achieved by demonstration of all the following:
 - (a) Access Line Speeds have to be at least doubled by the intervention and substantially higher upload speeds provided when compared with existing upload and download speeds;
 - (b) significant new investments in the broadband network are undertaken (i.e. investments that must include civil works and installation of new passive elements); and
 - (c) the new infrastructure brings significant new capabilities to the market in terms of broadband service availability, capacity and speeds and / or competition.
- 5.9 The Supplier must provide:
 - (a) Open Access to the Network; and

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- (b) Wholesale Access Products and Services and Wholesale Passive Products on an open, fair, reasonable, equal and non-discriminatory basis. The Wholesale Access Prices shall be benchmarked in accordance with Paragraph 5 (Wholesale Access Pricing) of Call-Off Schedule 4 (Financial Schedule).
- 5.10 The Supplier Solution shall utilise existing infrastructure and facilities where it is technically feasible, cost effective and commercially viable to do so. This can be achieved through:
 - (a) use of own infrastructure;
 - (b) use of another supplier's infrastructure; and
 - (c) use of other utilities infrastructure.
- 5.11 The Supplier shall provide the Access to Infrastructure information in each Stage Two Progress Report in accordance with Clause 15.3 (Call-Off Contract Reports).
- 5.12 The Supplier shall implement and maintain an asset register which provides details of all new and existing infrastructure created or used as part of the funded Network and which therefore becomes subject to the terms of each Call-Off Contract. The Supplier shall provide public access to such asset register subject to appropriate access controls in perpetuity.
- 6 Specific forms of Network access**
- 6.1 The Supplier shall make Wholesale Access Products and Services and Wholesale Passive Products available to Service Providers with the corresponding Wholesale Access Requirements as required by the specific form of technology deployed, as specified.
- 6.2 All infrastructure used by the Supplier as part of the Network, including both new and existing infrastructure shall be subject to the Wholesale Access Requirements. Existing infrastructure shall support all forms of the Wholesale Access Requirements where:
 - (a) technically feasible (e.g. given reasonable loading factors and existing capacity); and
 - (b) legally feasible (e.g. where conditions placed on access to existing infrastructure or other commercial terms imposed by an infrastructure owner would not prevent the Wholesale Access Requirements being met),
- except where the Regulator does not oblige the specific form of access to be provided on the Service Providers existing infrastructure and where such access is at the sole discretion of the Service Provider.
- 6.3 The Supplier shall provide a passive network interconnect to any new or existing infrastructure built outside the Intervention Area to the extent such infrastructure is used to deliver services in the Intervention Area. In practical terms, this will mean the Supplier shall provide access between the nearest network access points outside the Intervention Area which is nearest to the infrastructure in the Intervention Area (e.g. the nearest footway box in the case of Duct access).



Ducts

6.4 The Supplier shall ensure that:

- (a) any funded physical infrastructure located underground with an individual length of at least 1.0km and deployment costs of fifty thousand pounds sterling (£50,000) or greater deployed as part of the Network shall comply with the relevant Duct Standards and be configured to support at least three (3) competing Service Providers and designed to support alternative technologies (e.g. sub-duct or cabling) with similar sizes and/or physical characteristics as that deployed by the Supplier as part of its Supplier Solution; and
- (b) access shall be provided to all Points of Flexibility.

Poles

6.5 The Supplier shall ensure that:

- (a) any funded physical infrastructure located overhead where the poles will be deployed over a distance of 1.0km and have deployment costs of fifty thousand pounds sterling (£50,000) or greater deployed as part of the Network shall be configured to support at least three (3) competing Service Providers to install suspended Duct or Dark Fibre infrastructure including joint, junction and distribution nodes; and
- (b) where active network equipment is installed on Poles then the access requirements applied shall be fully consistent with that required for Masts.

Dark Fibre

6.6 The Supplier shall ensure that:

- (a) new Dark Fibre infrastructure deployed as part of the Network is configured to support at least three (3) competing Service Providers with access made available at appropriate Points of Flexibility in the Network comprising:
 - (i) the telephone exchange, Point of Presence optical distribution frame or equivalent;
 - (ii) Cabinets or similar local distribution points; and
 - (iii) all relevant Points of Flexibility.

6.7 Where Dark Fibre is provided in accordance with Paragraph 6.6, the Supplier shall ensure that access is provided for at least three (3) competing Service Providers to ensure that:

- (a) access is made available to all Network elements, except the Final Drop and where access is not made to the Final Drop then Suppliers must provide an active wholesale access facility as an alternative for other Services Providers to provision services across e.g. via VULA or similar technology;



- (b) in any circumstances where Final Drops or the distance to the last Point of Flexibility is unreasonably long, considering geography and premise density, then Dark Fibre access for three (3) competing Service Providers is required for those Final Drops together with reasonable access to an appropriate Point of Flexibility nearer to the premises;
- (c) there is sufficient space for active and optical equipment of a size and type similar to that used by the Supplier as part of the Network; and
- (d) there is sufficient space for power supplies (metered or unmetered) and equivalent to the Supplier's power supplies in all other respects.

Cabinets

- 6.8 The Supplier shall ensure that new Cabinet infrastructure deployed as part of the Network is configured to support at least three (3) competing Service Providers with access to a mains power supply and sufficient Cabinet space for co-location of equipment.
- 6.9 Extra-large Cabinets to accommodate at least three (3) competing Service Providers do not need to be provided as part of the Stage Two (Build) Works; however Suppliers are required to develop designs that would comply with local planning regulations and reasonable landowner conditions and shall upgrade Cabinets with sufficient space and capacity or install new Cabinets to meet the competing Service Providers requests where such requests can be provided legally and in accordance with Local Authority planning regulations.

Masts

- 6.10 The Supplier shall ensure that new Mast infrastructure deployed as part of the Network is configured to support at least three (3) competing Service Providers with access to Mast space, Antenna Apertures and an existing mains power supply.
- 6.11 Extra-large Masts to accommodate at least three (3) competing Service Providers do not need to be provided as part of the Stage Two (Build) Works; however Suppliers are required to develop designs that would comply with local planning regulations and reasonable landowner conditions and shall upgrade Masts with sufficient space and capacity or install new Masts to meet the competing Service Providers requests where such requests can be provided legally and in accordance with Local Authority planning regulations.

Antennae

- 6.12 The Supplier shall ensure that Shared Antennae Systems may be deployed as part of the Network where technically feasible, and provide for the sharing of any antennae systems operated by the Supplier, in particular where planning regulations could impede other forms of Mast capacity expansion.

Active Bit-Stream access

- 6.13 The Supplier shall ensure that:



- (a) for all infrastructure deployed as part of the Network, Bit-stream access for broadband and associated Backhaul is provided to Service Providers at appropriate Points of Flexibility such as telephone exchanges, Points of Presence or Cabinets (e.g. for VULA or equivalent);
- (b) new Network infrastructure is either dimensioned to meet the likely capacity requirements of Service Providers, or must be capable of being upgraded to meet it on demand. Existing infrastructure must support the capacity requirements of Service Providers where technically feasible;
- (c) Bit-stream access is provided over standardised or fully defined technical interfaces; and
- (d) where Bit-stream access is requested by Service Providers, the Supplier shall ensure that all other associated equipment access requirements are met in accordance with this Paragraph 6.13.

7 General forms of Network access

The Supplier shall make new forms of Network access over and above the Specific Forms of Network Access set out in Paragraph 6, to both existing and new Network infrastructure used in the Intervention Area where requested by any Service Provider demonstrating Reasonable Demand for a wholesale product that is not already available.

8 Wholesale Access Products and Services and Wholesale Passive Products requirements

- 8.1 The Supplier shall design, deliver, operate and maintain for the duration of the each Call-Off Contract Period an Open Access Network which supports where applicable, Gigabit Capable Connectivity, Ultrafast Capable Connectivity and all Wholesale Access Products and Services and Wholesale Passive Products to downstream Service Providers without restriction.
- 8.2 The Supplier Solution shall provide, where applicable, Gigabit Capable Connectivity, Ultrafast Capable Connectivity and all Wholesale Access Products and Services and all applicable Wholesale Passive Products from the period commencing on the date on which the first (1st) Premises is available for Take-up and ending on the Expiry Date without the need for future Network Upgrades.
- 8.3 The Supplier shall ensure that the Wholesale Access Products and Services and Wholesale Passive Products which are required to meet the Gigabit Capable Connectivity requirements to provide at least one Gigabit Gold Standard Wholesale Access Products and Services, and optionally, other Wholesale Access Products and Services set out in the Supplier ITT Response (all products to be capable of being upgraded, including up to the Gigabit Gold Standard, upon demand).
- 8.4 Where applicable, the Supplier shall ensure that the Wholesale Access Products and Services and Wholesale Passive Products which are required to meet the Ultrafast Capable Connectivity requirements to provide at least one Ultrafast Gold Standard Wholesale Access Product and Service, and optionally, other Wholesale Access Products and Services set out



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in the Supplier ITT Response (all products to be capable of being upgraded, including up to the Ultrafast Gold Standard, upon demand).

- 8.5 Actual Data Speeds and performance shall not degrade outside of the Busiest Hours below ninety-five percent (95%) of the download Access Line Speed and upload Access Line Speed specified for Gigabit Capable Connectivity as set out in Paragraph 8.3 and for Ultrafast Capable Connectivity as set out in Paragraph 8.4. In the event that such minimum download speeds are regulated by a new minimum set by the Regulator, such new minimum download speeds shall apply for the duration of each Call-Off Contract. On becoming aware of the new minimum download speeds, the Supplier shall promptly provide confirmation of such to the Authority for its written approval.
- 8.6 Any period where any of the criteria set out in Paragraph 8.3 and 8.4 are not met shall be recorded as service and/or network non-availability. The Supplier shall proactively monitor and measure such criteria and any failure of the Supplier to comply with its obligations under Paragraphs 8.3 and 8.4 shall constitute a Rectification Plan Trigger Event.
- 8.7 The Supplier shall provide Wholesale Access Products and Services and Wholesale Passive Products which support low data latency in accordance with the Regulator's regime or codes of practice and Industry Standards for the requirements of real-time services (or otherwise, in the absence of prevailing standards, 10 ms and below for ninety-five percent (95%) of the time).
- 8.8 The Supplier shall ensure the Network supports real-time services (e.g. voice/video calling, telematics, telemedicine etc.) with performance indicators (e.g. jitter, packet loss etc.) in line with recent Industry Standards, or in the absence of Industry Standards, 2ms for jitter, zero point one percent (0.1%) for packet loss for ninety-five percent (95%) of the time.
- 8.9 The Supplier's infrastructure shall support Actual Data Speeds and performance that do not degrade below the Gigabit Gold Standard (or where appropriate the Ultrafast Gold Standard) as Take-up of Wholesale Access Products and Services and Wholesale Passive Products approaches one hundred percent (100%) of the Intervention Area (including any part arising from switch-off of Legacy Networks).
- 8.10 The Supplier shall ensure that its Wholesale Access Products and Services are provided on a fair and reasonable basis.
- 8.11 The Supplier shall provide a firm commercial and technical plan which demonstrates that the Actual Data Speeds will not degrade below the minimum requirements including showing the capacity upgrades that will be made to maintain the Actual Data Speeds based on the Supplier's Take-up forecasts for seven (7) years from Achievement of the Stage Two (Build) Complete Milestone.
- 8.12 The Supplier shall provide a suite of Wholesale Access Products and Services that are capable of providing both symmetric and asymmetric services to Service Providers in order to meet the requirements of End Users.



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- 8.13 The i.Products and Services table of the Financial Model shall set out the Supplier's range and Wholesale Access Prices which shall be published and made available in a transparent, visible and easily accessible format to Service Providers.
- 8.14 The Supplier shall develop and configure new or existing Wholesale Access Products and Services and Wholesale Passive Products on a regular basis throughout the Call-Off Contract Period in line with reasonable Service Provider requirements and the goal of maximising Take-up.

