

Dated 19th July 2012

THE WELSH MINISTERS (1)

- and -

BRITISH TELECOMMUNICATIONS PUBLIC LIMITED COMPANY (2)

**GRANT AGREEMENT IN RESPECT OF PROVISION OF A NEXT GENERATION
BROADBAND NETWORK**

Morgan Cole
LLP 

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THIS GRANT AGREEMENT is made the 19th day of July 2012

BETWEEN:

- (1) **THE WELSH MINISTERS** of Cathays Park, Cardiff CF10 3NQ; and
 - (2) **BRITISH TELECOMMUNICATIONS PUBLIC LIMITED COMPANY**, a company registered in the United Kingdom under number 1800000 (the "Grantee"), whose registered office is situated at 81 Newgate Street, London, EC1A 7AJ,
- each a "Party" and together, the "Parties";

WHEREAS:

- A. The Welsh Ministers form part of the Welsh Assembly Government established by section 45 of the Government of Wales Act 2006;
- B. The Welsh Ministers wish to provide financial assistance in the form of a grant to ensure that Broadband Coverage (as defined below) is achieved in such a way that any retail services forming part of Broadband Coverage will be at prices comparable to those available on the market in urban areas of the United Kingdom;
- C. By delivering Broadband Coverage, the Welsh Ministers will be meeting certain policy and strategic frameworks and targets introduced by the European Commission (the Digital Agenda for Europe), UK Government (Britain's Superfast Broadband Future) and Welsh Government (Delivering a Digital Wales);
- D. On 20th November 2012, by letter addressed to Broadband Delivery UK the European Commission confirmed that the project described in Recital B and as set out in this Agreement is compatible with Article 107(1) of the Treaty on the Functioning of the European Union, subject to the conditions set out in that letter. On 11th January 2013, by letter addressed to the Welsh Ministers Broadband Delivery UK confirmed that the project described in Recital B and as set out in this Agreement could proceed, subject to the conditions set out in that letter. On [•], by a further letter addressed to [•] the European Commission confirmed that the project would be allowed to proceed as a major project pursuant to [•];
- E. The Welsh Ministers have obtained funding from the Funders (as defined below);
- F. On 2nd March 2011, the Welsh Ministers published a notice in the Official Journal of the European Union (reference 2011/S 42-068333) inviting expressions of interest in respect of carrying out the works necessary in order to facilitate the outcomes as envisaged by Recital B above;
- G. The Grantee was selected to participate in a Competitive Dialogue under the Public Contracts Regulations 2006;
- H. As part of the tender process, the Grantee has represented that it has skill and expertise in the provision of Broadband Works (as defined below) and is capable of carrying out the Implementation Works on time and to budget and that the Broadband Works taken together will achieve Broadband Coverage;
- I. In reliance on the representations outlined at Recital H above and, following a standstill period which expired on 9th July 2012, the Welsh Ministers now wish to enter into this Agreement with the Grantee for the provision of the Network; and
- J. The Parties acknowledge that the role of the Welsh Ministers and the governance of Wales may be liable to change during the course of this Agreement and that consequently the obligations set out herein may in future be owed to any successor body (or bodies) to the Welsh Ministers.

IT IS HEREBY AGREED as follows:

1. **Definitions and interpretation**
 - 1.1 **Schedule 1:** In this Agreement, unless inconsistent with the context or otherwise specified, the definitions set out in Schedule 1 Part 1 (Definitions) and the provisions of Schedule 1 Part 2 (Interpretation) shall apply.
2. **Condition Precedent**
 - 2.1 The rights and obligations of each Party under this Agreement shall have no force or effect unless the following conditions have been fulfilled:
 - 2.1.1 the Welsh Ministers have received the Funding Approval Letters and have provided copies of the Funding Approval Letters to the Grantee;
 - 2.1.2 both Parties have confirmed in writing that the terms of the Funding Approval Letters are acceptable (neither party unreasonably to withhold or delay such confirmation), and in any event, each Party shall confirm in writing to the other Party within thirty (30) Working Days of receipt by the Grantee of the copy Funding Approval Letters whether the terms of the Funding Approval Letters are acceptable or not. The following are examples of conditions which are not reasonably acceptable to the Grantee and which would entitle the Grantee to withhold confirmation under this clause 2.1.2: dark fibre unbundling, extension of PIA to non-broadband services, upgrade of existing duct, repairs to existing duct, new duct requirements or specifications, the level of Intervention Rate is less than the Grantee reasonably requires to provide the Broadband Coverage, and any additional Wholesale Access obligation(s) which are currently not provided for by regulation; and
 - 2.1.3 the Welsh Ministers have approval such as to allow the Grantee to receive Financial Contributions from the Implementation Commencement Date and to the Drop Dead Date.
 - 2.2 If the Funding Approval Letters are not reasonably acceptable to either Party, each Party shall provide to the other all information and assistance that is reasonably required in order to obtain Funding Approval Letters which are reasonably acceptable to the Grantee and the Welsh Ministers.
 - 2.3 If the conditions referred to in clause 2.1 above are not completely fulfilled by 31st July 2012 but are fulfilled within six (6) months from the Contract Commencement Date then:
 - 2.3.1 any dates in the Agreement which relate to either Party's rights, obligations and liabilities in connection with the Broadband Works shall except in the case of the Implementation Commencement Date automatically move forward by an equivalent period to the period between 31st July 2012 and the date on which the conditions are completely fulfilled; and
 - 2.3.2 the Welsh Ministers shall advise the Grantee promptly of any potential reduction in the Maximum Grant arising from any changes to the dates referred to at clause 2.3.1. If, as a result of those changes, the Welsh Ministers are or may be unable to make Financial Contributions for the Implementation Works then the impact of that reduction is to be dealt with under the Review Procedure in accordance with clause **Error! Reference source not found.**
 - 2.4 If the conditions referred to in clause 2.1 above are not satisfied within six (6) months and one week from the Contract Commencement Date then the Agreement will terminate without any liability on the part of either Party.
3. **Nature of the Agreement**

- 3.1 **Financial Contribution:** The Grantee acknowledges that this Agreement consists of the provision of a contribution by the Welsh Ministers to the Eligible Costs incurred by the Grantee in carrying out the Implementation Works only and that accordingly, this Agreement *inter alia*:
- 3.1.1 contains certain provisions relating to or mandated by the State Aid Terms;
 - 3.1.2 details certain provisions relating to or mandated by the European Commission and other Funders;
 - 3.1.3 sets out circumstances where the Welsh Ministers may be entitled to a repayment of any financial contribution made by them; and
 - 3.1.4 contains provisions intended to secure the Welsh Ministers' grant in respect of the Network.
- 3.2 **Relationship management:** The provisions of Schedule 3 (Relationship Management) shall apply to the relationship between the Grantee and the Welsh Ministers.
4. **Commencement and duration**
- 4.1 **Term:** This Agreement shall begin on the Implementation Commencement Date and expire as set out below.
- 4.2 **Implementation Phase:** The Implementation Phase begins on the Implementation Commencement Date and shall expire on the earliest to occur of:
- 4.2.1 the Grantee's achievement of the last Quarterly PP Target (and all preceding Quarterly PP Targets) set out in Schedule 2 (Quarterly Targets) (the "**Build Completion Date**") and subsequent issuance of a Grant Payment Request in respect of that Quarterly PP Target; and
 - 4.2.2 the Drop Dead Date,
- in each case, subject to earlier termination by either Party in accordance with the provisions of this Agreement (the "**Implementation Phase**").
- 4.3 **Operational Phase:** The Operational Phase begins on achievement of the first Quarterly PP Target. Subject to earlier termination by either Party in accordance with this Agreement and clause 36.1, all remaining rights and obligations of the Parties shall expire on the seventh (7th) anniversary of the Build Completion Date (the "**Operational Phase**").
5. **Grantee's Obligations**
- 5.1 **Initial documents:** Appendix 1 (Initial Documents) contains the initial version of the following documents, which the Grantee may change to the extent permitted by this Agreement:
- 5.1.1 Wholesale Service Descriptions;
 - 5.1.2 Network Architecture Documentation;
 - 5.1.3 Operational and Enterprise Support Systems documents; and
 - 5.1.4 Marketing Plan.
- The Grantee must maintain each of the above documents for the term of this Agreement.
- 5.2 **Principal obligations:** The Grantee must carry out the Broadband Works, comprising the Implementation Works and the Operational Works.
- 5.2.1 The Implementation Works comprise the creation of the Network, OEES and other works which are to be carried out by the Grantee in order to ensure that Broadband Coverage is achieved throughout the Contract Intervention Area, including throughout Value Zones, and that the Operational Works can be supported;

- 5.2.2 The Operational Works comprise the Maintenance Operations, the provision of Wholesale Services and the sales and support of Wholesale Services, each in accordance with this Agreement;
 - 5.2.3 The Maintenance Operations comprise the updating, maintenance, fault management, performance optimisation (when required) and capacity augmentation so that the Network continues to meet the Network Standard; and
 - 5.2.4 The Wholesale Services comprise the provision by the Grantee of services to enable Retail Service Providers to provide Retail Services over the Network. Wholesale Services are set out initially in section 1 of Appendix 1 (Initial Documents) and amended pursuant to clause 14.5.
- 5.3 **Carrying out the Broadband Works:** The Grantee must carry out the Broadband Works so:
- 5.3.1 as to comply at all times with all provisions of this Agreement; and.
 - 5.3.2 that Broadband Coverage is achieved throughout the Contract Intervention Area by 30th June 2016 and in any event by the Drop Dead Date, as follows:
 - 5.3.2.1 a minimum of ninety per cent (90%) of all Premises in the Contract Intervention Area are capable of having access to broadband services at a minimum of 30Mbps PPIR with 2Mbps CIR;
 - 5.3.2.2 a minimum of ninety five per cent (95%) of all Premises in the Contract Intervention Area are capable of having access to broadband services at a minimum of 24Mbps PPIR with 0.5Mbps CIR; and
 - 5.3.2.3 a minimum of forty per cent (40%) of all Premises in the Contract Intervention Area are capable of having access to broadband services at a minimum of 100Mbps PPIR with 10Mbps CIR.
 - 5.3.3 as to comply with the Annual Targets.
- For the avoidance of doubt and notwithstanding any other term to the contrary the sole right and remedy for the Welsh Ministers if the Grantee fails to achieve Broadband Coverage at 30th June 2016 and the Drop Dead Date is set out in clause 20 below.
- 5.4 **Capacity of Network:** The minimum levels of CIR set out in clause 5.3.2 reflect the short term expected reasonable market demand, which the Grantee and the Welsh Ministers acknowledge may increase. The Grantee shall ensure that the capacity of the Network is upgraded such that the Network itself does not unreasonably limit CIR. Such upgrades shall be implemented in a reasonable way to encourage take-up of Retail Services delivered over the Network that offer higher bandwidth content, such as high definition television.
- 5.5 **General obligations:** The Grantee undertakes, subject to the terms and conditions of this Agreement, to:
- 5.5.1 perform all its obligations under this Agreement in accordance with Good Industry Practice;
 - 5.5.2 perform all its obligations under this Agreement in accordance with all applicable Laws as they apply from time to time to the Broadband Works and other activities and obligations of the Grantee under this Agreement; and to the Grantee as a company located in the European Union. Specifically, to the extent that the Construction (Design and

- Management) Regulations 2007 (as amended and updated) apply to the Broadband Works, the Grantee must undertake all the obligations of a client (as defined in those Regulations) in respect of any Civil Works Contractor appointed from time to time;
- 5.5.3 obtain and maintain throughout the term of this Agreement all consents, licences and permissions it may require from time to time to carry out the Broadband Works;
 - 5.5.4 provide the Welsh Ministers with such reasonable information, assistance and co-operation as the Welsh Ministers may require from time to time in respect of the Grantee's carrying out the Broadband Works and any matter related to this Agreement;
 - 5.5.5 comply with reasonable deadlines set by the Welsh Ministers for any requests for information in whatever form regarding the progress of the Broadband Works;
 - 5.5.6 meet with the Welsh Ministers whenever reasonably required to discuss the progress of the Broadband Works;
 - 5.5.7 carry out the Broadband Works at all times in a manner that is not, and is not likely to be, injurious to health or damaging to property; and
 - 5.5.8 ensure that all infrastructure within the Network complies with mandatory industry standards for public broadband networks, including as a minimum those mandatory standards for public broadband networks determined by the Standards Bodies, as the same may change from time to time during the term of the Agreement.
- 5.6 **Critical National Infrastructure:** The Grantee acknowledges that, to the extent the Network will form part of the United Kingdom's Critical National Infrastructure and where there is a legal or regulatory requirement in respect of the same the Grantee will take steps to ensure it complies with all legal and regulatory requirements issued from time to time in respect of Critical National Infrastructure by the Government of the United Kingdom and/or the Electronic Communications – Resilience and Response Group (or any replacement of the foregoing or any additional or substitute governmental (or quasi-governmental) body having jurisdiction or authority in respect of the Critical National Infrastructure).
- 5.7 **Public sector traffic:** The Network must be capable of carrying public sector traffic which may be classified up to the Government Communications Headquarters (GCHQ) Communications Electronic Security Group (CESG) Impact Level 2.
- 5.8 **Network Architecture:** The Grantee has described the initial Network Architecture in section 2 of Appendix 1 (Initial Documents) and may vary unilaterally any aspects of the Network Architecture where this does not detrimentally affect the Grantee's performance of its obligations under this Agreement. The Grantee must make such variations to the Network Architecture as are necessary to meet the Grantee's obligations under this Agreement.
- 5.9 **Network Architecture Documentation:** The Grantee must maintain clear and comprehensive documentation accurately describing the Network Architecture (the "Network Architecture Documentation"), which must include the following information:
- 5.9.1 a diagram showing the Network Architecture, showing how all Wholesale Services integrate;
 - 5.9.2 a description of the technologies used for each of the Wholesale Services;
 - 5.9.3 evidence of how the Network Architecture supports contracted PPIR, CIR and appropriate Wholesale Services standards;
 - 5.9.4 dimensions of all material elements of the technical solution, including switches, circuits, and all other equipment;

- 5.9.5 a description of short and medium term material changes to technical requirement anticipated and evidence that the Network Architecture and its components are specified sufficiently to maintain the Network Standard;
- 5.9.6 a description of any technical/operational risks to integrity of the Network and how the Network Architecture mitigates against their impact; and
- 5.9.7 a description of the Design Rules used by the Grantee to locate and dimension Points of Premises Passed and to assess which Premises are eligible to become Premises Passed as a result of the successful implementation of a Point of Premises Passed,

and must release the then current Network Architecture Documentation to the Welsh Ministers promptly and in any event within five (5) Working Days of request, unless the Grantee has reasonable concerns that such release may affect the security or integrity of the Network. In such circumstances, the Grantee must permit representatives of the Welsh Ministers or the nominated agent of the Welsh Ministers (subject to appropriate security vetting, to be conducted reasonably) to inspect the Network Architecture Documentation under the supervision of the Grantee.

