

TCN SCHEDULE 12

COLLABORATION AND INTERFACE OBLIGATIONS

CONTENTS

1	INTRODUCTION	3
2	FUTURE FTTS SUPPLIERS	3
3	FUNDAMENTAL PURPOSE	3
4	DELEGATED AUTHORITY	4
5	REQUIRED BEHAVIOURS	5
6	COMPLIANCE WITH FTTS SUPPLIER AGREEMENTS	7
7	SUPPORT FOR FTTS SERVICES	7
8	COLLABORATION OBLIGATIONS	8
9	PRINCIPLES OF CO-OPERATION.....	10
10	CONFIDENTIALITY	10
11	INTELLECTUAL PROPERTY RIGHTS.....	11

Appendices

1	Supplier Dependencies	12
2	Definitions & Interpretation.....	13
3	Confidentiality Agreement	14
1	DEFINITIONS AND INTERPRETATION	15
2	CONFIDENTIALITY OBLIGATIONS	20
3	EXCLUDED INFORMATION	21
4	REVIEW ON BEHALF OF RECIPIENT	21
5	RETURN AND DESTRUCTION OF CONFIDENTIAL INFORMATION	22
6	PERMITTED DISCLOSURE.....	22
7	INTELLECTUAL PROPERTY RIGHTS	23
8	DATA PROTECTION	23
9	NO WARRANTY.....	23
10	TERMINATION	24
11	THIRD PARTY RIGHTS	24
12	GENERAL	24
13	NOTICE	25
14	ENTIRE AGREEMENT	26
15	GOVERNING LAW.....	27

1. INTRODUCTION

- 1.1 The Supplier acknowledges that the Services it is to provide to the Authority and the Service Beneficiaries pursuant to this Agreement form part of the Authority's overall Theory Test Service. In that context, it is a requirement of the Authority that the Supplier and each of the FTTS Suppliers collaborate together in order to ensure the smooth and effective delivery of an end-to-end service to the Authority and the Service Beneficiaries.
- 1.2 The success of the Authority's overall Theory Test Service and the delivery of an end-to-end service to the Authority and the Service Beneficiaries relies, in part, on the effective collaboration between the Supplier and the FTTS Suppliers.
- 1.3 The Supplier has accepted and will comply with the provisions of this Schedule 12 in order to ensure the smooth and effective delivery of an end-to-end service to the Authority and the Service Beneficiaries.
- 1.4 Where any obligation of the Supplier pursuant to this Schedule is to be discharged by any Sub-contractor, the Supplier shall procure that such Sub-contractor shall comply with the provisions of this Schedule 12.
- 1.5 The obligations contained in this Schedule 12 are without prejudice to the obligations of the Supplier to comply with the provisions of Schedule 2.1 (Services Description).

2. FUTURE FTTS SUPPLIERS

- 2.1 The Supplier acknowledges that the Authority may enter into agreements with FTTS Suppliers following the Effective Date and that consequential Changes to the Agreement and this Schedule 12 may be required as a result. Such Changes shall be subject to the Change Control Procedure set out in Schedule 8.2 (Change Control Procedure).
- 2.2 Where any future FTTS Supplier enters into any arrangement set out in paragraph 2.1 above, they may be required to attend collaboration workshops/meetings with the Authority and/or the Supplier and/or any other FTTS Suppliers as the Authority deems necessary. The Supplier will comply with all requirements of the Authority in this regard.

3. FUNDAMENTAL PURPOSE

- 3.1 The provisions of this Schedule 12 are intended to create binding rights and obligations between the Supplier and the Authority in relation to collaboration and co-operation with the FTTS Suppliers in order to ensure the smooth and effective delivery of an end-to-end Theory Test Service to the Authority and the Service Beneficiaries.
- 3.2 The Supplier shall work collaboratively and collectively with the FTTS Suppliers to ensure that their delivery of the Services do not conflict with and, to the fullest extent possible, support, the Authority's objectives, strategies and goals as published or as notified to the Supplier from time to time.

4. DELEGATED AUTHORITY

4.1 The Authority shall be entitled to grant to the Supplier or any FTTS Supplier from time to time Delegated Authority to make decisions and give instructions on behalf of the Authority to the Supplier and/or any FTTS Suppliers, as applicable, in connection with:

4.1.1 the management of the resolution and root cause analysis of major incidents and problems, where, in the reasonable opinion of the Authority, the Delegatee bears the majority of the responsibility therefor;

4.1.2 the implementation of cross FTTS Supplier projects, including services improvement; and

4.1.3 any other activities as may be reasonably required by the Authority.

The Authority shall do so by issuing a Delegated Authority Notice to the Supplier and each FTTS Supplier to whom it applies specifying the applicable Delegatee and the scope and boundaries of the relevant Delegated Authority.

4.2 The Supplier acknowledges that the Delegatees have been granted Delegated Authority and the Supplier agrees:

4.2.1 where it is a Delegatee, to make decisions and give instructions strictly in compliance with the Delegated Authority Notice and:

4.2.1.1 not act or seek to act beyond the Delegated Authority; and

4.2.1.2 take decisions and give instructions in accordance with the Delegated Authority for and on behalf of the Authority within a reasonable time;

4.2.2 if the Supplier considers any FTTS Supplier is failing to comply with any decision or instruction properly given by the Supplier as a Delegatee in accordance with the Delegated Authority within a reasonable time the Supplier shall:

4.2.2.1 inform the Authority immediately; and

4.2.2.2 inform the FTTS Supplier immediately and, to the extent reasonably practicable, seek to ensure that the FTTS Supplier acts in accordance with such decision or instruction;

4.2.3 to comply with any decision or instruction of another Delegatee that is in compliance with the details of its Delegated Authority as set out in the Delegated Authority Notice as if it were a decision or instruction of the Authority, to the extent that such Delegated Authority Notice is made available to the Supplier by the Authority;

4.2.4 if the Supplier considers any Delegatee is:

4.2.4.1 acting or seeking to act beyond the Delegated Authority; or

4.2.4.2 failing to take decisions or give instructions in accordance with the Delegated Authority within a reasonable time;

the Supplier shall:

4.2.4.3 inform the Authority immediately; and

4.2.4.4 inform the Delegatee immediately and, to the extent reasonably practicable, seek to ensure that the Delegatee acts in accordance with the Delegated Authority.