Regulatory Framework

- 8.15 The Regulator may mandate a change on the regulatory access requirements for any Communications Provider with Significant Market Power (as defined under the applicable regulatory rules of the Regulator). Where any change places a greater obligation than the wholesale access conditions set out in Paragraphs 5 to 8 of this Specification, any supplementary or increased regulatory or access requirements shall be deemed automatically included in this Specification, and its terms shall be amended accordingly.

9 Operations

- 9.1 The Supplier shall provide the same Automated Retail Online Platform (capable of handling volume transactions) for use by all Communications Providers. Where the Supplier is developing new systems and associated processes, these shall align with relevant Industry Standards for the service management.
- 9.2 The Supplier shall provide a Lead-to-Cash Process to support Communications Providers which, as a minimum, shall include the following:
- (a) order entry;
 - (b) order fulfilment such as line testing;
 - (c) distribution;
 - (d) billing and invoicing; and
 - (e) buyer payment/collection.
- 9.3 The Supplier Solution shall include capabilities so as to be able to service MACDs.
- 9.4 The Supplier shall provide full OSS facilities to provide high quality and on-going operational management to Communications Providers, and which as a minimum shall include:
- (a) maintaining network inventory (including both physical and logical);
 - (b) providing Communications Providers with location-based, capacity management information for all offered products on funded infrastructure;
 - (c) provisioning services;

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- (d) configuring network components;
 - (e) monitoring and managing performance using relevant performance indicators;
 - (f) monitoring and managing faults;
 - (g) trouble-ticketing; and
 - (h) service assurance.
- 9.5 The Supplier's OSS shall be designed so as to be capable of being scaled to manage increased Take-up delivered by Communications Providers as necessary to a level that at least meets the Supplier's Take-up forecast in the i.Take-up – Connections and i.Take-up – Disconnections tables in the Financial Model and can be scaled to one hundred percent (100%) of all End User Premises connected to the Network. All OSS/BSS Supplier systems that are not as at the date of this Call-Off Contract capable of dealing with the required volumes of operations shall be upgraded as part of the Works so as to become compliant with the NICC business to business specifications or equivalent Industry Standards.
- 9.6 The Supplier shall operate a BSS, which as a minimum shall include the following business to business processes:
- (a) Communications Providers contact service;
 - (b) customer relationship management;
 - (c) order management;
 - (d) order fulfilment;
 - (e) service activation; and
 - (f) billing and invoicing.
- 9.7 The Supplier's BSS shall be designed so as to be capable of being scaled to manage increased Take-up delivered by Communications Providers to the same levels as specified in Paragraph 9.5.
- 9.8 The Supplier shall provide a service management model which describes the processes and communication needed to address disputes with and complaints from Communications Providers, including a dispute escalation procedure.
- 9.9 The Supplier shall have standard OSS and BSS processes and procedures for Communications Providers. These shall, as applicable, comply with the relevant NICC standards, or Industry Standards, or achieve functions/performance levels that are equivalent to or better than those standards.
- 9.10 The Supplier Solution shall enable Communications Providers to adhere to the Regulator's approved code of practice for complaints handling as the same may be amended, updated or replaced from time to time.

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10 Service Levels

- 10.1 The Supplier shall include a clear Service Level Agreement for each Wholesale Access Product and Service and Wholesale Passive Product, which as a minimum shall accord with the Supplier's published specifications, Industry Standards or as superseded by the Regulator's prevailing regulation or codes of practice.
- 10.2 The Supplier's Reference Offer shall meet the Actual Data Speed, latency, jitter and packet loss requirements of the Wholesale Access Requirements for each service that is offered.
- 10.3 The Supplier shall ensure that rectification is completed within typical Industry Standard timescales, supported by demonstrably efficient wholesale service management processes.
- 10.4 The Supplier shall ensure that its Service Level Agreements for appointments, order fulfilment and fault management are completed within typical Industry Standard timescales, supported by demonstrably efficient wholesale service management processes. This shall be supported by the following expected performance standards as a minimum:
- (a) For Wholesale Access Products and Services the Supplier shall maintain and report minimum Service Levels calculated on a monthly basis, in accordance with the Regulator's prevailing relevant regulation or relevant codes of practice or the following:
 - (i) completion of eighty eight percent (88%) of fault repairs within two (2) Working Days of being notified;
 - (ii) completion of ninety seven percent (97%) of fault repairs no later than five (5) Working Days after the completion date committed;
 - (iii) provide an appointment for ninety percent (90%) of new service installations with ten (10) Working Days of being requested; and
 - (iv) complete installation of ninety five percent (95%) of connections on the date agreed between the Supplier and the Communications Provider,where each of the definition of what constitutes a fault repair, appointments for new service installation and completion of connection installations is in accordance with the Supplier's own standard operating procedures or, where these are not available, in accordance with typical Industry Standards; and
 - (b) For Wholesale Passive Products as calculated on a monthly basis based upon the Supplier's corresponding service levels (if different from those set out in Paragraph 10.4(a)) for each Wholesale Passive Product which must as a minimum meet Industry Standards.
- 10.5 The Supplier shall maintain customer Service Levels and Network Availability in line with Industry Standards.



- 10.6 The Supplier shall ensure it does not unfairly discriminate against particular types of Wholesale Access Products and Services and Wholesale Passive Products, Service Providers, End Users or other third parties through, but not limited to Traffic Shaping, Service Level Agreements or other quality of service measures. This shall be set out by the Supplier in each Service Level Agreement.
- 10.7 The Supplier shall proactively monitor and measure Service Levels and Network Availability to Services Providers and/or End Users and shall promptly report any non-conformance to its Service Level Agreements to the Authority (subject to any third party confidentiality obligations).
- 10.8 The Supplier shall establish a trouble ticketing system which shall be described in each Service Level Agreement for all Wholesale Access Products and Services and Wholesale Passive Products.
- 10.9 The Supplier shall implement and maintain a complaint escalation process which shall be described in each Service Level Agreement for all Wholesale Access Products and Services and Wholesale Passive Products.

11 **Project and Contract management**

- 11.1 The Supplier shall carry out the Works, and provide the Outputs in accordance with the Project Plan, and shall:
- (a) adopt a standard project management approach; and
 - (b) meet, communicate and cooperate with the Authority as required in accordance with each Call-Off Contract to allow the Authority to adequately understand progress of the project, Achievement of Milestones and associated issues and risks.
- 11.2 The Supplier shall comply with the Supplier Solution, including:
- (a) its approach to engaging with external stakeholders including:
 - (i) identifying all relevant national, local, community, industrial, environmental and other stakeholders with planned communications for each; and
 - (ii) the complaint handling and escalation procedure for stakeholders;
 - (b) its approach to managing Subcontractors and suppliers in the supply chain, including:
 - (i) identifying which roles and stages are to be undertaken by a Subcontractor; and
 - (ii) ensuring it has an up-to-date overview of its supply-chain and management processes to be used;
 - (c) its approach to cost and quality control measures, including:



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- (i) the processes and procedures for project budget setting and management, and for ongoing cost optimisation and value engineering;
 - (ii) its assumptions used to calculate the level of public sector funding required and the sensitivity of these assumptions;
 - (iii) any contingency included within build costs;
 - (iv) details of the finance management processes, including with respect to audit; and
 - (v) quality management process, including standards, tools and key performance indicators used by the Supplier to carry out the Works and/or provide the Outputs;
- (d) its process for maintaining and updating the Risk and Issue Register and method for reporting risks and issues to the Authority;
- (e) its approach to planning, including:
 - (i) the tools, procedures and methods used for programme planning, including any industry-standard frameworks and models to be used e.g. PRINCE 2; and
 - (ii) liaising with local planning authorities, including ensuring compliance with their requirements and co-ordinating street works to avoid unnecessary local disruption. Its approach to wayleaves and contingencies to mitigate against issues such as delays to achieving planning permission, road closure orders etc.; and
- (f) its approach to its contract delivery team, including:
 - (i) maintaining the Key Personnel during the Contract Period; and
 - (ii) ensuring the relevant technical and professional resources are available in the Supplier's organisation to enable the carrying out of the Works and provision of the Outputs (e.g. staff qualifications including details of Supplier Staff training programmes, for each of the following staff groups – back office staff, supervisors, enforcement agents);
- (g) its approach to contract management, including:
 - (i) attendance at the Governance Meetings including delegates, where required; and
 - (ii) timely provision of all meeting slide packs;
- (h) its approach to DPS Reports and Call-Off Contract Reports, including:

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- (i) the timely provision of DPS Reports and Call-Off Contract Reports and any additional requested reports; and
- (ii) ensuring the relevant technical and professional resources have certified all reports.

11.3 The Supplier shall produce and maintain suitable documentation, information and records such that it can at all times demonstrate to the Authority on request that the Supplier Solution will provide the required Network performance as required by this Specification.

12 Take-up & marketing

12.1 The Supplier shall ensure that the Wholesale Access Products and Services and Wholesale Passive Products support Retail Service Providers in gaining Take-up for the duration of the Call-Off Contract Period.

12.2 The Supplier shall create and deliver within the timescales specified in the Project Plan a detailed marketing strategy (including a programme of activities) which supports the maximum Take-up during the term of each Call-Off Contract for where applicable, Gigabit Capable Connectivity, Ultrafast Capable Connectivity and all Wholesale Access Products and Services and Wholesale Passive Products.

12.3 As a minimum the Supplier's Take-up and marketing strategy shall provide for:

- (a) white label generic unbranded marketing to encourage maximum End User Take-up;
- (b) white label generic unbranded marketing approaches for where applicable, Gigabit Capable Connectivity and Ultrafast Capable Connectivity campaigns;
- (c) the establishment of a marketing resources to support Take-up; and
- (d) a range of marketing communications channels (examples: web, social media, newspaper, radio, brochures, stickers etc.) to ensure maximum coverage of information during the Network deployment.

12.4 The Supplier shall propose a methodology for measuring Take-up and also set out how Take-up will be validated and shared with the Authority as part of its Supplier Solution.

12.5 The Supplier shall provide reports on the adoption by Service Providers of Wholesale Access Products and Services in accordance with the requirements of the Stage Two Progress Report and the Stage Three Report.

12.6 The Supplier shall engage with local businesses, residents and communities to provide information in respect of deployment of the Network and general information relating to the type of services that will be made available by Service Providers in order to stimulate Take-up.



13 **Social Value**

- 13.1 The Supplier shall comply with the Social Value Plan in accordance with Clause 45 (Social Value).



Call-Off Schedule 2 (Tender)

- 1 Tender response**
- 2 Network diagram**
- 3 Supplier Technical Solution**
- 4 Project Plan**
- 5 Test Strategy**
- 6 Test Plan(s)**
- 7 Wholesale Access Products and Services**
- 8 Wholesale Passive Products**
- 9 Social Value Plan**
- 10 Risk and Issue Register**



Call-Off Schedule 2 – (Tender)

1 Tender Schedule

1.1 In this Call-Off Schedule 2 (Tender):

- (a) capitalised terms which do not have a corresponding definition in Joint Schedule 1 (Definitions) shall be interpreted as having the standard industry meaning;
- (b) statements relating to current business practices and representations of future activities to be undertaken by the Supplier are contractually binding;
- (c) statements describing how the Supplier will comply with specific obligations set out in Call-Off Schedule 1 (Specification) are contractually binding, provided that:
- (d) where such statements do not fully meet the requirements set out in Call-Off Schedule 1 (Specification), the Supplier will not be relieved of its obligation to meet the requirement; and
- (e) where such statements exceed the requirements, the Supplier shall be obliged to comply with the statement;

1.2 Nothing in this Call-Off Schedule 2 (Tender) shall impose any obligations on the Authority including:

- (a) dependencies in embedded documents;
- (b) dependencies in attached documents
- (c) any other issues that arise in other documents that were not provided for review.