- 5.10 **Significant changes to the Network Architecture:** Should the Grantee undertake changes to the Network Architecture which are likely to cause interruption to the Wholesale Services then the Grantee will provide such notice to the Welsh Ministers in advance of such change as it typically provides to its Retail Service Provider customers.
- 5.11 **Operational and Enterprise Support Systems:** The Grantee must describe the OESS, including the OSS/BSS and financial systems, and their design in section 3 of Appendix 1 (Initial Documents) and may vary unilaterally any aspects of the OESS where this does not detrimentally affect the Grantee's performance of its obligations under this Agreement. The Grantee must make such variations to the OESS as are necessary to meet the Grantee's obligations under this Agreement.
- 5.12 **Description of the OESS:** The Grantee must maintain a clear description of the OESS and must release the then current version of this documentation to the Welsh Ministers promptly and in any event within five (5) Working Days of request.
- 5.13 **Implementation and maintenance of the OESS:** The Grantee must implement and maintain the OESS in line with acceptable UK market standards. Functionality shall include but not be limited to:
 - 5.13.1 Provisioning;
 - 5.13.2 fault management;
 - 5.13.3 change management (including configuration management);
 - 5.13.4 capacity management;
 - 5.13.5 service performance monitoring on a per Customer connection basis; and
 - 5.13.6 charging.
- 5.14 **OESS interface:** The Grantee must provide an interface to all relevant OESS for Retail Service Providers to meet all reasonable current and future UK market needs and expectations. This interface must at least have the same or similar functionality as the Equivalence Management Platform (EMP) currently implemented in the UK. The interface shall allow convenient management and monitoring facilities to Retail Service Providers for:
 - 5.14.1 service orders;
 - 5.14.2 service availability and performance on a per Customer connection basis;

- 5.14.3 faults; and
- 5.14.4 billing.
- 5.15 **Inventory Management System ("IMS"):** The Grantee must implement and maintain as part of the OEES an IMS that will keep accurate records of all assets whose acquisition was funded under this Agreement and which have an original purchase value of one thousand pounds (£1,000) or more. This must include an inventory of redundant and replacement assets over the term of the Agreement. The IMS records must include, as a minimum for each asset, the Inventory Information.
- 5.16 **Release of IMS:** The Grantee must release a copy of the IMS to the Welsh Ministers promptly and in any event within five (5) Working Days of request.
- 5.17 **Project management:** The Grantee must manage the Broadband Works using generally accepted project management principles.
- 6. **Grantee Due Diligence**
 - 6.1 **Acknowledgement:** The Grantee acknowledges that it has:
 - 6.1.1 been supplied with sufficient information about the Welsh Ministers' requirements;
 - 6.1.2 had sufficient opportunity to consider that information and to carry out its own due diligence in respect of this Agreement;
 - 6.1.3 not received nor relied upon any warranty or representation by or on behalf of the Welsh Ministers as to the accuracy or completeness of any information made available or provided by the Welsh Ministers;
 - 6.1.4 satisfied itself as to the amount of the Financial Contribution as against the total anticipated costs of delivering Broadband Coverage; and
 - 6.1.5 made all appropriate enquiries that an undertaking carrying on business in the telecommunications sector and acting in accordance with Good Industry Practice should make to enable it to carry out the Broadband Works and meet its obligations under this Agreement.
- 7. **Implementation Works – Roll out**
 - 7.1 **Record of the Contract Intervention Area:** Details of the Premises and postcodes which lie within the Contract Intervention Area are set out in Schedule 4 (Contract Intervention Area). The Grantee shall use reasonable endeavours to maintain and make available to the Welsh Ministers accurate records of the Premises and postcodes which lie within the Contract Intervention Area at the Contract Commencement Date and as amended from time to time in accordance with clause 7.2 below.
 - 7.2 **Changes to Contract Intervention Area:** Any changes to the Contract Intervention Area, including, where appropriate, how any new Premises built within the Contract Intervention Area during the Implementation Phase are to be dealt with, shall be subject to the Change Control Procedure.
 - 7.3 **Priority Areas:** The Parties have identified within Schedule 2 (Quarterly Targets), certain prioritised areas for each Financial Year, which may include Value Zones and Enterprise Zones. In carrying out Broadband Works, the Grantee must afford priority to rolling out the Broadband Works to such areas (together, "Priority Areas"). For each Priority Area, the Grantee shall use reasonable endeavours to maintain and make available to the Welsh Ministers accurate records of:
 - 7.3.1 the Financial Year to which the Priority Area applies;
 - 7.3.2 the Premises and postcodes which lie within each Priority Area, described in Schedule 4 (Contract Intervention Area) at the Contract Commencement Date and as amended from time to time in accordance with clause 7.2 above;

- 7.3.3 the Quarterly PP Target for each Quarter of the Financial Year to which the Priority Area applies;
 - 7.3.4 the Quarterly PP Target for each Quarter of the Financial Year which relate to Value Zones or Enterprise Zones within the Priority Area; and
 - 7.3.5 the expected total number of Premises Passed that will be achieved in that Priority Area during the Implementation Phase.
- 7.4 **Changes to Priority Areas:** The Welsh Ministers shall review Priority Areas with the Grantee at the Quarterly meetings of the Programme Board and the Annual Review and, acting reasonably, may propose at the Mid-Point Quarterly Review or the Annual Review only to nominate additional areas to be included as Priority Areas to reflect the Welsh Ministers' evolving priorities. The Grantee must agree to accommodate the proposed changes to the Priority Areas unless it can demonstrate to the reasonable satisfaction of the Welsh Ministers that such changes cannot be accommodated without material additional cost to the Grantee or would have an adverse effect on the Grantee's ability to meet Annual Implementation Targets or Broadband Coverage. The impact of any request to change Priority Areas will be dealt with by the Review Procedure.
- 7.5 **Difficult to implement areas:**
- 7.5.1 The Parties also recognise that there are physical, geographical and technical difficulties in carrying out the Implementation Works in certain parts of the Contract Intervention Area. The Grantee agrees and acknowledges that implementation of the Broadband Works and achievement of Broadband Coverage in the Contract Intervention Area includes Premises in physically challenging, geographically remote and technically difficult parts of the Contract Intervention Area (together the "Value Zones"), as identified in Schedule 4 (Contract Intervention Area).
 - 7.5.2 The Grantee undertakes that it will carry out Implementation Works in Value Zones as follows:
 - 7.5.2.1 In Financial Year 2013 / 2014, in two (2) Value Zones;
 - 7.5.2.2 In Financial Year 2014 / 2015, in fifty per cent (50%) of the remaining Value Zones;
 - 7.5.2.3 In Financial Year 2015 / 2016, in the remaining Value Zones.
- 7.6 **Annual Implementation Targets:**
- 7.6.1 The Annual Implementation Targets in respect of total Premises Passed for each of Financial Years 2013 / 2014, 2014 / 2015, 2015 / 2016 and 2016 / 2017 are set out in Schedule 2 (Quarterly Targets).
 - 7.6.2 The Annual Implementation Targets in respect of Priority Areas (excluding Value Zones) for Financial Year 2013 / 2014 are set out in Schedule 2 (Quarterly Targets).
 - 7.6.3 The Annual Implementation Targets in respect of Priority Areas (excluding Value Zones) for Financial Years 2014 / 2015, 2015 / 2016 and 2016 / 2017 will be set by the Grantee no later than 31st October 2013, 31st July 2014 and 31st July 2015 respectively (and they shall be recorded in Schedule 2 (Quarterly Targets)).
 - 7.6.4 The Annual Implementation Targets in respect of Value Zones for Financial Year 2013 / 2014 will be set by the Grantee no later than 31st October 2013 (and they shall be recorded in Schedule 2 (Quarterly Targets)).
 - 7.6.5 The Annual Implementation Targets in respect of Value Zones for Financial Years 2014 / 2015, 2015 / 2016 and 2016 / 2017 will be set

by the Grantee no later than 31st October 2013, 31st July 2014 and 31st July 2015 respectively (and they shall be recorded in Schedule 2 (Quarterly Targets)).

- 7.6.6 The Grantee must carry out the Broadband Works in order to meet each of the Annual Implementation Targets by the relevant Completion Target Date. Notwithstanding any other term to the contrary, the sole right and remedy for the Welsh Ministers if the Grantee fails to achieve any Annual Implementation Target is set out in clause 18 below.
- 7.7 **Quarterly PP Target:** The Quarterly PP Targets for the Financial Year 2013 / 2014 are detailed in Schedule 2 (Quarterly Targets). The Grantee may, no later than 30th September 2013, review and amend those Quarterly PP Targets (and Schedule 2 (Quarterly Targets) shall be amended appropriately), provided that the aggregate of the Quarterly PP Targets shall be the same as the Annual Implementation Target for that Financial Year for total Premises Passed as specified by the Grantee under clause 7.6.1. Quarterly PP Targets for the Financial Years 2014 / 2015, 2015 / 2016 and 2016 / 2017 will be set by the Grantee no later than 31st October 2013, 31st July 2014 and 31st July 2015 respectively (and they shall be recorded in Schedule 2 (Quarterly Targets)), provided that the aggregate of the Quarterly PP Targets in each such Financial Year shall be the same as the Annual Implementation Target for that Financial Year for total Premises Passed as specified by the Grantee under clause 7.6.1. Unless changed by agreement between the Parties pursuant to paragraphs 6 and 7 of Schedule 3 (Relationship Management), the Quarterly PP Targets set out in Schedule 2 (Quarterly Targets) are binding on the Grantee. Notwithstanding any other term to the contrary, the sole right and remedy for the Welsh Ministers if the Grantee fails to achieve any Quarterly PP Target is set out in clause 11.2.5 below.
- 7.8 **Failure to achieve a Quarterly PP Target:** If the Grantee fails to achieve a Quarterly PP Target specified in Schedule 2 (Quarterly Targets) by the relevant Quarterly Target Date, for the following Quarter the Grantee must achieve a revised Quarterly PP Target which consists of:
- 7.8.1 the existing Quarterly PP Target for that Quarter; plus
- 7.8.2 the shortfall in the Quarterly PP Target for the previous Quarter (i.e. Quarterly PP Target less Quarterly PP Achieved).
- 7.9 **Exceeding Quarterly PP Targets** If the Grantee exceeds a Quarterly PP Target specified in Schedule 2 (Quarterly Targets) by the relevant Quarterly Target Date, the excess shall count towards the achievement of future Quarterly PP Targets. Provided that the Grantee complies with the obligations set out at clause 18.1 below, it will be paid Financial Contribution in respect of the additional Premises Passed over and above the relevant Quarterly PP Target. That payment of Financial Contribution will be made by the Welsh Ministers as soon as practicable, on the basis of one of the following:
- 7.9.1 at the sole discretion of the Welsh Ministers, as part of the Financial Contribution payable to the Grantee for the Quarter in which the Quarterly PP Target has been exceeded; or
- 7.9.2 if the Welsh Ministers choose not to exercise their discretion, as part of the Financial Contribution payable to the Grantee for the next Quarter (as part of the achievement of that Quarter's Quarterly PP Target); or
- 7.9.3 if the total Financial Contribution budgeted for the relevant Financial Year has already been paid out to the Grantee, as part of the Financial Contribution for the first Quarter of the next Financial Year.
- 7.10 **Number of Premises Passed:** The number of Premises to have achieved Premises Passed will depend upon:
- 7.10.1 in the case of fibre based technologies, the number of Premises served by the Point of Premises Passed;

- 7.10.2 in the case of copper based technologies, the number of Premises that will be able to receive broadband services from the Point of Premises Passed using the copper infrastructure available.
- 7.11 **Quarterly PP Target – Implementation:** During the Implementation Phase the Grantee shall ensure that:
- 7.11.1 it achieves or exceeds the relevant Quarterly PP Target detailed in Schedule 2 (Quarterly Targets) by the relevant Quarterly Target Date; and
- 7.11.2 in the case of a Completion Target Date, it achieves Premises Passed in respect of all Premises (including Premises in a Value Zone) in the relevant Priority Area.
- 7.12 **Market NGBA information:** In this clause 7.12 and the next clause 7.13, the phrase "Market NGBA" means a commercial network or other infrastructure or technology (other than the Network) capable of delivering broadband services of at least 24Mbps which are substantially similar in terms of speed, price, functionality, scope, contractual terms to the Wholesale Services that the Grantee will provide pursuant to this Agreement.
- 7.13 **Market NGBA intervention:** In the event that any undertaking announces its intention to provide and where the Welsh Ministers have a reasonable belief that they will provide Market NGBA in any part of the Contract Intervention Area during the Implementation Phase, the Welsh Ministers may request Premises to be removed from the Contract Intervention Area. Any such request from the Welsh Ministers shall be subject to the Change Control Procedure provided that the Grantee shall not unreasonably withhold or delay its consent to the request.
- 7.14 XXXXXXXXXXXXXXX REDACTED INFORMATION XXXXXXXXXXXXXXX
8. **Project Plan**
- 8.1 **Project Plan:** As at the Contract Commencement Date, the Project Plan is set out in Annex 1 to Schedule 2 (Quarterly Targets). The Grantee must at all times during the Implementation Phase fully maintain and keep fully up to date the Project Plan including:
- 8.1.1 timing, duration and dependencies of key implementation tasks;
- 8.1.2 resourcing;
- 8.1.3 critical path;
- 8.1.4 geographical focus for Implementation Works for each Quarter, identifying which unitary authorities will be targeted and milestones for achievement of coverage by unitary authority;
- 8.1.5 milestones for achievement of Quarterly PP Targets and other targets with dependencies;
- 8.1.6 Implementation Works being carried out in any location within the Contract Intervention Area on any day during the Implementation Phase; and
- 8.1.7 a risk register maintained according to a recognised methodology, including the top ten (10) risks to the project.
- 8.2 **Availability of Project Plan:** The Project Plan must be available electronically for the Welsh Ministers. The Project Plan and risk register may be amended by the Grantee and managed by the Grantee.

- 8.3 **Inspection right:** The Welsh Ministers shall be entitled on reasonable notice (which notice does not have to be in writing) to witness and inspect the Grantee's Implementation Works as they are carried out.
- 8.4 **Compliance with Project Plan:** The Grantee must comply with the latest Project Plan.
- 8.5 **Changes to Project Plan:** The Grantee may vary the Project Plan insofar as it relates to the order in which the Grantee achieves Premises Passed in respect of areas other than Priority Areas and Value Zones, so long as it continues to comply with this Agreement and achieves the relevant Quarterly PP Targets and Annual Implementation Targets. Should the Grantee wish to materially amend the geographical focus of Implementation Works (by changing Premises Passed achieved in a unitary authority by more than twenty five per cent (25%)), such change shall constitute a Change and shall be subject to the Change Control Procedure. Any agreed Change to geographical focus shall not in itself vary any of the Quarterly PP Targets set out in Schedule 2 (Quarterly Targets).
- 8.6 **Reports:** The Grantee must prepare the written reports set out in Schedule 9 (Reporting) which must be delivered to the Welsh Ministers within five (5) Working Days of the end of the period to which they relate or such other timescales as specified in Schedule 9 (Reporting). The reports must be in the form set out in Schedule 9 (Reporting).
9. **Milestones**
- 9.1 **Agreed Milestones:** Schedule 8 (Milestones) sets out certain Milestones which have been agreed between the Parties. These Milestones include Milestone 0, which shall start from the Implementation Commencement Date. The Welsh Ministers will be liable to pay Financial Contributions in respect of Eligible Costs incurred by the Grantee in respect of Milestone 0 from the Implementation Commencement Date onwards, as more particularly set out in Schedule 8 (Milestones).
- 9.2 **Achievement of Milestones:** Schedule 8 (Milestones) specifies:
- 9.2.1 The steps to be taken by the Grantee to complete each Milestone Activity;
- 9.2.2 The Milestone Output relating to completion of each Milestone Activity; and
- 9.2.3 The process for payment of Financial Contribution in respect of each completed Milestone Activity.
- 9.3 **Milestone payments:** Any payment due from the Welsh Ministers in respect of Milestones shall be met from within the Maximum Grant payable to the Grantee, which shall in no circumstances be exceeded.
- 9.4 **Review of Milestones:** The Welsh Ministers and the Grantee shall review the Milestones at each Quarterly Review and may (but shall not be obliged to) agree variations, deletions or additions to them. Any changes agreed to the Milestones shall constitute a Change and shall be subject to the Change Control Procedure.
10. **Delay and Relief Events**
- 10.1 **Relief:** To the extent that the Grantee can reasonably demonstrate that any:
- 10.1.1 failure to achieve a Quarterly PP Target;
- 10.1.2 failure to achieve an Annual Implementation Target;
- 10.1.3 failure to achieve Broadband Coverage; or
- 10.1.4 other failure by the Grantee to carry out any of the Broadband Works,
- is due to a Relief Event, the Grantee shall be entitled to receive:

- 10.1.5 in the case of a delay to the Implementation Works only, an extension of time to achieve Premises Passed equivalent to the period of the Relief Event; or
- 10.1.6 in the case of delay or failure to the Operational Works only, an extension of time equal to the effect of such Relief Event within which to remedy the failure,

and shall be relieved of any financial or other liability in respect of the failure, but only to the extent such failure was directly caused by a Relief Event and the Grantee has used all reasonable endeavours to avoid the consequences and mitigate the effects of the Relief Event.

10.2 Meaning of Relief Events: Relief Events are:

- 10.2.1 Force Majeure;
- 10.2.2 fire, flood, lightning strike, severe weather, earthquake, bursting or overflowing of pipes, water tanks or other such apparatus;
- 10.2.3 failure or shortage of power or power connection or fuel which could not have been reasonably foreseen by the Grantee and which is caused by circumstances beyond the control of the Grantee;
- 10.2.4 strikes, lockouts or other industrial action affecting a workforce other than that of the Grantee, but upon whom the Grantee is reliant for carrying out any part of the Broadband Works;
- 10.2.5 delay in obtaining planning, highway or wayleave consents which could not have been reasonably foreseen by the Grantee, save where caused or contributed to by the Grantee;
- 10.2.6 negligent or wilful act of a third party, providing the latter is not part of the Grantee's Group or the Grantee's supply chain or within the Grantee's reasonable control;
- 10.2.7 exceptionally adverse ground conditions which could not have been reasonably foreseen by the Grantee and were not the result of anything which was within the control of the Grantee;
- 10.2.8 breach of any statutory duty on the part of the Welsh Ministers;
- 10.2.9 where it is not technically or legally possible to carry out the Implementation Works for reasons which could not have been reasonably foreseen by the Grantee and which are beyond the reasonable control of the Grantee and its Subcontractors;
- 10.2.10 blockade or embargo not amounting to Force Majeure; and
- 10.2.11 other matters not listed above to the extent the Grantee can demonstrate that they are beyond the Grantee's reasonable control.

10.3 No compensation: Neither Party shall be liable to pay compensation to the other Party in respect of any Relief Event.