4.2.5 that failure to comply with paragraphs 4.2.1 to 4.2.4 of this Schedule 12 shall be deemed to be a Notifiable Default pursuant to clause 27 (Rectification Plan Process) of the Agreement and the Supplier shall be required to follow the Rectification Plan process set out within that clause.

5. REQUIRED BEHAVIOURS

5.1 In order to ensure the effective delivery of the Authority's objectives, the Supplier will act in the following way:

5.1.1 **Collaborative Intention:** the Supplier must act in good faith and adopt and maintain a genuine non-defensive presence and make a commitment to mutual success in its relationship with the Authority and the FTTS Suppliers;

5.1.2 **Openness:** the Supplier must be honest in its dealings and open to honest feedback and create a culture of openness that allows all of the Supplier, the FTTS Suppliers and the Authority to feel safe enough to discuss concerns, solve problems and deal directly with difficult issues;

5.1.3 **Self Accountability:** the Supplier must behave in a fair and reasonable manner and must take responsibility for its circumstances and the choices it makes either through its action or failing to act as well as the intended and unforeseen consequences of these actions. The Supplier must focus on the solution to a problem or issue rather than seeking to blame the Authority or any FTTS Supplier;

5.1.4 **Self-Awareness and Awareness of Others:** the Supplier must commit to understanding its own organisations and issues within its own organisations as well as understanding concerns, intentions and motivations of the Authority and the FTTS Suppliers as well as the culture and context of the Authority and the FTTS Suppliers' circumstances;

5.1.5 **Problem Solving and Negotiating:** the Supplier must proactively use problem-solving methods that promote a collaborative and co-operative atmosphere and avoid fostering covert, overt, conscious or unconscious enmity, conflicts or point-scoring;

5.1.6 **Expertise:** the Supplier shall commit to using its expertise to the benefit of the overall Theory Test Service and the end-to-end services delivered to the

Authority and the Service Beneficiaries. The Supplier shall ensure that the Supplier Personnel work collaboratively with FTTS Supplier personnel, laying aside considerations of individual competitive advantage in the interests of the Authority;

- 5.1.7 **Data Sharing:** subject to its duties to comply with confidentiality undertakings and Data Protection Legislation, the Supplier shall commit to providing the Authority and FTTS Suppliers with such data and information as is appropriate and necessary in order to benefit the overall Theory Test Service, ensure end-to-end services delivery to the Authority and/or to help the resolution of any incidents or problems;
- 5.1.8 **Promote Value:** the Supplier shall demonstrate a preparedness to innovate and adopt best practises and be forthcoming in initiating proposals for new best practices which deliver improved value to the Authority and the Service Beneficiaries;
- 5.1.9 **Forward Looking:** the Supplier shall take a forward looking approach that does not dwell on past issues or conflicts of delivery methods, other than ensuring that past lessons are learnt so as to maximise the effective delivery of end-to-end services to the Authority and the Service Beneficiaries; and
- 5.1.10 **Intellectual Property and Confidential Information:** the Supplier shall recognise that, when working with the FTTS Suppliers, any and all Intellectual Property Rights and confidential information exposed by any FTTS Supplier shall be exposed on the basis that the Supplier will:
 - 5.1.10.1 afford the same level of protection to such Intellectual Property Rights and confidential information as they would to their own Intellectual Property Rights or confidential information;
 - 5.1.10.2 only make use of such Intellectual Property Rights or confidential information for the express purpose of the Theory Test Service and subject to the provisions of paragraph 11; and
 - 5.1.10.3 without prejudice to the generality of paragraph 5.1.10.1 and the provisions of paragraph 10 and Appendix 3, be kept confidential and not disclosed to any third party other than another FTTS Supplier for the purpose set out in paragraph 5.1.10.2.
- 5.2 The Supplier's demonstration of the above behaviours will be measured by the Authority's consideration of the extent of the Supplier's compliance with the provisions of this Schedule 12 and, in considering the Supplier's compliance pursuant to this paragraph 5.2, the Authority may take into account its own views and the reasonable opinions and views of relevant FTTS Suppliers.
- 5.3 Where it is deemed by the Authority, acting reasonably, that the Supplier is not demonstrating the behaviours set out in this paragraph 5, such failure shall be deemed to be a Notifiable Default for the purposes of clause 27 (Rectification Plan Process) and the

Supplier shall be required to follow the Rectification Plan process set out within that clause.

- 5.4 The provisions of paragraph 5 are without prejudice to any other rights or remedies that the Authority may have in respect of any breach of this Agreement, whether set out in this Agreement or otherwise.

6. COMPLIANCE WITH FTTS SUPPLIER AGREEMENTS

- 6.1 Where the Supplier fails or becomes aware that it is likely to fail to comply with any obligation of this Agreement and that failure could impact on the performance of services by any FTTS Supplier, the Supplier shall promptly notify the Authority (in writing) of such failure or likely failure.

- 6.2 Where the Supplier becomes aware of an event or incident that could impact on the performance of the Services or the performance of services by any FTTS Supplier, the Supplier shall promptly notify the Authority (in writing) of such failure or likely failure.