1.3 The following documents are incorporated into the Call-Off Contract in Atamis with filenames as below:

REDACTED UNDER FOIA SECTION 43: COMMERCIALY SENSITIVE

2 Network Diagram

REDACTED UNDER FOIA SECTION 43: COMMERCIALY SENSITIVE

3 Network architecture design and solution

REDACTED UNDER FOIA SECTION 43: COMMERCIALY SENSITIVE

4 Project Plan

REDACTED UNDER FOIA SECTION 43: COMMERCIALY SENSITIVE

5 Test Strategy

REDACTED UNDER FOIA SECTION 43: COMMERCIALY SENSITIVE

6 Test Plan

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REDACTED UNDER FOIA SECTION 43: COMMERCIALLY SENSITIVE

7 Wholesale Access Products and Services

REDACTED UNDER FOIA SECTION 43: COMMERCIALLY SENSITIVE

8 Wholesale Passive Products and Services

REDACTED UNDER FOIA SECTION 43: COMMERCIALLY SENSITIVE

9 Social Value

REDACTED UNDER FOIA SECTION 43: COMMERCIALLY SENSITIVE

10 Risk and Issues Register

REDACTED UNDER FOIA SECTION 43: COMMERCIALLY SENSITIVE



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Call-Off Schedule 3 (Guarantee)

Annex 1 – Form of Guarantee

[INSERT NAME OF THE GUARANTOR]

- AND -

[INSERT NAME OF THE BENEFICIARY]

DEED OF GUARANTEE

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DEED OF GUARANTEE

THIS DEED OF GUARANTEE is made the day of 20[]

PROVIDED BY:

[Insert the name of the Guarantor] [a company incorporated in England and Wales] with number [insert company no.] whose registered office is at [insert details of the Guarantor's registered office here] [OR] [a company incorporated under the laws of [insert country], registered in [insert country] with number [insert number] at [insert place of registration], whose principal office is at [insert office details] ("**Guarantor**")

WHEREAS:

- (A) A Financial Distress Event has occurred under the terms of the Call-Off Contract.
- (B) In connection with the Beneficiary's prior entry into, and in accordance with the terms of, the Call-Off Contract, the Guarantor has agreed to guarantee the Guaranteed Obligations.
- (C) It is the intention of the Parties that this document be executed and take effect as a deed.

The Guarantor hereby agrees for the benefit of the Beneficiary as follows:

1 DEFINITIONS AND INTERPRETATION

In this Deed of Guarantee:

- 1.1 unless defined elsewhere in this Deed of Guarantee or the context requires otherwise, defined terms shall have the same meaning as they have for the purposes of the Call-Off Contract;

- 1.2 the words and phrases below shall have the following meanings:

"Authority" has the meaning given to it in the Call-Off Contract;

"Beneficiary" means the Authority;

"Call-Off Contract" means the call-off contract for the carrying out of the Works and the provision of the Outputs between the Beneficiary and Supplier dated [insert Call-Off Contract Effective Date dd/mm/yyyy];

"Financial Distress Event" has the meaning given to it in the Call-Off Contract;

"Guaranteed Obligations" means all payment obligations and payment liabilities of the Supplier to the Beneficiary under or pursuant to the Call-Off Contract;

"Outputs" has the meaning given to it in the Call-Off Contract;

"Supplier" has the meaning given to it in the Call-Off Contract; and

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"Works" has the meaning given to it in the Call-Off Contract;

- 1.3 references to this Deed of Guarantee and any provisions of this Deed of Guarantee or to any other document or agreement (including to the Call-Off Contract) are to be construed as references to this Deed of Guarantee, those provisions or that document or agreement in force for the time being and as amended, varied, restated, supplemented, substituted or novated from time to time;
- 1.4 unless the context otherwise requires, words importing the singular are to include the plural and vice versa;
- 1.5 references to a person are to be construed to include that person's assignees or transferees or successors in title, whether direct or indirect;
- 1.6 the words "other" and "otherwise" are not to be construed as confining the meaning of any following words to the class of thing previously stated where a wider construction is possible;
- 1.7 unless the context otherwise requires, reference to a gender includes the other gender and the neuter;
- 1.8 unless the context otherwise requires, references to an Act of Parliament, statutory provision or statutory instrument include a reference to that Act of Parliament, statutory provision or statutory instrument as amended, extended or re-enacted from time to time and to any regulations made under it;
- 1.9 unless the context otherwise requires, any phrase introduced by the words "including", "includes", "in particular", "for example" or similar, shall be construed as illustrative and without limitation to the generality of the related general words;
- 1.10 references to Clauses and Schedules are, unless otherwise provided, references to Clauses of and Schedules to this Deed of Guarantee; and
- 1.11 references to liability are to include any liability whether actual, contingent, present or future.

2 GUARANTEE AND INDEMNITY

- 2.1 The Guarantor irrevocably and unconditionally:
 - (a) guarantees to the Beneficiary punctual performance by the Supplier of the Guaranteed Obligations;
 - (b) undertakes with the Beneficiary that whenever the Supplier does not pay any amount when expressed to be due under or in connection with the Call-Off Contract, it shall immediately on demand pay that amount as if it were the principal obligor; and
 - (c) agrees with the Beneficiary that if any obligation guaranteed by it is or becomes unenforceable, invalid or illegal, it will, as an independent and primary obligation, indemnify the Beneficiary immediately on demand against any cost, loss or liability it



incurs as a result of the Supplier not paying any amount which would, but for such unenforceability, invalidity or illegality, have been payable by it under the Call-Off Contract on the date when it would have been due. Any references in this Deed of Guarantee to a "guarantee" or a "Guarantor" and any provisions of this Deed of Guarantee relating to a guarantee but not to a primary obligation shall be ignored for the purpose of interpreting the nature of the Guarantor's obligations under this Clause 2.1(c).

3 DEMANDS AND NOTICES

- 3.1 Any demand or notice served by the Beneficiary on the Guarantor under this Deed of Guarantee shall be in writing, addressed to:

[Insert Address of the Guarantor in England and Wales]

[Insert Facsimile Number]

For the Attention of [Insert details]

or such other address in England and Wales or facsimile number as the Guarantor has from time to time notified to the Beneficiary in writing in accordance with the terms of this Deed of Guarantee as being an address or facsimile number for the receipt of such demands or notices.

- 3.2 Any notice or demand served on the Guarantor or the Beneficiary under this Deed of Guarantee shall be deemed to have been served:

- (a) if delivered by hand, at the time of delivery; or
- (b) if posted, at 10.00 a.m. on the second Working Day after it was put into the post; or
- (c) if sent by facsimile, at the time of despatch, if despatched before 5.00 p.m. on any Working Day, and in any other case at 10.00 a.m. on the next Working Day.

- 3.3 In proving service of a notice or demand on the Guarantor or the Beneficiary it shall be sufficient to prove that delivery was made, or that the envelope containing the notice or demand was properly addressed and posted as a prepaid first class recorded delivery letter, or that the facsimile message was properly addressed and despatched, as the case may be.

- 3.4 Any notice purported to be served on the Beneficiary under this Deed of Guarantee shall only be valid when received in writing by the Beneficiary.

4 BENEFICIARY'S PROTECTIONS

- 4.1 The Guarantor shall not be discharged or released from this Deed of Guarantee by:

- (a) any arrangement made between the Supplier and the Beneficiary (whether or not such arrangement is made with or without the assent of the Guarantor);

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- (b) any amendment to or termination of the Call-Off Contract or by any forbearance, indulgence, waiver or consent whether as to payment, time, performance or otherwise granted by the Beneficiary in relation thereto (whether or not such amendment, termination, forbearance, indulgence, waiver or consent is made with or without the assent of the Guarantor);
- (c) any incapacity or lack of power, authority or legal personality of or dissolution or change in the members, name or status of the Supplier or any other person;
- (d) any insolvency or similar proceedings; or
- (e) the Beneficiary doing (or omitting to do) any other matter or thing which but for this provision might exonerate the Guarantor or would reduce, release or prejudice any of its obligations under this Deed of Guarantee (whether or not known to it or the Supplier).

4.2 This Deed of Guarantee shall be a continuing guarantee and will extend to the ultimate balance of sums payable by the Supplier to the Beneficiary in connection with the Guaranteed Obligations and accordingly:

- (a) it shall not be discharged, reduced or otherwise affected by any partial performance (except to the extent of such partial performance) by the Supplier of the Guaranteed Obligations or by any omission or delay on the part of the Beneficiary in exercising its rights under this Deed of Guarantee;
- (b) it shall not be affected by any dissolution, amalgamation, reconstruction, reorganisation, change in status, function, control or ownership, insolvency, liquidation, administration, appointment of a receiver, voluntary arrangement, any legal limitation or other incapacity, of the Supplier, the Beneficiary, the Guarantor or any other person;
- (c) if, for any reason, any of the Guaranteed Obligations shall prove to have been or shall become void or unenforceable against the Supplier for any reason whatsoever, the Guarantor shall nevertheless be liable in respect of that purported obligation or liability as if the same were fully valid and enforceable and the Guarantor were principal debtor in respect thereof; and
- (d) the rights of the Beneficiary against the Guarantor under this Deed of Guarantee are in addition to, shall not be affected by and shall not prejudice, any other security, guarantee, indemnity or other rights or remedies available to the Beneficiary.

4.3 The Beneficiary shall be entitled to exercise its rights and to make demands on the Guarantor under this Deed of Guarantee as often as it wishes and the making of a demand (whether effective, partial or defective) in respect of the breach or non-performance by the Supplier of any Guaranteed Obligation shall not preclude the Beneficiary from making a further demand in respect of the same or some other default in respect of the same Guaranteed Obligation.



- 4.4 The Beneficiary shall not be obliged before taking steps to enforce this Deed of Guarantee against the Guarantor to obtain judgment against the Supplier or the Guarantor or any third party in any court, or to make or file any claim in a bankruptcy or liquidation of the Supplier or any third party, or to take any action whatsoever against the Supplier or the Guarantor or any third party or to resort to any other security or guarantee or other means of payment. No action (or inaction) by the Beneficiary in respect of any such security, guarantee or other means of payment shall prejudice or affect the liability of the Guarantor hereunder.
- 4.5 The Beneficiary's rights under this Deed of Guarantee are cumulative and not exclusive of any rights provided by law and may be exercised from time to time and as often as the Beneficiary deems expedient.
- 4.6 Any waiver by the Beneficiary of any terms of this Deed of Guarantee, or of any Guaranteed Obligations shall only be effective if given in writing and then only for the purpose and upon the terms and conditions, if any, on which it is given.
- 4.7 Any release, discharge or settlement between the Guarantor and the Beneficiary shall be conditional upon no security, disposition or payment to the Beneficiary by the Guarantor or any other person being void, set aside or ordered to be refunded pursuant to any enactment or law relating to liquidation, administration or insolvency or for any other reason whatsoever and if such condition shall not be fulfilled the Beneficiary shall be entitled to enforce this Deed of Guarantee subsequently as if such release, discharge or settlement had not occurred and any such payment had not been made. The Beneficiary shall be entitled to retain this security after as well as before the payment, discharge or satisfaction of all monies, obligations and liabilities that are or may become due owing or incurred to the Beneficiary from the Guarantor for such period as the Beneficiary may determine.
- 4.8 The Guarantor shall afford any auditor of the Beneficiary appointed under the Call-Off Contract access to such records and accounts at the Guarantor's premises and/or provide such records and accounts or copies of the same, as may be required and agreed with any of the Beneficiary's auditors from time to time, in order that the Auditor may identify or investigate any circumstances which may impact upon the financial stability of the Guarantor.