10.4 Written advice of Relief Event: The Grantee must advise the Welsh Ministers in writing promptly (and in any event within five (5) Working Days) after becoming aware of the existence of a Relief Event. Failure to advise the Welsh Ministers in line with this clause shall mean that the Grantee is not able to claim any extension of time or other relief in respect of the period until written advice of the Relief Event is actually received by the Welsh Ministers. Failure to advise the Welsh Ministers within fifteen (15) Working Days after becoming aware of the existence of the Relief Event shall mean that the Grantee is not able to claim any extension of time or any other relief whatsoever. To be valid, the written advice to the Welsh Ministers under this clause 10.4 must include:

- 10.4.1 the nature and cause of the Relief Event and its anticipated duration;
- 10.4.2 the Priority Area in which the Relief Event has occurred; and

- 10.4.3 details of any steps which the Grantee proposes to take to mitigate the duration and effect of the Relief Event.
- 10.5 **The Welsh Ministers' liability:** Any liability of the Welsh Ministers to make payment in respect of any Premises which have not achieved Premises Passed prior to the Drop Dead Date shall be extinguished with effect from the Drop Dead Date. Clause 12.3 will apply at the Drop Dead Date in respect of Implementation Works completed prior to the Drop Dead Date.
- 10.6 **Frustration by Relief Event:** Where a Relief Event has the effect of completely frustrating performance of any element of this Agreement by the Grantee, the Parties shall discuss in good faith whether there is any way of working around such Relief Event failing which such element should be excluded from this Agreement.
11. **Warning Notice, Correction Report and Inspection**
- 11.1 **Warning Notice:** Without prejudice to their other rights under this Agreement, the Welsh Ministers shall be entitled to issue a notice (a "Warning Notice") in respect of any of the following events or circumstances:
- 11.1.1 five (5) Service Escalation Events in any rolling six (6) month period;
 - 11.1.2 twenty (20) Service Failure Events in any rolling six (6) month period;
 - 11.1.3 repeat failure leading to more than three (3) Service Escalation Events in a rolling twelve (12) month period caused by the same underlying fault;
 - 11.1.4 repeat failure leading to more than twenty (20) Service Failure Events in a rolling twelve (12) month period caused by the same underlying fault;
 - 11.1.5 a predicted Urgent Funding Shortfall as set out in Schedule 6 (Eligible Costs and Financial Contribution);
 - 11.1.6 there is a Funding Shortfall and the circumstances set out in paragraph 12 of Schedule 6 (Eligible Costs and Financial Contributions) apply;
 - 11.1.7 failure to notify the Welsh Ministers promptly of any predicted Funding Shortfall;
 - 11.1.8 a single Warning Notice to cover one or more of the circumstances identified in Table 2 in clause 0;
 - 11.1.9 failure to implement a Correction Report in a timely manner;
 - 11.1.10 failure to achieve a Milestone;
 - 11.1.11 a Correction Report has been implemented but the underlying problem has not been resolved;
 - 11.1.12 any action by the Grantee which causes reputational damage to the Welsh Ministers;
 - 11.1.13 failure to achieve fifty per cent (50%) of Premises Passed by the date specified in Schedule 2 (Quarterly Targets), unless solely due to a Relief Event; or
 - 11.1.14 failure to achieve seventy five per cent (75%) of Premises Passed by the date specified in Schedule 2 (Quarterly Targets), unless solely due to a Relief Event;
- (each a "Warning Notice Event").
- 11.2 **Right to require Correction Report:** Without prejudice to any of their other rights under this Agreement, the Welsh Ministers shall be entitled to request a draft Correction Report from the Grantee either in a Warning Notice or in any of the following events:

- 11.2.1 in any two consecutive Quarters, the Eligible Costs actually incurred by the Grantee exceed the Eligible Costs shown in the Financial Model for that Quarter by ten percent (10%) or more; or
 - 11.2.2 the revenues that the Grantee anticipates/receives from Retail Service Providers during the Implementation Phase are less than those set out in the Financial Model by twenty percent (20%) or more; or
 - 11.2.3 a predicted Funding Shortfall as set out in Schedule 6 (Eligible Costs and Financial Contribution); or
 - 11.2.4 a single Correction Report to cover one or more of the circumstances identified in Table 2 in clause 0; or
 - 11.2.5 failure to achieve at least eighty per cent (80%) of a Quarterly PP Target, unless solely due to a Relief Event; or
 - 11.2.6 the Grantee is failing to deliver Wholesale Services which comply with the minimum standards set out in clause 14.4; or
 - 11.2.7 if the Welsh Ministers, acting reasonably, believe that unless corrective action is taken by the Grantee, a Warning Notice Event or event that would lead to a Correction Report is likely to occur.
- 11.3 **Contents of Correction Report:** The draft Correction Report must:
- 11.3.1 be prepared and presented at the Grantee's sole cost and expense; and
 - 11.3.2 identify the issues arising from the failure or delay and the steps that the Grantee proposes to take to rectify (where possible) or mitigate the effects of such failure or delay. Where relevant, the Correction Report must also contain a revised Project Plan; and
 - 11.3.3 include committed and clear timescales for conclusion of remedial works which are consistent with the urgency of the failure or delay; and
 - 11.3.4 include an update of the Financial Model.
- 11.4 **Timing for provision of draft Correction Report:** The draft Correction Report must be submitted to the Welsh Ministers for their approval (such approval not to be unreasonably withheld or delayed) promptly after the Grantee becomes aware of any such delay or failure (or likely delay or failure) in the delivery, completion or performance of any part of the Broadband Works or promptly following a request from the Welsh Ministers. The Grantee will incorporate into a revised draft of the Correction Report all reasonable requests or reasonable comments raised by the Welsh Ministers.
- 11.5 **Dispute about the contents of a Correction Report:** Where a Correction Report is required and there is a dispute between the Welsh Ministers and the Grantee as to whether:
- 11.5.1 to the extent the Correction Report contains proposed remedial and/or mitigation activity, such remedial and/or mitigation activity set out in the Correction Report is appropriate, achievable and conforms with Good Industry Practice; and/or
 - 11.5.2 to the extent the Correction Report contains financial calculations or forecasts, the financial calculations are accurate, the forecasts are reasonably accurate and both are based on reasonable assumptions and, where applicable, that the means proposed to be taken by the Grantee to rectify or mitigate the effects of any Funding Shortfall are appropriate and conform with Good Industry Practice
- that dispute shall be determined by an Expert in accordance with clause 45.4.
- 11.6 **Compliance:** The Grantee must comply with the Correction Report following its

approval by the Welsh Ministers.

12. **Testing**

- 12.1 **Tests:** The Parties have agreed Tests in respect of the Implementation Works, as further detailed in Schedule 5 (Testing and Test Criteria). The Tests involve tests which the Grantee must successfully pass or requirements that the Grantee must satisfy, without there being any actual tests as such.
- 12.2 **Anticipated performance:** The Grantee must, not less than fifteen (15) Working Days prior to the relevant Quarterly Target Date, advise the Welsh Ministers of the number of Premises Passed it anticipates will be achieved at the Quarterly Target Date.
- 12.3 **Timing:** The Grantee must submit the relevant Deliverables to the Tests to demonstrate that the Implementation Works conform with this Agreement. If the Grantee reasonably and in good faith believes that the relevant Implementation Works conform with this Agreement, the Grantee may issue a certificate to the effect that they have met the Test Criteria (a "Test Certificate"). All Test Certificates relating to a Quarter must be issued no later than fifteen (15) Working Days after the relevant Quarterly Target Date.
- 12.4 **Right to attend etc:** The Welsh Ministers may attend the Tests and the Grantee must provide the Welsh Ministers with notice in good time of the time and place of the testing to be carried out.
- 12.5 **Provision of test data:** In respect of the Tests carried out, the Grantee must:
- 12.5.1 include with the Test Certificate, a list of Premises by post code in respect of which the Grantee's Test Certificate is issued; and
 - 12.5.2 retain all test results for all Premises in respect of which the Grantee's Test Certificate states it has achieved Premises Passed and promptly make available all or any of them (together with evidence of the Premises to which the Test relates) when requested by the Welsh Ministers.
- 12.6 **Verification:** Following the issuance of a Test Certificate, the Welsh Ministers may, (without prejudice to any other right or remedy available to them) during a period of fifteen (15) Working Days following the later of receipt of the Test Certificate or receipt of any additional information requested pursuant to this clause (the "Verification Period"), inspect the Deliverables and verify the Implementation Works and Tests undertaken by the Grantee and the results achieved from the Tests. The Grantee must provide promptly all relevant information and co-operation reasonably required by the Welsh Ministers in the course of such inspection and verification.
- 12.7 **Successful Testing:** At the end of the Verification Period, the Welsh Ministers will, unless they reasonably believe the Test Criteria not to have been met issue a Test Notice. If the Welsh Ministers do not indicate prior to the end of the Verification Period that they are taking issue with the Grantee's achievement of the Tests and fail to issue a Test Notice:
- 12.7.1 the results of the Tests carried out by the Grantee will stand; and
 - 12.7.2 to the extent that the Tests carried out by the Grantee indicate that the Test Criteria have been met and the Test passed, a Test Notice will be deemed to have been issued by the Welsh Ministers on the last day of the Verification Period,
- and the Grantee must promptly issue a Grant Payment Request in respect of the same.
- 12.8 **Dispute:** In the event of a dispute as to whether the Test Criteria have been met, the Parties shall proceed directly to the appointment of an Expert pursuant to clause 45.4.

13. **Title and Risk**
- 13.1 Risk and title to the Network must be and remain with the Grantee for the duration of the Agreement.
14. **Performance of Operational Works and Wholesale Services**
- 14.1 **Commencement:** With effect from the date that the Grantee issues a Test Certificate in respect of any Premises, the Grantee must perform the Operational Works in respect of those Premises.
- 14.2 **Payment for Operational Works:** The Grantee shall not be entitled to any payment whatsoever in respect of its performance of the Operational Works.
- 14.3 **Making Wholesale Services available:** The Grantee must ensure that throughout the Operational Phase:
- 14.3.1 it makes the Wholesale Services available so that they conform with the Wholesale Services Principles;
- 14.3.2 each Wholesale Service performs to at least the minimum requirements set out in the template Wholesale Service Description at Table 1 below, including Availability, PPIR, CIR, Upstream PIR and Upstream CIR; and
- 14.3.3 all Wholesale Services can be delivered within their respective Maximum Provisioning Times and are delivered on average within their respective Average Provisioning Times, subject to the provisions of clause 10.1.6;
- 14.3.4 it adapts the Wholesale Services to meet reasonable market demand effectively, whether by creation of new services or improving its services to Retail Service Providers.
- 14.4 **Wholesale Service Description:** The Grantee shall maintain the information in Table 1 below in each Wholesale Service Description:

Table 1

Information required	Minimum requirement
Name of Wholesale Service	
Service Description	
First date available for ordering	
Last date available for ordering	
Maximum Provisioning Time	20 days (subject to site survey and details set out in Appendix 1)
Average Provisioning Time	10 days
Restrictions on geographical availability	
PPIR	24Mbps
CIR	0.5Mbps
Upstream CIR	
Upstream PIR	
Installation Price	
Monthly Price	
Benchmark source (URL if possible)	
Upgrade / downgrade options available (for each: one off cost)	
Early termination provisions	
Compensation for late delivery	
Remedies for non-performance	
CESG security level	

- 14.5 **Amendment of Wholesale Services:** Subject to clause 14.3, the Grantee may amend the Wholesale Services at any time. The Grantee must maintain accurate

Wholesale Service Descriptions and promptly provide the Welsh Ministers with a copy of each completed or amended Wholesale Service Description.

- 14.6 **Pricing of Wholesale Services:** The Grantee acknowledges that the Welsh Ministers are obliged to ensure the avoidance of excessive pricing for provision of Wholesale Services or, by contrast, predatory pricing by the Grantee. The Grantee may revise or amend its pricing for provision of Wholesale Services to reflect market demand, though the Welsh Ministers should be notified in advance of the proposed change. Any revision or amendment of pricing of Wholesale Services must conform with the Wholesale Services Principles.
- 14.7 **Wholesale Services Principles:** The Wholesale Services Principles mean:
- 14.7.1 that the Grantee will ensure Open Access for the Wholesale Services;
- 14.7.2 that the Grantee shall operate and maintain at least one Wholesale Service in each of the following categories:
- 14.7.2.1 Wholesale Services which enable broadband services at a minimum of:
- 14.7.2.1.1 30Mbps PPIR with 2Mbps CIR;
- 14.7.2.1.2 24Mbps PPIR with 0.5Mbps CIR; and
- 14.7.2.1.3 100Mbps PPIR with 10Mbps CIR; and
- 14.7.2.2 a minimum downstream and upstream CIR of 10 Mbps.
- 14.7.3 the Grantee will ensure equality of treatment between Retail Service Providers and will not discriminate between them in the provision, receipt, conditions and pricing of the Wholesale Services; and
- 14.7.4 the pricing of the Wholesale Services must be set at a level which will enable Retail Service Providers to offer Retail Services in the Contract Intervention Area which are comparable to the average of prices charged to Customers in metropolitan areas of Birmingham, Manchester and London and parts of Wales not within the Contract Intervention Area.
- 14.8 **Benchmarking:** The Wholesale Services Prices shall be benchmarked in accordance with Schedule 7 (Benchmarking Provisions).
- 14.9 **Passive Access:** The Grantee will, in the Contract Intervention Area, enable the use, by third parties for the delivery of next generation broadband services, of passive access, as mandated by OFCOM and/or as required by the terms of the Commission Approval Letters.
15. **Network Standard**
- 15.1 **Compliance with Network Standard:** With effect from a Customer order for provision of broadband services, the Grantee must ensure that the Network Standard specified for the relevant Wholesale Service is met in respect of the relevant Customer's Premises.
16. **Warranties**
- 16.1 **Warranties – general** The Grantee warrants and represents that:
- 16.1.1 all documents upon which it would be reasonable to expect the Welsh Ministers to have relied as part of the procurement process prior to the Contract Commencement Date, have in each case been prepared in accordance with Good Industry Practice and all applicable Law and at the date of this Agreement are truthful, accurate (in all material respects) and not misleading;
- 16.1.2 having made all thorough investigations and enquiries, as at the Contract Commencement Date, the Grantee is not aware of any

- matters within its reasonable control which might or will adversely affect its ability to perform its obligations under this Agreement;
- 16.1.3 the Grantee is a corporation which is duly incorporated under the laws of England and Wales and has all the necessary corporate power and authority to accept the terms of this Agreement and to perform its obligations under it;
- 16.1.4 no corporate action or any other steps have been take by it in respect of an Insolvency Event relating to the Grantee; and
- 16.1.5 its entry into this Agreement has been duly and validly authorised and all requisite corporate action has been taken in order to make such entry valid and binding in accordance with the terms of this Agreement.
- 16.2 **Warranties – specific:** The Grantee warrants, represents and undertakes that:
- 16.2.1 all written information and materials to be provided or used by the Grantee under this Agreement will be prepared in accordance with Good Industry Practice and be accurate in all material respects;
- 16.2.2 it is (and will continue during the term of this Agreement to be) of sound financial standing and, as at the Contract Commencement Date, the Grantee is not aware of any circumstances (other than any circumstances that may be disclosed in the auditors' report of the published accounts of the Grantee for the accounting period ending 31st March 2011) which will materially adversely affect that financial standing in the future;
- 16.2.3 it has obtained and complied with and will maintain and comply with all applicable licences, waivers, consents, registrations, regulatory approvals and other authorisations of competent authorities required for it to carry out the Broadband Works and perform its obligations as referred to in this Agreement;
- 16.2.4 it employs people based on their individual capabilities and skills and does not discriminate on the grounds of age, disability, gender reassignment, marriage or civil partnership, pregnancy and maternity, race, religion and belief, sex or sexual orientation (together defined in the Equality Act 2010 as "protected characteristics"); and
- 16.2.5 it will, and will ensure that all its employees will, adhere to the requirements of the Equality Act 2010.
- 16.3 **Grantee warranties – Network and Broadband Works:** The Grantee warrants, represents and undertakes:
- 16.3.1 that any equipment, items, hardware, material, software or other technology used in or forming part of the Network:
- 16.3.1.1 is and will be free from material defects in materials, workmanship and installation and conforms to its specification;
- 16.3.1.2 has been and will be imported into the United Kingdom in compliance with all applicable Laws and international treaties relating to the export or import of dual use goods and technologies; and
- 16.3.1.3 when in use as envisaged by this Agreement, complies with all applicable health and safety and environmental Laws;
- 16.3.2 that it will perform the Implementation Works diligently, in a good and workmanlike manner, using good quality materials and well maintained plant in accordance with all Requisite Consents;

- 16.3.3 that it owns or has all necessary rights, authorisations and licences in respect of all Intellectual Property Rights used to enable the Grantee to perform the Broadband Works in accordance with this Agreement and the Law;
 - 16.3.4 it will take such precautions as a communications contractor experienced in developing and operating next generation networks would take with a view to ensure that throughout the term of this Agreement no Virus will be introduced into any part of the Network; and
 - 16.3.5 it will use all appropriate precautions to be expected of a supplier complying with Good Industry Practice while using any Hazardous Substance as part of the Implementation Works.
- 16.4 **Environmental and other policies:** The Grantee must comply with the Welsh Ministers' requirements in respect of the re-use and minimisation of environmental impact in its provision of the Broadband Works as set out in Schedule 21 (Sustainability) and the other policies and procedures listed in Schedule 19 (Policies and Procedures).
- 16.5 **Welsh language:** The Grantee shall ensure that:
- 16.5.1 in its dealings with the public in Wales relating to the Broadband Works and other activities carried out under the Agreement, it will treat the Welsh and English languages on the basis of equality;
 - 16.5.2 it will not do anything which will put the Welsh Ministers in breach of any of their obligations relating to the use of the Welsh language, whether under any enactment or under any statutory language schemes pursuant to the Welsh Language Act 1993 or statutory language standards pursuant to the Welsh Language (Wales) Measure 2011 as published from time to time;
 - 16.5.3 that it will comply with any and all statutory language standards pursuant to the Welsh Language (Wales) Measure 2011 which are potentially applicable to the Grantee, as published from time to time.
- 16.6 **Marketing etc:** The Grantee undertakes to market the Wholesale Services by way of the marketing activities that are set out in the Marketing Plan, but only when those marketing activities have been approved by the Welsh Ministers and the level of Financial Contribution agreed between the Parties. The Welsh Ministers shall only pay Financial Contributions in respect of those marketing activities that the Welsh Ministers have approved in accordance with the Marketing Plan.
- 16.7 **Enquiries from the general public:** Subject to approval and agreement under Clause 16.6 the Grantee shall provide a website and telephone helpdesk to inform the general public bilingually (in Welsh and English) of:
- 16.7.1 the planned roll-out of the Implementation Works by postcode (and any updates to this); and
 - 16.7.2 which Retail Service Providers are currently offering Retail Services through the Network.
- 16.8 **Marketing Plan:** The Grantee has produced in section 4 of Appendix 1 (Initial Documents), an initial marketing plan detailing how it will market the Wholesale Services by Customer type (as outlined in the Financial Model) (the "**Marketing Plan**"). The Grantee shall provide the Welsh Ministers with a copy of the current Marketing Plan within twenty (20) Working Days of request.
- 16.9 **Marketing Plan – updates:** The Grantee shall update the Marketing Plan annually or such other period as is reasonably requested by the Welsh Ministers and shall submit it to the Welsh Ministers. The Grantee must collaborate in good faith with the Welsh Ministers in connection with marketing initiatives and incorporate reasonable suggestions from the Welsh Ministers for changes to the Marketing Plan. The

Grantee shall maintain sufficient resources to conduct the activities set out in the Marketing Plan diligently and effectively.