7. SUPPORT FOR FTTS SERVICES

- 7.1 As at the Effective Date, the Supplier acknowledges that all dependencies upon the Authority and any FTTS Suppliers that the Supplier requires to enable it to deliver the Services are set out or referred to in Schedule 3 (Authority Responsibilities) and are subject to the Authority Cause provisions, and the Supplier further acknowledges that there are no other dependencies on either the Authority or any FTTS Supplier than those set out in Schedule 3 (Authority Responsibilities).

- 7.2 The Supplier shall comply with and/or perform, as applicable, the Supplier Dependencies.

- 7.3 The Supplier agrees to work together with the Authority in order to identify any new Supplier Dependencies that may arise following the Effective Date (whether by virtue of a Change to this Agreement, a change to any of the FTTS Supplier Agreements or the Authority entering into a new FTTS Supplier Agreement or otherwise). Any changes to the Supplier Dependencies or the Authority Responsibilities after the Effective Date will be processed by the Authority in accordance with the Change Control Procedure.

- 7.4 For the avoidance of doubt, any Changes to the Supplier Dependencies will only attract an increase in the Charges where any newly defined Supplier Dependencies fall outside of the scope of Services and reflect a change in the Supplier's obligations under this Agreement.

- 7.5 Where the Supplier fails to perform, or is likely to fail to perform any relevant obligation recorded as a Supplier Dependency and this results, or is likely to result, directly or indirectly in any FTTS Supplier failing to perform their relevant obligations under their relevant contractual arrangements then:

- 7.5.1 the Supplier shall notify the Authority as soon as it becomes aware of the relevant default or likely default, giving reasons for such default or likely default;

- 7.5.2 the Supplier shall work with the relevant FTTS Supplier(s) to minimise the effect of any failure or likely failure to perform a relevant Supplier Dependency on the performance of its obligations under this Agreement and the provision of the services under the relevant FTTS Supplier Agreement and shall continue to perform any unaffected obligations or services in accordance with the terms of this Agreement and/or the relevant FTTS Supplier Agreement (as relevant); and
- 7.5.3 (without double counting pursuant to the provisions of schedule 7.6 (Compensation)) the Supplier shall be liable to the Authority (in accordance with and subject to the provisions of this Agreement) for all loss, damage, costs and expenses (including legal expenses) suffered or incurred by the Authority including any amounts payable by the Authority to a FTTS Supplier under the relevant FTTS Supplier Agreement as a result of the Supplier's failure to perform the Supplier Dependency, but subject always to the provisions of Clause 25 (Limitations on Liability).
- 7.6 The Supplier agrees that it shall not bring any claim against either the Authority or any FTTS Supplier for any loss, damage, costs or expenses incurred due to the failure to perform an Authority Responsibility other than through the provisions of Clause 31 (Authority Cause) of this Agreement.
- 8. COLLABORATION OBLIGATIONS**
- 8.1 The Supplier shall, and shall procure that its Sub-contractors shall (where it is necessary and/or desirable to do so), co-operate with each of the FTTS Suppliers and with the Authority and provide such cooperation, support, assistance and information to each other party as is necessary (including in accordance with the Supplier Dependencies) in each case to the extent reasonable, in order:
- 8.1.1 to ensure the orderly provision of seamless end-to-end services to the Authority and Service Beneficiaries in accordance with all policies and procedures and technical interface standards that are specified by the Authority or any Delegatee(s) in accordance with their Delegated Authority, as such Delegated Authority may be amended or replaced from time to time;
- 8.1.2 to avoid hindering the provision of services to the Authority and Service Beneficiaries under the FTTS Supplier Agreement(s) by any of the FTTS Suppliers;
- 8.1.3 to facilitate the delivery of the services by the FTTS Suppliers in accordance with the terms of their respective FTTS Supplier Agreement;
- 8.1.4 to avoid any unnecessary duplication of effort;
- 8.1.5 to avoid undue disturbance to the Authority and Service Beneficiaries;
- 8.1.6 to undertake all such tasks and activities as may be necessary to integrate the systems, Software and Services with all other relevant systems, software and services of FTTS Suppliers; and

- 8.1.7 where (i) there is a failure by any FTTS Supplier to comply with the obligations set out in its FTTS Supplier Agreement (a “**FTTS Supplier Default**”) and (ii) such FTTS Supplier Default may or will lead to the Supplier, any FTTS Supplier and/or the Authority suffering claims, losses or damages of any description, the Supplier shall use all reasonable endeavours to mitigate any losses, claims or damage suffered by any FTTS Supplier and/or the Authority arising out of or in connection with such FTTS Supplier Default.
- 8.2 Without prejudice to the generality of paragraph 8.1, the Supplier shall as part of its general co-operation obligations described in paragraph 8.1:
- 8.2.1 work together with the FTTS Suppliers in good faith to ensure integration and interfacing where services are subject to inter-party dependencies;
- 8.2.2 operate and maintain all software, hardware and technology in accordance with Good Industry Practice where there is interoperation with a FTTS Supplier;
- 8.2.3 assist with any testing and/or any quality assurance analysis to be undertaken by the Authority or any FTTS Supplier;
- 8.2.4 subject to the provisions of paragraph 10 and Appendix 3, provide prompt access to any of their resources, systems, Software and materials required by any FTTS Supplier to enable them to provide their Services to the Authority and Service Beneficiaries and to deal with security and/or compliance issues, assessments and actions;
- 8.2.5 subject to the provisions of paragraph 10 and Appendix 3, promptly provide the FTTS Suppliers with all relevant information (including details of all operating environments, system constraints, all relevant information concerning interfacing, interoperation and operating parameters that may be reasonably required by such FTTS Suppliers) that they may need to provide their services to the Authority or Service Beneficiaries;
- 8.2.6 promptly escalate any issues or perceived problems via the governance regime set out in Schedule 8.1 (Governance); and
- 8.2.7 without limitation to paragraph 7.5, where it anticipates or discovers a potential or actual non-compliance with its obligations under this Agreement, and such non-compliance may have an impact on the performance of the services by a FTTS Supplier, notify such FTTS Supplier and the Authority as soon as reasonably practicable.
- 8.3 Where the Supplier fails to comply with the behaviours and/or obligations set out in this paragraph 8, such failure shall be deemed to be a Notifiable Default for the purposes of clause 27 (Rectification Plan Process) and the Supplier shall be required to follow the Rectification Plan process set out within that clause.