5 GUARANTOR INTENT

- 5.1 Without prejudice to the generality of Clause 4 (Beneficiary's Protections), the Guarantor expressly confirms that it intends that this Deed of Guarantee:
- (a) shall extend from time to time to any (however fundamental) variation, increase, extension or addition of or to, the Call-Off Contract and any associated fees, costs and/or expenses; and
 - (b) shall not be affected by any act of, unenforceability, illegality or any obligation of, or any insolvency or other similar proceedings relating to, the Call-Off Contract.
- 5.2 This Deed of Guarantee is a continuing guarantee and will extend to the ultimate balance of sums payable by the Supplier to the Beneficiary under the Call-Off Contract, regardless of any intermediate payment or discharge in whole or in part.



- 5.3 The Guarantor waives any right it may have of first requiring the Beneficiary to proceed against or enforce any other rights or claim payment from any person before claiming from the Guarantor under this Deed of Guarantee. This waiver applies irrespective of any law or any provision of the Call-Off Contract to the contrary.

6 RIGHTS OF SUBROGATION

- 6.1 The Guarantor shall, at any time when there is any default in the performance of any of the Guaranteed Obligations by the Supplier and/or any default by the Guarantor in the performance of any of its obligations under this Deed of Guarantee, exercise any rights it may have:

- (a) of subrogation and indemnity;
- (b) to take the benefit of, share in or enforce any security or other guarantee or indemnity for the Supplier's obligations; and
- (c) to prove in the liquidation or insolvency of the Supplier,

only in accordance with the Beneficiary's written instructions and shall hold any amount recovered as a result of the exercise of such rights on trust for the Beneficiary and pay the same to the Beneficiary on first demand. The Guarantor hereby acknowledges that it has not taken any security from the Supplier and agrees not to do so until Beneficiary receives all monies payable hereunder and will hold any security taken in breach of this Clause on trust for the Beneficiary.

7 DEFERRAL OF RIGHTS

- 7.1 Until all amounts which may be or become payable by the Supplier under or in connection with the Call-Off Contract have been irrevocably paid in full, the Guarantor agrees that, without the prior written consent of the Beneficiary, it will not:

- (a) exercise any rights it may have to be indemnified by the Supplier;
- (b) claim any contribution from any other guarantor of the Supplier's obligations under the Call-Off Contract;
- (c) take the benefit (in whole or in part and whether by way of subrogation or otherwise) of any rights of the Beneficiary under the Call-Off Contract or of any other guarantee or security taken pursuant to, or in connection with, the Call-Off Contract;
- (d) bring legal or other proceedings for an order requiring the Supplier to make any payment, or perform any obligation, in respect of which the Guarantor has given a guarantee, undertaking or indemnity under Clause 2 (Guarantee and indemnity);
- (e) demand or accept repayment in whole or in part of any indebtedness now or hereafter due from the Supplier; or



- (f) claim any set-off or counterclaim against the Supplier.

7.2 If the Guarantor receives any payment or other benefit or exercises any set off or counterclaim or otherwise acts in breach of this Clause 7, anything so received and any benefit derived directly or indirectly by the Guarantor therefrom shall be held on trust for the Beneficiary and applied in or towards discharge of its obligations to the Beneficiary under this Deed of Guarantee.

8 REPRESENTATIONS AND WARRANTIES

The Guarantor hereby represents and warrants to the Beneficiary that:

- (a) the Guarantor is duly incorporated and is a validly existing company under the laws of its place of incorporation, has the capacity to sue or be sued in its own name and has power to carry on its business as now being conducted and to own its property and other assets;
- (b) the Guarantor has full power and authority to execute, deliver and perform its obligations under this Deed of Guarantee and no limitation on the powers of the Guarantor will be exceeded as a result of the Guarantor entering into this Deed of Guarantee;
- (c) the execution and delivery by the Guarantor of this Deed of Guarantee and the performance by the Guarantor of its obligations under this Deed of Guarantee have been duly authorised by all necessary corporate action and do not contravene or conflict with:
 - (i) the Guarantor's memorandum and articles of association or other equivalent constitutional documents;
 - (ii) any existing law, statute, rule or regulation or any judgment, decree or permit to which the Guarantor is subject; or
 - (iii) the terms of any agreement or other document to which the Guarantor is a Party or which is binding upon it or any of its assets;
- (d) all governmental and other authorisations, approvals, licences and consents, required or desirable, to enable it lawfully to enter into, exercise its rights and comply with its obligations under this Deed of Guarantee, and to make this Deed of Guarantee admissible in evidence in its jurisdiction of incorporation, have been obtained or effected and are in full force and effect;
- (e) this Deed of Guarantee is the legal, valid and binding obligation of the Guarantor and is enforceable against the Guarantor in accordance with its terms;
- (f) any unsecured and unsubordinated claims of the Beneficiary against it under this Deed of Guarantee rank at least *pari passu* with the claims of all its other unsecured



and unsubordinated creditors, except for those creditors whose claims are mandatorily preferred by laws applying to companies generally;

- (g) no litigation, arbitration or administrative proceedings or investigations of, or before, any court, arbitral body or agency have (to the best of its knowledge and belief (having made due and careful enquiry)) been started or threatened against it, nor is there subsisting any unsatisfied judgment or award given against any of them by any court, arbitrator or other body; and
- (h) it has not taken any action nor (to the best of its knowledge and belief) have any steps been taken or legal proceedings been started or threatened against it for its winding-up, dissolution or re-organisation, for the enforcement of any security over its assets or for the appointment of a liquidator, supervisor, receiver, administrator, administrative receiver, compulsory manager, trustee or other similar officer of it or in respect of any of its assets.

9 PAYMENTS AND SET-OFF

- 9.1 All sums payable by the Guarantor under this Deed of Guarantee shall be paid without any set-off, lien or counterclaim, deduction or withholding, howsoever arising, except for those required by law, and if any deduction or withholding must be made by law, the Guarantor will pay that additional amount which is necessary to ensure that the Beneficiary receives a net amount equal to the full amount which it would have received if the payment had been made without the deduction or withholding.
- 9.2 The Guarantor shall pay interest on any amount due under this Deed of Guarantee at the applicable rate under the Late Payment of Commercial Debts (Interest) Act 1998, accruing on a daily basis from the due date up to the date of actual payment, whether before or after judgment.
- 9.3 The Guarantor will reimburse the Beneficiary for all legal and other costs (including VAT) incurred by the Beneficiary in connection with the enforcement of this Deed of Guarantee.

10 GUARANTOR'S ACKNOWLEDGEMENT

The Guarantor warrants, acknowledges and confirms to the Beneficiary that it has not entered into this Deed of Guarantee in reliance upon, nor has it been induced to enter into this Deed of Guarantee by any representation, warranty or undertaking made by or on behalf of the Beneficiary (whether express or implied and whether pursuant to statute or otherwise) which is not set out in this Deed of Guarantee.

11 ASSIGNMENT

- 11.1 The Beneficiary shall be entitled to assign or transfer the benefit of this Deed of Guarantee at any time to any person without the consent of the Guarantor being required and any such assignment or transfer shall not release the Guarantor from its liability under this Guarantee.



- 11.2 The Guarantor may not assign or transfer any of its rights and/or obligations under this Deed of Guarantee.

12 SEVERANCE

If any provision of this Deed of Guarantee is held invalid, illegal or unenforceable for any reason by any court of competent jurisdiction, such provision shall be severed and the remainder of the provisions hereof shall continue in full force and effect as if this Deed of Guarantee had been executed with the invalid, illegal or unenforceable provision eliminated.

13 THIRD PARTY RIGHTS

Other than the Beneficiary, a person who is not a Party to this Deed of Guarantee shall have no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Deed of Guarantee. This Clause does not affect any right or remedy of any person which exists or is available otherwise than pursuant to that Act.

14 SURVIVAL

This Deed of Guarantee shall survive termination or expiry of the Call-Off Contract.

15 AMENDMENTS AND WAIVERS

Any term of this Deed of Guarantee may be amended or waived only with the written consent of the Guarantor and the Beneficiary.

16 COUNTERPARTS

This Deed of Guarantee may be executed in any number of counterparts, and this has the same effect as if the signatures on the counterparts were on a single copy of this Deed of Guarantee.

17 GOVERNING LAW

- 17.1 This Deed of Guarantee and any non-contractual obligations arising out of or in connection with it shall be governed by and construed in all respects in accordance with English law.
- 17.2 The Guarantor irrevocably agrees for the benefit of the Beneficiary that the courts of England shall have jurisdiction to hear and determine any suit, action or proceedings and to settle any dispute which may arise out of or in connection with this Deed of Guarantee and for such purposes hereby irrevocably submits to the jurisdiction of such courts.
- 17.3 Nothing contained in this Clause shall limit the rights of the Beneficiary to take proceedings against the Guarantor in any other court of competent jurisdiction, nor shall the taking of any such proceedings in one or more jurisdictions preclude the taking of proceedings in any other jurisdiction, whether concurrently or not (unless precluded by applicable law).



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- 17.4 The Guarantor irrevocably waives any objection which it may have now or in the future to the courts of England being nominated for the purpose of this Clause on the ground of venue or otherwise and agrees not to claim that any such court is not a convenient or appropriate forum.

[Guidance Note: Include the above provision when dealing with the appointment of English process agent by a non-English incorporated Guarantor]

- 17.5 [The Guarantor hereby irrevocably designates, appoints and empowers [the Supplier] [a suitable alternative to be agreed if the Supplier's registered office is not in England or Wales] either at its registered office or on facsimile number [insert fax no.] from time to time to act as its authorised agent to receive notices, demands, service of process and any other legal summons in England and Wales for the purposes of any legal action or proceeding brought or to be brought by the Beneficiary in respect of this Deed of Guarantee. The Guarantor hereby irrevocably consents to the service of notices and demands, service of process or any other legal summons served in such way.]

IN WITNESS whereof the Guarantor has caused this instrument to be executed and delivered as a Deed the day and year first before written.

EXECUTED as a DEED by

[Insert name of the Guarantor] acting by [Insert/print names]

Director

Director/Secretary

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Call-Off Schedule 4 (Financial Schedule)

1 Funding Payments

General

- 1.1 The Authority shall make payments to the Supplier in accordance with the provisions set out in this Paragraph 1 and Paragraph 2 (Claims procedure).
- 1.2 The payments set out in Paragraph 1 and Clause 47 (Changing the Contract Procedure) shall be the only payments made by the Authority in respect of the Supplier's performance of its obligations under the Contract.
- 1.3 Any claims made by the Supplier for any payment must follow the procedure set out in Paragraph 2 (Claims procedure).
- 1.4 Interest shall be payable on the late payment of any undisputed payment properly claimed in accordance with the terms of this Call-Off Contract at the rate of two per cent (2%) per annum above the base rate for the time being of the Bank of England. Such interest shall accrue on a daily basis from the due date until the date of actual payment of the overdue amount.