17. Change Control Procedure

17.1 **Changes to Appendix 1 documents:** Changes to any of the documents listed in Appendix 1 (Initial Documents) are to be made as specified in the relevant parts of this Agreement and are not subject to the Change Control Procedure.

17.2 **Change Control:** Subject to clause 17.1, all proposed Changes must go through the Change Control Procedure set out in Schedule 11 (Change Control Procedure and Change Forms).

17.3 **No Change until formally agreed:** Until such time as any Change is formally agreed between the Grantee and the Welsh Ministers, both Parties must continue to perform their obligations as if such Change had not been requested. Neither Party will unreasonably withhold or delay their consent to a Change.

17.4 **This procedure to apply:** No Change may be implemented save in accordance with the provisions of this clause 17 (Change Control Procedure).

18. Payment, delivery of Quarterly PP Targets and Annual Implementation Targets and Retentions

18.1 **Payment:** Subject to the retentions outlined at clause **Error! Reference source not found.** below, the Welsh Ministers will pay to the Grantee the Financial Contribution relating to a Quarterly Target Date or a Milestone as set out in Schedule 8 (Milestones), such Financial Contribution to be calculated and paid in accordance with the provisions of Schedule 6 (Eligible Costs and Financial Contribution), provided that:

18.1.1 the Grantee has submitted a valid Test Certificate in accordance with clause 12.3; and

18.1.2 a Test Notice has been issued (or deemed issued); and

18.1.3 a Grant Payment Request has properly been issued

and subject also to the remainder of this clause.

18.2 **Certification:** Within twenty (20) days of submitting each Grant Payment Request, the Grantee must supply the Welsh Ministers with a certificate signed by the Grantee's Director of Group Finance or a senior person nominated by such Director (such senior person to be approved by the Welsh Ministers (such consent not to be unreasonably withheld)), who the Grantee warrants and undertakes will act in good faith, certifying the accuracy of Eligible Costs.

18.3 **Supporting documents:** Such certificate must be accompanied by full details showing how the calculation has been made, together with the evidence specified in Schedule 6 (Eligible Costs and Financial Contribution) which supports the calculation of Eligible Costs.

18.4 XXXXXXXXXXXXXXX REDACTED INFORMATION XXXXXXXXXXXXXXX

18.5 XXXXXXXXXXXXXXX REDACTED INFORMATION XXXXXXXXXXXXXXX

18.6 XXXXXXXXXXXXXXX REDACTED INFORMATION XXXXXXXXXXXXXXX

18.7 XXXXXXXXXXXXXXX REDACTED INFORMATION XXXXXXXXXXXXXXX

18.8 XXXXXXXXXXXXXXX REDACTED INFORMATION XXXXXXXXXXXXXXX.

18.9 **Annual Implementation Targets and the Build Completion Date:** Clauses 18.4 to 0 above shall apply in respect of the Annual Implementation Targets which expire on the Build Completion Date, save that the Grantee shall be given an opportunity to make up any shortfall in those Annual Implementation Targets by the Drop Dead Date.

18.10 XXXXXXXXXXXXX REDACTED INFORMATION XXXXXXXXXXXXX

19. **Financial Year Close**

19.1 **Consequences of late delivery due to Grantee failure at FY Close:** The Grantee acknowledges that subject to clause 18.5 above, in respect of Annual Implementation Targets falling due within a Financial Year, the Welsh Ministers need to be in a position, on or prior to 31st March in that Financial Year (the "Financial Year Close"), to accrue for all Implementation Works completed by the Grantee prior to a Financial Year Close.

19.2 **Anticipated Premises Passed:** The Grantee must, not less than twenty (20) Working Days prior to the relevant Financial Year Close, advise the Welsh Ministers of the number of Premises Passed it anticipates will be achieved at the Financial Year Close.

19.3 **Delivery of Test Certificates at Financial Year Close:** At a Financial Year Close, clause 12.3 above applies to the delivery of Test Certificates by the Grantee such that all Test Certificates relating to a Quarter concluding at a Financial Year Close must be issued no later than fifteen (15) Working Days after the relevant Financial Year Close.

20. **Drop Dead Date**

20.1 XXXXXXXXXXXXX REDACTED INFORMATION XXXXXXXXXXXXX

20.2 XXXXXXXXXXXXX REDACTED INFORMATION XXXXXXXXXXXXX.

21. **Other Financial Provisions**

21.1 **Maximum Grant:** Under no circumstances will the Financial Contribution payable to the Grantee for achieving the Broadband Coverage set out at clause 5.3.2.2 above or in any event under this Agreement exceed the Maximum Grant.

21.2 **Maximum Financial Contribution for 90% Broadband Coverage:** Under no circumstances will the maximum Financial Contribution payable to the Grantee under this Agreement for achieving Broadband Coverage in not more than ninety per cent (90%) of Premises within the Contract Intervention Area exceed one hundred and ninety five million pounds (£195,000,000), that figure of ninety per cent (90%) to consist of the following:

21.2.1 A minimum of eighty nine per cent (89%) of Premises achieving the Broadband Coverage set out in clause 5.3.2.1 above; and

21.2.2 Ninety per cent (90%) of Premises achieving the Broadband Coverage set out in clause 5.3.2.2 above

21.3 **Financial Contributions for intermediate percentages:** The maximum Financial Contribution payable to the Grantee under this Agreement for achieving Broadband Coverage at levels other than those set out at clauses 21.1 or 21.2 above shall be calculated as follows:

21.3.1 Where Broadband Coverage is achieved in less than ninety per cent (90%) of Premises within the Contract Intervention Area, using the formula

$[(P / 90\% \text{ of the total number of Premises in the Contract Intervention Area}) \times \text{£}195\text{m}]$

21.3.2 Where Broadband Coverage is achieved in more than ninety per cent (90%) but less than ninety five per cent (95%) of Premises within the Contract Intervention Area, using the formula

$[\text{£}195\text{m} + (P - 90\% \text{ of the total number Premises in the Contract Intervention Area}) / 5\% \text{ of the total number of Premises in the Contract Intervention Area}) \times \text{£}8.3\text{m}]$

where P is the actual number of Premises Passed at the Drop Dead Date.

- 21.4 **Last Drop Connection:** The Grantee acknowledges that the Welsh Ministers will not pay any contribution or subsidy to the Grantee in respect of the Last Drop Connection.
- 21.5 **Grantee's investment:** The Welsh Ministers acknowledge and accept that the Grantee has made a contribution of a sum at least equivalent to the Maximum Grant.
- 21.6 **Provision of Resources:** The Grantee shall provide all such resources and equipment as may be necessary to carry out the Broadband Works and to achieve Broadband Coverage in the Contract Intervention Area.
- 21.7 **Firm price:** The Financial Contribution shall not be subject to any increase except those increases expressly agreed by the Welsh Ministers in writing in strict accordance with the provisions of this Agreement, the State Aid Terms and the requirements of Funders. Any increase agreed shall be void to the extent that it fails to meet these constraints.
- 21.8 **Due date:** Subject to clause **Error! Reference source not found.** and the other provisions of this Agreement, payment of any Financial Contribution is due within thirty (30) calendar days of the Welsh Ministers' receipt of a correct and properly due Grant Payment Request.
- 21.9 **Payment dispute:** The Welsh Ministers may withhold payment that it disputes in good faith by notice in writing to the Grantee within thirty (30) days after receipt of the relevant Grant Payment Request giving its reasons and supporting evidence and specifying any additional information required to assist in resolving its concerns. Where such a withholding occurs:
- 21.9.1 the Grantee must continue to perform all its obligations under this Agreement;
- 21.9.2 the Welsh Ministers will pay any undisputed amounts to the Grantee; and
- 21.9.3 the Parties shall use all reasonable endeavours to resolve the dispute regarding payment within thirty (30) days of it arising. If they fail to resolve the dispute, either Party may refer the matter to the Dispute Resolution Procedure.
- 21.10 **Interest:** If the Welsh Ministers fail to pay any undisputed amount by the due date referred to in clause 21.8, the Grantee may (but without obligation to do so) charge the Welsh Ministers' interest on the overdue amount from the due date up to the date of actual payment at the rate of four (4) per cent per annum above the base rate for the time being of the Bank of England. The Grantee acknowledges that this amounts to a substantial and (save in respect of termination pursuant to clause 35.6) the exclusive remedy for the late payment of any Financial Contribution.
- 21.11 **VAT:** The Parties have agreed that the Broadband Works are not a supply of services to the Welsh Ministers and that the Financial Contribution is not payment in consideration of the provision of services to the Welsh Ministers. Accordingly the Parties believe that the provision of Broadband Works do not constitute a supply subject to VAT.
- 21.12 **Provision of information:** The Welsh Ministers may (and without prejudice to their

other rights under this Agreement including under clause 30 (Audit)) reasonably require the Grantee to produce such further information or evidence as the Welsh Ministers may reasonably require in order to verify the Eligible Costs incurred by the Grantee. The Grantee must furnish the Welsh Ministers promptly with all such information and evidence required. Until such information is provided, time shall not run for the purposes of clause 21.8.

- 21.13 **Set-off:** Without prejudice to any other right or remedy they may have, the Welsh Ministers reserve the right to set off any undisputed amounts owed by the Grantee to the Welsh Ministers under this Agreement against any amount payable by the Welsh Ministers to the Grantee under this Agreement.
- 21.14 **Clawback:** The provisions of Schedule 12 (Clawback) apply. The Grantee must comply with the provisions of Schedule 12 (Clawback) including (without limitation) paying to the Welsh Ministers such sums as are due to the Welsh Ministers pursuant to that Schedule.
- 21.15 **Nature of obligations:** Every obligation or responsibility of the Grantee in this Agreement must be completed by the Grantee at its own expense.
- 21.16 **Illegality:** Notwithstanding any contrary provision, neither Party will have any obligation which would be unlawful or in breach of Law.

22. **Review Procedure**

- 22.1 **Events:** Subject to clause 22.2, the Review Procedure will apply:
- 22.1.1 prior to any additional Priority Areas being added in accordance with clause 7.4 above;
 - 22.1.2 prior to the Welsh Ministers removing the affected Premises and de-scoping the Contract Intervention Area in accordance with clause 7.13;
 - 22.1.3 on the occurrence of a Relief Event in accordance with 10.9 above;
 - 22.1.4 on the loss or recovery of funding under clause **Error! Reference source not found.**;
 - 22.1.5 following Force Majeure in accordance with clause 26.1; or
 - 22.1.6 on suspension of this Agreement in accordance with clause 37 below.
- 22.2 **Effect of event:** The Review Procedure shall apply if any of the events set out at clause 22.1 above are likely to result in one or more of the following:
- 22.2.1 a change in the Eligible Costs which the Grantee is likely to incur;
 - 22.2.2 an increased risk in the Grantee's ability to achieve the Quarterly PP Targets or Annual Implementation Targets;
 - 22.2.3 a change to the Intervention Rate;
 - 22.2.4 an increased risk in the Grantee's ability to achieve the Broadband Coverage; or
 - 22.2.5 a change to the Maximum Grant.
- 22.3 **Items for review:** In considering the matters outlined at clause 22.2 above, the Review Procedure shall review the levels of:
- 22.3.1 Quarterly PP Targets;
 - 22.3.2 Annual Implementation Targets;
 - 22.3.3 the Intervention Rate (subject to clause 22.4);
 - 22.3.4 Broadband Coverage; and/or
 - 22.3.5 the Maximum Grant.
- 22.4 **Review of Intervention Rate:** It is acknowledged and agreed by the Parties that the Intervention Rate set for this Agreement can only be amended with the approval of

the appropriate authority. If both Parties agree that the Intervention Rate needs to be increased as a result of the matters outlined at clauses 22.1 and 22.2 above, then either:

- 22.4.1 the Welsh Ministers may elect not to proceed with the relevant event set out at clause 22.1; or
 - 22.4.2 in respect of the events at clauses 22.1.1 or 22.1.3 only, the Welsh Ministers may proceed to seek a variation to the Intervention Rate from the appropriate authority and the Grantee shall provide to the Welsh Ministers such reasonable assistance as is required in that regard.
- 22.5 **Reasons for change:** The Review Procedure shall consider changes to the figures in clause 22.3 above only where:
- 22.5.1 the Grantee has taken all reasonable steps to mitigate the need for change, including rescheduling implementation where appropriate and where this does not result in an increase in risk or costs to the Grantee;
 - 22.5.2 change is a reasonable consequence of the relevant event/s set out in clause 22.1 above;
 - 22.5.3 change is supported by reasonable evidence; and
 - 22.5.4 the level of change proposed is reasonably proportionate to the event/s set out in clause 22.1 above and any increase in risk to the Grantee is consistent with the pricing methodology/apportionment of risk at the Contract Commencement Date.
- 22.6 **Timetable:** The Review Procedure shall be commenced by either Party serving on the other a Notice of Review stating that they wish to initiate a change to the matters referred to at clauses 22.1.1 - 22.1.6 above such notice to contain:
- 22.6.1 the reasons for the request and specifying the issues that they believe need to be addressed by the Review Procedure;
 - 22.6.2 an explanation of what that Party asserts should happen in respect of each issue; and
 - 22.6.3 copies of any documentation or other evidence which support that Party's request.
- 22.7 **Procedure:** The timescales referred to below are maxima, subject to any earlier timescales being agreed between the Parties with due regard to the urgency and complexity of the request. Following receipt of a Notice of Review:
- 22.7.1 the Party receiving the Notice of Review shall notify the other Party within twenty (20) Working Days of receipt as to whether it agrees the other Party's position in respect of each issue raised:
 - 22.7.1.1 if it does, such agreement shall constitute a Change and be subject to the Change Control Procedure;
 - 22.7.1.2 if it does not, within twenty (20) Working Days of receipt of the Notice of Review the receiving Party must provide to the other Party in writing the reasons why it does not agree and copies of any documentation or other evidence which support that Party's position;
 - 22.7.2 if the parties are unable to reach agreement as to how the contents of the Notice of Review are to be addressed, within sixty (60) Working Days of the issue of the Notice of Review and acting reasonably and in good faith, they shall meet to discuss the contents of the Notice of Review and try to reach agreement pending which and

notwithstanding any other term to the contrary there shall be no change or right to change the Agreement;

22.7.3 If, after that meeting, the parties are still unable to reach agreement the dispute will be referred to the Dispute Resolution Procedure in accordance with clause 45.

23. Grantee Indemnities

23.1 **General:** The Grantee must indemnify the Welsh Ministers and keep the same fully and effectively indemnified against all liabilities, reasonable costs and expenses, damages and losses (including wasted management time or reasonable third party costs incurred, all interest, penalties and reasonable professional costs and expenses) arising out of or in connection with any claim made against the Welsh Ministers by a third party:

- 23.1.1 in respect of property damage;
- 23.1.2 for infringement of Intellectual Property Rights;
- 23.1.3 for breach of Data Protection Legislation; or
- 23.1.4 breach of any duty of confidence,

arising out of or in connection with the Grantee's performance of the Broadband Works, the existence of the Network, any other obligation of the Grantee under this Agreement or other use of the Network.

23.2 **Notification of indemnity claim:** The Welsh Ministers will notify the Grantee promptly following its becoming aware of a potential claim on any of the indemnities referred to in clause 23.1.