9. PRINCIPLES OF CO-OPERATION

9.1 The co-operation, support, information and assistance to be provided by the Supplier pursuant to Schedule shall be provided in accordance with the following principles:

- 9.1.1 the principle that the Supplier shall provide its cooperation, support, information and assistance in a proactive, transparent and open way and in a spirit of trust and mutual confidence;
- 9.1.2 the principle of 'fix first, discuss later', requiring that the Supplier shall concentrate on solving a problem as expeditiously and cost effectively as possible and leave any Disputes as to whether the Supplier or a FTTS Supplier are responsible, and should bear the cost of fixing the problem, and any associated legal issues, until resolution of the relevant problem. Where the Authority instructs the Supplier to resolve a problem or otherwise undertake specific work in connection with this paragraph 9.1.2 that has previously been agreed by the Authority as outside of the scope of the Services set out in Schedule 2.1, the Authority shall reimburse the Supplier for such work with such Charges being agreed through the Change Control Procedure, based on the applicable rate set out in Table 4 to Annex of Schedule 7.1 (Charging and Invoicing);
- 9.1.3 the principle that co-operative behaviour and overall cost efficiency should be promoted. For the avoidance of doubt, if this Agreement allows for the performance of a certain obligation in different ways, then the Supplier shall in good faith (i) take the cost impact of its choice on the FTTS Suppliers and the Authority into consideration when making such choice and (ii) refrain from knowingly choosing an option which would significantly and without justification increase the costs of any FTTS Supplier or of the Authority;
- 9.1.4 the principle that in setting up cross-supplier teams for delivery of projects and/or services, the Supplier shall work on a "responsibility matrix system" with the FTTS Suppliers and choose the best resource for each role rather than duplicating roles; and
- 9.1.5 the principle that the Supplier shall procure the adherence of Supplier Personnel and Sub-contractors to these co-operation and collaboration requirements.

9.2 Where it is deemed by the Authority, acting reasonably, that the Supplier is not demonstrating the behaviours set out in this paragraph 9, such failure shall be deemed to be a Notifiable Default for the purposes of clause 27 (Rectification Plan Process) and the Supplier shall be required to follow the Rectification Plan process set out within that clause.

10. CONFIDENTIALITY

10.1 The Supplier shall, within ten (10) Working Days of a request to do so by the Authority, enter into a confidentiality agreement with any other FTTS Supplier(s) substantially in the

form set out in Appendix 3 (Confidentiality Agreement) in relation to its obligations under this Schedule 12.

- 10.2 Where reasonably requested to do so by the Supplier, the Authority shall procure that any relevant FTTS Supplier shall enter into a confidentiality agreement with the Supplier, substantially in the form set out in Appendix 3 (Confidentiality Agreement), in relation to the Supplier's obligations under this Schedule 12.

11. INTELLECTUAL PROPERTY RIGHTS

Except as expressly agreed otherwise in writing (and without prejudice to the provisions of clauses 16-19 of this Agreement), all Intellectual Property Rights vested in a party prior to the date of this Agreement shall remain vested in that party.

APPENDIX 1

Supplier Dependencies

1. Supplier Dependencies

- 1.1 The Supplier Dependencies, as at the Effective Date, are all dependencies upon the Supplier as set out in the Agreement (including within Schedule 2.1 (Services Description), Schedule 2.2 (Performance Levels), Schedule 4.1 (Supplier Solution) and Schedule 8.5 (Exit Management)).

2. Change Control

- 2.1 Changes to the Supplier Dependencies will be processed by the Authority according to the change control procedures set out in Schedule 8.2 (Change Control Procedure) of this Agreement to reflect changes that may occur as a result of:

- (a) the addition of a new FTTS Supplier;
- (b) the addition of new Services;
- (c) the decommissioning of existing Services;
- (d) material changes to the manner in which existing Services are delivered; or
- (e) a change to this Agreement, a FTTS Supplier Agreement or a Supplier Dependency.

APPENDIX 2

Definitions & Interpretation

Unless the context otherwise requires the following expressions shall have the meanings set out below.

“Delegated Authority”	the rights granted to a Delegatee to act on the Authority's behalf as set out in a Delegated Authority Notice;
“Delegated Authority Notice”	a written notice given by the Authority pursuant to paragraph 4.1 specifying the applicable Delegatee and the scope and boundaries of the relevant Delegated Authority;
“Delegatee”	the Supplier or a FTTS Supplier, as applicable, with Delegated Authority;

APPENDIX 3

Confidentiality Agreement

Dated

20[]

(1) [Supplier 1]

(2) [Supplier 2]

Confidentiality Agreement

Future Theory Test Project

BETWEEN

- (1) [NAME OF THE SUPPLIER] a company registered in [England and Wales] under company number [] whose registered office is at []; and
- (2) [NAME OF THE SUPPLIER] a company registered in [England and Wales] under company number [] whose registered office is at [].

INTRODUCTION

- (A) The Secretary of State for Transport has entered into contracts for the provision of premises, hardware, software and/or any related functions and activities in relation to its Future Theory Test Service target operating model programme (the “FTTS Programme”) with a series of suppliers (each a “FTTS Supplier”).
- (B) The FTTS Suppliers will be obliged, pursuant to their contractual arrangements with the Secretary of State for Transport, to work collaboratively with each other and the Secretary of State for Transport in order to ensure the successful delivery of the FTTS Programme.
- (C) The above named FTTS Suppliers have entered into this Agreement in order to provide protection for their Confidential Information and Personal Data whilst carrying out their collaboration obligations as referred to in (B) above.