Stage One (Network Detailed Design and Due Diligence) Payment

- 1.5 Paragraphs 1.6 and 1.8 apply where the Call-Off Award Form specifies that the Supplier will undertake a full Stage One (Network Detailed Design and Due Diligence).
- 1.6 When the Supplier Achieves the Stage One (Network Detailed Design and Due Diligence) Complete Milestone, the Authority shall calculate:

- (a) the Stage One (Network Detailed Design and Due Diligence) True-Up Amount as follows:

Stage One (Network Detailed Design and Due Diligence) True-Up Amount is the greater of zero (0) or $A - B$ where:

A = forecast Stage One (Network Detailed Design and Due Diligence) Cost as set out in section 3.1 of the Outputs section of the Financial Model; and

B = costs incurred in completing the Stage One (Network Detailed Design and Due Diligence) Works as evidenced in the Stage One Output and which are of a type within the scope of the Stage One Eligible Cost Categories and are Eligible Stage One Expenditure; and

- (b) the Stage One (PMO) True-Up Amount as follows:

Stage One (PMO) True-Up Amount is:

- (i) zero (0) where the Stage One (Network Detailed Design and Due Diligence) True-Up Amount is greater than zero (0); or



- (ii) the greater of zero (0) or A – B where the Stage One (Network Detailed Design and Due Diligence) True-Up Amount is zero (0), where:

A =	forecast Stage One (PMO) Cost as set out in section 3.1 of the Outputs section of the Financial Model; and
B =	actual costs incurred in completing the Stage One (Network Detailed Design and Due Diligence) Works as evidenced in the Stage One Output and which are of a type within the scope of the Stage One PMO Cost Categories and are Eligible Stage One Expenditure.

- 1.7 Subject to Paragraph 1.8, when the Supplier Achieves the Stage One (Network Detailed Design and Due Diligence) Complete Milestone, it shall be entitled to submit a claim for the Stage One (Network Detailed Design and Due Diligence) Payment which shall be calculated as follows:

Stage One (Network Detailed Design and Due Diligence) Payment = A – B – C where:

A = Maximum Stage One Funding Payment as set out in section 1.1 of the Outputs section of the Financial Model;

B = Stage One (Network Detailed Design and Due Diligence) True-Up Amount; and

C = Stage One (PMO) True-Up Amount.

- 1.8 If the Supplier Achieves the Stage One (Network Detailed Design and Due Diligence) Complete Milestone after its Milestone Date, the claim submitted under Paragraph 1.7 must not include any costs incurred after the Milestone Date which are of a type within the scope of the Stage One PMO Cost Categories.
- 1.9 For the avoidance of doubt, the provisions of Paragraphs 1.5 to 1.8 and 2 (Claims procedure) shall apply regardless of whether the Parties are exercising their rights pursuant to Clause 10 (Completion of Stage One (Network Detailed Design and Due Diligence)).

Stage Two (Build) Regular Payments

- 1.10 The Supplier may only submit a claim for payment under Paragraph 1.11 if:

- (a) it has Achieved all Build Milestones which have a Milestone Date earlier than the date of the relevant claim; and
- (b) it has submitted the Stage Two Progress Report to the Authority for the Month in respect of which a claim is being submitted.

- 1.11 Subject to Paragraph 1.10, by the last Working Day of each Month, the Supplier shall be entitled to submit a claim for a Stage Two (Build) Regular Payment calculated as follows:

Stage Two (Build) Regular Payment = A * ((B * 75%) ÷ C) where:

A = number of Build Units evidenced during the previous Month in respect of which the claim is being submitted;



B = Maximum Stage Two Funding Payment; and

C = total number of Build Units to be completed during Stage Two (Build).

Where the Supplier is not entitled to submit a claim because the conditions in Paragraph 1.10 have not been satisfied, it shall be entitled to submit the relevant claim at the end of the Month following the date on which those conditions are satisfied.

See below for worked examples:

Assumptions

- | | |
|---|----------|
| 1. Maximum Stage Two Funding Payment: | £100,000 |
| 2. Total number of Build Units (premises) to be completed during Stage Two (Build): | 4000 |
| 3. Value held back for True-up Payment - 25%: | £25,000 |
| 4. Eligible for Claims - 75%: | £75,000 |
| 5. Six (6) Build Milestones in the Project Plan | |
| 6. Build Milestones are a minimum of three (3) Months apart | |

Notes:

1. *Provided the Supplier Achieves the number of Build Milestones as detailed in the Project Plan (and the Supplier has provided the Stage Two Progress Report by the seventh (7th) Working Day of the Month) the Supplier can submit a claim for payment on the last Working Day of the Month for the Build Milestones Achieved earlier than the date of the claim for payment. E.g. The Supplier has until the seventh (7th) Working Day of May to submit the April Stage Two Progress Report and then until the last Working Day of May or any subsequent Month to submit a claim for payment for April.*
2. *If the Supplier does not Achieve the Build Milestone by the Milestone Date as per the Project Plan then it cannot submit a claim for payment for future Stage Two (Build) Regular Payments (i.e. the payments stop) until the previous Build Milestone(s) is Achieved at which point the Supplier can submit a claim for payment for the previous Months, provided the Supplier has not already been paid for such Months.*



Example 1: All Build Milestones Achieved on Milestone Dates as in the Project Plan therefore all monthly Claims submitted and payments made

Year 1	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Total claims
Build Units in Project Plan (per Month)	100	100	100	200	200	200	100	200	200	200	200	100	
Build Units achieved (per Month)	100	100	100	200	200	200	100	200	200	200	200	100	
Build Milestone				1				2				3	
Milestone Date				30 April				31 Aug				31 Dec	
Build Units (per Project Plan) at Milestone Date				500				1200				1900	
Build Units achieved at Milestone Date				500				1200				1900	
Build Milestone Claim (submitted on last WD of month)	£1,875	£1,875	£1,875	£3,750	£3,750	£3,750	£1,875	£3,750	£3,750	£3,750	£3,750	£1,875	
	Can submit Claim	Can submit Claim	Can submit Claim	Can submit Claim	Can submit Claim	Can submit Claim	Can submit Claim	Can submit Claim	Can submit Claim	Can submit Claim	Can submit Claim	Can submit Claim	

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Year 2	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	
Build Units in Project Plan	100	100	100	200	200	200	100	200	200	200	200	300	
Build Units Achieved (per month)	100	100	100	200	200	200	100	200	200	200	200	300	
Build Milestone					4				5			6	
Milestone Date					31 May				30 Sep			31 Dec	
Build Units (per Project Plan) at Milestone Date					2600				3300			4000	
Build Units Achieved at Milestone Date					2600				3300			4000	
Build Milestone Claim (submitted on last WD of month)	£1,875	£1,875	£1,875	£3,750	£3,750	£3,750	£1,875	£3,750	£3,750	£3,750	£3,750	£5,625	£75,000
	Can submit Claim	Can submit Claim	Can submit Claim	Can submit Claim	Can submit Claim	Can submit Claim	Can submit Claim	Can submit Claim	Can submit Claim	Can submit Claim	Can submit Claim	Can submit Claim	

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Example 2: Build Milestones missed i.e. not Achieved on Milestone Dates as in the Project Plan

Year 1	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Total claims
Build Units in Project Plan (per month)	100	100	100	200	200	200	100	200	200	200	200	100	
Build Units Achieved (per Month)	100	100	100	200	200	150	100	100	350	200	200	100	
Build Milestone				1				2				3	
Milestone Date				30 April				31 Aug				31 Dec	
Build Units (per Project Plan) at Milestone Date				500				1200				1900	
Build Units Achieved at Milestone Date				500				1050				1900	
Build Milestone Claim (submitted on last WD of month)	£1,875	£1,875	£1,875	£3,750	£3,750	£2,812.50	£1,875	0	£8,437.50	£3,750	£3,750	£1,875	
	Can submit Claim	Can submit Claim	Can submit Claim	Can submit Claim	Can submit Claim	Can submit Claim	Can submit Claim	Cannot submit Claim	Can submit Claim for	Can submit Claim	Can submit Claim	Can submit Claim	

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									Aug and Sep				
Year 2	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	
Build Units in Project Plan	100	100	100	200	200	200	100	200	200	200	200	300	
Build Units Achieved (per month)	100	100	100	200	100	50	50	400	200	300	200	300	
Build Milestone					4				5			6	
Milestone Date					31 May				30 Sep			31 Dec	
Build Units (per Project Plan) at Milestone Date					2600				3300			4000	
Build Units Achieved at Milestone Date					2500				3200			4000	
Build Milestone Claim (submitted on last WD of month)	£1,875	£1,875	£1,875	£3,750	0	0	£3,750	£7,500	0	£9,375	£3,750	£5,625	£75,000
	Can submit Claim	Can submit Claim	Can submit Claim	Can submit Claim	Cannot submit Claim	Cannot submit Claim	Can submit Claim for May, Jun, Jul	Can submit Claim for Aug	Cannot submit Claim	Can submit Claim for Sep and Oct	Can submit Claim	Can submit Claim	

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Stage Two (Build) Key Milestone Payment

1.12 When the Supplier Achieves the Stage Two (Build) Complete Milestone, the Authority shall calculate:

(a) the Stage Two (Build) True-Up Amount as follows:

Stage Two (Build) True-Up Amount is the greater of zero (0) or $A - B$ where:

A = forecast Stage Two (Build) Cost as set out in section 3.2 of the Outputs section of the Financial Model; and

B = costs incurred in completing the Stage Two (Build) Works as evidenced in the Stage Two Progress Report and which are of a type within the scope of the Stage Two Eligible Cost Categories and are Eligible Stage Two Expenditure; and

(b) the Stage Two (PMO) True-Up Amount as follows:

Stage Two (PMO) True-Up Amount is:

(i) zero (0) where the Stage Two (Build) True-Up Amount is greater than zero (0); or

(ii) the greater of zero (0) or $A - B$ where the Stage Two (Build) True-Up Amount is zero (0), where:

A =	forecast Stage Two (PMO) Cost as set out in section 3.2 of the Outputs section of the Financial Model; and
B =	actual costs incurred in completing the Stage Two (Build) Works as evidenced in the Stage Two Progress Report and which are of a type within the scope of the Stage Two PMO Cost Categories and are Eligible Stage Two Expenditure.

1.13 Subject to Paragraph 1.14, when the Supplier Achieves the Stage Two (Build) Complete Milestone, it must submit a claim for the Stage Two (Build) Key Milestone Payment which shall be calculated as follows:

Stage Two (Build) Key Milestone Payment = $A - B - C - D$ where:

A = Maximum Stage Two Funding Payment as set out in section 1.2 of the Outputs section of the Financial Model;

B = Stage Two (Build) True-Up Amount;

C = Stage Two (PMO) True-Up Amount; and

D = any amounts paid by the Authority to the Supplier by way of Stage Two (Build) Regular Payments in accordance with Paragraph 1.11.



- 1.14 If the Supplier Achieves the Stage Two (Build) Complete Milestone after its Milestone Date the claim submitted under Paragraph 1.13 must not include any costs incurred after the relevant Milestone Date which are of a type within the scope of the Stage Two PMO Cost Categories.
- 1.15 In no event shall the total amount paid to the Supplier by the Authority under Paragraphs 1.10 and 1.12 exceed the Maximum Stage Two Funding Payment.
- 1.16 Where any calculation of the Stage Two (Build) Key Milestone Payment results in a negative figure, the Supplier shall refund such amount to the Authority within twenty (20) Working Days.

2 Claims procedure

- 2.1 The Supplier shall ensure that any claim for payment under Paragraph 1 (Funding Payments) contains the following information:
- (a) date of the claim;
 - (b) period and activity to which the claim relates;
 - (c) banking details for payment to the Supplier via electronic transfer of funds;
 - (d) contact details for an individual in the Supplier's finance department to deal with administrative queries; and
 - (e) such supporting evidence of delivery that the Authority may require in addition to the evidence provided to the Authority to demonstrate Achievement of the Milestone.
- 2.2 If the Authority requires any further information following receipt of a claim, it shall notify the Supplier within ten (10) Working Days of receipt of the claim and the Supplier shall provide such information and/or clarification without delay.
- 2.3 The Authority shall pay each valid and undisputed claim submitted in accordance with Paragraph 2.1 above within twenty (20) Working Days (provided that where Paragraph 2.2 applies the twenty (20) Working Day period shall commence when the further information has been provided in each case to the Authority's satisfaction).

3 Active services clawback

- 3.1 The Supplier shall comply with this Paragraph 3 from the Stage Two (Build) Commencement Date. For the avoidance of doubt, nothing in this Paragraph 3 shall result in the Authority providing any additional Funding Payments to the Supplier.