23.3 **Reasonable assistance:** The Welsh Ministers shall, at the reasonable request of the Grantee, provide reasonable assistance to the Grantee in the management of an indemnity claim and, where the Welsh Ministers do so assist:

- 23.3.1 the Grantee shall conduct all negotiations and proceedings, subject to having all due regard to any representations of the Welsh Ministers in respect of such negotiations and proceedings, and shall keep the Welsh Ministers fully informed of the progress of the claim;
- 23.3.2 the Grantee shall reimburse the Welsh Ministers for all reasonable costs and expenses incurred by the Welsh Ministers in providing such assistance (including legal costs, the costs of professional services and disbursements to the extent the same are reasonable);
- 23.3.3 the Welsh Ministers shall not make any admissions in relation to any alleged or actual infringement without the Grantee's prior written consent (such consent not to be unreasonably withheld or delayed); and
- 23.3.4 under no circumstances may the Grantee:

23.3.4.1 settle any claim in respect of any indemnity; or

23.3.4.2 submit to any mandatory order or give any undertaking to a court in the name of the Welsh Ministers or otherwise hold itself out as representing the Welsh Ministers in respect of any claim or proceedings

without the express authorisation in writing of the Welsh Ministers given by the Welsh Ministers' Head of Legal Services or other nominated legal representative of the Welsh Ministers (such authorisation not to be unreasonably withheld or delayed).

24. Limitation of Liability

24.1 XXXXXXXXXXXXX REDACTED INFORMATION XXXXXXXXXXXXX

- 24.2 **The Welsh Ministers' liability:** Subject to clause 24.4 the Welsh Ministers' entire liability to the Grantee under this Agreement is limited to the following:
- 24.2.1 to pay the Financial Contributions as they fall due in accordance with this Agreement;
 - 24.2.2 breach of Data Protection Legislation;
 - 24.2.3 breach of any duty of confidence owed to the Grantee by the Welsh Ministers pursuant to this Agreement; or
 - 24.2.4 breach of clause 40.
- Subject to clause 24.4, the Welsh Ministers shall have no further liability in contract, tort (including negligence) or otherwise pursuant to this Agreement.
- 24.3 **No exclusions – Grantee:** The Grantee does not exclude or restrict its liability for any of the following:
- 24.3.1 any claim for, or in respect of, the death and/or personal injury of any person, arising out of, or in the course of, the provision of the Broadband Works;
 - 24.3.2 fraud or fraudulent misrepresentation by the Grantee or breach by the Grantee of clause 40;
 - 24.3.3 any claim made by a third party against the Welsh Ministers in respect of which the Grantee indemnifies the Welsh Ministers under this Agreement;
 - 24.3.4 any payment due under Schedule 12 (Clawback) but subject to the restrictions set out in that Schedule;
 - 24.3.5 deliberate personal repudiatory breach including wilful abandonment of the Implementation Works or Operational Works (or any part thereof) by the Grantee;
 - 24.3.6 breach of Data Protection Legislation or any duty of confidence owed to the Welsh Ministers by the Grantee pursuant to this Agreement; and
 - 24.3.7 loss or repayment of funding from the Funders suffered by the Welsh Ministers due to breach of this Agreement by the Grantee,
- and no amounts awarded or agreed to be paid in respect of any item referred to in this clause 24.3 shall count towards the cap on liability set out in clause **Error! Reference source not found.**
- 24.4 **No exclusions – the Welsh Ministers:** The Welsh Ministers do not exclude or restrict their liability for any of the following:
- 24.4.1 the death and/or personal injury of any person arising out of any negligent act or omission by the Welsh Ministers, their employees or officers;
 - 24.4.2 breach of Data Protection Legislation; or
 - 24.4.3 breach of any duty of confidence owed to the Grantee by the Welsh Ministers pursuant to this Agreement.; or
 - 24.4.4 breach by the Welsh Ministers of clause 40.
- 24.5 **Indirect/Consequential loss:** Neither the Welsh Ministers nor the Grantee shall be liable to each other regarding this Agreement for:
- 24.5.1 any indirect, special or consequential loss or damage;
 - 24.5.2 any loss of profit;
 - 24.5.3 loss of business;
 - 24.5.4 loss under or in relation to any other contract;

24.5.5 loss of sales or turnover; and

24.5.6 loss of goodwill

whether caused by breach of contract or tort (including negligence), breach of statutory duty or arising in any other way.

24.6 **Direct losses:** For the purposes of this clause 24.6, the Parties have agreed that the following categories of loss shall (without limitation) be treated as direct losses:

24.6.1 internal and external operational and administrative costs and expenses necessarily incurred by either Party (including fees of consultants, advisers and lawyers) as a result of a breach of this Agreement or as a result of a negligent or other unlawful act or omission of the other Party;

24.6.2 reasonable costs of carrying out a re-procurement exercise, selecting, participating in dialogue and negotiating (or other pre-contractual process) with prospective Replacement Suppliers in connection with the provision of works that are the same as or broadly equivalent to the Broadband Works;

24.6.3 the difference (if greater) in cost between what the Welsh Ministers would have paid to the Grantee for the Broadband Works that the Grantee should have delivered under this Agreement and what the Welsh Ministers reasonably contract to pay a Replacement Supplier to provide the same or broadly equivalent services to the Broadband Works;

24.6.4 loss or repayment of funding from the Funders suffered by the Welsh Ministers due to breach of this Agreement.

25. Insurance

25.1 **General:** During the currency of this Agreement the Grantee shall maintain in force the following insurances (the "**Insurances**"):

25.1.1 Public/Product Liability insurance in an amount not less than ten million pounds (£10,000,000);

25.1.2 Employer's liability insurance in an amount not less than ten million pounds (£10,000,000) or such other limit as may be required by Law from time to time, whichever shall be higher;

25.1.3 Insurance against liability for damage to tangible property of any person in an amount not less than ten million pounds (£10,000,000) each and every occurrence;

25.1.4 all infrastructure and other physical property making up the Network for their replacement value (including the cost of implementation); and

25.1.5 Professional indemnity insurance in an amount not less than ten million pounds (£10,000,000).

25.2 **Further requirements:** Save in respect of clauses 25.1.1 and 25.1.5 each of the Insurances must provide cover on an "each and every event" basis and not in the aggregate.

25.3 **Production:** The Grantee must, on the Welsh Ministers' request, produce either the insurance certificate or a broker's letter confirming that the Insurances are in place.

25.4 **Proceeds of insurance claim:** In any circumstances where the Grantee makes a claim in respect of the Insurance maintained pursuant to clause 25.1.4, it must use such proceeds first to restore any damage to the Network (save to the extent any damage has already been corrected).

26. Force Majeure

26.1 **General:** Neither Party shall be in breach of this Agreement, nor liable for any failure

or delay in performance of any obligation under this Agreement to the extent arising from or attributable to a Force Majeure event. The Welsh Ministers shall not be liable to pay the Grantee for any aspect of the Broadband Works which the Grantee fails to deliver as a result of Force Majeure. Save where this Agreement has been terminated pursuant to clause 26.2, following a Force Majeure event, the Grantee must promptly carry out the Recommencement Activities when the impact of the Force Majeure event has been assessed under the Review Procedure.

- 26.2 **Termination:** If either Party is prevented from performing its obligations for more than sixty (60) days by reason of Force Majeure or any of the events referred to in clauses 10.2.2 to 10.2.11, the other Party may serve notice on the other to terminate this Agreement. Such termination shall take effect after a further period of twenty (20) Working Days.
27. **Data Protection**
- 27.1 **Compliance:** Each Party must at all times comply fully with all Data Protection Legislation.
28. **Intellectual Property**
- 28.1 **No licence:** Nothing in this Agreement shall or will be construed or deemed to grant to either Party any right, title, licence or other interest in, to or under (whether by estoppel, by implication or otherwise) any logo, trade mark or similar designation of the other Party.
- 28.2 **Prompt notification:** The Grantee acknowledges the importance of continuity of service and accordingly undertakes to promptly inform the Welsh Ministers of any claim or threat from any third party relating to the infringement of a third party's Intellectual Property Rights or any rights of confidence affecting a third party which materially affects any Intellectual Property Rights forming part of or used in any aspect of the Broadband Works.
29. **Confidentiality**
- 29.1 **General:** Except to the extent set out in this clause or where disclosure is expressly permitted elsewhere in this Agreement, each Party must:
- 29.1.1 treat the other Party's Confidential Information as confidential and safeguard it accordingly; and
- 29.1.2 not disclose the other Party's Confidential Information to any other person without the owner's prior written consent.
- 29.2 **Exceptions:** Clause 29.1 shall not apply to the extent that such disclosure is to a body carrying out an audit pursuant to clause 30. In the event of such disclosure, the Welsh Ministers shall draw the attention of the recipient to the fact that the information disclosed may contain Confidential Information and that such information must only be used for the purposes of this Agreement.
- 29.3 **Disclosure required:** Neither Party shall be in breach of their obligations under clause 27.1:
- 29.3.1 where the disclosure is required by order of any authority having jurisdiction over the relevant Party or by Law, including any requirement for disclosure under FOIA, the Code of Practice on Access to Government Information or the Environmental Information Regulations pursuant to clause 31 (Freedom of Information);
- 29.3.2 to the extent that such information was lawfully in the possession of a Party making the disclosure without obligation of confidentiality prior to its disclosure;
- 29.3.3 to the extent that such information was lawfully obtained from a third party without obligation of confidentiality;
- 29.3.4 to the extent that such information was already in the public domain at the time of disclosure otherwise than by a breach of this Agreement; or

- 29.3.5 to such information as can be demonstrated to have been independently developed without access to the other Party's Confidential Information.
- 29.4 **Disclosure by Grantee:** The Grantee (and its Subcontractors) may only disclose the Welsh Ministers' Confidential Information to such Personnel who are directly involved in the provision of the Broadband Works and who need to know the information. The Grantee must ensure that all Personnel and Subcontractors are aware of the confidential nature of the material provided to them and enter into confidentiality undertakings with the Grantee.
- 29.5 **Disclosure by the Welsh Ministers:** Nothing in this Agreement shall prevent the Welsh Ministers from disclosing the Grantee's Confidential Information:
- 29.5.1 to the Funders, any government department or any other department, agency or office of the Welsh Ministers or their respective advisers, the European Commission, OFCOM or as required pursuant to clause 30 (Audit). Prior to any such disclosure, the Welsh Ministers must make these organisations aware of the confidential nature of the Grantee's Confidential Information and the need to protect it accordingly; and
- 29.5.2 to any consultant, contractor, adviser or other person engaged by the Welsh Ministers from time to time for the purposes of supporting the Welsh Ministers in relation to and who need to know the information for the Broadband Works, provided that the Welsh Ministers ensure the other party is aware of the confidential nature of the material provided to them and enter into a confidentiality undertaking with the Welsh Ministers.
- 29.6 **Use by Personnel and Subcontractors:** Each Party must only (and must ensure that all Personnel and Subcontractors comply) use any Confidential Information of the other Party for the sole purposes of this Agreement.
- 29.7 **Termination:** To the extent such documents are not required to be maintained and retained under clause 30 below, on or before the date when this Agreement terminates or expires, each Party must ensure that all documents (including but without limitation any computer records) in its possession, custody or control, which contain Confidential Information of the other Party (including any documents in the possession, custody or control of a consultant, advisor or Subcontractor) are (at the other Party's option) permanently destroyed or delivered up.
30. **Audit**
- 30.1 **Retention of records:** The Grantee must, until the Record Retention Expiry Date, maintain and retain full and accurate Open Book records in accordance with Generally Accepted Accounting Principles (GAAP), including details of:
- 30.1.1 its performance of the Implementation Works;
- 30.1.2 the Eligible Costs incurred in the performance of the Implementation Works (including where they are Eligible Costs the amounts charged by its Subcontractors, agents and suppliers);
- 30.1.3 any sums repaid or to be repaid to the Welsh Ministers under Schedule 12 (Clawback), including all underlying information and documents relating to the calculation of any clawback payments; and
- 30.1.4 Inventory Information
- in a form which facilitates comparison of actual project costs (and Personnel used) on an item by item basis with those set out as Eligible Costs in Schedule 6 (Eligible Costs and Financial Contribution).
- (together, the "Auditable Records").

- 30.2 **Notification:** On the Record Retention Expiry Date, the Grantee must notify the Welsh Ministers whether it intends to destroy or otherwise dispose of the Auditable Records.
- 30.3 **Right to carry out audit:** The Grantee must ensure that the Audit Representatives have the right and the ability from time to time to perform full and detailed audits and inspections of the Grantee's provision of the Broadband Works, the component parts of the Network and the Auditable Records. Where any additional information or original documentation is reasonably requested from time to time in support of Eligible Costs by Audit Representatives, the Grantee must provide or procure the provision of such information or documentation promptly.
- 30.4 **Frequency of audit – the Welsh Ministers Audit Representatives:** The Grantee acknowledges that since the Broadband Works involve the use of Structural Funds, the Welsh Ministers and the European Commission need the ability to carry out audits at a frequency determined by either of them. The Grantee also acknowledges that where the Welsh Ministers reasonably suspect fraud, a breach of the State Aid Terms or a material failure to keep or provide proper records or accounts, the Audit Representatives will be entitled to carry out additional audit(s) as and when required.
- 30.5 **Frequency of audit – Funders' Audit Representatives:** In the case of Audit Representatives of the Funders, they shall be entitled to carry out such audits at such frequency as may be required by the Funders, without prejudice to any other right such Audit Representatives may have under Law.
- 30.6 **Audit Representatives:** The Grantee must provide all reasonable assistance promptly to enable the Audit Representatives to carry out and complete any such audit. Such assistance shall include granting or procuring the grant of access to the Grantee's premises or other premises where Auditable Records are kept during normal working hours and taking reasonable account of the Grantee's reasonable security requirements to take copies of Auditable Records. The Welsh Ministers will use reasonable endeavours to ensure that Audit Representatives minimise disruption to the provision of the Broadband Works and will alert Audit Representatives to the need to comply with the Grantee's on-site health and safety and security requirements.
- 30.7 **Action following Audit:** Schedule 22 (Actions and Procedures Following an Audit) shall have effect.
31. **Freedom of Information**
- 31.1 **Grantee obligations:** Where the Welsh Ministers receive a Request for Information in relation to information that the Grantee via the Welsh Ministers or otherwise is holding on the Welsh Ministers' behalf and which the Welsh Ministers do not themselves hold, the Welsh Ministers may refer such Request for Information to the Grantee, in which case the Grantee must provide:
- 31.1.1 the Welsh Ministers with a copy of all such information in the form that the Welsh Ministers reasonably requires as soon as practicable and in any event within five (5) Working Days (or such other period as the Welsh Ministers acting reasonably may specify) of the Welsh Ministers' request; and
- 31.1.2 all necessary assistance as may reasonably be requested by the Welsh Ministers in connection with any such information, to enable the Welsh Ministers to respond to a Request for Information within the time for compliance set out in Section 10 of FOIA or Regulation 5 of the EIR.
- 31.2 **The Welsh Ministers' decision:** Following notification under clause 31.1, and up until such time as the Grantee has provided the Welsh Ministers with all the information specified in clause 31.1, the Grantee may make representations to the Welsh Ministers as to whether or not or on what basis information requested should be disclosed, and whether further information should reasonably be provided in order to identify and locate the information requested, provided always that the Welsh

Ministers shall be responsible for determining at their absolute discretion:

- 31.2.1 whether information is exempt from disclosure under the FOIA and the EIR;
- 31.2.2 whether information is to be disclosed in response to a Request for Information; and

in no event shall the Grantee respond directly, or allow any Subcontractor to respond directly, to a Request for Information unless expressly authorised to do so by the Welsh Ministers.

- 31.3 **Duty to retain:** Save for Auditable Records (which are subject to clause 30.1 above), the Grantee must ensure that all information held on behalf of the Welsh Ministers is retained for disclosure for at least six (6) years (from the date it is created or acquired) and must permit the Welsh Ministers to inspect such information as requested from time to time.
- 31.4 **Duty to inform of Requests for Information:** The Grantee must inform the Welsh Ministers of any Request for Information received by it as soon as practicable and in any event within three (3) Working Days of receiving it and must immediately thereafter notify the Welsh Ministers of the date on which any such Request for Information was received by the Grantee and the date on which it was transferred to the Welsh Ministers.
- 31.5 **Acknowledgement:** The Grantee acknowledges that the Welsh Ministers may in any event be obliged to disclose Confidential Information.
- 31.6 **Application of the Codes:** The Grantee acknowledges that (notwithstanding the provisions of clause 29 (Confidentiality) and clause 31 (Freedom of Information) the Welsh Ministers may, acting in accordance with the Welsh Government's Code of Practice on Access to Information and/or the Department of Constitutional Affairs' Code of Practice on the Discharge of Functions of Public Authorities under Part I of the FOIA (the "Codes"), be obliged under the FOIA, or the EIR to disclose Information concerning the Grantee or the provision of the Broadband Works:

- 31.6.1 in certain circumstances without consulting with the Grantee; or
- 31.6.2 following consultation with the Grantee and having taken their views into account,

provided always that where clause 31.6.1 applies, the Welsh Ministers shall, where reasonably practicable, draw this to the attention of the Grantee prior to any disclosure in accordance with the recommendations of the Codes.

