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Schedule 3 – Financial Schedule



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Schedule 3 (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 48 (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 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 to 1.8 apply where the Supplier indicated in its Supplier ITT Response that the Supplier will undertake a full Stage One (Network Detailed Design and Due Diligence).
- 1.6 For each Authorised Drawdown, 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 for the relevant Authorised Drawdown; and
- B = costs incurred in completing the Stage One (Network Detailed Design and Due Diligence) Works for the relevant Authorised Drawdown 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

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- (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 for the relevant Authorised Drawdown; and
B =	actual costs incurred in completing the Stage One (Network Detailed Design and Due Diligence) Works for the relevant Authorised Drawdown 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 for an Authorised Drawdown, 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 for the relevant Authorised Drawdown;
- 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 for an Authorised Drawdown 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 9.1 (Completion of Stage One (Network Detailed Design and Due Diligence) for an Authorised Drawdown).

Stage Two (Build) Regular Payments

- 1.10 The Supplier may only submit a claim for payment under Paragraph 1.11 if:
- it has Achieved all Build Milestones for the relevant Authorised Drawdown which have a Milestone Date earlier than the date of the relevant claim; and
 - it has submitted the Stage Two Progress Report for the relevant Authorised Drawdown 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 for an Authorised Drawdown calculated as follows:

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

- A = number of Build Units in the relevant Authorised Drawdown 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) for the relevant Authorised Drawdown.

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:

Worked examples

Assumptions

- | | |
|---|----------|
| 1. Maximum Stage Two Funding Payment for an Authorised Drawdown: | £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.*

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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 the 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												
Year 2	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	

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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												

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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	Cannot submit Claim	Can submit Claim for Aug and Sep	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	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	

These are worked examples only and figures have no other application or relevance.

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Stage Two (Build) Key Milestone Payment

1.12 When the Supplier Achieves the Stage Two (Build) Complete Milestone of an Authorised Drawdown, 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 for the relevant Authorised Drawdown; and

B = costs incurred in completing the Stage Two (Build) Works for the relevant Authorised Drawdown 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 for the relevant Authorised Drawdown; and
B =	actual costs incurred in completing the Stage Two (Build) Works for the relevant Authorised Drawdown 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 for an Authorised Drawdown, 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 for the relevant Authorised Drawdown;

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

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



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- D= any amounts paid by the Authority to the Supplier by way of Stage Two (Build) Regular Payments for the relevant Authorised Drawdown in accordance with Paragraph 1.11.
- 1.14 If the Supplier Achieves the Stage Two (Build) Complete Milestone for an Authorised Drawdown 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 for the relevant Authorised Drawdown.
- 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.
- 1.17 Where the Supplier Achieves the Stage Two (Build) Complete Milestone of an Authorised Drawdown and can provide evidence there has been an unforeseen underspend of Eligible Stage Two Expenditure and there are still subsequent incomplete Authorised Drawdowns where the Supplier can evidence an unforeseen overspend, the Supplier may issue a Change Request to move underspend to subsequent Authorised Drawdowns. The Authority shall not unreasonably withhold agreement to such Change Request subject to the Supplier demonstrating to the Authority's satisfaction that:
- (a) it has promptly informed the Authority without undue delay;
 - (b) such underspend and overspend could not have been foreseen by a reasonably competent supplier of good standing carrying out similar works; and
 - (c) it has used all reasonable endeavours to mitigate any underspend or overspend occurring.
- 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.

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- 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).
- 2.4 The Authority acknowledges that if the Supplier is a SME, the Authority shall pay each valid and undisputed claim submitted in accordance with Paragraph 2.1 above within five (5) days (provided that where Paragraph 2.2 applies the five (5) days period shall commence when further information has been provided in each case to the Authority's satisfaction).
- (a) The Authority's commitment is to pay undisputed and valid invoices from SMEs within five (5) days and all undisputed and valid invoices to be paid within thirty (30) days.

3 Active services clawback

- 3.1 For each Authorised Drawdown, the Supplier shall comply with this Paragraph 3 from the Stage Two (Build) Commencement Date for that Authorised Drawdown. 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 15.1 (Reports), include the 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 for the relevant Authorised Drawdown, 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 the 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

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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:

$$\text{Active Services Exposure to Clawback} = (A * B) * 50\%$$

Where:

A = Net Additional Active Services Take Up; and

B = Active Services Incremental Customer Margin as set out in section of the Outputs section of the Financial Model for the relevant Authorised Drawdown

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

$$\text{Annual Active Services Take-up Clawback Amount} = A - B$$

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 for the Authorised Drawdown.

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):

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"**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 per cent (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 per cent (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 per cent (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:

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- A = NPV of additional customer connection (as specified in section 5 of the Outputs section of the Financial Model for the relevant Authorised Drawdown);
- 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 for the relevant Authorised Drawdown; and
- D = The total of any Annual Active Services Take-up Clawback Amounts previously paid back to the Authority for the Authorised Drawdown.

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 For each Authorised Drawdown, the Supplier shall comply with this Paragraph 4 from the Stage Two (Build) Commencement Date for that Authorised Drawdown. 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 the Stage Three Report provided under Clause 15.1 (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 table of the Financial Model for the relevant Authorised Drawdown, 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-	100	150	250	300	800

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up (customer units)					
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 one hundred and twenty five (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:

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

Where:

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



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B = Incremental Product Margin per customer unit or kilometre (as appropriate for the relevant Wholesale Passive Product) as set out in section 4 of the Outputs section of the Financial Model for the relevant Authorised Drawdown.

- 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:

- (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.

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- 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 5 of the Outputs section of the Financial Model for the relevant Authorised Drawdown);
- 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 for the relevant Authorised Drawdown; 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 of the final Drawdown, 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

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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 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 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 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

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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.

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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).



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Schedule 3 - Financial Schedule Tender South Yorkshire (Lot 20) Initial Scope and Deferred Scope, Appendix 1

Annex 1 – Initial Scope

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Annex 2 – Deferred Scope

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