Annual clawback payments

- 3.2 The Supplier shall ensure that the Stage Two Progress Report and the Stage Three Report, provided under Clause 15.3 (Call-Off Contract Reports), include actual total Active Services



Take-up per Quarter. The actual Active Services Take-up shall be compared to the forecast Active Services Take-up as shown in the i.Take-up - Connections and i.Take-up - Disconnections tables of the Financial Model, from the Stage Two (Build) Commencement Date to the last day of the relevant Quarter. The difference between the cumulative actual Active Services Take-up per Quarter (being the sum in 'Actual Take-up (Cumulative)' row in the table in the example below), and the sum of the cumulative forecast Active Services Take-up (being the sum in Forecast Take-up (Cumulative) row in the table below), represents a Net Additional Active Services Take-up. See Table 1 below for an example:

Table 1 - Active Services Take-up

Quarter	1	2	3	4	5	6	7	8
Forecast Take-up (Incremental)	150	200	250	250	200	150	50	0
Forecast Take-up (Cumulative)	150	350	600	850	1050	1200	1250	1250
Actual Take-up (Incremental)	50	150	250	350	200	150	150	0
Actual Take-up (Cumulative)	50	200	450	800	1000	1150	1300	1300
Net Additional Active Services Take-up	-100	-150	-150	-50	-50	-50	50	50

Note: In this example, actual Active Services Take-up is being measured at the end of Q4 and Q8. This is a worked example only and figures have no other application or relevance.

3.3 The exposure to clawback at the end of each Quarter shall be calculated as follows:

Active Services Exposure to Clawback = (A * B) * 50%

Where:

A = Net Additional Active Services Take Up; and

B = Active Services Incremental Customer Margin as set out in section 6 of the Outputs section of the Financial Model.

3.4 At the end of each Financial Year, an Annual Active Services Take-up Clawback Amount shall be calculated as follows:



Annual Active Services Take-up Clawback Amount = A - B

Where:

- A = the total of all Active Services Exposure to Clawback for all Quarters to date; and
- B = The total of any Annual Active Services Take-up Clawback Amounts previously paid back to the Authority.

3.5 The Supplier shall repay:

- (a) any positive Annual Active Services Take-up Clawback Amounts calculated during Stage Two (Build) to the Authority within twenty (20) Working Days of the Stage Three (Monitor and Clawback) Commencement Date; and
- (b) any positive Annual Active Services Take-up Clawback Amounts calculated from and including the Stage Three (Monitor and Clawback) Commencement Date to the Authority within twenty (20) Working Days of the last day of the relevant Financial Year.

Final Active Services Take-up Clawback Amount

3.6 In Paragraphs 3.7 to 3.10 and 4.7 to 4.10 (Final passive services clawback amount):

"AS2BC+7" means the date which is seven (7) years from the Achievement the Stage Two (Build) Complete Milestone;

"Calculation Quarter" means the Quarter in which AS2BC+7 occurs;

"Calculation Period" means the Calculation Quarter and immediately preceding three (3) Quarters prior to the Calculation Quarter; and

"Take-up Percentage Change" means the percentage change in the cumulative Net Additional Active Services Take Up from a respective Quarter and the Quarter immediately preceding it.

3.7 At the end of the Calculation Quarter, the Authority shall calculate the Take-up Percentage Change for each Quarter within the Calculation Period.

3.8 If the Take-up Percentage Change in all Quarters within the Calculation Period is less than zero point five percent (0.5%) then:

- (a) the Authority shall calculate the Final Active Services Take-up Clawback Amount in accordance with Paragraph 3.11;
- (b) the Supplier shall repay to the Authority within twenty (20) Working Days of notification by the Authority any positive Final Active Service Take-up Clawback Amount and



- (c) the Supplier's obligation to report on Take-up in accordance with Paragraph 3.2 shall cease.

3.9 If the Take-up Percentage Change in any Quarter within the Calculation Period is greater than or equal to zero point five percent (0.5%) then the end of the Quarter immediately following the Calculation Quarter shall be deemed the Calculation Quarter and the provisions of Paragraphs 3.7 and 3.8 shall be applied accordingly.

3.10 Notwithstanding anything in Paragraphs 3.7 to 3.9, if the Authority has not calculated the Final Active Services Take-up Clawback Amount by the date which is the date of Achievement of the Stage Two (Build) Complete Milestone plus a period equal to the Average Connection Life then the Take-up Percentage Change for all Quarters in the relevant Calculation Quarter shall be deemed to be less than zero point five percent (0.5%) and the provisions of Paragraphs 3.8(a) to 3.8(c) (inclusive) shall apply.

3.11 The Final Active Services Take-up Clawback Amount shall be calculated as follows:

Final Active Services Take-up Clawback Amount = the greater of zero (0) or $(A * (B - C)) - D$

Where:

- A = NPV of additional customer connection (as specified in section 6 of the Outputs section of the Financial Model);
- B = Total actual Active Services Take-up;
- C = Total Forecast Active Services Take-up (as specified in the i.Take-up – Connections and i.Take-up Disconnections tables of the Financial Model); and
- D = The total of any Annual Active Services Take-up Clawback Amounts previously paid back to the Authority.

3.12 Where any calculation in Paragraph 3.11 demonstrates a prior overpayment to the Authority by the Supplier under these provisions, the Authority shall refund the overpayment to the Supplier within twenty (20) Working Days.

4 **Passive services clawback**

4.1 The Supplier shall comply with this Paragraph 4 from the Stage Two (Build) Commencement Date. For the avoidance of doubt, nothing in this Paragraph 4 shall result in the Authority providing any additional Funding Payments to the Supplier.

Annual passive services clawback amounts

4.2 The Supplier shall ensure that the Stage Two Progress Report and Stage Three Report, provided under Clause 15.3 (Call-Off Contract Reports), includes the actual total Passive Services Take-up per Quarter for each Wholesale Passive Product. The actual Passive Services Take-up shall be compared to the forecast Passive Services Take-up as shown in



the i.Take-up - Connections and i.Take-up - Disconnections tables of the Financial Model, from the Stage Two (Build) Commencement Date to the last day of the relevant Quarter. The difference between the cumulative actual Passive Services Take-up per Quarter (being the sum in 'Actual Passive Services Take-up (Cumulative)' row in the table in the example below), and the sum of the cumulative forecast Passive Services Take-up (being the sum in Forecast Passive Services Take-up (Cumulative) row in the table below), represents a Net Additional Passive Services Take-up.

Table 2 - Wholesale Passive Products where take-up is measured in customer units

Quarter	1	2	3	4	Cumulative sum across Q1 – Q4 (customer units)
Forecast Passive Services Take-up (customer units)	100	150	250	300	800
Actual Passive Services Take-up (customer units)	125	200	300	300	925

Note: In Table 2, actual Passive Services Take-up for Wholesale Passive Products measured in customer units is being measured at the end of Q4. The Net Additional Passive Services Take-up measured at the end of Q4 would be 125 customer units i.e. 925-800. This is a worked example only and figures have no other application or relevance.

Table 3 - Wholesale Passive Products where take up is measured in km

Quarter	1	2	3	4	Cumulative sum across Q1 – Q4 (km)
Forecast Passive Services Take-up (km)	10	20	20	35	85
Actual Passive Services Take-up (km)	20	25	20	40	105

Note: In Table 2, actual Passive Services Take-up for Wholesale Passive Products measured in kilometres is being measured at the end of Q4. The Net Additional Passive Services



Take-up measured at the end of Q4 would be 20km i.e. 105-85. This is a worked example only and figures have no other application or relevance.

- 4.3 For each Wholesale Passive Product, the exposure to clawback at the end of each Quarter shall be calculated as follows:

Passive Services Exposure to Clawback = $(A * B) * 50\%$

Where:

A = Net Additional Passive Services Take Up for the relevant Wholesale Passive Product; and

B = Incremental Product Margin 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.

- 4.4 At the end of each Financial Year, an Annual Passive Services Take-up Clawback Amount shall be calculated for each Wholesale Passive Product as follows:

Annual Passive Services Take-up Clawback Amount = A - B

Where:

A = The total of all Passive Services Exposure to Clawback for the relevant Wholesale Passive Product for all Quarters to date; and

B = The total of any Annual Passive Services Take-up Clawback Amounts previously paid back to the Authority in respect of the relevant Wholesale Passive Product.

- 4.5 The Supplier shall repay:

- (a) the total of any positive Annual Passive Services Take-up Clawback Amounts calculated for all Wholesale Passive Products during Stage Two (Build) to the Authority within twenty (20) Working Days of the Stage Three (Monitor and Clawback) Commencement Date; and
- (b) the total of any positive Annual Passive Services Take-up Clawback Amounts calculated for all Wholesale Passive Products from and including the Stage Three (Monitor and Clawback) Commencement Date to the Authority within twenty (20) Working Days of the last day of the relevant Financial Year.

Final passive services clawback amount

- 4.6 Paragraphs 4.7 to 4.12 shall apply for each Wholesale Passive Product.
- 4.7 At the end of the Calculation Quarter, the Authority shall for each Quarter within the Calculation Period calculate the Take-up Percentage Change.
- 4.8 If the Take-up Percentage Change in all Quarters within the Calculation Period is less than zero point five per cent (0.5%) then:

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- (a) the Authority shall calculate the Final Passive Services Take-up Clawback Amount in accordance with Paragraph 4.11;
 - (b) the Supplier shall repay to the Authority within twenty (20) Working Days of notification by the Authority any positive Final Active Service Take-up Clawback Amount.; and
 - (c) the Supplier's obligation to report on Take-up in accordance with Paragraph 4.2 shall cease.
- 4.9 If the Take-up Percentage Change is greater than or equal to zero point five per cent (0.5%) in any Quarter within the Calculation Period then the end of the Quarter immediately following the Calculation Quarter shall be deemed the Calculation Quarter and the provisions of Paragraphs 3.7 and 3.8 (Final Active Services Take-up Clawback Amount) shall be applied accordingly.
- 4.10 Notwithstanding anything in Paragraphs 4.7 to 4.9, if the Authority has not calculated the Final Passive Services Take-up Clawback Amount by the date which is the date of Achievement of the Stage Two (Build) Complete Milestone plus a period equal to the Average Connection Life then the Take-up Percentage Change for all Quarters in the relevant Calculation Quarter shall be deemed to be less than zero point five per cent (0.5%) and the provisions of Paragraphs 4.8(a) to 4.8(c) (inclusive) shall apply.
- 4.11 For each Wholesale Passive Product, the Final Passive Services Take-up Clawback Amount shall be calculated as follows:

Final Passive Services Take-up Clawback Amount = the greater of zero (0) or $(A * (B - C)) - D$

Where:

- A = NPV of additional customer unit or kilometre (as appropriate for the relevant Wholesale Passive Product) (as specified in section 6 of the Outputs section of the Financial Model):
 - B = total actual Passive Services Take-up for the relevant Wholesale Passive Product:
 - C = total Forecast Passive Services Take-up for the relevant Wholesale Passive Product (as specified in the i.Take-up Connections and i.Take-up Disconnections tables of the Financial Model): and
 - D = the total of any Annual Passive Services Take-up Clawback Amounts previously paid back to the Authority in respect of the relevant Wholesale Passive Product.
- 4.12 Where any calculation in Paragraph 4.11 demonstrates a prior overpayment to the Authority by the Supplier under these provisions, the Authority shall refund the overpayment to the Supplier within twenty (20) Working Days.