32. Personnel

- 32.1 **Continuity:** The Grantee agrees to use reasonable endeavours to maintain continuity of Key Personnel during its performance of the Broadband Works. The Grantee must not substitute any Key Personnel for the sake of convenience.
- 32.2 **Implementation Works:** Without prejudice to the generality of clause 32.1, during the provision of the Implementation Works, Key Personnel employed by the Grantee in performing the Broadband Works must not be released for any other project or training then being carried out by the Grantee if any Quarterly PP Target has not been attained by the Quarterly Target Date set out in Schedule 2 (Quarterly Targets) for that Quarterly PP Target and the Quarterly PP Target is still uncompleted and their presence is substantially relevant to the attainment of such Quarterly PP Target.
- 32.3 **Key Personnel:** The Grantee must:
 - 32.3.1 list its Key Personnel in Schedule 15 (Key Personnel). The Grantee must keep that list updated throughout the term of this Agreement and must not unreasonably withhold or delay its agreement to the inclusion in that list of further Personnel nominated by the Welsh Ministers from time to time during the term of this Agreement;

- 32.3.2 at the written request of the Welsh Ministers, appoint Key Personnel who must be suitably skilled, experienced and qualified to carry out the Broadband Works;
 - 32.3.3 procure the availability of the Key Personnel to provide the Broadband Works throughout the term of this Agreement, or where expressly stated in Schedule 15 (Key Personnel), for the duration of any task or phase specified in respect of them; and
 - 32.3.4 promptly inform the Welsh Ministers of the absence (or anticipated absence) of any Key Personnel. If the Welsh Ministers require, the Grantee must provide an equivalently qualified and suitable replacement during such absences.
- 32.4 **Principal Key Personnel:** The following are Principal Key Personnel:
- 32.4.1 Project/Programme Director (the senior overall Project/Programme Director for the project);
 - 32.4.2 Delivery/Implementation Director (the senior role responsible for the overall implementation/rollout of the programme);
 - 32.4.3 Finance Director/Manager (the senior role with overall responsibility for the project finance and audit function).
- 32.5 **Replacement:** The Grantee must replace any of the Key Personnel assigned by the Grantee (or any Subcontractor) to the Broadband Works if the Welsh Ministers reasonably consider the performance of that person is unacceptable or his/her attitude is incompatible with the successful performance of the Broadband Works or good relations between the Parties. The Welsh Ministers must provide written instruction to the Grantee requesting removal together with full and comprehensive evidence in support. Where requested by the Welsh Ministers (and to the extent reasonably practicable), the Grantee must ensure that there is a handover period of at least one (1) month between such replacement commencing work and the outgoing member of staff leaving. During such handover period, the Welsh Ministers shall not be required to pay any contribution in respect of work carried out by the new member of staff.
- 32.6 **Compliance with regulations etc:** The Grantee must procure that:
- 32.6.1 all Personnel comply with Law and all relevant safety, security, internal staff and on site regulations specified from time to time by any person on whose premises they are required to work;
 - 32.6.2 it uses adequate numbers of Personnel (including adequate numbers of supervisory staff) to ensure that the Broadband Works are performed in accordance with this Agreement; and
 - 32.6.3 where any Financial Contribution is calculated on the basis of day rates, that the normal working day of a member of the Personnel is equivalent to at least seven point two (7.2) working hours.
33. **Non-Solicitation**
- 33.1 **General:** Subject to clause 33.2, each Party agrees that from the Contract Commencement Date to six (6) months after termination or expiry of this Agreement it must not directly solicit or actively attempt to entice away any of the other Party's employees who are directly involved with the provision of Broadband Works.
- 33.2 **Grantee Insolvency:** The provisions of clause 33.1 shall not apply to either party where the other party suffers an Insolvency Event (other than a moratorium or administration).
34. **Subcontracting**
- 34.1 **Subcontractor information:** The Grantee must disclose such information as may reasonably be requested by the Welsh Ministers or the Audit Representatives from time to time to the extent such information is necessary to verify any claim for Eligible

Costs, including:

- 34.1.1 copies of any contracts between the Grantee and Subcontractors to the extent they relate to the performance of the Implementation Works; and
- 34.1.2 any information in respect of the procurement and timing of payment and performance of any Subcontractors appointed by the Grantee in connection with the performance of the Implementation Works.

Any information or documents disclosed by the Grantee under this clause 34.1 are disclosed on a "commercial in confidence" basis.

- 34.2 **Sole point of contact:** The Grantee must remain the sole point of contact for the Welsh Ministers in respect of the performance of all aspects of the Broadband Works.
 - 34.3 **Prime liability:** Each and every act or omission of a Subcontractor or third party used by the Grantee shall be deemed to be the act or omission of the Grantee. The Grantee shall not be relieved from any of its obligations hereunder by entering into any subcontract for the performance of any part of the Broadband Works and must at all times remain primarily liable for the acts and omissions of its Subcontractors.
 - 34.4 **Treatment of Subcontractors:** The Grantee will conduct a reasonable investigation if the Welsh Ministers are or become aware of any complaints from Subcontractors (of whatever tier) relating to payment for Implementation Works where the same are Eligible Costs and have been the subject of a Financial Contribution from the Welsh Ministers.
35. **Termination**
- 35.1 **The Welsh Ministers' right to terminate:** On the occurrence of a Grantee Event of Default, the Welsh Ministers may:
 - 35.1.1 in the case of material or persistent breach as referred to in clause 35.2.1, serve notice of default in writing on the Grantee requiring the Grantee to remedy the Grantee Event of Default within thirty (30) days. Within two (2) days of service of the notice of default, the Grantee may put forward a plan to remedy the Grantee Event of Default. If that remedial plan is accepted by the Welsh Ministers in their absolute discretion within five (5) days of service of the notice of default, the Grantee must implement the remedial plan within such time as the Welsh Ministers approve. If the Grantee Event of Default specified in the notice of default is not remedied before the expiry of the notice period, or the Welsh Ministers do not accept the remedial plan, or the Grantee fails to implement the remedial plan within the approved time or implementation of the remedial plan fails to remedy the Grantee Event of Default, the Welsh Ministers may terminate this Agreement by notice in writing having immediate effect; or
 - 35.1.2 in the case of any other Grantee Event of Default, terminate this Agreement by notice in writing having immediate effect.
 - 35.2 **Grantee Event of Default:** For the purposes of this Agreement, a Grantee Event of Default means any of the following events or circumstances:
 - 35.2.1 the Grantee commits a material breach of this Agreement or commits a series of persistent breaches which, taken together, amount to a material breach of this Agreement;
 - 35.2.2 an Insolvency Event occurs in respect of the Grantee;
 - 35.2.3 the Grantee undergoes a change of control, where control is defined in section 416 of the Income and Corporation Taxes Act 1988. Any notice to terminate on the basis of a change of control must be served within six (6) months of the date the change of control is publicly announced by the Grantee;

- 35.2.4 the Grantee enters into a Service Affecting Transaction. Any notice to terminate on the basis of a Service Affecting Transaction must be served within six (6) months of the date of the Service Affecting Transaction;
 - 35.2.5 the Grantee incurs liabilities to the Welsh Ministers equal to or in excess of seventy five per cent (75%) of the limits of liability set out in clause **Error! Reference source not found.**;
 - 35.2.6 three (3) Warning Notices are issued by the Welsh Ministers in any twelve (12) month rolling period;
 - 35.2.7 two (2) Warning Notices are issued by the Welsh Ministers in any fourteen (14) week rolling period; or
 - 35.2.8 Annual PP Achieved is less than seventy five per cent (75%) of the relevant Annual Implementation Target in any Financial Year during the Implementation Phase.
- 35.3 **Termination for FM Event:** Either Party may terminate this Agreement pursuant to the provisions of clause 26.
- 35.4 **Termination for convenience:** The Welsh Ministers may (at their discretion) terminate this Agreement for convenience at any time on giving twelve (12) months' written notice to the Grantee.
- 35.5 **Termination for convenience – no compensation:** The Grantee acknowledges that the onus is on the Grantee:
- 35.5.1 to order its affairs appropriately in light of the Welsh Ministers' termination for convenience right; and
 - 35.5.2 to arrange its contracts with Subcontractors so that they are terminable at no cost following the Welsh Ministers' termination for convenience,
- and further acknowledges that the Welsh Ministers will have no liability for any termination, redundancy or other costs, payment of compensation or other liability whatsoever arising from its exercise of its right of termination for convenience set out in clause 35.4.
- 35.6 **Grantee right to terminate:** The Grantee may terminate this Agreement upon giving twenty (20) Working Days' notice for failure by the Welsh Ministers to pay when due sums properly requested pursuant to a Grant Payment Request issued in strict accordance with this Agreement provided that:
- 35.6.1 the Grantee has first issued a written notice to the Welsh Ministers informing the Welsh Ministers that its Grant Payment Request is outstanding, which notice warns the Welsh Ministers that failure to pay will trigger termination or suspension under this clause. To be valid such notice must be addressed to the Head of Legal Services for the Welsh Ministers and handed in personally between 9 a.m. and 5 p.m. on a Working Day at the Welsh Ministers' address for service set out in this Agreement;
 - 35.6.2 the amount remains unpaid at the expiry of the notice referred to in sub-clause 35.6.1; and
 - 35.6.3 the amount outstanding is in excess of one million pounds (£1,000,000) in aggregate and is not the subject of a bona fide dispute or claim of set off, notice of which has been given by the Welsh Ministers to the Grantee.
- 35.7 **Exclusion of other termination rights:** The Parties agree that all other statutory and implied rights of termination are excluded.
- 35.8 **Termination without prejudice:** Any termination of this Agreement shall be without prejudice to any rights or remedies of the Parties accrued up to the date of

termination.

- 35.9 **Termination Assistance:** On termination (whether in whole or in part) or expiry of this Agreement for any reason, the Grantee must (unless the Welsh Ministers notify the Grantee that it is not required or is only required for a limited time) provide such reasonable termination assistance as the Welsh Ministers may reasonably require. Except where this Agreement is terminated by the Welsh Ministers for convenience, change of control or for a Service Affecting Transaction or expires (in which case the Welsh Ministers shall pay the Grantee's reasonable costs in providing the termination assistance requested), the Grantee shall bear its own costs of providing such termination assistance.
36. **Consequences of Termination**
- 36.1 **Continuing obligation to perform Operational Works:** Without prejudice to the generality of clause 36.2, termination of this Agreement (howsoever occurring) will not terminate the Grantee's obligation to perform the Operational Works, which will continue in respect of all Premises Passed achieved as at the date of termination, subject to clause **Error! Reference source not found.**
- 36.2 **Continuance in force:** Termination of this Agreement (howsoever occurring) will not affect either of the Party's accrued rights or liabilities or affect the coming into force or the continuance in force of any provision which is expressly or by implication intended to come into or continue in force on or after termination.
37. **Suspension by the Welsh Ministers**
- 37.1 **Events:** In the event that prior to completion of the Implementation Works, the Welsh Ministers learn that:
- 37.1.1 a complaint has been made to the European Commission or proceedings have been brought in a UK Court or in the EU Courts alleging that the payments or part of the payments to the Grantee under this Agreement constitute unlawful State Aid; or
- 37.1.2 the European Commission is contemplating the launching of an investigation under Article 10 of Council Regulation 659/99 or Article 108(2) of the EC Treaty in respect of this Agreement,
- the Welsh Ministers may give notice of the suspension of this Agreement ("a Suspension Notice"). From the date on which the Welsh Ministers serve a Suspension Notice until such time as the matter has been concluded to the reasonable satisfaction of the Welsh Ministers and the Grantee, the Welsh Ministers shall be entitled to cease paying Financial Contributions to the Grantee and the Grantee will not be obliged to perform the Implementation Works. For the avoidance of doubt and notwithstanding any other term to the contrary the Grantee shall not be liable in any way to the Welsh Ministers in respect of Broadband Coverage, Broadband Works, Annual Implementation Targets or otherwise due in whole or in part to any period of suspension.
- 37.2 **Each party to inform:** Each Party shall inform the other as soon as it becomes aware of any matter referred to in the preceding sub-clauses 37.1.1 and 37.1.2 and the Parties shall meet as soon as reasonably practicable to discuss the same and agree a way forward.
- 37.3 **Other rights of Suspension:** Save for the circumstances outlined in clause 37.1 above, any other request by the Welsh Ministers to suspend all or part of the Parties' rights and obligations under this Agreement shall be subject to the Change Control Procedure.
38. **State Aid Compliance**
- 38.1 Both the Grantee and the Welsh Ministers acknowledge that it is the Welsh Ministers' responsibility to comply with the State Aid Terms and that the Financial Contributions paid by the Welsh Ministers to the Grantee pursuant to this Agreement are made pursuant to an authorised state aid scheme.

- 38.2 The Grantee shall provide such assistance, information and/or support as the Welsh Ministers may reasonably require from time to time in connection with the Welsh Ministers' responsibilities under the State Aid Terms, or with any action, examination and/or investigation by the European Commission, pursuant to the State Aid Terms as may, in the Welsh Ministers' view, be reasonably necessary and relevant, but for the avoidance of doubt shall not require the Grantee to provide legal advice subject to privilege to the Welsh Ministers, and the Grantee shall be given adequate time to provide the information.
- 38.3 If the European Commission issues a recovery decision as defined in Article 14(1) of Council Regulation 659/1999 in connection with this Agreement naming the Grantee as beneficiary, then, unless an earlier date has been specified by the European Commission or the national court, the Grantee shall within four (4) months of a written notice from the Welsh Ministers at any time (where such notice shall include a copy of the relevant European Commission decision) pay an amount equivalent to the unlawful and incompatible aid of which the Grantee is beneficiary (plus interest, as applicable) which the European Commission requires to be repaid pursuant to its decision into a blocked account to which neither Party has unilateral access pending either: (i) the expiry of the deadlines for the Grantee to bring proceedings in respect of the repayment without the Grantee having brought any proceedings before such expiry; or, where the Grantee has brought proceedings before such expiry, (ii) the final outcome of those proceedings including any appeals, provided that where the European Commission's decision does not specify the precise amount of unlawful aid to be recovered, the Parties shall (acting reasonably) calculate and agree upon the precise amount to be repaid.
- 38.4 If the European Commission issues a recovery decision as defined in Article 14(1) of Council Regulation 659/1999 in connection with this Agreement naming the Grantee as beneficiary, the Grantee acknowledges that clause 38.3 shall apply regardless of whether:
- 38.4.1 the Grantee is in Default and irrespective of the Grantee's financial circumstances, except that the Welsh Ministers shall apply paragraphs 60 to 68 of the Commission's recovery notice in respect of the Grantee; and
- 38.4.2 in the Welsh Ministers' view, as previously indicated to the Grantee, the state aid granted in connection with this Agreement complies with the State Aid Terms.
- 38.5 If the Grantee fails to bring proceedings in respect of the repayment obligation 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:
- 38.5.1 the Grantee shall give its consent for the unlawful and incompatible aid (plus interest, as applicable) to be released from the blocked account to the Welsh Ministers and/or to such other government body as the Welsh Ministers may direct, including in particular the Secretary of State for Culture, Olympics, Media and Sport acting through the Department for Culture, Media and Sport;
- 38.5.2 without prejudice to any other remedy available to the Grantee at Law (subject always to clause 24), the Welsh Ministers shall make no payment to the Grantee to indemnify the Grantee for the recovery of the unlawful and incompatible state aid; and
- 38.5.3 the Parties shall deal with the effect on this Agreement of the repayment of the unlawful state aid in accordance with the Review Procedure.
39. **Notices**
- 39.1 **Form and contents:** All notices which are required to be given under this Agreement must be in writing and sent to the address of the recipient set out on the front page of this Agreement (or such other address as the recipient may designate by notice given

in accordance with this clause) marked for the attention of:

- 39.1.1 in the case of the Welsh Ministers, the Project Director and copied to the Director of Legal Services (and/or such other person(s) as may be notified from time to time); and
- 39.1.2 in the case of the Grantee, General Counsel, Openreach.
- 39.2 **Delivery:** Any such notice may be delivered personally, by first class pre-paid letter or recorded delivery, or by commercial courier and shall be deemed to have been received:
 - 39.2.1 if delivered personally, at the time of delivery;
 - 39.2.2 if sent by first class pre-paid letter or recorded delivery, at 9.00 am on the second Working Day after the date of mailing;
 - 39.2.3 if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed.
- 39.3 **E-mail notice:** A notice required to be given under this Agreement shall not be validly given if sent by e-mail.
- 39.4 **No service:** The provisions of this clause shall not apply to the service of any proceedings or other documents in any legal action which shall be governed by rules of court.
- 40. **Prevention of Corruption and Bribery**
- 40.1 Each Party:
 - 40.1.1 shall not in connection with this Agreement commit a Prohibited Act;
 - 40.1.2 warrants, represents and undertakes that it is not aware of any financial or other advantage being given to any person working for or engaged by the other Party, or that an agreement has been reached to that effect, in connection with the execution of this Agreement, excluding any arrangement of which full details have been disclosed in writing to the other Party before execution of this Agreement.
- 40.2 Each Party shall if requested provide the other Party with any reasonable assistance to enable the other Party to perform any activity required by any relevant government or agency in any relevant jurisdiction for the purpose of compliance with the Bribery Act 2010.
- 40.3 The Grantee shall have an anti-bribery policy (which shall be disclosed to the Welsh Ministers) in place throughout the term of this Agreement with the aim of preventing any Subcontractor or Personnel from committing a Prohibited Act and shall enforce it where necessary.
- 40.4 If any breach of clause 40.1 by either Party is suspected or known, such Party shall promptly notify the other Party.
- 40.5 If a Party notifies the other Party that it suspects or knows that there may be a breach of clause 40.1, 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.
- 41. **Waiver**
- 41.1 Save where and to the extent expressly stated in this Agreement, no failure to exercise and no delay in exercising on the part of either Party any right, power or privilege hereunder shall operate as a waiver thereof nor shall any single or partial exercise of any right, power or privilege preclude the enforcement of any other right, power or privilege herein be taken or held to be a waiver of the provision itself. Any waiver to be effective must be in writing.
- 42. **Severability**
- 42.1 If any part of this Agreement is found by a court of competent jurisdiction to be

invalid, unlawful or unenforceable then such part shall be severed from the remainder of the Agreement which shall continue to be valid and enforceable to the fullest extent permitted by Law.

43. Whole Agreement

43.1 The Welsh Ministers and the Grantee agree that this Agreement, the Schedules and Appendices and all documents referred to herein are the complete and exclusive statement of the agreement between the Parties which supersedes all prior agreements, oral or written, and all other prior communications between the Parties relating to the subject matter of this Agreement.

43.2 Each Party acknowledges and agrees that in entering into this Agreement and the Schedules and Appendices it does not rely on, and shall have no remedy in respect of, any statement, representation, warranty or undertaking (whether negligently or innocently made) other than as expressly set out or referred to in the Agreement.

44. Order of Precedence

44.1 In the event of any conflict or inconsistency between the various documents forming part of this Agreement the following order of precedence shall apply:

44.1.1 the clauses of this Agreement and Schedule 1 together;

44.1.2 Schedules 2-22; and

44.1.3 Appendix 1 (Initial Documents).

45. Dispute Resolution

45.1 **Housing Grants Regeneration Act:** The Parties acknowledge that certain of the Implementation Works may involve Construction Works within the meaning of the Housing Grants Regeneration Act 1996 (the "HGRA"). To the extent the HGRA applies, the Parties will comply with its provisions in respect of payment and dispute resolution.

45.2 **General:** If any dispute arises in connection with this Agreement, representatives of the Parties with authority to settle the dispute will, within seven (7) days of a written request from one Party to the other, meet in a good faith effort to resolve the dispute. If the Parties are not able to resolve the matter at that meeting, the dispute may be referred by either party to the Managing Director of the Grantee and a senior civil servant on behalf of the Welsh Ministers and then, if the matter remains unresolved after ten (10) Working Days, the Chief Executive Officer of the Grantee and the Director General on behalf of the Welsh Ministers. If the Parties are still unable to resolve the matter within ten (10) Working Days of that meeting then, at the sole option of the Welsh Ministers the dispute may be referred to the Minister and the Grantee's Group Chief Executive.

45.3 **Mediation:** If the dispute is not resolved at that meeting, either Party may request (with the agreement of the other party) that they attempt to settle the dispute by mediation in accordance with the Centre for Effective Dispute Resolution ("CEDR") Model Mediation Procedure. Unless otherwise agreed between the Parties, the mediator will be nominated by CEDR. To initiate the mediation, a Party must give notice in writing (an "ADR notice") to the other Party to the dispute requesting a mediation. A copy of the request should be sent to CEDR Solve. The mediation will start not later than thirty (30) days after the date of the ADR notice.

45.4 **Expert determination:** As an alternative to mediation, where both Parties agree or where this Agreement expressly requires, a dispute of fact may be determined by an Expert, provided that the matter is within the expertise of an expert. The Expert shall be agreed between the Parties and, in default of agreement within seven (7) days from either Party to the other calling upon the other so to agree, to a person chosen on the application of either Party by the President for the time being of the Institute of Engineering and Technology (or, in respect of civil works, the Institute of Civil Engineers or such other body as the Parties may agree from time to time). Such person shall be appointed as an expert and not as an arbitrator and the decision of

such person shall be final and binding. The costs of the Expert shall be borne equally by the Parties unless the Expert decides one Party has acted unreasonably, in which case the Expert has a discretion as to costs.

45.5 **Court proceedings:** Nothing in this clause will prevent either Party from proceeding directly to court.

46. **Rights of Welsh Ministers to mandatory relief**

The Grantee agrees and acknowledges that the Welsh Ministers have agreed to pay the Financial Contribution to the Grantee in order to provide for the people of Wales a next generation broadband network for the economic, cultural and other benefit of Wales. The Grantee therefore acknowledges and accepts that, except where a remedy is expressed in this Agreement as the sole right and remedy, damages will not be an adequate remedy for the Welsh Ministers if the Grantee fails to carry out the Broadband Works in breach of this Agreement, and that consequently the Welsh Ministers will be entitled to seek and obtain injunctions, orders for specific performance and other mandatory relief in such circumstances.

47. **Announcements**

The Grantee must not make or permit any person to make any public announcement concerning this Agreement without the prior written consent of the Welsh Ministers except as required by law, any governmental or regulatory authority, any court or other authority of competent jurisdiction.

48. **Assignment and Disposal**

48.1 **Agreement:** This Agreement is personal to the Parties and, save as set out below, may not be assigned (whether by trust device or otherwise) without the prior consent of the other Party, such consent not to be unreasonably withheld or delayed.

48.2 **Assignment to public bodies:** The Welsh Ministers may assign the benefit and the burden of this Agreement to any Contracting Authority whatsoever. Unless the Contracting Authority is a Minister of the Crown or local or regional government, or any agent thereof, the Welsh Ministers must give the Grantee prior notice of the proposed assignment. Within five (5) days of receipt of such notice, the Grantee may make representations to the Welsh Ministers in relation to the proposed assignment. The Welsh Ministers shall not be bound or obliged to have regard to those representations

48.3 **Disposal of Network:** During the Implementation Phase and for seven (7) years from the Build Completion Date, the Grantee must not assign, charge or otherwise dispose of any of its rights in the Network without the written consent of the Welsh Ministers, such consent not to be unreasonably withheld or delayed.

49. **No Third Party Rights**

49.1 **General:** Save as set out in this Agreement, no person other than a Party to this Agreement can enforce any term of this Agreement pursuant to the Contracts (Rights of Third Parties) Act 1999.

49.2 **Funders:** Any of the Funders may enforce directly against the Grantee the benefit of clause 30.

50. **No Double Recovery**

50.1 Notwithstanding any other provision of this Agreement, neither Party may recover compensation or make a claim under this Agreement in respect of any cost and/or loss that it has incurred to the extent that it has already been compensated in respect of that cost and/or loss pursuant to this Agreement or otherwise.

51. **Governing Law**

51.1 **Law:** This Agreement shall be construed as being made in Wales and in accordance with and governed by the Laws of England and Wales, as they are applied in Wales.

51.2 **Jurisdiction:** Each Party irrevocably agrees to submit to the exclusive jurisdiction of the Courts of England and Wales sitting in Cardiff (save where the Welsh Ministers direct that the High Court in London (or elsewhere) should have jurisdiction).

EXECUTION:

IN WITNESS OF WHEREOF duly authorised executives on behalf of the Parties have set their hand the day and year first above written.

SIGNED BY.....

For and on behalf of the Grantee

Name: Olivia Garfield

Title: Chief Executive, BT Openreach

Date: July 2012

SIGNED BY.....

For and on behalf of the Welsh Ministers

Name: James Price

Title: Director General, Business, Enterprise, Technology and Science

Under the authority of the Minister for Business, Enterprise, Technology and Science
one of the Welsh Ministers

Date: July 2012

Schedule 1

DEFINITIONS AND INTERPRETATION

Part 1. – DEFINITIONS

Annual Implementation Performance Report	means the annual report to be produced by the Grantee up to and including the Build Completion Date in accordance with paragraph 7.2.2 of Schedule 3 (Relationship Management) and paragraph 6 of Schedule 9 (Reporting);
Annual Implementation Targets	means the annual targets in respect of total Premises Passed, total Premises Passed in Priority Areas and total Premises Passed in Value Zones for each Financial Year, as set out in Schedule 2 (Quarterly Targets);
Annual Implementation Targets Report	means the report to be produced by the Grantee in accordance with paragraphs 7.2.1 of Schedule 3 (Relationship Management) and paragraph 4 of Schedule 9 (Reporting);
Annual Operational Targets	means the annual targets to be proposed by the Grantee at the start of each Financial Year following completion of the Implementation Phase in respect of the matters set out at paragraph 7b of Schedule 9 (Reporting), such targets to be set out in the Annual Operational Programme Report;
Annual PP Achieved	means the actual number of Premises to achieve Premises Passed in a Financial Year;
Annual Review	means the annual meeting of the Programme Board referred to in paragraph 7 of Schedule 3 (Relationship Management);
Annual Operational Performance Report	means the annual report to be produced by the Grantee following the Build Completion Date in accordance with paragraph 7.2.2 of Schedule 3 (Relationship Management) and paragraph 7 of Schedule 9 (Reporting);
Annual Targets	means the Annual Implementation Targets and the Annual Operational Targets;
Appendix	means an appendix to this Agreement;
Audit Representatives	means any agent or auditor appointed from time to time by the Welsh Ministers or any Funder including <i>inter alia</i> : (a) The Welsh European Funding Office (b) The Welsh Government's Corporate Governance and Assurance Division; (c) The Auditor General for Wales; (d) The Wales Audit Office; (e) The European Commission; (f) The European Court of Auditors; and/or

	(g) The European Anti Fraud Office;
Auditable Records	has the meaning set out in clause 30.1;
Average Provisioning Time	means the mean Provisioning Time taken by the Grantee in respect of all Provisioning requests received from Retail Service Providers during a Financial Year in respect of each Wholesale Service;
Board(s)	means the Project Board and the Programme Board;
Board Member	means the Welsh Ministers' and Grantee's Board appointments set out in the Appendix to Schedule 3 (Relationship Management);
Broadband Coverage	has the meaning set out in clause 5.3.2;
Broadband Works	has the meaning set out in clause 5.2;
Build Completion Date	has the meaning set out in clause 4.2.1;
Change	means any change or alteration to any part of this Agreement (including an Operational Change), except in respect of the documents listed at Appendix 1 (Initial Documents);
Change Control Procedure	means the mechanism for requiring and dealing with Changes as referred to in clause 17;
Change Request	means a notice given in accordance with paragraph 1.2 of Schedule 11 (Change Control Procedure and Change Forms);
Civil Works Contractor	means a Subcontractor appointed by the Grantee to carry out civil works;
Commission Approval Letters	means: <ul style="list-style-type: none"> (a) the letter dated 20th November 2012 and addressed to Broadband Development UK from the European Commission confirming that the project described in Recital B and as set out in this Agreement is compatible with Article 107(1) of the Treaty on the Functioning of the European Union, subject to the conditions set out in that letter; (b) the letter dated 11th January 2013 and addressed to the Welsh Ministers from Broadband Delivery UK confirming that the project described in Recital B and as set out in this Agreement could proceed, subject to the conditions set out in that letter; and (c) the letter dated [•] and addressed to [•] from the European Commission confirming that the project described in Recital B would be allowed to proceed as

a major project pursuant to [•], but only from the date on which the Welsh Ministers and the Grantee have both confirmed in writing that they accept the conditions set out in that letter,

copies of which letters are set out at Schedule 14 (Commission Approval Letters);

Committed Information Rate or CIR	means the minimum design bandwidth each Premises may receive, including Last Drop Connection, to the Point of Handover assuming that all Customers simultaneously use the Network fully;
Completion Target Date	means the date specified in Schedule 2 (Quarterly Targets) by which the Grantee must achieve each of the Annual Implementation Targets for each Financial Year;
Confidential Information	means information which would be deemed confidential information by a court in England and Wales;
Contract Commencement Date	means the date that this Agreement is signed by the Parties;
Contract Intervention Area	means the entire dataset consisting of Premises and postcodes set out in Schedule 4 (Contract Intervention Area) in respect of which the Grantee is obliged to carry out Broadband Works pursuant to this Agreement;
Contracting Authority	has the meaning set out in Regulation 3 of the Public Contracts Regulations 2006;
Correction Report	means a correction report prepared by the Grantee in accordance with clauses 11.3 and 11.6;
Customer	means a customer of the Retail Services;
Data Protection Legislation	means the Data Protection Act 1998, the EU Data Protection Directive 95/46/EC, the Regulation of Investigatory Powers Act 2000, the Telecommunications (Lawful Business Practice) (Interception of Communications) Regulations 2000 (SI 2000/2699), the Electronic Communications Data Protection Directive 2002/58/EC, the Privacy and Electronic Communications (EC Directive) Regulations 2003 (as amended) and all applicable laws and regulations relating to processing of personal data and privacy to the extent they relate to the performance of this Agreement;
Deliverable	means in relation to a specific Quarterly PP Target, the relevant equipment and Implementation Works, Broadband Works or any other service thing or activity required to be

	undertaken or delivered for that Quarterly PP Target to be achieved;
Design Rules	means those rules by which the Network must be built and are provided by the Grantee and included in Appendix 1, Network Architecture, as the same may be amended from time to time by the Grantee;
Dispute Resolution Procedure	means the dispute resolution procedure set out in clause 45;
Drop Dead Date	means 30 th December 2016;
EIR	means the Environmental Information Regulations 2004;
Eligible Costs	has the meaning set out in paragraph 2 of Schedule 6 (Eligible Costs and Financial Contribution);
Enterprise Zones	means a geographical area of economic importance to the Welsh Ministers, as identified in Schedule 4 (Contract Intervention Area). Any new Enterprise Zones are to be added to the Contract Intervention Area in accordance with clause 7.4;
Expert	means an expert on technical matters;
Final Test	means the last Test relating to the last Quarterly PP Target;
Financial Contribution	means the Welsh Ministers' financial contribution to the Eligible Costs of the Implementation Works, which shall not exceed the Maximum Grant;
Financial Model	means the financial model annexed to Schedule 6 (Eligible Costs and Financial Contribution) as updated from time to time;
Financial Year	means 1 st April to 31 st March;
Financial Year Close	has the meaning set out in clause 19.1;
Force Majeure	means: <ul style="list-style-type: none"> (a) war, civil war, terrorism, riot or civil commotion and acts of government under emergency powers; (b) damage caused by aerial devices travelling at supersonic speeds or by aircraft or articles dropped therefrom; (c) nuclear, biological or chemical contamination (save to the extent caused by the Grantee); (d) destruction or damage to property by or

	under the order or any government or public or local authority;
	(e) imposition of government sanction embargo or similar; or
	(f) any restriction due to public health and any pandemic;
FOIA	means the Freedom of Information Act 2000;
Funders	means Welsh European Funding Office and Broadband Delivery UK;
Funding Approval Letters	means: <ul style="list-style-type: none"> (a) the letter dated 20th November 2012 and addressed to Broadband Delivery UK from the European Commission confirming that the project described in Recital B and as set out in this Agreement is compatible with Article 107(1) of the Treaty on the Functioning of the European Union, subject to the conditions set out in that letter; and (b) the letter dated 11th January 2013 and addressed to the Welsh Ministers from Broadband Delivery UK confirming that the project described in Recital B and as set out in this Agreement could proceed, subject to the conditions set out in that letter.
Funding Shortfall	means any shortfall in the funding available to the Grantee in order to complete the Implementation Works in accordance with this Agreement;
Good Industry Practice	means the degree of reasonable skill, care, diligence and foresight reasonably to be expected of a contractor who is reasonably skilled and experienced in the design, provision, installation, operation and maintenance of broadband networks in the UK of a similar size, value, scope and complexity to the Network;
GPP 90	has the meaning set out in paragraph 1 of Schedule 6 (Eligible Costs and Financial Contribution);
GPP95	has the meaning set out in paragraph 1 of Schedule 6 (Eligible Costs and Financial Contribution);
Grantee Event of Default	has the meaning set out in clause 35.2;
Grant Payment Request	means a request (meeting the requirements of paragraph 13 of Schedule 6 (Eligible Costs and Financial Contribution)) for payment by the Welsh Ministers in accordance with Schedule 6 (Eligible Costs and Financial Contribution);

Group	means the Grantee and any company which is a Subsidiary or a Holding Company of the Grantee or any company which is a Subsidiary of any such Holding Company;
Hazardous Substance	means any substance (in whatever form) which is subject to regulatory control as being hazardous or dangerous or is capable of causing harm or damage to the environment;
Holding Company	means a company which falls within either the meaning attributed to that term in section 1159 of the Companies Act 2006 or the meaning attributed to the term "parent undertaking" in section 1162 of the Companies Act 2006;
Implementation Commencement Date	means 29 th June 2012;
Implementation Phase	has the meaning set out in clause 4.2;
Implementation Works	has the meaning set out in clause 5.2.1;
Insolvency Event	means: <ul style="list-style-type: none"> (a) becoming insolvent or unable to pay its debts (as defined in Section 123 of the Insolvency Act 1986); (b) proposing a voluntary arrangement; (c) any steps are taken to appoint or else any of the following are appointed: a receiver, administrator or manager, in each case over the whole or any part of the company's business or assets; (d) the issuing of or presentation of a petition which is not discharged within (7) days, making of an order or passing of a resolution for winding-up (except for the purposes of a bona fide solvent amalgamation or reconstruction), bankruptcy or dissolution; (e) if it shall otherwise propose or enter into a composition, arrangement or compromise with its creditors generally or any class of them; (f) if it ceases to carry on business or any steps are taken to have it dissolved or struck off the Register of Companies or if it claims the benefit of any statutory moratorium; or any process equal or analogous to any of the above occurs in respect of the Grantee or Guarantor in any foreign jurisdiction;
Insurances	has the meaning set out in clause 25.1;