1. DEFINITIONS AND INTERPRETATION

In this Agreement:

- 1.1 the following words and expressions have the following meanings unless the context otherwise requires:

“Affiliates”	in respect of a Party, any other entity which directly and/or indirectly Controls, is Controlled by, or is under direct or indirect common Control with that Party from time to time and for this purpose “Control” and “Controls” and “Controlled” will be construed accordingly
---------------------	---

“Confidential Information”	<p>(a) Information, including all Personal Data, which (however it is conveyed) is provided by the Discloser pursuant to or in anticipation of this Agreement or a FTTS Supplier Agreement that relates to:</p> <ul style="list-style-type: none"> (i) the Discloser Parties; or (ii) the operations, business, affairs, developments, intellectual property rights, trade secrets,
-----------------------------------	---

know-how and/or personnel of the Discloser Parties;

- (b) other Information provided by the Discloser pursuant to or in anticipation of this Agreement or a relevant FTTS Supplier Agreement 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 Agreement or a relevant FTTS Supplier Agreement;
- (c) discussions, negotiations, and correspondence between the Discloser 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 Agreement or a relevant FTTS Supplier Agreement and all matters arising therefrom; and
- (d) Information derived from any of the above,

but not including any Information which:

- (i) was in the possession of the Recipient without obligation of confidentiality prior to its disclosure by the Discloser;
- (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 Discloser or otherwise prohibited from disclosing the information to the Recipient;
- (iii) was already generally available and in the public domain at the time of disclosure otherwise than by a breach of this Agreement or

	breach of a duty of confidentiality;
	(iv) was independently developed without access to the Confidential Information; or
	(v) relates to the relevant FTTS Supplier's performance under the relevant FTTS Supplier Agreement
"Data Protection Legislation"	<p>(a) the GDPR, the Law Enforcement Directive (LED) and any applicable national implementing Laws as amended from time to time;</p> <p>(b) the DPA 2018 to the extent that it relates to processing of personal data and privacy;</p> <p>(c) all applicable Law about the processing of personal data and privacy</p>
"Discloser"	a Party which discloses or makes available directly or indirectly its Confidential Information
"Discloser Parties"	the Discloser, each of the Discloser's Affiliates and the Discloser's Representatives and "Discloser Party" means any of them
"DPA 2018"	the Data Protection Act 2018
"FTTS Programme"	a defined in recital (A)
"FTTS Supplier Agreement"	any contract between the Secretary of State for Transport and a FTTS Supplier to provide premises, software, hardware, goods and/or any related functions and activities as part of the FTTS Programme
"FTTS Supplier"	a defined in recital (A)
"GDPR"	The General Data Protection Regulation (EU) 2016/679
"Information"	all information of whatever nature, however conveyed and in whatever form, including in writing, orally, by demonstration, electronically and in a

	tangible, visual or machine-readable medium (including CD-ROM, magnetic and digital form)
“Intellectual Property”	all intellectual and industrial property of any kind whatsoever including patents, supplementary protection certificates, rights in Know-How, registered trade marks, registered designs, models, unregistered design rights, unregistered trade marks, rights to prevent passing off or unfair competition and copyright (whether in drawings, plans, specifications, designs and computer software or otherwise), database rights, topography rights, any rights in any invention, discovery or process, and applications for and rights to apply for any of the foregoing, in each case in the United Kingdom and all other countries in the world and together with all renewals, extensions, continuations, divisions, reissues, re-examinations and substitutions
“Know-How”	formulae, methods, plans, inventions, discoveries, improvements, processes, performance methodologies, techniques, specifications, technical information, tests, results, reports, component lists, manuals and instructions
“Law”	any law, statute, subordinate legislation within the meaning of section 21(1) of the Interpretation Act 1978, bye-law, enforceable right within the meaning of section 2 of the European Communities Act 1972, regulation, order, mandatory guidance or code of practice, judgment of a relevant court of law, or directives or requirements of any regulatory body with which the Parties are bound to comply;
“Parties”	the parties to this Agreement and “Party” shall be construed accordingly
“Permitted Discloser”	will have the meaning given to it in clause 6.1
“Permitted Disclosure”	will have the meaning given to it in clause 6.1
“Personal Data”	any data within the Confidential Information which comprises “personal data” as such term is defined within the GDPR
“Purpose”	in relation to a FTTS Supplier, the provision of premises, hardware, software and/or any related functions and activities in relation to the FTTS

	Programme outsourced to that FTTS Supplier under the relevant FTTS Supplier Agreement
“Recipient”	a Party which receives or obtains directly or indirectly Confidential Information
“Recipient Parties”	the Recipient, each of the Recipient’s Affiliates and the Recipient’s Representatives and “Recipient Party” means any of them
“Reports and Analyses”	any documents, summaries, extracts, transcripts, recordings, analyses, reports and other records (in any form or media) that use, concern or are based on or derived from any Confidential Information and are created by or on behalf of a Recipient Party
“Representatives”	any director, officer, employee of or professional advisor, agent or contractor to a Party or an Affiliate of that Party
“Working Day”	a day that is not a Saturday, Sunday or public or bank holiday in England and/or Wales
1.2	references to clauses, Schedules and Annexes are to the clauses of, schedules and annexes to this Agreement and references to paragraphs are to paragraphs of the relevant Schedule;
1.3	the Schedules form part of this Agreement and will have the same force and effect as if set out in the body of this Agreement and any reference to this Agreement will include the Schedules;
1.4	all headings are for ease of reference only and will not affect the construction or interpretation of this Agreement;
1.5	unless the context otherwise requires:
1.5.1	references to the singular include the plural and vice versa and references to any gender include every gender;
1.5.2	references to a “person” include any individual, body corporate, association, partnership, firm, trust, organisation, joint venture, government, local or municipal authority, governmental or supra-governmental agency or department, state or agency of state or any other entity (in each case whether or not having separate legal personality);
1.6	references to any statute or statutory provision will include any subordinate legislation made under it and will be construed as references to such statute, statutory provision and/or subordinate legislation as modified, amended, extended, consolidated, re-enacted and/or replaced and in force from time to time;
1.7	any words following the words “include”, “includes”, “including”, “in particular” or any

similar words or expressions will be construed without limitation and accordingly will not limit the meaning of the words preceding them; and

- 1.8 an obligation on a Party to this Agreement to procure or ensure the performance or standing of another person will be construed as a primary obligation of that Party.