- 4.13 In the second year following the Stage Two (Build) Complete Milestone Date, the Parties may meet to review the actual Active Services Take-Up and Passive Services Take-Up volumes and margins in relation to the volumes and margins assumed in the Financial Model. If the Supplier can provide appropriate evidence that a material shift has occurred in the Supplier's revenue stream from Active Services Take-Up to Passive Services Take-Up, or from Passive Services Take-Up to Active Services Take-Up, either Party may submit a Change Request to amend the take-up and margin assumptions in the Financial Model to reflect the shift in revenue streams. No other change to the Financial Model is permitted and any change to Take-up or margins must maintain the original internal rate of return (IRR) and Funding Payments.

5 Wholesale Access Pricing

Wholesale Access Prices Benchmarking

- 5.1 From the Call-Off Contract Effective Date, the Supplier shall make available the Wholesale Access Products and Services and the Wholesale Passive Products at the Wholesale Access Prices in accordance with this Contract.
- 5.2 From the Call-Off Contract Effective Date, the Supplier shall, at least annually, carry out a benchmarking exercise to compare the Wholesale Access Prices with the Benchmark Data to determine whether the Wholesale Access Prices need to be revised ("**Wholesale Access Prices Benchmarking**").
- 5.3 The Supplier shall ensure that the Benchmark Data provides a reasonable basis for determining how the Wholesale Access Prices compare with:
- (a) the average published (regulated) wholesale prices that prevail in other comparable (including more competitive) areas of the country or the European Union; or
 - (b) in the absence of such published prices, prices already set or approved by the Regulator for the markets and services concerned.
- 5.4 If the Benchmarking Data no longer meets the description in Paragraph 5.3 (in the opinion of the Authority) then the Supplier shall follow the principle of cost orientation and, where possible, look at existing pricing in relation to wholesale access products and adjust the price to take into account any overlap to identify and agree with the Authority the alternative data to be used in the Wholesale Access Prices Benchmarking. The Parties shall ensure that any change to Benchmarking Data in accordance with this Paragraph is evidenced in a Change Authorisation Note.

Frequency of Wholesale access benchmarking

- 5.5 Subject to Paragraph 5.6, the Parties shall agree (such agreement not to be unreasonably withheld or delayed) the specific timings of each Wholesale Access Prices Benchmarking, however the Supplier shall not be required to carry out Wholesale Access Prices Benchmarking within six (6) Months of any previous Wholesale Access Prices Benchmarking.



- 5.6 In spite of Paragraph 5.5, the Authority may require the Supplier to carry out an ad hoc Wholesale Access Prices Benchmarking at any time during the Call-Off Contract Period where there is reasonable evidence that any of the following may have occurred:
- (a) higher or lower wholesale pricing relative to recent Benchmark Data; and/or
 - (b) a change in the market having a significant impact on potential applicable Benchmark Data.

Wholesale Access Prices Benchmarking Report

- 5.7 Within twenty (20) Working Days of carrying out a Wholesale Access Prices Benchmarking (or such other period as the Parties may agree), the Supplier shall provide a Wholesale Access Prices Benchmarking Report to the Authority.
- 5.8 The Wholesale Access Prices Benchmarking Report shall:
- (a) set out a comparison of the Wholesale Access Prices against the Benchmark Data;
 - (b) justify and provide evidence in detail for any deviation of the Wholesale Access Prices from the Benchmark Data (including the expected timescale over which the deviations will remain in place, and the circumstances under which such deviations will be re-evaluated); and
 - (c) set out proposals for changes to the Wholesale Access Prices, so that they align to the Benchmark Data taking into account any justifiable basis for deviation (see Paragraphs 5.9 to 5.11 for the process for implementation of changes).

Changes to the Wholesale Access Prices

- 5.9 Where the Wholesale Access Prices Benchmarking Report identifies Wholesale Access Prices that are higher or lower than the Benchmark Data and there is no applicable reasonable justification for the deviation (in the opinion of the Authority), the Authority may:
- (a) request the Supplier to provide further evidence or justification for the deviation between the Wholesale Access Prices and the Benchmark Data; and
 - (b) require the Supplier to review and adjust the Wholesale Access Prices in the r.Products and Services table in the Stage Two Progress Report and Stage Three Report to align with the Benchmark Data, taking into account any justifiable basis for deviation.
- 5.10 Any adjustment to the Wholesale Access Prices in the r.Products and Services table in the Stage Two Progress Report and Stage Three Report shall be implemented as soon as reasonably practicable and, in any event, within ten (10) Working Days of the Authority's request pursuant to Paragraph 5.9(b) (unless otherwise agreed in writing). Neither Party shall unreasonably withhold or delay agreement to such changes.



- 5.11 If the Supplier refuses to adjust the Wholesale Access Prices in the r.Products and Services table in the Stage Two Progress Report and Stage Three Report following the Authority's request pursuant to Paragraph 5.9(b), the Authority may:
- (a) notify the Regulator and/or the Regulatory Body under the Subsidy Control Regime of the Supplier's refusal; and/or
 - (b) refer the matter to be determined in accordance with the Dispute Resolution Procedure.
- 5.12 If any prices for the Supplier's Wholesale Access Products and Services and the Wholesale Passive Products are adjusted by a Regulator, then operational changes to those prices shall not require prior consent from the Authority as contemplated under Paragraph 5.10 above. The Supplier shall submit adjustments to the Wholesale Access Prices in the r.Products and Services table in the Reports for formal record of such change as soon as reasonably practicable following such price change(s).



Annex 1 – Financial Model

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Call-Off Schedule 5 (Project Plan and Testing)

Part 1 – Project Plan and Milestones

1 Project Plan

- 1.1 As at the Effective Date, the first (1st) version of the Project Plan is set out in the Call-Off Schedule 2 (Tender).
- 1.2 Subject to Paragraph 1.3 of Part 1 of this Schedule, the Supplier shall update the Project Plan on a regular basis and ensure that it always:
- (a) includes the level of detail provided in its initial version to manage the carrying out of the Works and the provision of the Outputs effectively;
 - (b) incorporates all the Milestones and associated Milestone Dates as set out in the initial version and complies with the Milestone Template set out in Annex 1 (Milestone Template);
 - (c) continues to comprise Gantt charts and planning data as is reasonably necessary to provide identification and notice of the individual Works and Output activities in order to support the practical operation of this Contract and tracking of the progress of the Works and Outputs;
 - (d) is maintained using a planning software tool that is capable of generating output that is machine readable and compatible with the Authority's software, including PDF format; and
 - (e) includes planning levels 1, 2 and 3.
- 1.3 The Supplier shall not be entitled to postpone, alter or request an alteration to any Milestone or its associated Milestone Date set out in the Project Plan (except in accordance with Clauses 39 (Relief Events), 40 (Exceptional Engineering Difficulties) and 10 (Completion of Stage One (Network Detailed Design and Due Diligence))).
- 1.4 The Supplier shall:
- (a) establish an appropriate version control procedure so as to ensure that the agreed version of the Project Plan is made available to the Authority at all times; and
 - (b) ensure the latest version of the Project Plan is included in each Status Report provided to the Authority in accordance with Clause 15.3 (Call-Off Contract Reports).
- 1.5 The Supplier's performance against the Project Plan shall be reviewed at each Progress Meeting and when updating the Project Plan, the Supplier shall take reasonable account of any comments that the Authority has provided during the Progress Meeting. The Parties shall ensure that any amendments to the Project Plan in accordance with this Paragraph 1 is evidenced in a Change Authorisation Note.



2 Milestone Achievement procedure

- 2.1 The Milestone Criteria for each Milestone are set out in Annex 2.
- 2.2 The Supplier shall on or before the Milestone Date for each Milestone provide the Authority with the relevant items associated with that Milestone listed in the Milestone Criteria and shall ensure they are sufficiently detailed to enable the Authority to determine whether each Milestone has been Achieved.
- 2.3 Within ten (10) Working Days following receipt, the Authority shall review the items and in respect of each Milestone confirm in writing that either:
- (a) the Milestone Criteria have been met and that accordingly the Milestone has been Achieved; or
 - (b) the Milestone Criteria have not been met (giving reasons) and that accordingly the Milestone has not been Achieved.
- 2.4 If the Supplier does not Achieve a Milestone on or before the associated Milestone Date, the Supplier shall issue a report to the Authority setting out the reasons why within two (2) Working Days of the Milestone Date.
- 2.5 If the Parties fail to agree whether or not the relevant Milestone has been Achieved then the matter shall be resolved using the Dispute Resolution Procedure.



Part 2 - Testing

1 Testing

- 1.1 The Supplier shall carry out Testing in accordance with this Schedule, the Test Strategy and the Test Plan.
- 1.2 Any Testing shall not affect the Authority's rights and remedies set out elsewhere in this Contract and the passing of any Test shall not relieve the Supplier from complying with its other obligations in this Contract.

2 Test Strategy

- 2.1 The Test Strategy is set out in the Call-Off Schedule 2 (Tender).
- 2.2 The Supplier shall only be entitled to amend the Test Strategy if agreed between the Parties in accordance with the Changing the Contract Procedure and where the amendment relates to or arises from a change to the Supplier Technical Solution as agreed between the Parties in accordance with the Changing the Contract Procedure.

3 Test Plans

- 3.1 The Test Plans are set out in the Call-Off Schedule 2 (Tender).
- 3.2 The Supplier shall only be entitled to amend a Test Plan if agreed between the Parties in accordance with the Changing the Contract Procedure and where the amendment relates to or arises from a change to the Supplier Technical Solution as agreed between the Parties in accordance with the Changing the Contract Procedure.

4 Test Success Criteria

The Test Success Criteria for all Tests shall be set out in the Test Strategy.

5 Test attendance

- 5.1 The Supplier shall notify the Authority at least five (5) Working Days prior to the date for commencing Testing of any Test Item.
- 5.2 The Authority may attend any Test (in its sole discretion) and the Supplier must facilitate such attendance.
- 5.3 Subject to the Supplier's compliance with this Paragraph 5, the Authority's non-attendance at a Test shall not prevent completion of the Test by the Supplier.

6 Auditing the quality of the Test

- 6.1 Without affecting the Authority's rights set out in Clauses 17.2 to 17.15 (Audit rights), the Authority or an agent or contractor appointed by the Authority may perform on-going quality audits in respect of any part of the Testing (each a "**Testing Quality Audit**").



- 6.2 The focus of the Testing Quality Audit shall be on:
- (a) adherence to an agreed methodology;
 - (b) adherence to an agreed Testing process;
 - (c) review of status and key development issues; and
 - (d) identification of key risk areas.
- 6.3 The Supplier shall allow sufficient time in the Test Plan to ensure that adequate responses to a Testing Quality Audit can be provided.
- 6.4 The Authority will give the Supplier at least five (5) Working Days written notice of the Authority's intention to undertake a Testing Quality Audit.
- 6.5 The Supplier shall provide all reasonable necessary assistance and access to all relevant documentation required by the Authority to enable it to carry out the Testing Quality Audit.
- 6.6 If the Testing Quality Audit gives the Authority concern in respect of any Test, the Authority shall prepare a written report for the Supplier detailing its concerns and the Supplier shall, within a reasonable timeframe, respond in writing to the Authority's report.
- 6.7 In the event of an inadequate response to the written report from the Supplier, the Authority may require further iterations of the Supplier's response until the issues in the report have been addressed to the satisfaction of the Authority.

7 Test Reports

- 7.1 The Supplier shall provide to the Authority in relation to each Test:
- (a) a draft Test Report not less than two (2) Working Days prior to the date on which the Test is planned to end; and
 - (b) the final Test Report within five (5) Working Days of completion of Testing.
- 7.2 Each Test Report shall provide a full report on the Testing conducted in respect of the relevant Test Items, including:
- (a) an overview of the Testing conducted;
 - (b) identification of the relevant Test Success Criteria that have/have not been satisfied together with the Supplier's explanation of why any criteria have not been met;
 - (c) the Tests that were not completed together with the Supplier's explanation of why those Tests were not completed;
 - (d) the Test Success Criteria that were satisfied, not satisfied or which were not tested, and any other relevant categories, in each case grouped by severity level; and



- (e) the specification for any hardware and software used throughout Testing and any changes that were applied to that hardware and/or software during Testing.