Intellectual Property Rights	means all industrial and intellectual property rights, including patents, supplementary protection certificates, petty patents, utility models, trade marks, database rights, rights in designs, copyrights and topography rights (whether or not any of these rights are registered, and including applications for any such right) and all rights and forms of protection of a similar nature or having equivalent or similar effect to any of these which may subsist anywhere in the world, in each case for their full term and together with any renewals or extensions;
Intervention Rate	means eighty eight point eight per cent (88.8%);
Inventory Information	means, in respect of any asset acquired, built or improved wholly or partly using Financial Contributions: <ul style="list-style-type: none"> (a) the date that it was purchased or created; (b) a description of the relevant asset; (c) price paid net recoverable VAT; (d) amount of Financial Contribution paid; (e) location of any title deeds; (f) serial or identification numbers; (g) location of it; (h) date of disposal; and (i) sale proceeds;
Inventory Management System or IMS	has the meaning set out in clause 5.15;
Key Personnel	means any member of the Grantee's Personnel who is identified as being key in the delivery of the Broadband Works. Key Personnel identified as at the Contract Commencement Date are set out in Schedule 15 (Key Personnel);
Key Subcontractor	means those Subcontractors: <ul style="list-style-type: none"> (a) listed in Schedule 13 (Key Subcontractors); or (b) with which the Grantee has entered into a national supply agreement;
Last Drop Connection	means the connection between the Customer's Premises and the Point of Premises Passed;
Law	means: <ul style="list-style-type: none"> (a) any applicable statute or proclamation or any delegated or subordinate legislation (including any Measure passed by the Welsh Assembly from time to time); (b) any enforceable community right within the meaning of section 2(1) European Communities Act 1972; (c) any applicable guidance, direction or

determination with which the Grantee is legally bound to comply (including any guidance, direction or determination issued from time to time by OFCOM) to the extent that the same are published and publicly available or the existence or contents of them have been notified to the Grantee by the Welsh Ministers; and

(d) any rule of common law or European law,

in each case in force or applicable in England and Wales, or in Wales;

Maintenance Operations	has the meaning set out in clause 5.2.3;
Market NGBA	has the meaning set out in clause 7.12;
Marketing Plan	has the meaning set out in clause 16.8;
Maximum Grant	means two hundred and five million pounds (£205m);
Maximum Provisioning Time	means the maximum time it takes to provision a Wholesale Service by the Grantee in respect of all Provisioning requests received from Retail Service Providers during a Financial Year in respect of each Wholesale Service;
Mid-Point Quarterly Review;	means the Quarterly review meeting of the Programme Board which takes place at the end of the second Quarter in the Financial Year;
Milestone	means each of the milestones set out in Schedule 8 (Milestones);
Milestone 0 Completion	means delivery by the Grantee of all of the Milestone Outputs which relate to Milestone 0;
Milestone Activity	means each of the activities to be completed in order for a Milestone to be achieved, as specified in Schedule 8 (Milestones);
Milestone Output	means the evidence and/or information to be provided by the Grantee, as specified in Schedule 8 (Milestones), in order to establish completion of a Milestone Activity;
Network	means all those active and passive network elements that are required to deliver the Wholesale Services to Premises located in the Contract Intervention Area between the Point of Handover and the Point of Premises Passed;
Network Architecture	means the network architecture described in the Network Architecture Documentation;
Network Architecture Documentation	has the meaning set out at clause 5.9;
Network Standard	means the performance to be met by the Grantee

	in providing the Operational Works as set out in Schedule 17 (Service Failure);
Non-Operational Change	means any Change which is not an Operational Change;
Notice of Review	means the notice to be served in accordance with clause 22.6;
Open Access	means the right of third party providers (including Retail Service Providers) to have access to the parts of the Network as may be required from time to time by OFCOM on a non-discriminatory basis;
Open Book	means access to complete and accurate financial information relating to Eligible Costs and to calculate Clawback in respect of the Broadband Works, including: <ul style="list-style-type: none"> (a) actual capital expenditure, including capital replacement costs; and (b) the profit which the Grantee has achieved in the provision of the Broadband Works, and including evidence to support the above including invoices, all Grant Payment Requests, timesheets and other supporting information (including proof of payment by the Grantee);
Operational and Enterprise Support Systems or OESS	means those information technology systems that allow the Grantee to effectively and efficiently undertake the Operational Works and provide the Wholesale Services using the Network;
Operational Change	means any Change which does not: <ul style="list-style-type: none"> (a) adversely affect the ability of the Grantee to provide all or part of the Broadband Works; (b) result in any increase or decrease in the Financial Contribution payable by the Welsh Ministers; (c) have an adverse impact on the Welsh Ministers or the Grantee's compliance with this Agreement; or (d) otherwise require a variation to this Agreement;
Operational Phase	means the period referred to in clause 4.3;
Operational Works	has the meaning set out in clause 5.2.2;
Original Financial Model	has the meaning set out at paragraph 6 of Schedule 6 (Eligible Costs and Financial Contribution);

Penetration Date	means the date that Wholesale Services are provided to 10% of Premises across the Contract Intervention Area;
Personnel	means the employees from time to time of the Grantee and any Subcontractor;
Point of Handover	means the point where the Grantee provides aggregated traffic from the Network to Retail Service Providers;
Point of Premises Passed	<p>means, for given Premises Passed, the last point of the Network implemented by the Grantee and involving Eligible Costs such that the relevant Wholesale Services can be delivered within Design Rules and Wholesale Service Descriptions to the relevant Premises Passed. Depending on the technology used by the Grantee:</p> <p>(a) for the direct fibre to the premises product, the last element of the physical infrastructure to be built before entering the curtilage of a Premises, usually the duct manifold outside the Premises;</p> <p>(b) for copper based technologies, the cabinet or other enclosure where the xDSL access multiplexer will be installed that will have access to BT's copper access network; or</p> <p>(c) for the fibre on-demand product the next generation fibre-enabled cabinet or other enclosure;</p>
Premise Cap	means one thousand seven hundred pounds (£1,700);
Premise Cap Maximum	means four (4) per cent of Premises in the Contract Intervention Area;
Premises	means a single residential, commercial or public sector address point;
Premises Passed	means the delivery and implementation of all Deliverables to the Point of Premises Passed and successful achievement of all Tests relating to the relevant Premises;
Premises Peak Information Rate or PPIR	<p>means for downstream:</p> <ol style="list-style-type: none"> 1. for fibre to the cabinet (FTTC) products, the maximum line speed that can be supported between the Premise and the Point of Handover via the fibre cabinet and copper D side (i.e. the copper network connecting a cabinet to the Premise), taking into account any effects of cross talk and the length and physical

quality of the copper D side;

2. for fibre to the premises (FTTP) products, the maximum throughput at which data will be sent between the Premise and the Point of Handover on the basis that the ability to receive the peak rates on any individual line will be influenced by the number of active customers on the same Passive Optical Network (PON) concurrently. The downstream throughput will include a small element of bandwidth to support traffic management;
3. for fibre on-demand product, the maximum throughput that could be achieved between the Premise and the Point of Handover;

Priority Area

has the meaning set out in clause 7.3;

Programme Board

means the body described in paragraph 5 of Schedule 3 (Relationship Management);

Prohibited Act

each of the following constitutes a Prohibited Act:

- (a) to directly or indirectly offer, promise or give any person working for or engaged by the Welsh Ministers a financial or other advantage to:
 - (i) induce that person to perform improperly a relevant function or activity; or
 - (ii) reward that person for improper performance of a relevant function or activity;
- (b) to directly or indirectly request, agree to receive or accept any financial or other advantage as an inducement or a reward for improper performance of a relevant function or activity in connection with this Agreement;
- (c) committing any offence:
 - (i) under the Bribery Act 2010;
 - (ii) under legislation creating offences concerning fraudulent acts;
 - (iii) at common law concerning fraudulent acts relating to this Agreement or any other contract with the Welsh Ministers; or
- (d) defrauding, attempting to defraud or

	conspiring to defraud the Welsh Ministers;
Project Board	means the management board described in paragraph 8 of Schedule 3 (Relationship Management);
Project Director	means the individuals appointed by the Welsh Ministers and the Grantee respectively in accordance with paragraph 3 of Schedule 3 (Relationship Management) and who shall be the senior operational representative for each party;
Project Plan	means the project plan to be prepared by the Grantee to enable it to meet the Quarterly Target Dates;
Provisioning	means the provision of a Wholesale Service to a Retail Service Provider;
Provisioning Time	means the lapsed time between the Retail Service Provider placing a firm order for Wholesale Services with the Grantee and the Grantee providing the Wholesale Service to the Retail Service Provider subject to and taking into account the issues referred to in Appendix 1;
Quarter	means (1) the period between the Implementation Commencement Date and the first Quarterly Target Date and (2) each subsequent period starting on the day after a Quarterly Target Date and ending on the next relevant Quarterly Target Date;
Quarterly PP Achieved	means the actual number of Premises to achieve Premises Passed in a Quarter;
Quarterly PP Target	means the target figure for the number of Premises to achieve Premises Passed in a Quarter as set out in Schedule 2 (Quarterly Targets), as it may be varied from time to time;
Quarterly Target Date	means 30 th September, 31 st December, 31 st March or 30 th June as set out in Schedule 2 (Quarterly Targets), being the date by which the relevant Quarterly PP Target must be met;
Recommencement Activities	means, in respect of the Implementation Works: <ul style="list-style-type: none"> (a) updating the timescales in Schedule 2 (Quarterly Targets), such timescales not to exceed the time actually lost as a result of the Force Majeure event or event of suspension; (b) updating the Project Plan in line with the timescales set out in the revised Schedule 2 (Quarterly Targets); and in any case, whether in respect of the Implementation Phase or Operational Phase,

	recommencing the provision of the Broadband Works as soon as possible;
Record Retention Expiry Date	means the date notified to the Welsh Ministers by the Welsh European Funding Office (which is likely to be 2024 at the earliest);
Replacement Supplier	means a new supplier providing all or any part of the Broadband Works or equivalent or replacement services to the Broadband Works;
Request for Information	means a request for information pursuant to FOIA or the EIR;
Requisite Consent	means building regulation consents, by-law approvals, and any other consent, licence or authorisation required from a competent authority, statutory undertaker or person for carrying out civil works;
Retail Service Provider	means providers of Retail Services;
Retail Services	means the IPTV, voice, data and any other internet based or communications services which are provided using the Wholesale Services in the Contract Intervention Area;
Review Procedure	means the procedure detailed in clause 22;
Schedule	means a Schedule to this Agreement;
Service Affecting Transaction	means a transaction in which the Grantee disposes or ceases to carry on (or threatens so to do) a part of its business that supplies Implementation Works or Operational Works under this Agreement and the Welsh Ministers reasonably consider that this is likely to have a material impact upon the Grantee's ability to perform its obligations under this Agreement;
Standards Bodies	means: <ul style="list-style-type: none"> a) The UK National Joint Utilities Group (NJUG); b) The National Interoperability Consultative Committee (NICC); c) International Telecommunications Union (ITU); d) European Telecommunications Standards Institute (ETSI) including TISPAN; e) Internet Engineering Task Force (IETF); f) Metro Ethernet Forum (MEF); g) Institute of Electrical and Electronic Engineers (IEEE);

- h) Full Services Access Network (FSAN);
- i) Society of Cable Telecommunications Engineers (SCTE);
- j) Third Generation Partnership Project (3GPP); and
- k) Worldwide Interoperability for Microwave Access (WiMAX) Forum;

State Aid Terms

means the terms set out in:

- (a) the Commission Approval Letters;
- (b) the relevant articles of the Treaty on the Functioning of the European Union, in particular Articles 107 - 109; and
- (c) the European Community rules, regulations and guidelines relating to state aid in force from time to time, including at the Contract Commencement Date the Community Guidelines for the application of state aid rules in relation to rapid deployment of broadband networks (reference 2009/C 235/04);

Subcontractor

means any entity which:

- a) performs on behalf of the Grantee any part of the Broadband Works; and/or
- b) provides any facilities or services materially required for the provision of the Broadband Works;

Subsidiary

means a company which falls within either the meaning attributed to that term in section 1159 Companies Act 2006 or the meaning attributed to the term "subsidiary undertaking" in section 1162 Companies Act 2006;

Test Certificate

has the meaning set out in clause 12.3;

Test Criteria

means the criteria that Deliverables must meet in order to pass the Tests. The Test Criteria are set out in Schedule 5 (Testing and Criteria);

Test Notice

means a written notice issued by the Welsh Ministers authorising the Grantee to issue a Grant Payment Request in respect of Premises in respect of which the Grantee has evidenced it has achieved Premises Passed at the relevant Quarterly Target Date and commence work in respect of the next Quarterly PP Target or (as the

	case may be) commence provision of the Operational Works;
Tests	means the tests referred to in clause 12 which the Grantee must carry out to demonstrate that Deliverables meets the Test Criteria;
Value Zones	has the meaning set out in clause 7.5.1;
Verification Period	Has the meaning set out in clause 12.6;
Virus	means any software intended to corrupt, destroy or otherwise damage or interfere with the use of the hardware, software or data in the provision of the Broadband Works whether such software is introduced wilfully or negligently;
Warning Notice	has the meaning set out in clause 11.1;
Warning Notice Event	means any of the events specified in clause 11.1;
Wholesale Services	has the meaning set out in clause 5.2.4;
Wholesale Service Description	means the description to be provided by the Grantee, using the template at clause 14.4, for each Wholesale Service offered or to be offered by the Grantee during the term of the Agreement;
Wholesale Services Prices	has the meaning set out at paragraph 2.1 of Schedule 7 (Benchmarking Provisions);
Wholesale Services Principles	has the meaning set out in clause 14.7;
Working Day	means a day other than a weekend or public holiday in Wales between the hours of 8.30am and 5.30pm;

Part 2. – INTERPRETATION

1. This Agreement shall be interpreted according to the provisions of this Part 2, unless the context requires a different meaning.
2. The headings and marginal notes and references to them in this Agreement shall be deemed not to be part of this Agreement and shall not be taken into consideration in the interpretation of this Agreement.
3. Except where the context expressly requires otherwise, references to clauses, sub-clauses, paragraphs, sub paragraphs, parts and Schedules are references to clauses, sub-clauses, paragraphs, sub paragraphs and parts of and Schedules to this Agreement and references to sections, Appendices and Attachments (if any) are references to sections, appendices and attachments to or contained in this Agreement.
4. The Schedules and Appendices to this Agreement are an integral part of this Agreement and a reference to this Agreement includes a reference to the Schedules and Appendices.
5. Words importing persons shall, where the context so requires or admits, include individuals, firms, partnerships, trusts, corporations, governments, governmental bodies, authorities, agencies, unincorporated bodies of persons or associations and any organisations having legal capacity.
6. Where the context so requires words importing the singular only also include the plural and vice versa and words importing the masculine shall be construed as including the feminine or the neuter or vice versa.
7. The language of this Agreement is English. All correspondence, notices, drawings, design data, test reports, certificates, specifications and information shall be in English. All operating and maintenance instructions, name plates, identification labels, instructions and notices to the public and staff and all other written, printed or electronically readable matter required in accordance with, or for purposes envisaged by, this Agreement shall be in English.
8. References to any agreement or document include (subject to all relevant approvals and any other provisions of this Agreement concerning amendments to agreements or documents) a reference to that agreement or document as amended, supplemented, substituted, novated or assigned.
9. References to any Law are to be construed as references to that Law as from time to time amended or to any Law from time to time replacing, extending, consolidating or amending the same.
10. References to a public organisation (including the Funders and the Welsh Ministers) shall be deemed to include a reference to any successor to such public organisation or any organisation or entity which has taken over either or both the functions and responsibilities of such public organisation. References to other persons (other than the Welsh Ministers) and the Grantee shall include their successors and assignees to the extent permitted in accordance with this Agreement.
11. The words in this Agreement shall bear their natural meaning. The Parties have had the opportunity to take legal advice on this Agreement and no term shall, therefore, be construed contra proferentem.
12. In construing this Agreement, the rule known as the ejusdem generis rule shall not apply nor shall any similar rule or approach to the construction of this Agreement and accordingly general words introduced or followed by the word "other" or "including" or "in particular" shall not be given a restrictive meaning because they are followed or preceded (as the case may be) by particular examples intended to fall within the meaning of the general words.
13. All the Grantee's obligations, duties and responsibilities shall be construed as separate obligations, duties and responsibilities owed to the Welsh Ministers and to be performed at the Grantee's own cost and expense.

14. Except where otherwise expressly stated all rights and remedies of the Welsh Ministers (whether set out in this Agreement or under the law) are cumulative, and specifying one or more particular remedies as being available to the Welsh Ministers shall be without prejudice to all other remedies which are or may be available to them.