

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;
 - (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
 - (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;
- (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 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

(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.

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			
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;
 - (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.

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
 - (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.

- 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	<p>The Supplier shall provide the meeting slide pack prior to the meeting to review and discuss:</p> <ul style="list-style-type: none"> a) the Supplier's performance under the Call-Off Contract and review of: <ul style="list-style-type: none"> a. delivery against Milestones; b. Funding Payments; and 	Monthly (unless otherwise agreed by the Authority)	Call-Off Contract Reports (as applicable)	<p>Authority:</p> <ul style="list-style-type: none"> • Local Authority Representative (as required) • Deputy Director Commercial • Head of Commercial • Deputy Director of Local Relationships & Partnering • Head of Local Relationships & Partnering • Head of Contract Management

	<p>c. Rectification Plans and status (if relevant);</p> <p>b) review of status of any Contract Change Requests;</p> <p>c) risk and issue management by review of:</p> <p>a. any risks and issues raised;</p> <p>b. dispute log;</p> <p>c. financial liquidity;</p> <p>d. resource availability; and</p> <p>e. Wholesale Access Prices Benchmarking ;</p> <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"> • 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 • 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

				<ul style="list-style-type: none"> • 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> <ul style="list-style-type: none"> a) the Supplier's performance under the Call-Off Contract; b) review of the Project Plan and the Supplier's progress against the Milestones, including discussions relating to items listed in the Milestone Criteria; c) any Rectification Plans (as applicable); 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; 	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)

	<p>i) upcoming key activities, including changes to Supplier business, supply chain and Key Personnel or Subcontractors;</p> <p>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); and</p> <p>k) any open actions from previous meetings.</p> <p>On a quarterly basis, as well as the items listed above (a)-(k) on a monthly basis:</p> <p>a) Social Value and Supply Chain Report as set out Clause 15.3; and</p> <p>b) any other recently submitted DPS Reports.</p> <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> <ul style="list-style-type: none"> 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; b) outstanding clawback payments; c) upcoming key activities, including changes to Supplier business and Key Personnel; and d) any open actions from previous meetings. 	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 • Other Supplier representatives (as required)

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	Supplier

			Effective Date	
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	<p>The report shall be in the format of the "Quarterly Feedback Template" set out in the Platform and including the Supplier's feedback on:</p> <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

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; 	Monthly	Call-Off Contract Effective Date	No later than the fifth (5 th) Working Day

	<ul style="list-style-type: none"> 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>			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 Detailed Design and Due Diligence)	<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"> 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; r.Build Plan – Network links: <ul style="list-style-type: none"> Comments and justification for any updates to network design; 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; 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 	Once	NA	On or before the Milestone Date for the Stage One (Network Detailed Design and Due Diligence) Complete Milestone

	<p>which the cost is attributed, including a unique reference number and dates on which the cost was incurred and paid; and</p> <ul style="list-style-type: none"> ○ 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 ● 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 			
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	<p>required following Stage One (Network Detailed Design and Due Diligence) including detailed justification for any changes to funding, coverage and scope, or milestones;</p> <ul style="list-style-type: none"> ○ 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; ● r. Eligible Cost - Stage Two: <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 	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

	<p>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</p> <ul style="list-style-type: none"> ● Cover sheet and declaration: <ul style="list-style-type: none"> ○ 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; ○ confirmation in the Stage Two Progress Form that the Supplier has opted to re-use existing infrastructure where technically and commercially feasible; ○ 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; ○ 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 evidence of Testing in the form of a certification by the engineer who carried out the Testing has been retained; and ○ 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: 			
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	<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"> ○ 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"> ○ Take-up by Wholesale Access Product and Services and Wholesale Passive Products; • r.Take-up – Disconnections <ul style="list-style-type: none"> ○ End User disconnection by Wholesale Access Product and Services and Wholesale Passive Products; • r.Access Requests: <ul style="list-style-type: none"> ○ a summary of access requests made by access seekers in the Month; ○ number of access requests granted and declined in the Month; 			
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	<ul style="list-style-type: none"> ○ rationale for granting or declining each access request in the Month; and ○ 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	<p>The report shall be in a form acceptable to the Authority and shall consist of the following items:</p> <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. 	Quarterly	Stage Two (Build) Commencement Date	No later than fifth (5 th) Working Day of the first (1 st) Month of each Quarter

	<ul style="list-style-type: none"> • 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)). 			
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: <ul style="list-style-type: none"> ○ Take-up by Wholesale Access Product and Services and Wholesale Passive Products; • r.Take-up – Disconnections: <ul style="list-style-type: none"> ○ End User disconnection by Wholesale Access Product and Services and Wholesale Passive Products; • r.Access Requests: <ul style="list-style-type: none"> ○ a summary of access requests made by access seekers in the Month; ○ number of access requests granted and declined in the Month; 	Quarterly	Stage Two (Build) Complete Milestone Date	For the first (1 st) Stage Three Report, no later than the last Working Day of the Quarter in which the Stage Two (Build) Complete Mile

	<ul style="list-style-type: none"> ○ rationale for granting or declining each access request in the Month; ○ 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"> ○ 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; ○ planned marketing activities for the next Quarter and how the marketing activities planned for the next Quarter will increase demand in the areas relating to this Contract; and ○ 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>			<p>stone 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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	<ul style="list-style-type: none"> • r.Upfront Product Costs: <ul style="list-style-type: none"> ○ 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"> ○ 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"> ○ a breakdown of the actual cost incurred provided to at least the 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:

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);
 - (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:
 - (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 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:

- (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 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.

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:

- (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
- (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

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 of 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,
- 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.

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	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	Stage One (Network Detailed Design and Due Diligence) Stage Two (Build)	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.

	<p>(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>'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> <p>c) Reduction in number of Premises in-scope of the Call-Off Contract</p>
3	<p>Strike by Local Authority personnel, which directly delays surveying, planning, or deployment.</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</p>

			<p>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>
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>	<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>
5	Local Authority delays and/or refusals in granting wayleaves on reasonable terms (being consistent with those terms the Local Authority	Stage One (Network Detailed	a) Change in timescales to deliver Build Milestones

	<p>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>Design and Due Diligence)</p> <p>Stage Two (Build)</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.

- 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:
- (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;
 - (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.

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;
- (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

- 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 submitted in accordance with the process set out in Paragraphs 2.1 and 2.2 of Call-Off Schedule 4 (Financial Schedule).
 - (a) The Authority acknowledges that if the Supplier is a SME, the Authority shall make payment to the Supplier within five (5) days of a valid and undisputed invoice submitted in accordance with the process set out in Paragraphs 2.1 and 2.2 of Call-Off Schedule 4 (Financial Schedule)
- 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.

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.
- 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:

- (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
- (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 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 Science, Innovation and Technology (DSIT), 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.