8 Test Issue Management Log

- 8.1 Where a Test Report identifies a Test issue, the Supplier shall log the Test issue in the Test Issue Management Log.
- 8.2 The Supplier shall be responsible for maintaining the Test Issue Management Log and for ensuring that its contents accurately represent the current status of each Test issue at all relevant times. The Supplier shall make the Test Issue Management Log available to the Authority on request.

9 Outcome of the Testing

- 9.1 The Supplier shall confirm and evidence to the Authority's satisfaction that in respect of each Milestone (where applicable) the Test Item associated with the Milestone satisfies the Test Success Criteria in respect of that Test without any Test issues.
- 9.2 The Supplier shall self-certify in each Stage Two Progress Report that:
 - (a) Testing has been carried out in accordance with the provisions of this Schedule on all Test Items by an appropriately qualified engineer of the Supplier; and
 - (b) evidence of Testing in the form of a certification by the engineer who carried out the Testing has been retained.
- 9.3 The Authority may, without affecting any other rights and remedies that it has under this Contract, recover from the Supplier any reasonable additional costs it may incur as a direct result of further review or re-Testing which is required for the Test Success Criteria for that Test Item to be satisfied.



Annex 1 – Milestone Template

No	Milestone Type	Milestone Name	Milestone Date	Number of Build Units
1	Key Milestone	Stage One (Network Detailed Design and Due Diligence) Complete Milestone	REDACTED UNDER FOIA SECTION 43: COMMERCIALY SENSITIVE	REDACTED UNDER FOIA SECTION 43: COMMERCIALY SENSITIVE
2	Build Milestone	Stage Two - Build Unit Complete Milestone (1)*	REDACTED UNDER FOIA SECTION 43: COMMERCIALY SENSITIVE	REDACTED UNDER FOIA SECTION 43: COMMERCIALY SENSITIVE
3	Build Milestone	Stage Two - Build Unit Complete Milestone (2)	REDACTED UNDER FOIA SECTION 43: COMMERCIALY SENSITIVE	REDACTED UNDER FOIA SECTION 43: COMMERCIALY SENSITIVE
4	Build Milestone	Stage Two - Build Unit Complete Milestone (3)	REDACTED UNDER FOIA SECTION 43: COMMERCIALY SENSITIVE	REDACTED UNDER FOIA SECTION 43: COMMERCIALY SENSITIVE
5	Build Milestone	Stage Two - Build Unit Complete Milestone (4)	REDACTED UNDER FOIA SECTION 43: COMMERCIALY SENSITIVE	REDACTED UNDER FOIA SECTION 43: COMMERCIALY SENSITIVE
6	Key Milestone	Stage Two (Build) Complete Milestone	REDACTED UNDER FOIA SECTION 43: COMMERCIALY SENSITIVE	REDACTED UNDER FOIA SECTION 43: COMMERCIALY SENSITIVE

Notes:

* In Stage Two (Build) there shall be a minimum of four (4) Build Milestones which are at least three (3) months apart. Each of the Build Milestones shall represent a maximum of 40% of the total Build Units.

* All Milestones, including Build Milestones and Key Milestones, must have a Milestone Date and number of Build Units that align to the Financial Model. Unless otherwise agreed between the Parties, where a Change is agreed under the Changing the Contract Procedure, the number of Build Units must align to the updated Financial Model.

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Annex 2 – Milestone Criteria

Milestone Type	Milestone Name	Milestone Criteria Items
Key Milestone	Stage One (Network Detailed Design and Due Diligence) Complete Milestone	<ul style="list-style-type: none">• Where Paragraph 6 (Stage One (Network Detailed Design and Due Diligence) approach) of the Call-Off Award Form specifies that the Supplier will be carrying out an expedited Stage One (Network Detailed Design and Due Diligence):<ul style="list-style-type: none">◦ Written confirmation from the Supplier in accordance with Paragraph 2.5 (Stage One (Network Detailed Design and Due Diligence)) of Call-Off Schedule 1 (Specification) to the satisfaction of the Authority.• Where Paragraph 6 (Stage One (Network Detailed Design and Due Diligence) approach) of the Call-Off Award Form specifies that the Supplier will be carrying out a full Stage One (Network Detailed Design and Due Diligence):<ul style="list-style-type: none">◦ Stage One Output in accordance with Clause 15.3 (Call-Off Contract Reports) to the satisfaction of the Authority.
Build Milestone	Build Unit Complete Milestone	Stage Two Progress Report in accordance with Clause 15.3 (Call-Off



	(There shall be a minimum of four (4) Build Milestones)	Contract Reports) to the satisfaction of the Authority.
Key Milestone	Stage Two (Build) Complete Milestone	<ul style="list-style-type: none">• The final Stage Two Progress Report in accordance with Clause 15.3 (Call-Off Contract Reports) to the satisfaction of the Authority.• Evidence to the satisfaction of the Authority confirming:<ul style="list-style-type: none">○ all Build Milestones have been Achieved; and○ all End User Premises in the Intervention Area have achieved Customer Ready For Service.



DPS Schedule 2 (Call-Off Award Procedure)

PART 1 CALL-OFF AWARD PROCEDURE

1 Introduction

- 1.1 If an Authority decides to award a Call-Off Contract under the DPS Contract it must award the Call-Off Contract in accordance with the procedure in this Schedule and the requirements of the PCR Regulations.

2 Call-Off Award Procedure

The Authority

- 2.1 If an Authority awards a Call-Off Contract under the DPS Contract following the Call-Off Award Procedure in this Schedule, it shall:
- (a) set out the Works to be carried out and the Outputs to be delivered in the Call-Off Award Form (Schedule 1);
 - (b) verify that the suppliers on the DPS are eligible to be invited to tender under the terms of the DPS Contract;
 - (c) invite tenders following the Call-Off Award Procedure in this Schedule in accordance with the PCR Regulations and in particular:
 - (i) set a time limit for receipt of tenders that takes account of factors such as the complexity of the contract and the time needed to prepare tenders;
 - (ii) keep each tender confidential until the time limit set out for the return of tenders has expired; and
 - (iii) apply the Call-Off Contract Award Criteria to the Suppliers' compliant tenders submitted during the Call-Off Award Procedure as the basis for its decision to award a Call-Off Contract for its requirements set out in the Call-Off Award Form;
 - (d) where the Authority considers it is appropriate to do so, request clarification from a Supplier in accordance with Regulation 56(4) of the PCR Regulations;
 - (e) subject to Paragraph 2.2 below, award the Call-Off Contract to the successful Supplier in accordance with Paragraph 2.1(c)(iii). The Call-Off Contract shall:
 - (i) state the Outputs to be delivered and the Works to be carried out;
 - (ii) state the tender submitted by the successful Supplier;



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- (iii) state the Funding Payments to be provided for the delivery of the Outputs and the carrying out of the Works in accordance with the tender submitted by the successful Supplier; and
 - (iv) incorporate the terms of the Call-Off Award Form and DPS Contract applicable to the requirements; and
 - (f) provide unsuccessful Suppliers with written feedback in relation to the reasons why their tenders were unsuccessful.
- 2.2 The Authority reserves the right not to award a Call-Off Contract to the successful Supplier where the successful Supplier is unable to provide additional supporting information to demonstrate that it can deliver the Call-Off Contract or Call-Off Contracts it has been successful for.

The Supplier

- 2.3 The Supplier shall in writing by the time and date specified by the Authority following an ITT pursuant to Paragraph 2.1(c) above provide the Authority with either:
 - (a) a statement to the effect that it does not wish to tender in relation to the delivery of the Outputs and the carrying out of the Works; or
 - (b) the full details of its tender made in respect of the delivery of the Outputs and the carrying out of the Works. In the event the Supplier submits a tender, it shall submit its tender in accordance with the ITT issued by the Authority for the Call-Off Contract relating to the Outputs.
- 2.4 The Supplier agrees that:
 - (a) all tenders submitted by the Supplier in relation to a Call-Off Contract held pursuant to Paragraph 2 shall remain open for acceptance by the Authority for one hundred and eighty (180) Working Days (or such other period specified in the ITT issued by the Authority in accordance with the Call-Off Award Procedure);
 - (b) all tenders submitted by the Supplier are made in good faith and that the Supplier has not fixed or adjusted and will not fix or adjust the Funding Payment in the tender by or in accordance with any agreement or arrangement with any other person. The Supplier certifies that it has not and undertakes that it will not:
 - (i) communicate to any person other than the person inviting these tenders the amount or approximate amount of the Funding Payment in the tender, except where the disclosure, in confidence, of the approximate amount of the Funding Payment in the tender was necessary to obtain quotations required for the preparation of the tender; and
 - (ii) enter into any arrangement or agreement with any other person that he or the other person(s) shall refrain from submitting a tender or as to the amount of any Funding Payment in the tenders to be submitted.

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3 No requirement to award

- 3.1 Even if the Authority has followed a Call-Off Award Procedure as set out in Paragraph 2 above, the Supplier acknowledges and agrees that the Authority shall be entitled at all times to decline to make an award for its requirements and that nothing in this DPS Contract shall oblige the Authority to award any Call-Off Contract.

4 Responsibility for the award

- 4.1 The Supplier acknowledges that the Authority is independently responsible for the conduct of its award of Call-Off Contracts under this DPS Contract and that DCMS is not responsible or accountable for and shall have no liability whatsoever, except where it is the Authority, in relation to:
- (a) the conduct of the Authority in relation to this DPS Contract; or
 - (b) the performance or non-performance of any Call-Off Contracts between the Supplier and the Authority entered into pursuant to this DPS Contract.

5 Awarding and creating a Call-Off Contract

- 5.1 Subject to Paragraphs 1 - 4 above, the Authority may award a Call-Off Contract with the Supplier by sending (including electronically) a signed Call-Off Award form substantially in the form of the Call-Off Award Form Template set out in DPS Schedule 1 (Call-Off Award Form).
- 5.2 The Parties agree that any document or communication (including any document or communication in the apparent form of a Call-Off Contract) which is not as described in this Paragraph 5 shall not constitute a Call-Off Contract under this DPS Contract.
- 5.3 On receipt of a call-off award form as described in Paragraph 5.1 from the Authority the Supplier shall accept the Call-Off Contract by promptly signing and returning (including by electronic means) a copy of the call-off award form to the Authority concerned.
- 5.4 On receipt of the countersigned Call-Off Award Form from the Supplier, the Authority shall send (including by electronic means) a written notice of receipt to the Supplier within two (2) Working Days and the Call-Off Contract shall be formed with effect from the Call-Off Contract Effective Date stated in the Call-Off Award Form.

PART 2 AWARD CRITERIA

6 Introduction

- 6.1 The award criteria for the award of a Call-Off Contract under the DPS is most economically advantageous tender.
- 6.2 The criteria that may be used for determining the most economically advantageous tender for a Call-Off Contract following a competition in accordance with the Call-Off Award Procedure in this Schedule 2 are set out in Table 1 below.



Table 1

Quality	[50-70%]	Technical Solution Quality and Design	[20-50%]
		Planning	[10-40%]
		Operation In-Life	[10-20%]
		Stakeholder Management and Contract Management	[10-30%]
		Wholesale Products and Services	[10-30%]
Social Value	[10%]		
Price	[30-50%]	Coverage	[50-80%]
		Cost	[20-50%]

- 6.3 The criteria set out in Table 1 may be formulated more precisely in the ITT for a specific Call-Off Contract. The Authority will specify the criteria and weightings to be applied for the award of a specific Call-Off Contract in the ITT for the specific Call-Off Contract.