2. **CONFIDENTIALITY OBLIGATIONS**

- 2.1 Each Recipient undertakes to the relevant Discloser and the relevant Discloser's Affiliates that it will, and will procure that each other Recipient Party will:

- 2.1.1 keep the Confidential Information secret and, subject to **clauses 3, 4 and 6**, will not, directly or indirectly disclose or publish any Confidential Information to any person (including the Recipient's Representatives);
- 2.1.2 use the Confidential Information solely for the Purpose;
- 2.1.3 maintain an up to date written record of the Confidential Information provided to it, all copies made of the Confidential Information and all Reports and Analyses and the then current location of each and name and address of each person to whom Confidential Information has been disclosed or who has otherwise had access to it and the date of such access or disclosure. The Recipient will, on request, provide a copy of such record to the relevant Discloser;
- 2.1.4 immediately notify the relevant Discloser in writing as soon as the Recipient (or, as appropriate, other Recipient Party) becomes aware of any breach (or suspected breach) of this Agreement or any breach (or suspected breach) of confidence in relation to the Confidential Information, by the Recipient or any person to whom the Recipient has directly or indirectly disclosed or published Confidential Information;
- 2.1.5 keep the Confidential Information safe and secure and will apply to it documentary and electronic security measures that match or exceed those that the Recipient operates in relation to its own confidential information and will also exercise not less than reasonable care;
- 2.1.6 mark all Confidential Information as "confidential";
- 2.1.7 not take any copies of the Confidential Information save as is strictly necessary for the Purpose and any such copies will be deemed to be Confidential Information and will be kept separate from the Recipient's (or that Recipient Party's (as appropriate)) own information;
- 2.1.8 only create such Reports and Analyses as are strictly necessary for the Purpose;
- 2.1.9 not reverse engineer, or attempt to reverse engineer, any software comprised within the Confidential Information;
- 2.1.10 at its own cost take or omit to take any reasonable and lawful actions that the

relevant Discloser requires to be taken or omitted to be taken in respect of the Confidential Information, any breach (or suspected breach) of this Agreement or any of the confidentiality agreements entered into between the Recipient and a Recipient Party pursuant to **clause 4.1**, the enforcement of this Agreement (or such other agreements) and/or any infringement of the relevant Discloser's rights in relation to the Confidential Information including the commencement of legal proceedings; and

- 2.1.11 contact and deal only with those representatives of the relevant Discloser notified by the relevant Discloser to the Recipient in writing from time to time and will not seek Confidential Information from, or discuss Confidential Information with, any of the relevant Discloser's other Representatives.

3. EXCLUDED INFORMATION

The Recipients' obligations under this Agreement will not extend to Confidential Information which:

- 3.1 at the time of disclosure was in the public domain or subsequently enters into the public domain other than as the direct or indirect result of a breach of this Agreement by a Recipient Party;
- 3.2 the Recipient can prove to the reasonable satisfaction of the relevant Discloser from written records or other substantive evidence:
 - 3.2.1 has been received by the Recipient or one of its Affiliates at any time from a third party who did not acquire it in confidence and who is free to make it available to the Recipient or the relevant Affiliate without limitation; or
 - 3.2.2 was independently developed by the Recipient or one of its Affiliates without any breach of this Agreement.

4. REVIEW ON BEHALF OF RECIPIENT

- 4.1 The Recipient may disclose Confidential Information to any Recipient Party to the extent it is strictly necessary that they review or evaluate such Confidential Information in connection with the Purpose. Prior to any such disclosure the Recipient must make that Recipient Party aware of the fact that the Confidential Information is confidential and the obligations of confidentiality contained in this Agreement and if that Recipient Party is not an employee or officer of the Recipient such Recipient Party must enter into a confidentiality agreement with the Recipient on terms substantially equivalent to those contained in this Agreement. The Discloser may (at its absolute discretion) decline to enter into such a confidentiality agreement with any of the Recipient's Representatives or may deny any such person access to the Confidential Information.
- 4.2 The Recipient will on request provide to the Discloser a copy of each confidentiality agreement entered into by a Recipient Party pursuant to **clause 4.1**.
- 4.3 The Recipient will take reasonable steps to procure that any Recipient Party to whom the Recipient directly or indirectly discloses or publishes Confidential Information will not do

or omit to do anything which if done or omitted to be done by the Recipient would constitute a breach of this Agreement. The Recipient will be liable for the acts and omissions of the Recipient Parties as if they were acts and omissions of the Recipient. This **clause 4.3** will continue to apply notwithstanding the execution by the relevant Recipient Party of a direct confidentiality undertaking in favour of the Discloser.

5. RETURN AND DESTRUCTION OF CONFIDENTIAL INFORMATION

5.1 Subject to **clause 5.2**, immediately following a written request from the Discloser (or any of the Discloser's Affiliates) the Recipient will (and will procure that each Recipient Party will) cease to use the Confidential Information (including for the Purpose) and:

5.1.1 return to the Discloser (or the relevant Discloser Affiliate) all Confidential Information that was provided in hard copy to the Recipient (or a Recipient Party) and will destroy any other hard copy documentation held by or on behalf of a Recipient Party that contains any Confidential Information (including copies); and

5.1.2 permanently delete or erase (in each case to the extent technically feasible) all other Confidential Information (including copies).

5.2 Any Recipient Party may retain any Confidential Information which it is obliged to retain by virtue of any law, regulation or by the rules of any applicable governmental, regulatory or professional body. Any items of Confidential Information which are retained by a Recipient Party pursuant to this **clause 5.2** (or because it is not technically feasible or reasonably practical) to destroy or permanently erase them will continue to be subject to the other terms of this Agreement and may, subject to **clause 6**, only be used for the purposes for which they have been required to be retained.

5.3 The Recipient will provide such information as is reasonably necessary to enable the Discloser (or any of the Discloser's Affiliates) to satisfy itself as to each Recipient Party's compliance with this Agreement. The Recipient will also allow (and will procure that each of the Recipient Parties will allow) any Discloser Party, upon reasonable prior written notice, reasonable access to any relevant premises, during normal business hours, to inspect compliance with this Agreement.

6. PERMITTED DISCLOSURE

6.1 Subject to **clause 8** and the other provisions of this **clause 6**, any Recipient Party ("**Permitted Discloser**") may disclose Confidential Information to the extent such disclosure ("**Permitted Disclosure**") is required by law, an order of a court of competent jurisdiction or governmental or regulatory body to which that person is subject and submits.

6.2 Each Recipient undertakes to the relevant Discloser (and each of the relevant Discloser's Affiliates) that it will (and will procure that any other Permitted Discloser will) in relation to each Permitted Disclosure:

6.2.1 (to the extent reasonably practical and lawful):

6.2.1.1 take all reasonable steps to avoid the need to make the Permitted

Disclosure;

6.2.1.2 notify the Discloser in writing in advance of the circumstances of and content of the proposed Permitted Disclosure and will consult with the Discloser in relation to the content, purpose and means of disclosure of the Permitted Disclosure;

6.2.2 where the Permitted Discloser is not able to inform the Discloser prior to the making of the Permitted Disclosure, it will (to the extent lawful) inform the Discloser immediately after the making of the Permitted Disclosure of the full circumstances of the Permitted Disclosure and provide details of all Confidential Information that has been disclosed;

6.2.3 co-operate fully with the Discloser in any proceedings brought by the Discloser to challenge or dispute any request to make a Permitted Disclosure; and

6.2.4 disclose the minimum amount of Confidential Information that is necessary in order for the applicable requirement to be complied with and will use its best endeavours to make such Permitted Disclosure subject to obligations of confidence, consistent, so far as possible, with the terms of this Agreement.

7. INTELLECTUAL PROPERTY RIGHTS

The Discloser, one of its Affiliates or its or their licensors owns all right, title and interest in the Confidential Information and, save as is expressly provided otherwise by this Agreement, no licence or right to use any Intellectual Property or any right to use any Confidential Information is granted by the Discloser or any of the Discloser's Affiliates.

8. DATA PROTECTION

To the extent that it is proposed that any Recipient Party will process Personal Data for and on behalf of the Discloser as a "data processor" (as such term is defined in the GDPR), the Recipient and the Discloser will not do so unless and until they have entered into an appropriate data processing agreement that complies in all respects with the Data Protection Legislation.

9. NO WARRANTY

9.1 Nothing in this Agreement will imply any obligation on any Discloser or any of the Discloser Parties to disclose any Confidential Information to any Recipient Party, to update or correct any Confidential Information or to enter into any negotiation or agreement in relation to the Purpose or otherwise.

9.2 Nothing in this Agreement will restrict any Discloser Party from disclosing Confidential Information to any third party or from entering into any negotiation and/or agreement with any third party in relation to the Purpose or otherwise.

9.3 No Discloser (nor any other Discloser Party) makes any warranty, representation, statement or undertaking (whether express or implied) in respect of the accuracy, reasonableness or completeness of the Confidential Information.

9.4 The Recipient:

9.4.1 will not (and the Recipient will procure that no Recipient Party will) rely on the Confidential Information; and

9.4.2 agrees that neither it (nor any other Recipient Party) will have any remedy against the Discloser or any other Discloser Party in respect of the inaccuracy, unreasonableness or incompleteness of any Confidential Information.

9.5 Neither the Discloser nor any other Discloser Party shall have any liability (whether in contract, tort (including negligence), misrepresentation, under any statute or otherwise) to the Recipient or any Recipient Party in relation to the Confidential Information or its accuracy, reasonableness or completeness.

9.6 Nothing in this Agreement will operate to exclude or restrict any person's liability (if any) for its fraud or fraudulent misrepresentation or the fraud or fraudulent misrepresentation of a person for whom it is vicariously liable.

10. **TERMINATION**

10.1 The provisions of this Agreement will continue in full force and effect for a period of [NUMBER] years from the date of this Agreement.

10.2 Termination of this Agreement is without prejudice to any rights, obligation, claims (including claims for damages for breach) and liabilities which have accrued prior to termination.

11. **RIGHTS OF THIRD PARTIES**

11.1 Each of the Discloser's Affiliates will be entitled to enforce **clauses 2, 4, 5, 6, 7, 8, 9, 12.2 and 14** subject to and in accordance with the Contracts (Rights of Third Parties) Act 1999 and the terms of this Agreement.

11.2 Each of the Discloser's Representatives will be entitled to enforce **clause 9** subject to and in accordance with the Contracts (Rights of Third Parties) Act 1999 and the terms of this Agreement.

11.3 The parties may vary or rescind this Agreement without the consent of the persons referred to in **clauses 11.1 and 11.2**

11.4 Save as provided in **clauses 11.1 and 11.2**, the parties do not intend that any term of this Agreement will be enforceable under the Contracts (Rights of Third Parties) Act 1999 by any person other than the parties.

12. **GENERAL**

12.1 Each Recipient is entering into this Agreement in consideration of the disclosure of Confidential Information.

12.2 Each Recipient agrees that the obligations imposed by this Agreement in relation to Confidential Information extend to any Confidential Information which has been, or may

have been, supplied to any of the Recipient Parties prior to the date of this Agreement, despite the absence of a written agreement, this Agreement merely recording in writing the oral confidentiality obligations under which the relevant Recipient Party received the Confidential Information in question.

- 12.3 Each Recipient acknowledges and agrees that damages alone would not be an adequate remedy for breach of **clauses 2, 4, 5, 6, 8 and 12.2** by the Recipient or any other Recipient Party. Accordingly, the Discloser will be entitled, without having to prove special damages, to equitable relief (including injunction and specific performance) for any breach or threatened breach of such clauses by the Recipient or any other Recipient Party.
- 12.4 No variation to this Agreement will be effective unless it is in writing and signed by a duly authorised representative on behalf of each of the Parties.
- 12.5 A delay in exercising or failure to exercise a right or remedy under or in connection with this Agreement will not constitute a waiver of, or prevent or restrict future exercise of, that or any other right or remedy, nor will the single or partial exercise of a right or remedy prevent or restrict the further exercise of that or any other right or remedy. A waiver of any right, remedy, breach or default will only be valid if it is in writing and signed by the Party giving it and only in the circumstances and for the purpose for which it was given and will not constitute a waiver of any other right, remedy, breach or default.
- 12.6 This Agreement may be executed in any number of counterparts, each of which will constitute an original, but which will together constitute one agreement.
- 12.7 Each Recipient will not be entitled to assign, transfer, charge, hold on trust for any person or deal in any other manner with any of its rights under this Agreement. The Discloser will be entitled to assign, transfer, charge and deal in any other manner with any of its rights under this Agreement.
- 12.8 Each Party will bear its own costs and expenses incurred in connection with or arising out of the negotiation, preparation and execution of this Agreement.
- 12.9 Each Recipient will be responsible for any breach of any of the terms of this Agreement by any Recipient Party.
- 12.10 If any term of this Agreement is found by any court or body or authority of competent jurisdiction to be illegal, unlawful, void or unenforceable, such term will be deemed to be severed from this Agreement and this will not affect the remainder of this Agreement which will continue in full force and effect.

13. NOTICE

- 13.1 Any notice or other communication given under or in connection with this Agreement will be in writing, marked for the attention of the specified representative of the Party to this Agreement to be given the notice or communication and:

- 13.1.1 sent by pre-paid, Royal Mail Signed for 1st Class or other prepaid, next day service providing proof of delivery to that Party's address; or

13.1.2 delivered to or left at (but not, in either case, by post) that Party's address.

The address and representative for each Party to this Agreement are set out below and may be changed by that Party giving at least ten (10) Working Days' written notice in accordance with this **clause 13.1**.

[PARTY 1]

[INSERT ADDRESS]

For the attention of: [INSERT JOB TITLE]

[PARTY 2]

[INSERT ADDRESS]

For the attention of: [INSERT JOB TITLE]

13.2 Any notice or communication given in accordance with **clause 13.1** will be deemed to have been served:

13.2.1 if given as set out in **clause 13.1.1**, at 9.00am on the first Working Day after the date of posting;

13.2.2 if given as set out in **clause 13.1.2**, at the time the notice or communication is delivered to or left at that Party's address,

provided that if a notice or communication is deemed to be served before 9.00am on a Working Day it will be deemed to be served at 9.00am on that Working Day and if it is deemed to be served on a day which is not a Working Day or after 5.00pm on a Working Day it will be deemed to be served at 9.00am on the immediately following Working Day.

13.3 To prove service of a notice or communication it will be sufficient to prove that the provisions of **clause 13.1** were complied with.

14. **ENTIRE AGREEMENT**

This Agreement and the FTTS Supplier Agreements constitute the entire agreement between the Parties and supersede any prior agreement or arrangement in respect of their subject matter and:

14.1 no Party has entered into this Agreement in reliance upon, and will have no remedy in respect of, any misrepresentation, representation or statement (whether made by the other Party or any other person and whether made to a Party or any other person) which is not expressly set out in this Agreement;

14.2 the only remedies available for any misrepresentation or breach of any representation or statement which was made prior to entry into this Agreement or the FTTS Supplier Agreements and which is expressly set out in this Agreement or the FTTS Supplier Agreements will be for breach of contract; and

14.3 nothing in this **clause 14** will be interpreted or construed as limiting or excluding the liability of any person for death, personal injury, fraud or fraudulent misrepresentation.

15. **GOVERNING LAW**

This Agreement and any non-contractual obligations arising out of or in connection with it will be governed by the laws of England and Wales.

16. **JURISDICTION**

Each Party to this Agreement agrees that the courts of England and Wales have non-exclusive jurisdiction to determine any dispute arising out of or in connection with this Agreement (including in relation to any non-contractual obligations).

SIGNED BY or on behalf of the parties on the date stated at the beginning of this Agreement.

EXECUTED AS A DEED, but not delivered)

until the date specified on this deed, by)

[name of Supplier 1] by a director in)

the presence of a witness:)

Signature:

Name (block capitals):

Director

Witness

signature:

Witness name

(block capitals):

Witness address:

EXECUTED AS A DEED, but not delivered)

until the date specified on this deed, by)

[name of Supplier 2] by a director in)

the presence of a witness:)

Signature:

Name (block capitals):

Director

Witness

signature:

Witness name

(block capitals):

Witness address: