

DATED

2012

HEREFORDSHIRE COUNCIL

GLOUCESTERSHIRE COUNTY COUNCIL

AND

BRITISH TELECOMMUNICATIONS PUBLIC
LIMITED COMPANY

BORDERS BROADBAND PROJECT

**PROJECT AGREEMENT FOR THE
PROVISION OF BROADBAND IN THE
HEREFORDSHIRE AND
GLOUCESTERSHIRE AREA**

Ashfords

www.ashfords.co.uk

INDEX

1.	DEFINITIONS AND INTERPRETATION	1
2.	DELIVERY OF CONDITIONS PRECEDENT AND DURATION	38
3.	AUTHORITIES' OPTION TO EXTEND THE TERM.....	40
4.	STATE AID	40
5.	WARRANTIES	42
6.	AUTHORITIES' WARRANTIES	44
7.	AUTHORITIES' OBLIGATIONS.....	45
8.	OWNERSHIP OF THE NETWORK.....	45
9.	CARRYING OUT OF THE IMPLEMENTATION WORKS.....	46
10.	DELIVERY OF THE WHOLESALE BROADBAND PROVISION	56
11.	ENVIRONMENTAL MATTERS	58
12.	MAINTENANCE.....	60
13.	NOT USED.....	61
14.	REPRESENTATIVES AND COMMUNICATIONS.....	61
15.	UTILITIES	63
16.	PAYMENTS	63
17.	INVOICING.....	64
18.	MONITORING AND REVIEWS	64
19.	INFORMATION IN RESPECT OF CHANGE IN LAW	64
20.	CHANGES	67
21.	INDEMNITIES	67
22.	EMPLOYEE MATTERS	67
23.	PENSIONS.....	70
24.	EMPLOYEES – GENERAL.....	70
25.	INSURANCE POLICIES.....	76
26.	TERMINATION FOR AUTHORITIES DEFAULT.....	78
27.	COMPENSATION FOR AUTHORITIES DEFAULT	79
27A.	NOT USED.....	79
27B.	NOT USED.....	79
28.	TERMINATION ON CONTRACTOR DEFAULT.....	79
29.	COMPENSATION ON TERMINATION FOR CONTRACTOR DEFAULT AND PERSISTENT BREACH.....	82
30.	TERMINATION ON FORCE MAJEURE.....	82
31.	COMPENSATION ON TERMINATION FOR FORCE MAJEURE	83
32.	TERMINATION ON CORRUPT GIFTS AND FRAUD	84
33.	COMPENSATION ON TERMINATION FOR CORRUPT GIFTS AND FRAUD	85

34.	CONSEQUENCES OF TERMINATION.....	85
35.	EXPIRY	85
36.	HEALTH AND SAFETY INTERVENTION.....	85
37.	EXTENSIONS OF TIME AND RELIEF EVENTS.....	87
38.	INTELLECTUAL PROPERTY	90
39.	CONTRACTOR'S RECORDS.....	90
40.	CONFIDENTIALITY, PUBLICITY AND BRANDING	94
41.	ASSIGNMENT, SUB-CONTRACTING AND THIRD PARTIES	96
42.	GENERAL.....	96
43.	SET-OFF, DISPUTED SUMS AND EXCLUSIVITY OF REMEDY	98
44.	INTEREST	100
45.	NOTICES	100
46.	DISPUTE RESOLUTION PROCEDURE	102
47.	FREEDOM OF INFORMATION ACT 2000.....	106
48.	DATA PROTECTION.....	109
49.	CONDUCT OF CLAIMS.....	111
50.	FINANCIAL ADJUSTMENTS.....	112
51.	WHOLESALE CHARGING BENCHMARKING.....	113
52.	COUNTERPARTS.....	113
53.	GOVERNING LAW & JURISDICTION	113

Schedule 1 - Conditions Precedent

Schedule 2 - Authorities' Requirements

Schedule 3 - Method Statements

Schedule 4 - Warranties

Schedule 5 - Milestones

Schedule 6 - Milestone Completion Requirements

Schedule 7 - Prohibited Materials

Schedule 8 - Testing Procedures

Schedule 9 - Management Groups and Meetings

Schedule 10 - Marketing Plan

Schedule 11 - Key Personnel

Schedule 12 - Payment Mechanism

Schedule 13 - Monitoring and Reporting

Schedule 14 - Business Plan

Schedule 15 - Change Protocol

Schedule 16 - Wholesale Access Pricing

Schedule 17 - Base Case

Schedule 18 - Operational Plan
Schedule 19 - Commercially Sensitive Information
Schedule 20 - Disaster Recovery and Business Continuity Plan
Schedule 21 - Community Request Protocol
Schedule 22 - New Technology
Schedule 23 - Not Used
Schedule 24 - Deployment Plan
Schedule 25 - Sustainability Requirements
Schedule 26 - State Aid Method Statement
Schedule 27 - Relief Events

THIS AGREEMENT is dated

2012

AND MADE BETWEEN:

- (1) Herefordshire Council, Brockington Offices, 35 Hafod Road, Hereford, Herefordshire, HR1 1SH ("**Herefordshire**");
- (2) Gloucestershire County Council, Shire Hall, Westgate Street, Gloucester, GL1 2TG ("**Gloucestershire**"); and
- (3) British Telecommunications Public Limited Company (Registered in England No. 1800000) whose registered office is at 81 Newgate Street, London, EC1A 7AJ (the "**Contractor**").

WHEREAS:

- (A) Further to a competitive tendering process, Herefordshire and Gloucestershire (together being the "**Authorities**" and each an "**Authority**") have procured the Contractor to provide a next generation, open access, wholesale broadband network within those parts of their administrative areas which are eligible to receive public sector funding for that purpose.

THE PARTIES AGREE as follows:

1. DEFINITIONS AND INTERPRETATION

1.1 In this Agreement unless the context otherwise requires:

"Abandonment Event"	means, following the Implementation Commencement Date, the Contractor has not carried out any physical works forming part of the Implementation Works for a period of two (2) Months from the date on which the Contractor has started, or is due to have started, the physical Implementation Works in accordance with the Deployment Plan, except to the extent that relief has been granted to the Contractor pursuant to the provision of clauses 30 (Termination on Force Majeure) and 37 (Extensions of Time and Relief Events) of this Agreement in relation to that failure;
---------------------	--

"ACOP"	has the meaning given to it in clause 11.3.2.1 (Compliance with the CDM Regulations);
"Action Notice"	has the meaning given to it in clause 36.2;
"Acts"	has the meaning given to it in clause 24.11 (Equal Opportunities);
"Adjudication Scheme"	means the scheme set out at Part 1 of the Schedule to the Scheme for Construction Contracts (England and Wales) Regulations 1998;
"Adjudicator"	means the independent expert appointed pursuant to clause 46.8 (Identity of the Adjudicator) whether by agreement or by nomination of the President for the time being of the Chartered Institute of Arbitrators;
"ADR Procedure"	has the meaning given to it in clause 46.5 (ADR Procedure);
"Affiliate"	means in relation to any person, any holding company or subsidiary of that person or any subsidiary of such holding company, and "holding company" and "subsidiary" shall have the meaning given to them in Section 1159 of the Companies Act 2006 even if its shares in that other company are registered in the name of (a) another person (or its nominee), whether by way of security or in connection with the taking of security, or (b) its nominee provided that neither of the Authorities shall be construed for any purposes as being Affiliates of the Contractor;
"Agreement"	means this agreement;
"Alternative Insurance Structure"	means, in respect of any Required Insurance Risk: <ul style="list-style-type: none"> (a) entering into any insurance arrangement with a

person which is an Affiliate of the Contractor (or otherwise not an independent third party in relation to the Contractor); and/or

- (b) otherwise accepting on its own account the risk of (and liability arising from) the occurrence of the relevant Required Insurance Risk;

"Alleged New Employer"	has the meaning given to it in clause 22.11;
"Applicable Rate"	means the applicable rate of interest set by the European Commission from time to time in respect of recovery interest rates for State aid for Member States and published in accordance with Article 10 of Commission Regulation (EC) No 794/2004 of 21 April 2004 and the relevant Commission notice on the method for setting the reference and discount rates published from time to time in the Official Journal of the European Union;
"Asset Register"	has the meaning given to it in clause 39.2.1;
"Assets"	means the Contractor Purchased Assets and the Contractor Leased Assets as the same may be replaced from time to time by the Contractor and such other assets as may be used by the Contractor in relation to the Project;
"Authorities Change"	has the meaning given to it in Schedule 15 (Change Protocol);
"Authorities Default Termination Notice"	has the meaning given to it in clause 26.1;
"Authorities Default Termination Sum"	Withheld
"Authorities Notice of Change"	has the meaning given to it in Schedule 15 (Change

	Protocol);
"Authorities' Property"	has the meaning given to it in clause Error! Reference source not found. ;
"Authorities' Representative"	means the person appointed by the Authorities in accordance with clause 14.7 (Authorities' Representative);
"Authorities' Requirements"	means the requirements of the Authorities in respect of the Project for the Implementation Works and the Wholesale Broadband Provision as set out in Schedule 2 (Authorities' Requirements) as the same may be amended or varied in accordance with clause 20 (Changes) and in Schedule 15 (Change Protocol);
"Authority Related Party"	means an officer, employee, servant, agent, contractor or sub-contractor of either Herefordshire or Gloucestershire acting in the course of his office or employment or appointment (as appropriate) but in each case excluding the Contractor and any Contractor Related Party;
"Base Case"	means the Contractor's financial model for the Project set out at Schedule 17 (Base Case);
"Base Date"	means the Commencement Date;
"Benchmark Data"	has the meaning given to it in paragraph 3.3 of Schedule 16 (Wholesale Access Pricing);
"Best Value Directions"	means the Best Value Authorities Staff Transfers (Pensions) Direction 2007 made under Section 101 of the Local Government Act 2003;
"Business Day"	means a day (other than a Saturday or Sunday) on which the banks are ordinarily open for business in the City of

London;

"Business Plan"	means the twenty (20) year business plan for the delivery of the Wholesale Broadband Provision, set out at Schedule 14 (Business Plan) and provided as a Condition Precedent to this Agreement as amended from time to time in accordance with this Agreement;
"Capital Expenditure"	means any capital expenditure accepted as such under normal accounting principles generally accepted and applied in the United Kingdom, International Financial Reporting Standards from time to time, or proper accounting practices for local authorities as defined by section 21(2) of the Local Government Act 2003 and Regulation 31 of the Local Authorities (Capital Finance and Accounting) (England) Regulations 2003;
"CDM Regulations"	has the meaning given to it in clause 11.3 (Compliance with the CDM Regulations);
"CFT Documents"	means the Call for Final Tender documents provided by the Authorities during the Procurement Process;
"Change"	has the meaning given to it in Schedule 15 (Change Protocol);
"Change in Costs"	<p>means in respect of any Relevant Event, the effect of that Relevant Event (whether of a one-off or recurring nature, and whether positive or negative) upon the actual or anticipated costs, losses or liabilities of the Contractor (without double counting), including, as relevant, the following:</p> <p class="list-item-l1">(a) the costs (including pension costs) of continued employment of, or making redundant, staff who are no longer required for the delivery of the</p>

Wholesale Broadband Provision;

- (b) the costs (including pension costs) of employing additional staff;
- (c) reasonable professional fees;
- (d) additional operating costs, or life cycle, maintenance or replacement costs;
- (e) Capital Expenditure; and
- (f) Direct Losses or Indirect Losses;

"Change in Law"

means the coming into effect after the date of this Agreement of any:

- (a) Law other than any law which on the date of this Agreement has been published:
 - (i) in a draft Bill as part of a Governmental Departmental Consultation Paper;
 - (ii) in a Bill; and/or
 - (iii) in a draft statutory instrument;
- (b) Guidance; or
- (c) applicable judgment of a relevant Court of Law which changes a binding precedent;

"Change in Revenue"

means in respect of any Relevant Event the effect of that Relevant Event (whether of a one-off or recurring nature, and whether positive or negative) upon the actual or anticipated income of the Contractor from the Network;

"Commencement Date"

means the date of this Agreement;

"Commercially Sensitive"

means the sub-set of Confidential Information listed in column 1 of Schedule 19 (Commercially Sensitive

Information"	Information) for the period specified in column 2 of Schedule 19 (Commercially Sensitive Information);
"Community Request Protocol"	means the protocol set out at Schedule 21 (Community Request Protocol);
"Conditions Precedent"	means the conditions to be satisfied pursuant to clauses 2.1 and 2.2 as the same are set out in Schedule 1 (Conditions Precedent);
"Confidential Information"	means any information that ought to be considered as confidential (however it is conveyed or on whatever media it is stored) and may include information whose disclosure would, or would be likely to, prejudice the commercial interests of any person, trade secrets, Intellectual Property Rights and know-how of either Party and all personal data and sensitive personal data within the meaning of the Data Protection Act 1988;
"Construction Operations"	has the meaning given to "construction operations" at section 105 of the Housing Grants, Construction and Regeneration Act 1996;
"Contact Employee"	means any employee assigned to carry out the Implementation Works and/or perform the Wholesale Broadband Provision who in the carrying out of the Implementation Works and/or the delivery of the Wholesale Broadband Provision does, or might reasonably be expected to, come into regular or unsupervised contact with children or vulnerable adults and where the Criminal Records Bureau or the Independent Safeguarding Authority permits checks to be carried out in respect of that type of work carried out by that employee from time to time;
"Contract Year"	means a period of twelve (12) Months commencing on 1

April provided that:

- (a) the first Contract Year shall be the period commencing on the Commencement Date and ending on the immediately following 31 March; and
- (b) the final Contract Year shall be the period commencing on 1 April immediately preceding the last day of the Term and ending on that day;

"Contractor Breakage Costs"	Withheld
"Contractor Change"	has the meaning given to it in Schedule 15 (Change Protocol);
"Contractor Consents"	means all permits, licences, permissions, consents, approvals, certificates and authorisations (whether statutory or otherwise) which are required for the performance of any of the Contractor's obligations under this Agreement, whether required in order to comply with Law or as a result of the rights of any third party;
"Contractor Costs"	means the costs incurred in the carrying out of the Implementation Works and/or the delivery of the Wholesale Broadband Provision;
"Contractor Default"	<p>means the occurrence of any one or more of the following in respect of the Contractor:</p> <ul style="list-style-type: none">(a) a breach by the Contractor of any of its obligations under this Agreement which materially and adversely affects the performance of the Implementation Works and/or Wholesale Broadband Provision, and which, if capable of remedy, is not remedied in accordance with clause 28.1.2;

- (b) a Persistent Breach;
- (c) the Contractor suspends, or threatens to suspend, payment of its debt or is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986;
- (d) a petition is filed, notice is given, a resolution is passed or an order is made for or in connection with a winding up of the Contractor;
- (e) any receiver, administrative receiver, administrator (either pursuant to an administration order or an out of court appointment by way of notice of appointment as set out in the Insolvency Act 1986 Schedule B1) or receiver manager in respect of the Contractor is appointed or any person becomes entitled to appoint a receiver over the assets of the Contractor or possession is taken by or on behalf of any creditor of any property that is the subject of a charge;
- (f) the Contractor commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors or any voluntary arrangement is made for a composition of debts or a scheme of arrangement is approved under the Insolvency Act 1986 or the Companies Act 2006 other than as a solvent reorganisation of the Contractor;
- (g) an application is made to court, or an order is made, for the appointment of an administrator, or if a notice of intention to appoint an administrator is given over the Contractor;

- (h) an Abandonment Event occurs;
- (i) a Milestone Acceptance Certificate has not been issued in respect of any Milestone by the Milestone Completion Longstop Date for that Milestone, provided always that in the event the issue of a Milestone Acceptance Certificate has not occurred by the relevant Milestone Completion Longstop Date for that Milestone either (i) because the issue of that Milestone Acceptance Certificate is subject to a Dispute under the provisions of clause 46 (Dispute Resolution Procedure) of this Agreement, or (ii) because the Authorities have not complied with their obligations under paragraph 12.2 of Schedule 8 (Testing Procedures), then these shall not be deemed to be Contractor Defaults until the result of the Dispute is determined or the Authorities comply with their obligations under paragraph 12.2 of Schedule 8 (Testing Procedures) (as applicable) in which case the Milestone Completion Longstop Date for that Milestone shall be extended by a period equal to the delay caused by the Dispute or the Authorities' failure under paragraph 12.2 of Schedule 8 (Testing Procedures);
- (j) not used;
- (k) failure by the Contractor to maintain insurances in accordance with clause 25 (Insurance Policies);
- (l) a change in the Control of the Contractor to a Prohibited Owner occurs;
- (m) not used;
- (n) the Contractor fails to comply with the Wholesale

Charging Restrictions;

(o) not used;

(p) Withheld

(q) Withheld

(i) ceasing to make any further payments to the Authorities under the Grant Agreement; or

(ii) recovering all or any part of any payments made to the Authorities under the Grant Agreement; or

(iii) terminating the Grant Agreement;

and/or

(r) the Contractor fails to comply with the State Aid Method Statement;

"Contractor Default Termination Notice"

has the meaning given to it in clause 28.1.1;

"Contractor Default Termination Sum"

Withheld

"Contractor Estimate"

has the meaning given to it in Schedule 15 (Change Protocol);

"Contractor Leased Assets"

means any software, hardware, vehicles, plant, equipment or other assets used by the Contractor in relation to the Project and which are the subject of lease or hire purchase arrangements or agreements between the Contractor and a third party;

"Contractor Notice of Change"

has the meaning given to it in Schedule 15 (Change Protocol);

"Contractor Personnel"	means the employees of the Contractor and all sub-contractors who are engaged in delivering the Project from time to time;
"Contractor Purchased Assets"	means any assets (including plant, vehicles, equipment, software and hardware wholly owned by the Contractor and used by the Contractor in relation to the Project;
"Contractor Related Party"	means: <ul style="list-style-type: none"> (a) any officer, servant, employee or agent of the Contractor and any officer, servant or agent of such a person; (b) any Sub-Contractor or sub-contractor of the Contractor and any of such Sub-Contractor's (or sub-contractor's (as the case may be)) officers servants or agents; or (c) any person on or at the Sites, or on or in any of the premises to which the Contractor has access or a right of access or otherwise utilises to carry out the Implementation Works and/or the Wholesale Broadband Provision or the Project at the express or implied invitation of the Contractor other than the Authorities or any Authority Related Party;
"Contractor Revenues"	means all revenues (of whatsoever nature) received by the Contractor during the relevant period;
"Contractor's Representative"	means the person appointed by the Contractor pursuant to clause 14.1;
"Control"	means: <ul style="list-style-type: none"> (a) the acquisition of fifty percent (50%) or more of

the share capital in the Contractor;

- (b) the acquisition of shares in the Contractor having the right to cast fifty percent (50%) or more of the votes capable of being cast in general meetings of the Contractor;
- (c) the ability to determine the composition of the majority of the board of directors (or like body) of the Contractor; or
- (d) control (as defined in section 840 of the Taxes Act) of the Contractor;

"Convictions"

means, other than in relation to any minor road traffic offences, any previous or pending prosecutions, convictions, cautions and binding-overs (including any spent convictions as contemplated by section 1(1) of the Rehabilitation of Offenders Act 1974 by virtue of the exemptions specified in Part II of Schedule 1 of the Rehabilitation of Offenders Act 1974 (Exemptions) Order 1975 (SI 1975/1023) or any replacement or amendment to that Order);

"Corrupt Gifts Termination
Sum"

Withheld

"CP Longstop Date"

means the date falling one hundred and twenty (120) Business Days from the Commencement Date;

"Data"

means all data, metadata, information and accessible representations of facts figures and ideas from which information or knowledge can be derived which are produced or provided or which are necessary to be produced or provided to fulfil the Contractor's obligations in connection with the Implementation Works and/or the Wholesale Broadband Provision and/or the Project including without limitation reports, instructions, routines,

protocols (including without limitation software source codes, programming notes and software templates) and records, specifications, and documents;

"Data Room"

means the data room established by the Authorities during the Procurement Process and located at <http://tenders.herefordshire.gov.uk/SupplierPortal/> which contained certain information in relation to the Project, access to which was made available to the bidders;

"Delay Event"

means any of the following:

- (a) breach by the Authorities (or either Authority) of any of their obligations under this Agreement or any breach of statutory duty;
- (b) an action, examination and/or investigation is commenced before the EU General Court, a national court or by the European Commission under the EU State aid rules; or
- (c) any other matter or event expressly referred to as required to be treated as or deemed to be a Delay Event within this Agreement;

"Deployment Plan"

means the programme for the carrying out of the Implementation Works set out at Schedule 24 (Deployment Plan) as amended from time to time in accordance with this Agreement;

"Direct Losses"

means all damages, losses, liabilities, costs, expenses (including legal and other professional charges and expenses) and charges whether arising under statute, contract or at common law, or in connection with judgments, proceedings, internal costs or demands but excluding Indirect Losses;

"Directive"	means EC Council Directive 2001/23/EC;
"Disaster Recovery and Business Continuity Plan"	means the plan set out at Schedule 20 (Disaster Recovery and Business Continuity Plan);
"Disclosed Data"	<p>means information relating to the Implementation Works and/or Wholesale Broadband Provision disclosed by the Authorities (or either Authority) to the Contractor including in:</p> <ul style="list-style-type: none"> (a) the PQQ; (b) the ISOS Documents, the ISDS Documents, the ISRS Documents and the CFT Documents; (c) any responses to clarifications or conveyed during dialogue meetings throughout the Procurement Process; and (d) any other information disclosed by the Authorities or either Authority and/or any Authority Related Party to the Contractor relating to the Implementation Works and/or Wholesale Broadband Provision including any information set out in the Data Room;
"Disclosing Party"	means the Party providing Confidential Information to the other Party;
"Dispute"	means any difference or dispute of whatever nature between the Parties arising under, out of, or in connection with this Agreement (including any question as to the interpretation, existence, breach, termination or validity of this Agreement);
"DPA"	means the Data Protection Act 1998;

"Eligible Area" has the meaning given to it in Schedule 2 (Authorities' Requirements);

"Eligible Employees" means any Transferring Employees who are active members of (or eligible to join) the Local Government Pension Scheme or a broadly comparable pension scheme provided by their existing employer on a Relevant Transfer Date for so long as they are employees in connection with the delivery of the Project or any element of the Project;

"Employee Costs" means:

(a) in respect of each Transferring Employee, the costs incurred by the Contractor of employing that Transferring Employee from the Commencement Date to the later of:

(i) the date on which the relevant Transferring Employee accepts a post with the Authority in accordance with the provisions of clause 22.2.2; and

(ii) the number of Business Days as set out in the table at (iii) below, from the date on which the Authority or the Contractor become aware of a finding, determination or allegation that the relevant person is a Transferring Employee;

(iii)

Business Days	Number of Transferring Employees
30	Fewer than 20 Transferring Employees

60	20 to 99 Transferring Employees
110	100 or more Transferring Employees

- (b) any right to a redundancy payment (whether contractual or otherwise), notice pay (including benefits) or payment in lieu of notice, and any accrued but untaken holiday entitlements due to any Transferring Employees which are required by Law or by contract to be made to such Transferring Employees and which arise as a result of their dismissal under clause 22.2.4 where lawful notice is given within the relevant number of Business Days of the Commencement Date (as determined in accordance with paragraph (a)(iii) above) and the Contractor shall make reasonable endeavours to do so in accordance with the relevant Transferring Employee's contract of employment and any applicable dismissal procedure; and
- (c) any basic award and/or compensation awarded to any Transferring Employee in respect of any unfair dismissal claim, any claim arising from a failure by a Party to comply with its obligations to inform and consult, or elect representatives under the Transfer of Undertakings (Protection of Employment) Regulations or any discrimination claim arising out of or in relation to the dismissal of any Transferring Employee in the circumstances described in clause 22.2.4;

"Estimated Change in Costs" means, in respect of any Relevant Event, the aggregate of any Change in Costs and Change in Revenue;

"Expiry Date"	means the last day of the Term due to the effluxion of time;
"Extension Meeting Date"	has the meaning given to it in clause 3.1;
"Fair Deal"	means the Cabinet Office Statement of Practice - Staff Transfers and the Public Sector dated January 2000 and the HM Treasury Guidance - The Fair Deal for Staff Pensions: Further Guidance - Fair Deal for Staff Pensions: Procurement of Bulk Transfer Agreements and Related Issues Guidance Note dated June 2004;
"Final Warning Notice"	has the meaning given to it in clause 28.2.2;
"FOIA"	means the Freedom of Information Act 2000;
"Force Majeure Event"	<p>means the occurrence after the date of this Agreement of:</p> <ul style="list-style-type: none"> (a) war, civil war, armed conflict or terrorism; (b) nuclear, chemical or biological contamination unless the source or cause of the contamination is the result of the actions of or breach of the obligations under this Agreement by the Contractor or any Contractor Related Party; (c) pressure waves caused by devices travelling at supersonic speeds; or (d) epidemic and/or pandemic, <p>which directly causes the Contractor, Herefordshire and/or Gloucestershire to be unable to comply with all or a material part of its respective obligations under this Agreement;</p>
"Force Majeure Termination Sum"	Withheld

"Good Industry Practice"	means using standards, practices, methods and procedures (as practised in the UK) conforming to the requirements of the Law and exercising that degree of skill and care, diligence, prudence and foresight and operating practice which would reasonably be expected from a skilled and experienced person engaged in a similar type of undertaking;
"Grant Agreement"	means the grant agreement between the Secretary of State for Culture, Olympics, Media and Sport (Acting through Broadband Delivery UK) and Herefordshire Council dated the 7 th day of December 2012;
"Guidance"	means any applicable guidance, policies, regulations or directions issued by a Relevant Authority with which the Contractor is bound to comply pursuant to Law, Good Industry Practice or otherwise under the terms of this Agreement;
"Implementation Commencement Date"	means the date upon which Authorities have delivered to the Contractor the document referred to in Part B Appendix (II) of Schedule 1 (Conditions Precedent) (unless the requirement to deliver any such document is waived by written agreement between the Contractor and the Authorities);
"Implementation Works"	means all of the works (including design and works necessary for obtaining access to the Sites) to be undertaken in accordance with this Agreement to satisfy those parts of the Authorities' Requirements which relate to the physical deployment and ongoing maintenance works and the Milestone Completion Requirements in respect of each Milestone, excluding the Wholesale Broadband Provision;
"Indemnified IPR Parties"	has the meaning given to it in clause Error! Reference

source not found.;

"Indemnified Party"	has the meaning given to it in clause 49.1;
"Indemnifying IPR Party"	has the meaning given to it in clause 38.2
"Indemnifying Party"	has the meaning given to it in clause 49.1;
"Index"	means the index published in Table 5 (excluding mortgage interest payments) of Business Monitor (MM23) published by the Office for National Statistics or failing such publication or in the event of a fundamental change to the Index, such other index as the Parties may agree, or such adjustments to the Index as the Parties may agree (in each case with the intention of putting the Parties in no better nor worse position than they would have been had the Index not ceased to be published or the relevant fundamental change not been made) or, in the event that no such agreement is reached, as may be determined in accordance with clause 46 (Dispute Resolution Procedure);
"Indirect Losses"	means, whether direct, indirect or consequential, loss of profits, loss of revenue, loss of anticipated savings, loss of use, loss of production, loss of business, loss of business opportunity, wasted expenditure, loss from business interruption, loss of contracts, loss from expenditure of time by managers and employees, liability to third parties (except as expressly provided in this Agreement) pecuniary losses arising from loss of or damage to goodwill or any claim for consequential loss or for indirect loss or damage whatsoever;
"Intellectual Property Rights"	means any patent, copyright, database right, moral right, design right, registered design, trade mark, service mark, domain name, know-how, utility model, unregistered design or, where relevant, any rights arising under any

application for any such right, and/or any other industrial or intellectual property right subsisting anywhere in the world including any overseas equivalents to any such rights;

"Investigation Body"

has the meaning given to it in clause 24.16;

"IPR Loss"

has the meaning given to it in clause 38.3

"ISDS Documents"

means the Invitation to Submit Detailed Solutions documents provided by the Authorities during the Procurement Process;

"ISPs"

has the meaning given to it in Schedule 2 (Authorities' Requirements);

"ISRS Documents"

means the Invitation to Submit Refined Solutions documents provided by the Authorities during the Procurement Process;

"Key Personnel"

means the personnel identified in Schedule 11 (Key Personnel) subject to any such personnel being replaced in accordance with clause 14.6 (Replacement of Key Personnel);

"Key Sub-Contractors"

means any Sub-Contractor performing over ten percent (10%) by value of the Implementation Works or the Wholesale Broadband Provision;

"Law"

means any applicable law, statute, statutory instrument, standards, law, ruling, proclamation, order, resolution, regulation, notice, judgment, determination, rule, bye-law, directive, code of conduct or other instrument or requirement in each case as aforesaid having the force of law within any national or local jurisdiction issued, declared, passed or given effect to in any manner by HM Parliament, the legislative making institutions of the

	European Union, any court, tribunal or other person or body exercising judicial functions or any Commission of Inquiry, local authority, statutory undertaker or Relevant Authority or any other body or person having such powers and any exercise of the Royal Prerogative;
"Losses"	means all Direct Losses and Indirect Losses;
"Losses Liability Cap"	Withheld
"Marketing Plan"	means the rolling plan set out at Schedule 10 (Marketing Plan) as may be amended from time to time in accordance with the provisions of this Agreement;
"Method Statement"	means the solutions of the Contractor to deliver the Implementation Works and the Wholesale Broadband Provision to satisfy the Authorities' Requirements as set out in Schedule 3 (Method Statements) as may be amended from time to time in accordance with this Agreement;
"Milestone"	means the milestones listed in Part 1 (Milestones) in Schedule 5 (Milestones), being the milestones to be achieved by the Contractor as part of the Implementation Works and described more fully in the Deployment Plan in order to deliver the Wholesale Broadband Provision;
"Milestone Acceptance Certificate"	has the meaning given to it in Schedule 8 (Testing Procedures);
"Milestone Area"	has the meaning given to it in Schedule 12 (Payment Mechanism);
"Milestone Completion"	means in relation to any Milestone the satisfaction of the relevant Milestone Completion Requirements;

"Milestone Completion Date"	means in relation to the Implementation Works in respect of a Milestone the date set out in Schedule 5 (Milestones);
"Milestone Completion Longstop Date"	Withheld
"Milestone Completion Payment"	means, in respect of a Milestone, the payment attributable to that Milestone if the relevant Milestone Completion Requirements for that Milestone have been satisfied, as set out in Schedule 5 (Milestones);
"Milestone Completion Requirements"	means the requirements for each Milestone set out in Schedule 6 (Milestone Completion Requirements);
"Monitoring Reports"	means the reports set out in Schedule 13 (Monitoring and Reporting);
"Month"	means a calendar month;
"NGA Milestone Completion Date"	means the Milestone Completion Date for each Type 1a (Infrastructure Build) Milestone as set out in Schedule 5 (Milestones);
"Network"	means the information and communications technology system used by the Contractor (including the Implementation Works) in relation to the Project including all assets, software, hardware and related cabling;
"Neutral Adviser"	means the independent adviser appointed pursuant to clause 46.4 (Identity of Neutral Adviser) (whether by agreement or by nomination of the President for the time being of the Centre for Dispute Resolution);
"New Employees"	means those employees employed by the Contractor and/or any sub-contractor to deliver the Project alongside

any Transferring Employees;

"Notice of Adjudication"	has the meaning given to it in clause 46.7 (No Resolution through an ADR Procedure);
"Notice of Escalation"	has the meaning given to it in clause 46.3 (Alternative Dispute Resolution);
"Operational Plan"	means the plan for the delivery of the Wholesale Broadband Provision set out at Schedule 18 (Operational Plan);
"Parties"	means the Authorities and the Contractor;
"Passed Premise"	has the meaning given to it in Schedule 2 (Authorities' Requirements);
"Permitted Expenditure"	shall mean Eligible Expenditure as defined in Schedule 12 (Payment Mechanism);
"Persistent Breach"	means a breach for which a Final Warning Notice has been served which has continued for more than ten (10) Business Days or recurred three (3) or more times within the six (6) month period after the date on which such Final Warning Notice has been served on the Contractor;
"Personal Data"	means personal data as defined in the DPA which is supplied by one Party to the other(s) or obtained by the Contractor, or the Authorities (or either Authority) in the course of carrying out the Implementation Works and/or delivering the Wholesale Broadband Provision and/or its involvement with the Project;
"Planned Maintenance Programme"	means the programme of maintenance set out in clause 12 (Maintenance) and as amended in accordance with this Agreement;

"Planned Milestone Completion Date"	means, in relation to a Milestone, the date shown as the Planned Milestone Completion Date in Schedule 5 (Milestones) or such later date as may be allowed in accordance with the terms of this Agreement;
"PQQ"	means the Pre-Qualification Questionnaire provided by the Authorities during the Procurement Process;
"Premise Cap"	Withheld
"Premise Cost"	means the Premise Implementation Works Cost to be incurred by the Contractor to make the relevant Premise a Passed Premise;
"Premise Implementation Works Cost"	Withheld
"Premises"	has the meaning given to it in Schedule 2 (Authorities' Requirements);
"Procurement Process"	means the competitive tendering process carried out by the Authorities to procure a contractor (being the Contractor) for the provision of the Project through a notice in the Official Journal of European Union number 181875-2011;
"Prohibited Act"	means: <ul style="list-style-type: none"> (a) offering, giving or agreeing to give any officer of or person employed by or on behalf of Herefordshire and/or Gloucestershire or any member of Herefordshire and/or Gloucestershire any gift or consideration of any kind as an inducement or reward: (i) for doing or not doing (or for having done or not having done) any act in relation to

the obtaining or performance of this Agreement or any other contract with Herefordshire and/or Gloucestershire; or

(ii) for showing or not showing favour or disfavour to any person in relation to this Agreement or any other contract with Herefordshire and/or Gloucestershire;

(b) entering into this Agreement or any other contract with Herefordshire and/or Gloucestershire in connection with which commission has been paid or has been agreed to be paid by the Contractor or on its behalf, or to its knowledge, unless before the relevant contract is entered into particulars of any such commission and of the terms and conditions of any such contract for the payment thereof have been disclosed in writing to Herefordshire and Gloucestershire;

(c) committing any offence:

(i) under the Bribery Act 2010 and/or the Foreign Corrupt Practices Act 1997 of the United States of America in relation to this Agreement or any other contract with Herefordshire and/or Gloucestershire;

(ii) under Laws creating offences in respect of fraudulent acts in relation to this Agreement or any other contract with Herefordshire and/or Gloucestershire;

(iii) at common law in respect of fraudulent acts in relation to this Agreement or any other contract with Herefordshire and/or Gloucestershire;

- (d) defrauding or attempting to defraud or conspiring to defraud Herefordshire and/or Gloucestershire; or
- (e) notwithstanding limbs (a), (b), (c) and (d) above, committing an offence included in Regulation 23 (1) of the Public Contracts Regulations 2006 (as amended);

"Prohibited Owner"

means any entity which itself, or through any Affiliate:

- (a) would mean that the Authorities would contract with an entity which:
 - (i) the Authorities would not have contracted with at the Commencement Date (under the terms of the Procurement Process);
 - (ii) has materially failed to deliver works or services to either or both Authorities to the required standards in any contract with either or both Authorities; and/or
 - (iii) takes a stance on matters relating to corporate social responsibility (including environmental sustainability) which is inconsistent with the policies of the UK government;
- (b) carries out activities which would adversely affect or prejudice national security or the level of threat of criminal activity; and/or
- (c) carries out activities which would have an adverse effect on the reputation of Herefordshire, Gloucestershire, the Contractor and/or the Project;

"Project"	means the Project for the delivery of the Implementation Works and Wholesale Broadband Provision by the Contractor;
"Project Wholesale Access Prices"	has the meaning given to it in paragraph 2.1 of Schedule 16 (Wholesale Access Pricing);
"Project Documents"	means this Agreement;
"Proposed Termination Date"	has the meaning given to it in clause 26.1.5;
"Protected Characteristics"	has the meaning given to it in clause 24.11;
"Publicity Material"	means all material produced by the Contractor (including any public relations material, marketing material, leaflets, articles and advertisements) in any type and form of media which relates to the Project;
"Quarter"	<p>means a period of three (3) Months ending on 31 March, 30 June, 30 September and 31 December, provided that:</p> <ul style="list-style-type: none"> (a) the first Quarter during the Term shall start on the Commencement Date and end on the first to occur of 31 March, 30 June, 30 September and 31 December; (b) each such three (3) month period shall start on the day following the last day of the preceding Quarter; and (c) the last Quarter during the Term shall end upon the last day of the Term;
"Receiving Party"	means the Party receiving Confidential Information from the other Party;
"Recovery Decision"	has the meaning given to it in Article 14(1) of Council Regulation (EC) No 659/1999 of 22 March 1999, as

	amended;
"Referral Notice"	has the meaning given to it in clause 46.9 (Referral of the Dispute);
"Referring Party"	has the meaning given to it in clause 46.9 (Referral of the Dispute);
"Regulatory Bodies"	means those Government departments and UK and EU regulatory, statutory and other entities, committees and bodies (excluding the Authorities) which, whether under statute, rules, regulations or otherwise, are entitled to regulate, investigate, audit or influence the matters dealt with in this Agreement or any other affairs of the Authorities (which shall include any body required to perform any annual statutory financial audit or any value for money (VfM) audit of the Authorities and any successor body responsible from time to time for performing the audit function previously performed by the Audit Commission) and "Regulatory Body" shall be construed accordingly;
"Relief Event"	has the meaning given to it in Schedule 27 (Relief Events);
"Relevant Authority"	means any court with the relevant jurisdiction and any local, national or supra-national agency, local authority, inspectorate, minister, ministry, official, or public or statutory person of the government of the United Kingdom or of the European Union including the International Commission on Non-Ionising Radiation Protection;
"Relevant Employees"	means the employees who are the subject of a Relevant Transfer;
"Relevant Event"	means an Authorities Change or, a Specific Change in Law or other matter expressly stated in this Agreement as

	requiring an adjustment to a Milestone Completion Payment in accordance with clause 50 (Financial Adjustments);
"Relevant Party"	has the meaning given to it in clause 4.1.3;
"Relevant Transfer"	means a relevant transfer for the purposes of TUPE or the Directive;
"Relevant Transfer Date"	means the date on which an Eligible Employee transfers to the Contractor or any sub-contractor whether by virtue of any Relevant Transfers or deemed Relevant Transfers or otherwise;
"Required Action"	has the meaning given to it in clause 36.3;
"Required Insurance Risk"	means any risk to which any of the Required Insurances relate;
"Required Insurances"	has the meaning given to it in clause 25 (Insurance Policies);
"Required Local NGA Coverage"	has the meaning given to it in Schedule 12 (Payment Mechanism);
"Required Local USC Coverage"	has the meaning given to it in Schedule 12 (Payment Mechanism);
"Required NGA Coverage"	has the meaning given to it in Schedule 12 (Payment Mechanism);
"Required USC Coverage"	has the meaning given to it in Schedule 12 (Payment Mechanism);
"Responding Party"	has the meaning given to it in clause 46.9 (Alternative Dispute Resolution);

"Response" has the meaning given to it in clause 46.10 (Response to the Referral);

"Return Employee Costs" means:

(a) in respect of each Return Transferring Employee, the costs incurred by the Alleged New Employer of employing that Return Transferring Employee from the Relevant Transfer Date to the later of:

(i) the date on which the relevant Return Transferring Employee accepts a post with the Contractor or sub-contractor in accordance with the provisions of clause 22.11; and

(ii) the number of Business Days as set out in the table at (iii) below, from the date on which the Alleged New Employer or the Contractor become aware of a finding, determination or allegation that the relevant person is a Return Transferring Employee;

(iii)

Business Days	Number of Return Transferring Employees
30	Fewer than 20
60	20 to 99
110	100 or more

(b) any right to redundancy payment (whether contractual or otherwise), notice pay (including benefits) or payment in lieu of notice (including benefits), and any accrued but untaken holiday

entitlements due to any Return Transferring Employee which are required by Law or by contract to be made to such Return Transferring Employee and which arise as a result of their dismissal under clause 22.11 where lawful notice is given within the relevant number of Business Days of the Expiry Date or Termination Date (as determined in accordance with paragraph (a)(iii) above) and the Authorities or Alleged New Employer shall make reasonable endeavours to do so in accordance with the relevant Return Transferring Employee's contract of employment and any applicable dismissal procedure; and

- (c) any basic award and/or compensation awarded to any Return Transferring Employee in respect of any unfair dismissal claim, any claim arising from a failure by a Party to comply with its obligations to inform or consult, or elect representatives under the Transfer of Undertakings (Protection of Employment) Regulations 2006 or any discrimination claim arising out of or in relation to the dismissal of any Return Transferring Employee in the circumstances described in clause 22.11;

"Satellite Technology"

means the provision by the Contractor of the Implementation Works using broadband networks provided by satellite technology;

"Site Conditions"

means the conditions of the Sites including (but not limited to) climatic, hydrological, hydrogeological, ecological, environmental, geotechnical and archaeological conditions;

"Sites"	means all of the geographical area which will be utilised by the Contractor in order to carry out the Implementation Works and/or deliver the Wholesale Broadband Provision;
"Specific Change in Law"	means a Change in Law which comes into effect following the Commencement Date and specifically refers to the provision of works or services the same or similar to the Implementation Works or the Wholesale Broadband Provision and which was not foreseeable at the date of this Agreement;
"State aid"	has the meaning given to it in Article 107(1) TFEU;
"State aid Account"	has the meaning given to it in clause 4.1.1;
"State aid Approval"	means the letter sent from the European Commission to the Secretary of State for Foreign Affairs approving the Project in relation to State aid as may be updated, reissued or otherwise amended from time to time;
"State aid Decisions"	means any approvals or decisions made in relation to the Project by the European Commission from time to time;
"State Aid Method Statement"	means the Contractor's method statement set out at Schedule 26 (State Aid Method Statement);
"State aid Terms"	means the terms under which State aid for purposes of the delivery of the Project is provided by the Authorities and as are set out in the State aid Approval;
"Sub-Contractor"	means any person engaged directly by the Contractor from time to time as may be permitted by this Agreement to carry out the Implementation Works and/or deliver the Wholesale Broadband Provision (or any of them) (including, for the avoidance of doubt, the Key Sub-Contractors). References to "sub-contractors" means

	sub-contractors (of any tier) of the Contractor;
"Sustainability Requirements"	means the requirements set out at Schedule 25 (Sustainability Requirements);
"Suitable Third Party"	means a person which is not a Prohibited Owner;
"Taxes Act"	means the Income and Corporation Taxes Act 1988;
"Term"	means, subject to the earlier termination of this Agreement in accordance with its terms, the period from and including the Commencement Date up to and including the date which falls seven (7) years from the date the last Milestone Completion Payment is paid by the Authorities to the Contractor as such period may be extended in accordance with the provisions of clause 2.1 (Authorities' Option to Extend the Term);
"Termination Date"	means the date of early termination of this Agreement in accordance with clauses 26.1 (Termination for Authorities Default), 28 (Termination for Contractor Default), 30 (Termination on Force Majeure) or 32 (Termination on Corrupt Gifts and Fraud);
"Termination Notice"	means an Authorities Termination Notice or an Authorities Default Termination Notice, a Corrupt Gifts Termination Notice or any other notice of termination given by either Party in accordance with the terms of this Agreement;
"TFEU"	means the Treaty on the Functioning of the European Union;
"Third Party Claim"	has the meaning given to it in clause 49.1;
"Transferring Employees"	has the meaning given to it in clause 22.2;

"Tolerable Variance"	has the meaning given to it in Schedule 5 (Milestones);
"TUPE"	means the Transfer of Undertakings (Protection of Employment) Regulations 2006;
"Utilities"	means water (including sewerage), gas and electricity;
"VAT"	means any value added tax as provided for in the Value Added Tax Act 1994 or any other tax of similar nature;
"Warning Notice"	has the meaning given to it in clause 28.2.1;
"Warranties"	means the representations and warranties set out in Part 1 of Schedule 4 (Warranties); and
"Wholesale Access Prices Benchmarking"	means the benchmarking exercise described in paragraph 3 of Schedule 16 (Wholesale Access Pricing);
"Wholesale Access Products and Services"	has the meaning given to it in Schedule 2 (Authorities' Requirements);
"Wholesale Broadband Provision"	means the provision contained in this Agreement including the requirements set out in the Authorities' Requirements and the Method Statement including any change to those requirements pursuant to clause 20 (Changes) and Schedule 15 (Change Protocol);
"Wholesale Broadband Provision Commencement Date"	means the actual date on which the Milestone Completion Date is reached in relation to the final Milestone to be delivered by the Contractor;
"Wholesale Broadband Provision Period"	means in respect of each element of the Network comprising a Milestone, the period from and including the Milestone Completion Date for that Milestone until and including the Termination Date or the Expiry Date (whichever is the earlier); and

"Wholesale Charging Restrictions" means the obligations required to be met by the Contractor as set out under clause 51 (Wholesale Charging Benchmarking) and Schedule 16 (Wholesale Access Pricing).

1.2 Interpretation

In this Agreement except where the context otherwise requires:

- 1.2.1 the masculine includes the feminine and vice-versa;
- 1.2.2 the singular includes the plural and vice-versa;
- 1.2.3 a reference to any clause, sub-clause, paragraph, Schedule, recital or annex is, except where expressly stated to the contrary, a reference to such clause, sub-clause, paragraph, Schedule, recital or annex of and to this Agreement;
- 1.2.4 save where otherwise provided in this Agreement, any reference to this Agreement or to any other document shall include any permitted variation, amendment or supplement to such document;
- 1.2.5 any reference to any enactment, order, regulation or other similar instrument shall be construed as a reference to the enactment, order, regulation or instrument as amended, replaced, consolidated or re-enacted;
- 1.2.6 a reference to a person includes firms, partnerships and corporations and their successors and permitted assignees or transferees;
- 1.2.7 headings are for convenience of reference only;
- 1.2.8 words preceding "include", "includes", "including" and "included" shall be construed without limitation by the words which follow those words;
- 1.2.9 any obligation on a Party to do any act, matter or thing includes, unless expressly stated otherwise, an obligation to procure that it is done; and
- 1.2.10 subject to any express provisions of this Agreement to the contrary, the obligations of either Party are to be performed at that Party's own cost and expense.

1.3 Schedules

The Schedules to this Agreement form part of this Agreement.

1.4 Capacity

Save as otherwise expressly provided, the obligations of the Authorities under this Agreement are obligations of the Authorities in their capacity as contracting counterparties and nothing in this Agreement shall operate as an obligation upon, or in any other way fetter or constrain the Authorities in any other capacity, nor shall the exercise by the Authorities of their duties and powers in any other capacity lead to any liability under this Agreement (howsoever arising) on the part of the Authorities to the Contractor.

1.5 Precedence of Documentation

In the event of any conflict between the provisions of the body of this Agreement and the Schedules, the body of this Agreement shall take precedence. In the event of any conflict between Schedule 2 (Authorities' Requirements) and: Schedule 3 (Method Statements); Schedule 10 (Marketing Plan); Schedule 14 (Business Plan); Schedule 18 (Operational Plan); and Schedule 24 (Deployment Plan); Schedule 2 (Authorities' Requirements) shall take precedence.

1.6 Responsibility for Related Parties

Subject to the provisions of this Agreement, the Contractor shall be responsible as against the Authorities for the acts and omissions of the Contractor Related Parties as if they were the acts and omissions of the Contractor and the Authorities shall be responsible as against the Contractor for the acts and omissions of Authority Related Parties as if they were the acts and omissions of the Authorities. The Contractor shall, as between itself and the Authorities, be responsible for the selection of and pricing by any Contractor Related Party.

1.7 Approval

Unless expressed to the contrary neither the giving of any approval, consent, examination, acknowledgement, knowledge of the terms of any agreement or document nor the review of any document or course of action by or on behalf of the Authorities, nor the failure of the same, shall unless otherwise expressly stated in this Agreement, relieve the Contractor of any of its obligations under the Project Documents or of any duty which it may have hereunder to ensure the correctness,

accuracy or suitability of the matter or thing which is the subject of the approval, consent, examination, acknowledgement or knowledge.

1.8 Succession

References to a public sector organisation (including Herefordshire and Gloucestershire) shall be deemed to include a reference to any successor to such public sector organisation or any organisation or entity which has taken over either or both the functions and responsibilities of such public sector organisation. References to other persons shall include their successors and assignees.

1.9 Joint and Several Liability

Each of the obligations on the part of the Authorities under this Agreement are undertaken by them jointly and severally.

1.10 Indexation

In this Agreement, save where otherwise provided, references to amounts expressed to be "Indexed" are references to such amounts at Base Date prices multiplied by:

$$\frac{I_1}{I_2}$$

where:

1.10.1 I_1 is the value of the Index most recently published prior to the relevant calculation date; and

1.10.2 I_2 is the value of the Index for the Base Date.

2. DELIVERY OF CONDITIONS PRECEDENT AND DURATION

2.1 On or prior to the execution of this Agreement:

2.1.1 the Contractor is to deliver to the Authorities the documents referred to in Part A Appendix (I) of Schedule 1 (Conditions Precedent) (unless the requirement to deliver any such document is waived by written agreement between the Authorities and the Contractor); and

- 2.1.2 the Authorities are to deliver to the Contractor the documents referred to in Part B Appendix (I) of Schedule 1 (Conditions Precedent) (unless the requirement to deliver any such document is waived by written agreement between the Contractor and the Authorities).
- 2.2 Subject to clause 2.3, on or prior to the CP Longstop Date:
- 2.2.1 the Contractor is to deliver to the Authorities the documents referred to in Part A Appendix (II) of Schedule 1 (Conditions Precedent) (unless the requirement to deliver any such document is waived by written agreement between the Authorities and the Contractor); and
- 2.2.2 the Authorities are to deliver to the Contractor the documents referred to in Part B Appendix (II) of Schedule 1 (Conditions Precedent) (unless the requirement to deliver any such document is waived by written agreement between the Contractor and the Authorities).
- 2.3 Except for clauses 1, 2.1, 2.2, 2.3, 2.4, 2.5, 2.6, 4.1, 6, 21, 25, 38, 40, 41, 42, 45, 47, 48, 52 and 53 which shall be binding contractual obligations on the Parties from the Commencement Date, the rights and obligations of the Authorities and Contractor shall commence on the Implementation Commencement Date provided that, on or prior to the CP Longstop Date, the Conditions Precedent listed in Part A Appendix (II) of Schedule 1 (Conditions Precedent) and Part B Appendix (II) of Schedule 1 (Conditions Precedent) have been satisfied or waived in accordance with clauses 2.2.1 and 2.2.2.
- 2.4 The Parties agree to use all reasonable endeavours to ensure that the requirements of clauses 2.2.1 and 2.2.2 are met on or prior to the CP Longstop Date.
- 2.5 If the Conditions Precedent listed in Part A Appendix (II) of Schedule 1 (Conditions Precedent) and Part B Appendix (II) of the Schedule 1 (Conditions Precedent) have not been satisfied or waived in accordance with clauses 2.2.1 and 2.2.2 on or prior to the CP Longstop Date, then this Agreement shall terminate at 23.59hrs on the CP Longstop Date. For the avoidance of doubt no compensation shall be payable by the Authorities to the Contractor as a result of such termination.
- 2.6 If the Conditions Precedent listed at Part A Appendix (II) of Schedule 1 (Conditions Precedent) and Part B Appendix (II) of Schedule 1 (Conditions Precedent) have been satisfied or waived in accordance with clauses 2.2.1 and 2.2.2 on or prior to the CP Longstop Date and the date on which they have been satisfied or waived falls after the 30th November 2012 then all dates in the Deployment Plan and Schedule 2 (Authorities' Requirements) will be deemed to be moved forward by an

equal number of days as the period between the 30th November 2012 and the date on which those Conditions Precedent listed at Part A Appendix (II) of Schedule 1 (Conditions Precedent) and Part B Appendix (II) of Schedule 1 (Conditions Precedent) are satisfied or waived in accordance with clauses 2.2.1 and 2.2.2.

3. **AUTHORITIES' OPTION TO EXTEND THE TERM**

3.1 The Authorities may, by giving written notice to the Contractor no later than the date which falls six (6) months prior to the expiry of the Term, extend the Term in accordance with provisions of this clause 3.

3.2 The Authorities may exercise their right under this clause 3 to extend the Term on as many occasions as they require provided that the minimum duration of each such extension shall not be less than one (1) year and the aggregate of such extensions shall not extend the Term beyond the date which falls twelve (12) years following the date the last Milestone Completion Payment is paid by the Authorities to the Contractor.

3.3 Where the Authorities exercise their option pursuant to clause 3.1 above, the Parties shall meet, within ninety (90) days of the issue by the Authorities of the notice referred to in clause 3.1 (each an "**Extension Meeting Date**"), to agree any variations to the Project Documents which should apply for the extension to the Term.

3.4 In the event that the Parties do not reach agreement following the Extension Meeting Date referred to in clause 3.3 by the date which falls thirty (30) days after the relevant Meeting Extension Date, then no such extension shall take effect and this Agreement shall expire in accordance with clause 35 (Expiry).

3.5 The provisions of clause 46 (Dispute Resolution Procedure) shall not apply to this clause 3 (Authorities' Option to Extend the Term).

4. **STATE AID**

4.1 State aid

4.1.1 If the European Commission issues a Recovery Decision in connection with any or all Milestone Completion Payments paid to the Contractor pursuant to this Agreement naming the Contractor as the beneficiary of unlawful and incompatible State aid, the Contractor shall, unless an earlier date has been

specified by the European Commission, within four (4) months of a written notice from the Authorities (where such notice shall include a copy of the Recovery Decision) pay an amount which is equivalent to the amount of unlawful and incompatible State aid (plus interest at the Applicable Rate) as specified by the European Commission in its Recovery Decision into a blocked bank account (the "**State aid Account**"), provided that where the Recovery Decision does not specify the amount of unlawful and incompatible State aid, the Contractor and the Authorities shall calculate and agree the amount plus interest at the Applicable Rate which Contractor should pay into the State aid Account.

4.1.2 Neither the Contractor nor the Authorities shall have unilateral access to the State aid Account pending either:

4.1.2.1 the expiry of any deadline for the Contractor (or any Contractor Related Party) to bring proceedings in respect of the validity (or otherwise) of the Recovery Decision; or

4.1.2.2 if the Contractor (or any Contractor Related Party) brings proceedings in respect of the validity (or otherwise) of the Recovery Decision, the final outcome of any proceedings or any appeal in respect of the Recovery Decision.

4.1.3 If:

4.1.3.1 the Contractor (or any Contractor Related Party) does not bring proceedings in respect of the Recovery Decision prior to any deadline to do so; or

4.1.3.2 the final appeal by the Contractor (or any Contractor Related Party) in respect of the Recovery Decision is denied; or

4.1.3.3 the Contractor withdraws from or otherwise terminates any proceedings in respect of the Recovery Decision,

the Contractor shall give its consent for the release of such amounts in the State aid Account as constitute unlawful and incompatible State aid and pay them to the Authorities or such other third party public sector body (the "**Relevant Party**") as it is instructed to do so in order for the requirements of the Recovery Decision to be satisfied.

- 4.1.4 Not used.
- 4.1.5 If any final appeal in respect of the Recovery Decision is allowed the Authorities shall give their consent for any and all outstanding amounts in the State aid Account to be paid to the Contractor.
- 4.1.6 The Contractor acknowledges and agrees that the provisions of clauses 4.1.1 to 4.1.5 (inclusive) shall apply irrespective of:
- 4.1.6.1 whether the Contractor has committed a Contractor Default;
or
 - 4.1.6.2 the Contractor's (or any Contractor Related Party's) financial circumstances, save that the Authorities, shall apply, as applicable, paragraphs 60 to 68 of the European Commission's Notice entitled "Towards an effective implementation of Commission decisions ordering Member States to recover unlawful and incompatible State aid" (2007/C 272/05) (in relation to insolvent beneficiaries) in respect of the Contractor (or Contractor Related Party).
- 4.1.7 Nothing in this clause 4 (State aid) shall prejudice any right or remedy of either Authority in relation to any breach of this Agreement by the Contractor or any Contractor Related Party.
- 4.1.8 Subject to clause 43.5, nothing in this clause 4 (State aid) shall prejudice any right or remedy of the Contractor in relation to any breach of this Agreement by the Authorities.

5. WARRANTIES

- 5.1 The Contractor hereby warrants and represents to the Authorities as at the following dates:
- 5.1.1 the Commencement Date;
 - 5.1.2 each Milestone Completion Date;
 - 5.1.3 the Wholesale Broadband Provision Commencement Date; and

- 5.1.4 the date of the commencement of any extension to the Term in accordance with clause 3.1 (Authorities' Option to Extend the Term) (by reference to the circumstances then prevailing);

in terms of the Warranties and it is acknowledged and agreed by the Contractor that the Authorities each rely upon such Warranties in entering into this Agreement.

- 5.2 The Contractor undertakes to the Authorities that from the Commencement Date for so long as this Agreement remains in full force and effect it will, upon becoming aware that any material litigation, arbitration, administrative or adjudication or mediation proceedings before or of any court, arbitrator or Relevant Authority may be threatened or pending and immediately after the commencement thereof, give the Authorities notice of such material litigation, arbitration, administrative or adjudication or mediation proceedings which would affect the Contractor's ability to perform its obligations under this Agreement or otherwise perform its obligations in relation to the Project.

- 5.3 The Contractor undertakes to the Authorities that from the Commencement Date for so long as this Agreement remains in full force and effect:

- 5.3.1 it will comply, and will procure that any Contractor Related Party complies (to the extent and in respect of that part of the Implementation Works and/or Wholesale Broadband Provision and/or other obligations that such Contractor Related Parties perform), with the provisions of the Project Documents (as applicable); and

- 5.3.2 it will throughout the Term comply with and will ensure that all Contractor Related Parties (that perform any part of the Implementation Works and/or Wholesale Broadband Provision and/or other obligations that such Contractor Related Parties perform) comply with:

- 5.3.2.1 the Law; and

- 5.3.2.2 any reasonable instructions and guidelines issued by the Authorities or the Authorities' Representative from time to time, provided that where such instructions and guidelines issued would materially change the nature of the Project and/or the cost of its delivery, then the Contractor shall

inform the Authorities of the same and the Authorities shall issue an Authorities Change.

- 5.4 All warranties, representations, undertakings, indemnities and other obligations made, given or undertaken by the Contractor in this Agreement are cumulative and none shall be given a limited construction by reference to any other.

6. AUTHORITIES' WARRANTIES

6.1 No Warranty by the Authorities

Subject to clause 6.3 (Fraudulent Statements), the Authorities do not give any warranty or undertaking as to the relevance, completeness, accuracy or fitness for any purpose of any of the Disclosed Data.

6.2 No Liability to the Contractor

Neither the Authorities nor any Authority Related Party shall be liable to the Contractor in contract, tort (including negligence or breach of statutory duty), statute or otherwise as a result of:

- 6.2.1 any inaccuracy, omission, unfitness for any purpose or inadequacy of any kind whatsoever in the Disclosed Data; or
- 6.2.2 any failure to make available to the Contractor any materials, documents, drawings, plans or other information relating to the Project.

6.3 Fraudulent Statements

Nothing in this clause 6 (Authorities' Warranties) shall exclude any liability which the Authorities (or either Authority) or any Authority Related Party would otherwise have to the Contractor in respect of any statements made fraudulently prior to the date of the Commencement Date.

6.4 The Contractor's Due Diligence

- 6.4.1 The Contractor shall, subject to the terms of this Agreement, be deemed to have satisfied itself as to the Sites and the nature and extent of the risks and obligations assumed by it under this Agreement and gathered all information necessary to perform its obligations under this Agreement and other obligations assumed by it, including:

6.4.1.1 information as to the nature, location, adequacy and condition of the Sites and the Site Conditions;

6.4.1.2 information relating to archaeological finds, areas of archaeological scientific or natural interest, local conditions and facilities and the quality of existing structures; and

6.4.1.3 existing passive or active telecommunications infrastructure.

6.5 Subject to clause 6.3 (Fraudulent Statements), the Contractor shall not in any way be relieved from any obligation under this Agreement nor shall it be entitled to claim against the Authorities (or either Authority) on grounds that any information, whether obtained from the Authorities (or either Authority) or from any Authority Related Party or otherwise (including information made available by the Authorities) is incorrect or insufficient and shall make its own enquiries as to the accuracy and adequacy of that information.

7. AUTHORITIES' OBLIGATIONS

7.1 The Authorities undertake that they shall, from the Commencement Date:

7.1.1 supply the Contractor with such information held by them (and not available elsewhere), as the Contractor may reasonably require to enable the Contractor to fulfil its obligations under this Agreement (but without the Authorities being obliged to incur any expenditure in relation to the provision of the same); and

7.1.2 subject to the terms of this Agreement and to the Contractor complying with the terms of this Agreement, use reasonable endeavours to carry out their obligations and exercise their rights under this Agreement so as to minimise any disruption to the carrying out of the Implementation Works and/or the delivery of the Wholesale Broadband Provision by the Contractor.

8. OWNERSHIP OF THE NETWORK

8.1 The Contractor shall utilise the Network throughout the Term in order to carry out the Implementation Works and/or deliver the Wholesale Broadband Provision.

8.2 The Parties acknowledge and agree that:

8.2.1 title to and ownership of the Network and all associated responsibilities and liabilities shall vest in the Contractor (or its lessors or licensors, as appropriate) and shall not transfer to the Authorities.

8.2.2 not used.

9. CARRYING OUT OF THE IMPLEMENTATION WORKS

9.1 The Contractor shall or shall procure that its sub-contractors shall carry out the design and the construction, completion, commissioning and testing of the Implementation Works so that:

9.1.1 each Milestone shall achieve Milestone Completion on or before the relevant Planned Milestone Completion Date;

9.1.2 the Implementation Works fully comply with and meet all the requirements of this Agreement, the Authorities' Requirements, the Method Statement, the Deployment Plan, the Business Plan, Good Industry Practice, Guidance, all Contractor Consents and the Law;

9.1.3 where the Implementation Works comprise of new infrastructure, (unless the Authorities agree otherwise in writing) new materials only will be used in carrying out the Implementation Works and all goods used or included in the Implementation Works will be in accordance with the materials and goods in the stated specification and will function in their stated parameters and there will be used or included in the Implementation Works none of those products and materials listed in Schedule 7 (Prohibited Materials) nor any products or materials not in conformity with relevant British or European Union Standards or codes of practice which at the time of use are widely known to contractors or members of the relevant design profession within the European Union to be deleterious to health or safety or to the durability of the systems and/or buildings and/or other structures and/or finishes and/or plant and machinery in the particular circumstances in which they are used;

9.1.4 the Implementation Works are maintained in good order, kept in a safe condition and protected from damage, and working areas of the Sites are secure against trespassers and clean and tidy so far as reasonably practicable having regard to the nature of the Implementation Works;

- 9.1.5 the Implementation Works are carried out in a manner which minimises disruption to the public;
 - 9.1.6 the Implementation Works are carried out and completed in a manner which ensure that the Authorities' Requirements are met;
 - 9.1.7 the requirements and obligations under the Community Request Protocol, the Disaster Recovery and Business Continuity Plan, the State Aid Method Statement and the Sustainability Requirements are complied with;
 - 9.1.8 the Network is capable of being used to deliver the Wholesale Broadband Provision at all times during the Wholesale Broadband Provision Period such that the Contractor is capable of achieving the Authorities' Requirements; and
 - 9.1.9 in accordance with the Agreement, deliver the Implementation Works efficiently and in a manner which represents value for money for the Authorities in accordance with the Contractor's obligations in this Agreement.
- 9.2 To avoid doubt, the obligations in clause 9.1 are independent obligations. In particular:
- 9.2.1 the fact that the Contractor has complied with the Authorities' Requirements but not the Method Statements or Deployment Plan shall not be a defence to an allegation that the Contractor has not satisfied the Method Statements or Deployment Plan provided that the Authorities' Requirements shall take priority over the Method Statements and Deployment Plan in the event of any discrepancy or inconsistency between them; and
 - 9.2.2 the fact that the Contractor has complied with the Method Statements and/or the Deployment Plan but not the Authorities' Requirements shall not be a defence to an allegation that the Contractor has not satisfied the Authorities' Requirements.
- 9.3 The Contractor shall, in relation to the Project and any Utilities required as a result of the carrying out of the Implementation Works:
- 9.3.1 be responsible for determining the location of the Implementation Works and any Utilities and for the maintenance of access to the Implementation Works and any Utilities;

- 9.3.2 make and rely upon all necessary investigations and surveys as to such Implementation Works and Utilities;
 - 9.3.3 make provision for lawfully diverting, disconnecting or otherwise dealing as may be necessary with any Utilities;
 - 9.3.4 pay to all Relevant Authorities or undertakings all costs and expenses incurred in diverting, disconnecting or otherwise carrying out works in respect of the Implementation Works and any Utilities;
 - 9.3.5 make connection into any existing Utilities; and
 - 9.3.6 otherwise do all that is required in relation to the Utilities required for the purposes of carrying out of the Implementation Works.
- 9.4 If either:
- 9.4.1 the Contractor becomes aware at any time that the actual progress of the Implementation Works may become or has been significantly delayed or a Milestone will not be achieved by the relevant Planned Milestone Completion Date; or
 - 9.4.2 it appears to the Authorities' Representative at any time that the actual progress of the Implementation Works has been significantly delayed or has fallen behind the Deployment Plan (and the Authorities' Representative requests the Contractor's Representative to do so),
- the Contractor's Representative shall submit to the Authorities' Representative a report identifying the reasons for the delay and (where the Authorities' Representative requires the Contractor's Representative to do so) the Contractor's Representative shall produce and submit to the Authorities' Representative a revised Deployment Plan showing the manner and the periods in which the Implementation Works will be carried out to achieve the Planned Milestone Completion Dates and showing the steps which are to be taken to eliminate or reduce the delay.
- 9.5 The Contractor shall procure that the Authorities' Representative and any advisers of the Authorities are afforded a reasonable opportunity to attend site meetings relating to the Implementation Works and (whether or not the Authorities'

Representative and any advisers of the Authorities have attended) that a copy of the minutes of site meetings is promptly supplied to the Authorities.

9.6 Premises Cap

9.6.1 Where the Contractor can demonstrate to the Authorities that the Premise Cost for a Premise exceeds the Premises Cap (each an "Affected Premise"), the Contractor shall provide a report, when appropriate identifying:

- 9.6.1.1 the number of Affected Premises;
- 9.6.1.2 the Premise Cost for each Affected Premise;
- 9.6.1.3 the original Premise Cost for each Affected Premise that was modelled by the Contractor prior to the Commencement Date;
- 9.6.1.4 the underlying reasons for the Premise Costs for each Affected Premise being greater than those modelled by the Contractor prior to the Commencement Date; and
- 9.6.1.5 the alternative options for the implementation of each Affected Premise together with the associated Premise Cost for each Affected Premise for each option.

9.6.2 On receipt of the report set out in clause 9.6.1 the Authorities and the Contractor shall meet to discuss the report and the options available and, following that meeting, the Authorities shall, in their complete discretion, decide whether:

- 9.6.2.1 to continue with the implementation of those Affected Premises as planned, provided that agreement is reached as to the payment of any additional costs over and above the Premises Cap; or
- 9.6.2.2 an alternative form of technology for the Implementation Works for the Affected Premise is to be pursued, provided that agreement is reached as to the payment of any additional costs of such implementation over and above the

Premises Cap or any associated reduction in the Milestone Completion Payments; or

9.6.2.3 to defer implementation of those Affected Premises to a later date and agree consequent changes to the relevant Milestone and Milestone Completion Payments; or

9.6.2.4 to remove the Affected Premises and de-scope the Eligible Area accordingly, subject to agreement being reached over the consequent decrease in the relevant Milestone Completion Payment, with the effects of such de-scoping being subject to the Change Protocol as a Contractor Change which the Authorities cannot reject

and, subject to the provisions of clause 9.6.3 below, the Contractor shall implement that decision.

9.6.3 Within ten (10) Business Days of the Authorities receiving the report set out in clause 9.6.1 the Authorities shall indicate to the Contractor whether they intend to require the Contractor to implement the provisions of clause 9.6.2.1, 9.6.2.2, 9.6.2.3 or 9.6.2.4 (the "**Initial Decision**") and shall confirm their decision on whether they require the Contractor to implement the provisions of clause 9.6.2.1, 9.6.2.2, 9.6.2.3 or 9.6.2.4 within sixty (60) Business Days (the "**Confirmed Decision**") provided always that:

9.6.3.1 if the Authorities' decide to require the Contractor to implement the provisions of clause 9.6.2.4 in their Initial Decision, the Authorities shall not be entitled to amend that decision in their Confirmed Decision without the Contractor's consent;

9.6.3.2 if the Authorities do not notify the Contractor of the Initial Decision within ten (10) Business Days of receipt by the Authorities of the report set out at clause 9.6.1 then the provisions of clause 9.6.2.4 shall apply to those Affected Premises covered in that report;

9.6.3.3 if the Authorities do not notify the Contractor of the Confirmed Decision within sixty (60) Business Days of

receipt by the Authorities of the report set out at clause 9.6.1 then the provisions of clause 9.6.2.4 shall apply to those Affected Premises covered in that report; and

- 9.6.3.4 if the Authorities indicate either of the options at clause 9.6.2.1 or 9.6.2.2 in their Initial Decision and the Authorities subsequently chose a different option in their Confirmed Decision, then the Authorities shall pay to the Contractor the proportion of the additional costs agreed with the Authorities in accordance with the provisions of clause 9.6.2.1 or 9.6.2.2 (as applicable) which the Contractor can demonstrate it has actually incurred in the time between the date of the Initial Decision and the Confirmed Decision (provided always that those additional costs are Permitted Expenditure) and such Permitted Expenditure shall be dealt with by the Parties as if it were part of a Milestone Completion Payment in accordance with the provisions of Schedule 12 (Payment Mechanism).

9.7 Monitoring and Inspection

9.7.1 Right of Inspection

- 9.7.1.1 The Authorities, the Authorities' Representative and/or any adviser of the Authorities shall have, on reasonable notice (which reasonable notice period shall never be less than five (5) Business Days), the right (subject to clause 9.7.1.2 below, with the consent of the Contractor, such consent shall not be unreasonably withheld or delayed) (but not so as to delay or impede the progress of the Implementation Works) to inspect the State and progress of the Implementation Works. The purpose of such inspections being to enable the Authorities to monitor compliance by the Contractor with its obligations under this Agreement. Such right or inspection shall be carried out by the Authorities, the Authorities' Representative and/or any adviser of the Authorities accompanied by a representative of the Contractor.

9.7.1.2 The Contractor shall not be entitled to reject a request to inspect received from the Authorities under clause 9.7.1.1 where the inspection request is for financial audit purposes to verify the use of Milestone Completion Payments provided that:

- (i) such inspections shall be subject to the Contractor's standard security policies at the time of the inspection to the extent those policies have been notified to the Authorities by the Contractor; and
- (ii) such inspections are limited to those required as a result of no more than one audit per Authority per Contract Year.

9.7.2 Right to Open Up

9.7.2.1 Subject to clause 9.7.2.2, the Authorities' Representative shall have the right (at any time prior to the Milestone Completion Date for a Milestone) to request the Contractor to open up and inspect any part or parts of the Implementation Works where the Authorities' Representative reasonably believes that such part or parts of the Implementation Works are not being carried out in accordance with the terms of this Agreement and the Contractor shall comply with such request.

9.7.2.2 Prior to exercising his right pursuant to clause 9.7.2.1 above, the Authorities' Representative shall notify the Contractor of his intention to exercise such right, setting out detailed reasons and providing such notice as is reasonable of this inspection.

9.7.2.3 Not used.

9.7.2.4 If, following the exercise by the Authorities' Representative of his right pursuant to clause 9.7.2.1, the inspection shows that the relevant part or parts of the Implementation Works has not been carried out in accordance with the terms of this

Agreement, the Contractor shall rectify and make good that part of the Implementation Works and any consequence of such rectification and/or making good shall be carried out by the Contractor at no cost to the Authorities and the Contractor shall not be entitled to any extension of time in relation to such rectification and making good of the Implementation Works.

9.7.2.5 If, following the exercise by the Authorities' Representative of its right pursuant to clause 9.7.2.1, the Authorities' Representative is of the opinion that the inspection shows that the relevant part or parts of the Implementation Works have not been carried out in accordance with the terms of this Agreement and the Contractor does not agree with such opinion, the matter shall be determined in accordance with clause 46 (Dispute Resolution Procedure).

9.7.2.6 Without prejudice to the rights of the Authorities' Representative pursuant to this clause 9.7.2 (Right to Open Up), the Parties acknowledge that the exercise of such rights shall not in any way affect the obligations of the Contractor under this Agreement save as expressly set out in this clause 9.6.3 (Monitoring and Inspection).

9.7.3 Not used.

9.7.4 Contractor's Reasonable Assistance

The Contractor shall procure that satisfactory facilities are made available to the Authorities, the Authorities' Representative and any adviser of the Authorities and that reasonable assistance is given for the purposes of clauses 9.7.1 (Right of Inspection) and 9.7.2 (Right to Open Up), subject to the Contractor's and the Sub-Contractors' operational obligations not being adversely affected and to the Authorities reimbursing the Contractor for any reasonable costs or expenses incurred as a result of the action taken by the Authorities under clauses 9.7.1 (Right of Inspection) and 9.7.2 (Right to Open Up).

9.7.5 Security, Health and Safety and Procedural Requirements

The Authorities, the Authorities' Representative and the advisers of the Authorities shall at all times comply with all the Contractor's relevant security, health and safety and other procedures which shall include any relevant health and safety plans for the implementation of the Milestones and any reasonable directions with regard to site safety that may be issued by or on behalf of the Contractor from time to time when exercising its rights under this clause 9.6.3 (Monitoring and Inspection).

9.7.6 Supply of Information

The Contractor shall supply to the Authorities:

9.7.6.1 and the Authorities' Representative or Authority Related Party visiting any of the Sites pursuant to clauses 9.7.1 (Right of Inspection) such information in respect of the Implementation Works as may reasonably be required to verify the use of expenditure relating to the Implementation Works; and

9.7.6.2 a copy of all the minutes of all those Milestone and monthly progress meetings that the Authorities were entitled to attend in accordance with this Agreement whether or not the Authorities or the Authorities' Representative or advisers of the Authorities were in attendance together with information relating to the progress of the Implementation Works.

9.7.7 Site Meetings, Monitoring and Inspection

9.7.7.1 not used;

9.7.7.2 Monthly progress meetings and site meetings shall be held in accordance with the provisions of Schedule 9 (Management Groups and Meetings) and that the Authorities' Representative shall have the right to attend such monthly progress meetings and site meetings in accordance with this Agreement.

9.7.8 Increased Monitoring

If, following any viewing, visit or inspection made by the Authorities, it is discovered that the Implementation Works have not been carried out in accordance with the terms of this Agreement or that the Contractor has materially failed to comply with the Authorities' Requirements or those elements of the Method Statements relating to the Implementation Works, the Authorities may, acting reasonably, (without prejudice to any other right or remedy available to the Authorities) by notice to the Contractor increase the level of its monitoring of the Contractor until such time as the Contractor shall have demonstrated to the reasonable satisfaction of the Authorities that it is capable of performing and will perform all its obligations under this Agreement and the Contractor shall reimburse the Authorities on demand for any reasonable costs or expenses incurred by the Authorities as a result of any increased level of monitoring undertaken by the Authorities pursuant to this clause.

9.7.9 Damage

If the Authorities or an Authority Related Party causes material damage to the Implementation Works in exercising any right under this clause 9.6.3 (Monitoring and Inspection), then this shall be deemed to be an Authorities Change.

9.8 Acceptance Testing

The Parties shall comply with the provisions of Schedule 8 (Testing Procedures).

9.9 Satellite Deployment

9.9.1 On request by the Authorities, the Contractor shall provide Satellite Technology to requested Premises within the Eligible Area prior to the NGA Milestone Completion Date for the Milestone Area in which those Premises are located.

9.9.2 The Contractor shall implement a request by the Authorities under clause 9.9.1 in a manner which shall not have the effect of:

9.9.2.1 Reducing the Required NGA Coverage;

9.9.2.2 Reducing the Required USC Coverage;

9.9.2.3 Withheld or

9.9.2.4 Withheld

9.9.3 Provided always that the Contractor shall not be obliged to implement any request made by the Authorities under clause 9.9.1 once it has implemented requests in accordance with clause 9.9.1 for (withheld) Premises within the Eligible Area.

10. DELIVERY OF THE WHOLESALE BROADBAND PROVISION

10.1 The Authorities engage the Contractor and the Contractor hereby shall deliver (or procure the delivery of) the Wholesale Broadband Provision during the Wholesale Broadband Provision Period.

10.2 In performing its obligations under this Agreement, the Contractor shall operate as, and have the status of, an independent contractor and shall not operate or have the status of agent, employee or representative of the Authorities.

10.3 The Contractor undertakes throughout the Wholesale Broadband Provision Period to:

10.3.1 ensure that it and the Contractor Related Parties will be appropriately qualified and experienced to undertake their tasks or will be (in the case of any apprentices or trainees) appropriately supervised and will use all professional skill and care (subject to and in accordance with the provisions of this Agreement) in the delivery of the Wholesale Broadband Provision which will be supplied in a professional and competent manner and will be fully supervised at all times and in accordance with Good Industry Practice;

10.3.2 not used;

10.3.3 inform the Authorities promptly, giving details of the circumstances, reasons and likely duration, in the event it becomes aware of anything of whatsoever nature and whether or not the result of any act or omission on the part of the Contractor and/or any Contractor Related Party which may prevent or hinder the Contractor fulfilling its obligations in accordance with this Agreement;

10.3.4 not used;

- 10.3.5 to the extent that the Contractor and any Contractor Related Party is entitled to access any IT systems of the Authorities, not at any time to introduce any computer virus or other contamination, knowingly into the IT systems of the Authorities (including any computer hardware or software) which is either owned or used by the Authorities and is used by the Contractor and/or any Contractor Related Party in connection with its obligations under this Agreement;
- 10.3.6 not used;
- 10.3.7 ensure that the Wholesale Broadband Provision fully complies with and meet all the requirements of this Agreement, the Authorities' Requirements, the Method Statements, the Operational Plan, the Business Plan, Good Industry Practice, Guidance, all Contractor Consents and the Law;
- 10.3.8 ensure that all goods and materials used or included in the Wholesale Broadband Provision will meet their stated specification and will function within their stated parameters and there will not be used or included any of those products and materials listed in Schedule 7 (Prohibited Materials) nor any products or materials which are not in conformity with relevant British or European Union Standards or codes of practice which at the time of use are widely known to building or services contractors or members of the relevant design profession within the European Union to be deleterious to health or safety or to the durability of buildings and/or other structures and/or finishes and/or plant and machinery in the particular circumstances in which they are used;
- 10.3.9 carry out the Wholesale Broadband Provision to ensure that no act or omission to act by the Contractor or any Contractor Related Party shall give rise to a right for any person other than the Contractor to obtain title to or any right or interest over the Network or any part of it;
- 10.3.10 comply with the requirements and obligations under the Community Request Protocol, the Disaster Recovery and Business Continuity Plan, the State Aid Method Statement and the Sustainability Requirements;
- 10.3.11 meet the Authorities' Requirement; and

- 10.3.12 otherwise deliver the Wholesale Broadband Provision in accordance with the terms of this Agreement.

11. ENVIRONMENTAL MATTERS

11.1 Carbon Dioxide Emissions

The Contractor shall be responsible for all liabilities and administration in respect of any carbon trading scheme or carbon-related taxes (in each case in force from time to time) which arise directly as a result of the Contractor's obligations under this Agreement.

11.2 Sustainability Requirements

The Contractor shall comply with the requirements of Schedule 25 (Sustainability Requirements).

11.3 Compliance with the CDM Regulations in respect of the Implementation Works and the Wholesale Broadband Provision

11.3.1 In this clause 11.3 (Compliance with the CDM Regulations), the CDM co-ordinator, construction phase plan, contractor, designer and principal contractor have the same meanings as in the Construction (Design and Management) Regulations 2007 (the "**CDM Regulations**").

11.3.2 The Contractor shall in respect of the Implementation Works and the Wholesale Broadband Provision to which the CDM Regulations apply, to the extent such regulations apply:

11.3.2.1 observe, perform and discharge or procure the observance, performance and discharge of all the obligations, requirements and duties of the principal contractor and/or a contractor pursuant to the CDM Regulations and any code of practice for the time being approved by the Health and Safety Commission or equivalent body and issued in connection with the CDM Regulations (the "**ACOP**"); and

11.3.2.2 observe, perform and discharge or procure the observance, performance and discharge of all the obligations, requirements and duties of a designer pursuant to the CDM

Regulations and the ACOP in relation to any of the Implementation Works and the Wholesale Broadband Provision for which the Contractor has a design responsibility.

11.3.3 Not used.

11.3.4 Without prejudice to any of the foregoing, the Contractor shall:

11.3.4.1 provide the Authorities and the CDM co-ordinator with any construction phase plan for any of the Implementation Works and any relevant Wholesale Broadband Provision prior to commencing the Implementation Works and the relevant Wholesale Broadband Provision and with any updated, reviewed, revised or refined construction phase plan from time to time during the course of the Implementation Works and the delivery of the Wholesale Broadband Provision;

11.3.4.2 provide any construction phase plan pursuant to clause 11.3.4.1 in sufficient time to reasonably allow the Authorities and/or the CDM co-ordinator the opportunity to comment thereon prior to the commencement of the carrying out of the Implementation Works and the delivery of any of the relevant Wholesale Broadband Provision and prior to any change in the method of the Implementation Works and the delivery of that Wholesale Broadband Provision; and

11.3.4.3 act on any comments that the Authorities (or either Authority) and/or the CDM co-ordinator may have in respect of any construction phase plan at any stage,

provided that, no approval, perusal, inspection of any construction phase plan or any comments thereon by the Authorities (or either Authority) or the CDM co-ordinator shall wholly or partly relieve the Contractor of its obligations and liabilities under this clause 11.3 (Compliance with the CDM Regulations).

12. MAINTENANCE

- 12.1 During the Wholesale Broadband Provision Period the Contractor shall ensure on a continuing basis that at all times its maintenance procedures are sufficient to ensure that:
- 12.1.1 the relevant Wholesale Broadband Provision is continuously available in accordance with Schedule 2 (Authorities' Requirements), Schedule 3 (Method Statements) and Schedule 18 (Operational Plan); and
 - 12.1.2 it can maintain the Network so that it is maintained in accordance with Good Industry Practice.
- 12.2 Not later than forty (40) Business Days after the first Milestone Completion Date, and forty (40) Business Days prior to the anniversary of each Contract Year, the Contractor shall deliver to the Authorities a copy (or if the Contractor has a maintenance plan for its UK network, an extract of this plan which covers the whole of the Network) of its maintenance plan setting out the maintenance and updates which it intends to carry out on the Network (in relation to each Milestone in respect of which a Milestone Acceptance Certificate has been issued) in the following Contract Year (or, in the context of the first Milestone Completion Date, the remainder of the then current Contract Year) (the "**Planned Maintenance Plan**"), such plan to include all Assets set out in the Asset Register.
- 12.3 Not used.
- 12.4 Not used.
- 12.5 Not used.
- 12.6 The Contractor shall use its best endeavours to carry out the Planned Maintenance Programme within the relevant Contract Year provided that the Contractor may, acting reasonably, elect to accelerate, delay, defer or carry out differently any maintenance in the Planned Maintenance Programme only to the extent that any such acceleration, delay, deferral or carrying out differently of any such maintenance would not cause the Contractor to breach the terms of clause 12.1.
- 12.7 Not used.

13. NOT USED

14. REPRESENTATIVES AND COMMUNICATIONS

14.1 The Contractor's Representative

The Contractor shall appoint an individual who shall be an employee of the Contractor (and not of an Affiliate of the Contractor), the identity of whom will be subject to the prior written approval of the Authorities (such approval not to be unreasonably withheld or delayed), to act as the Contractor's representative in connection with the carrying out of the Implementation Works and delivery of the Wholesale Broadband Provision and generally in connection with this Agreement (the "**Contractor's Representative**").

14.2 Authority of Contractor's Representative

The Contractor's Representative shall have full authority to act on behalf of the Contractor for all purposes of this Agreement. Each Authority and the Authorities' Representative shall be entitled to treat any act of the Contractor's Representative in connection with this Agreement as being expressly authorised by the Contractor (save where the Contractor has notified the Authorities in writing that such authority has been revoked) and neither Authority shall be required to determine whether any express authority has in fact been given. For the avoidance of doubt, the Contractor's Representative shall not represent any single business unit of the Contractor but the business of the Contractor as whole.

14.3 Appointment of Successor

The Contractor may, by notice to the Authorities, change the Contractor's Representative. Where the Contractor wishes to do so it shall by written notice to the Authorities propose a substitute for approval, taking account of the need for liaison and continuity in respect of the carrying out of the Implementation Works and delivery of the Wholesale Broadband Provision. Such appointment shall be subject to the approval of the Authorities (not to be unreasonably withheld or delayed).

14.4 Management Groups and Meetings

The Authorities and the Contractor (through the representatives specified in Schedule 9 (Management Groups and Meetings)) shall attend the meetings and

comply with the requirements as set out in Schedule 9 (Management Groups and Meetings).

14.5 Key Personnel

The persons named in Schedule 11 (Key Personnel) shall be appointed by the Contractor as Key Personnel for the carrying out of the Implementation Works and performance of the Wholesale Broadband Provision and shall carry out the specific functions indicated next to their names in Schedule 11 (Key Personnel). Such Key Personnel shall devote sufficient time and attention to carrying out of the Implementation Works and/or delivery of the Wholesale Broadband Provision (as applicable) to ensure the proper carrying out of the Implementation Works and/or performance of the Wholesale Broadband Provision (as applicable) in accordance with this Agreement and shall have full authority to act on behalf of the Contractor in the carrying out of the Implementation Works and/or provision of the Wholesale Broadband Provision (as applicable).

14.6 Replacement of Key Personnel

To the extent reasonably practicable, the Contractor shall not remove or replace (except in the case of death, ill health, retirement or termination of employment) any of the said Key Personnel or any of their properly appointed replacements without the prior written consent of the Authorities, which consent shall not be unreasonably withheld or delayed.

14.7 Authorities' Representative

The Authorities shall appoint an individual who shall be an employee of one of the Authorities to be the Authorities' representative and as such to liaise with the Contractor's Representative (the "**Authorities' Representative**") and shall keep the Contractor informed of any change to the identity as soon as reasonably practicable after the appointment of the replacement employee as Authorities' Representative.

14.8 Authority of the Authorities' Representative

The Authorities' Representative shall have full authority to act on behalf of the Authorities for all purposes of this Agreement. The Contractor shall be entitled to treat any act of the Authorities' Representative in connection with this Agreement as being expressly authorised by the Authorities (save where the Authorities have notified the Contractor that such authority has been revoked) and the Contractor

shall not be required to determine whether any express authority has in fact been given.

14.9 Appointment of Successor

The Authorities may by notice to the Contractor change the Authorities' Representative. Where the Authorities wish to do so they shall by written notice to the Contractor propose a substitute for approval (such approval not to be unreasonably withheld or delayed), taking account of the need for liaison and continuity in respect of the carrying out of the Implementation Works and/or delivery of the Wholesale Broadband Provision.

14.10 Notices etc.

Subject to clause 45 (Notices), any notice, information, instructions or public communication given to:

14.10.1 the Contractor's Representative shall be given in writing and shall be deemed to have been given to the Contractor; and

14.10.2 the Authorities' Representative shall be given in writing and shall be deemed to have been given to each Authority.

15. UTILITIES

15.1 From the Commencement Date, the Contractor shall be responsible for:

15.1.1 the cost of Utilities in relation to the Implementation Works and Wholesale Broadband Provision including payments to, interaction with and performance of other obligations to any statutory undertaker; and

15.1.2 the connection and running costs of any telecommunications in relation to the Implementation Works and/or Wholesale Broadband Provision including payments to, interaction with and performance of obligations to any statutory undertaker.

16. PAYMENTS

16.1 The Parties shall comply with their respective obligations set out in Schedule 12 (Payment Mechanism).

17. INVOICING

- 17.1 The Parties shall comply with their respective obligations set out in Schedule 12 (Payment Mechanism).

18. MONITORING AND REVIEWS

- 18.1 During the Wholesale Broadband Provision Period, the Contractor shall monitor the performance of the Wholesale Broadband Provision in accordance with the Business Plan, the Method Statements, the Operational Plan, the Authorities' Requirements and Schedule 12 (Payment Mechanism).
- 18.2 The Contractor shall provide the Authorities with the Monitoring Reports in accordance with the requirements of Schedule 13 (Monitoring and Reporting).
- 18.3 Not used.
- 18.4 Without prejudice to the Authorities' rights under clause 28 (Termination on Contractor Default), in the event that any of the Monitoring Reports and/or management meetings demonstrate that the Contractor is failing to meet its obligations in respect of this Agreement, the Authorities may by notice to the Contractor (containing reasonable detail of the additional measures to be taken by the Authorities or by the Contractor (as the case may be) in monitoring the performance of the Contractor) increase the level of their monitoring of the Contractor, or (at the Authorities' option) of the Contractor's monitoring of its own performance of its obligations under this Agreement until such time as the Contractor shall have demonstrated to the reasonable satisfaction of the Authorities that it will perform (and is capable of performing) its obligations under this Agreement.

19. INFORMATION IN RESPECT OF CHANGE IN LAW

- 19.1 The Contractor shall take all steps necessary to ensure that the Implementation Works and the Wholesale Broadband Provision are delivered and performed in accordance with the terms of this Agreement following a Change in Law.
- 19.2 For the avoidance of doubt, subject to the provisions of clause 19.3 (Specific Change in Law) below, no compensation shall be payable by either Authority to the Contractor in respect of any Change in Law.

19.3 Specific Change in Law

If a Specific Change in Law occurs or is shortly to occur, then either Party may write to the other to express an opinion on its likely effects, giving details of its opinion of:

- 19.3.1 any necessary change to the Implementation Works and the Wholesale Broadband Provision;
- 19.3.2 whether any changes are required to the terms of this Agreement to deal with the Specific Change in Law;
- 19.3.3 whether relief from compliance with obligations is required;
- 19.3.4 any loss of or increase in revenue that will result from the relevant Specific Change in Law;
- 19.3.5 any Estimated Change in Costs that directly result from the Specific Change in Law; and
- 19.3.6 any Capital Expenditure that is required or no longer required as a result of a Specific Change in Law taking effect during the Initial Term,

in each case giving in full detail the procedure for implementing the change in the Implementation Works and/or the Wholesale Broadband Provision. Responsibility for the costs of implementation (and any resulting variation to any Milestone Completion Payments) shall be dealt with in accordance with clauses 19.4 (Parties to Discuss) to 19.5 (Change Agreed in respect of additional Capital Expenditure) (inclusive).

19.4 Parties to Discuss

As soon as practicable after receipt of any notice from either Party under clause 19.3 (Specific Change in Law), the Parties shall discuss and agree the issues referred to in clause 19.3 (Specific Change in Law) and any ways in which the Contractor can mitigate the effect of the Specific Change in Law, including:

- 19.4.1 providing evidence that the Contractor has used reasonable endeavours (including (where practicable) the use of competitive quotes) to oblige its Sub-Contractors to minimise any increase in costs and maximise any reduction in costs;

- 19.4.2 demonstrating how any Capital Expenditure to be incurred or avoided is being measured in a cost effective manner, including showing that when such expenditure is incurred or would have been incurred, any foreseeable Changes in Law at that time have been taken into account by the Contractor; and
 - 19.4.3 not used;
 - 19.4.4 demonstrating that any expenditure that has been avoided, which was anticipated to be incurred to replace or maintain assets that have been affected by the Specific Change in Law concerned, has been taken into account in the amount which in its opinion has resulted or is required under clauses 19.3.5 and/or 19.3.6 (above).
- 19.5 Change Agreed in respect of additional Capital Expenditure
- 19.5.1 If the Parties agree or it is determined under clause 46 (Dispute Resolution Procedure) that the Contractor is required to incur additional Capital Expenditure due to a Specific Change in Law, then the Contractor shall use its reasonable endeavours to bear such Capital Expenditure.
 - 19.5.2 If the Contractor has used reasonable endeavours to bear such Capital Expenditure referred to in clause 19.5.1, but has been unable to do so within sixty (60) Business Days of the date that the agreement or determination in clause 19.4 (Parties to Discuss) occurred, then the Authorities shall pay to the Contractor an amount equal to that Capital Expenditure on or before the date falling sixty (60) Business Days after the Capital Expenditure has been incurred.
- 19.6 Any compensation payable under clause 19.3 (Specific Change in Law) by means of an adjustment to or reduction in the Milestone Completion Payments shall be determined in accordance with clause 50 (Financial Adjustments).
- 19.7 If the Parties agree or it is determined under clause 46 (Dispute Resolution Procedure) that changes are required to the terms of this Agreement to deal with a Specific Change in Law, the Parties shall enter into any documents required to amend this Agreement which are necessary to give effect to the Specific Change in Law.

20. CHANGES

The provisions of Schedule 15 (Change Protocol) shall have effect in respect of Changes except as otherwise expressly provided in this Agreement.

21. INDEMNITIES

21.1.1 Withheld

22. EMPLOYEE MATTERS

Commencement

22.1 The Authorities and the Contractor agree that neither TUPE nor the Directive shall apply on the commencement of the delivery of the Project by the Contractor and its sub-contractors and that there are therefore no individuals presently employed by either Authority or by any Authority Related Party whose contracts of employment will transfer to the Contractor or any sub-contractor (whether in accordance with TUPE or otherwise) whether on commencement of or by virtue of the Project or otherwise.

22.2 If, following the Commencement Date it is alleged, agreed and/or determined that there are persons employed immediately prior to the Commencement Date by either Authority or any Authority Related Party whose contracts of employment have effect after the Commencement Date as if originally made between those persons and the Contractor or the relevant Sub-Contractor as a result of the operation of TUPE (the "Transferring Employees") then:

22.2.1 upon either of the Authorities or the Contractor becoming aware of that finding or allegation, it shall inform the other Party as soon as reasonably practicable of it;

22.2.2 the Authority to which that finding or allegation relates shall, as soon as reasonably practicable after, and in any event within five (5) Business Days of, becoming aware of any Transferring Employees have the opportunity to offer a position or procure the offering of a position to some or all of the Transferring Employees in its absolute discretion;

22.2.3 the Contractor shall not dismiss any person to whom a position has been offered (and shall procure that no person to whom a position has been

offered) in accordance with clause 22.2.2 shall be dismissed in each case until the period for acceptance of the offer has expired and the person in question has not accepted the offer; and

- 22.2.4 subject to clauses 22.2.2 to 22.2.3 inclusive, the Contractor or any Sub-Contractor shall be entitled to dismiss any or all of the Transferring Employees by reason of redundancy.

22.3 .Withheld

22.4 .

Remuneration and Benefits

- 22.5 The Contractor shall be responsible or shall procure that any relevant sub-contractor is responsible for all remuneration, benefits, entitlements and outgoings in respect of all Contractor Personnel, including without limitation all wages, holiday pay, bonuses, commission, payment of PAYE, national insurance contributions, pension contributions and otherwise, from and including the Commencement Date.

Contractor Indemnities

22.6 Withheld

22.6.1 Withheld

22.6.2 Withheld

22.6.3 Withheld

22.7 Not used.

22.8 Not used.

The Government's Statement of Principles of Good Employment Practice

- 22.9 Insofar as the Contractor is obliged to do so, it shall comply so far as is reasonably practicable with the Contractor's obligations under the Government's Statement of Principles of Good Employment Practice in respect of the recruitment and terms and conditions of employment of New Employees.

Expiry of the Term or earlier termination of this Agreement

- 22.10 The Authorities and the Contractor agree that neither TUPE nor the Directive shall apply on the expiry of the Term or the earlier termination of the Agreement and that therefore there will be no person employed by the Contractor or any of its sub-contractors at or immediately before the Expiry Date whose contract of employment will transfer to any other person (whether in accordance with TUPE or otherwise) as a result of the expiry of the Term or the earlier termination of this Agreement.
- 22.11 If it is alleged or agreed that the employment of any employee of the Contractor or any sub-contractor ("**Return Transferring Employee**") has transferred to either Authority and/or any other person ("**Alleged New Employer**") as a result of the expiry of the Term or the earlier termination of this Agreement and whether pursuant to TUPE or otherwise:
- 22.11.1 each Authority shall notify the Contractor, or shall take reasonable steps to procure that the Alleged New Employer notifies the Contractor, of that finding or allegation as soon as reasonably practicable after becoming aware of it;
 - 22.11.2 the Contractor or sub-contractor to which that finding or allegation relates shall, as soon as reasonably practicable after, and in any event within fifteen (15) Business Days of, becoming aware of any Return Transferring Employees have the opportunity to offer a position or procure the offering of a position to some or all of the Return Transferring Employees in its absolute discretion, such offer of employment shall be open for a period of five (5) Business Days (the "**Offer Return Period**");
 - 22.11.3 the Alleged New Employer shall not dismiss any Return Transferring Employee to whom a position has been offered (and shall procure that no Return Transferring Employee to whom a position has been offered in accordance with clause 22.11.2 shall be dismissed in each case until the Offer Return Period of the offer has expired and the person in question has not accepted the offer; and
 - 22.11.4 subject to clauses 22.11.2 to 22.11.3 inclusive, the Alleged New Employer shall be entitled to dismiss any or all of the Return Transferring Employees by reason of redundancy.
 - 22.11.5 Withheld
- 22.12 Withheld

Sub-contractors

22.13 Not used.

22.14 Not used.

22.15 Not used.

Third Party Rights

22.16 Notwithstanding anything to the contrary provided in any other clause of this Agreement, it is agreed that any Alleged New Employer has the benefit of and may enforce the terms of any of the indemnities given by the Contractor to each of the Authorities in this clause 22 (Employee Matters) subject to and in accordance with the provisions of the Contracts (Rights of Third Parties) Act 1999.

Assignment of Contractor Indemnities

22.17 Withheld

23. PENSIONS

23.1 Withheld

24. EMPLOYEES – GENERAL

Contractor's Employees

24.1 The Contractor shall during the period of this Agreement be entirely responsible for the employment and conditions of service of all employees employed by the Contractor and engaged in the carrying out of the Implementation Works and/or the delivery of the Wholesale Broadband Provision and shall take all reasonable to procure that all sub-contractors are likewise responsible for their employees employed by the sub-contractor.

Permission to work in the United Kingdom

24.2 The Contractor shall:

24.2.1 procure that all employees engaged in the carrying out of the Implementation Works and/or the delivery of the Wholesale Broadband Provision from time to time (whether employed by the Contractor or any sub-contractor) have the

right to work in the United Kingdom and to work in the carrying out of the Implementation Works and/or the delivery of the Wholesale Broadband Provision for their employer;

24.2.2 not used; and

24.2.3 not used.

Criminal Records

24.3 Before any person is engaged as a Contact Employee in respect of the Project the Contractor shall ensure:

24.3.1 appropriate checks are carried out in accordance with the Law in relation to Convictions (including conducting a Criminal Records Bureau check or check with the Independent Safeguarding Authority or other organisation with equivalent statutory responsibilities where to conduct such a check would be consistent with the Law; and

24.3.2 such questioning and investigation is conducted to the standard required by the Law where the above required checks reveal a Conviction;

24.3.3 not used; and

24.3.4 not used.

24.4 The Contractor shall procure that (unless otherwise agreed in writing between the Parties) no person who discloses any Convictions which means it would be inappropriate (having regard to the relevant legal guidance and the Law) for them to have access to children, vulnerable people, or other members of the public to whom the Authorities owe a special duty of care) shall be permitted to become a Contact Employee.

24.5 Clause 24.4 shall also apply to any Contact Employee who, subsequent to his/her assignment to the Project, receives a Conviction or whose previous Convictions become known to Contractor (whether an employee of Contractor or any sub-contractor) which means it would be inappropriate (having regard to the relevant legal guidance and the Law) for them to have access to children, vulnerable people or other members of the public to whom the Authorities owe a special duty of care.

- 24.6 Clauses 24.3 to 24.5 shall not apply to those individuals who shall be required by the Contractor or any sub-contractor to provide emergency reactive services in respect of the Project. In the case of such individuals, the Contractor shall or shall procure that any sub-contractor shall ensure that such individuals are accompanied at all times whilst engaged on the Project by a member of the Contractor or any sub-contractor's staff who has been properly employed or engaged in accordance with the provisions of clauses 24.2 to 24.5 (inclusive).

Conduct of Staff

- 24.7 Whilst engaged in the carrying out of the Project the Contractor shall take all reasonable steps to procure that any sub-contractor comply with the Contractor's policies relating to the conduct of staff and security arrangements. The Authorities (or either Authority) (acting reasonably) may:

24.7.1 not used;

24.7.2 where the Authorities (or either Authority) have reasonable grounds for considering that the presence or conduct of an employee at any location relevant to the Project is undesirable, require the exclusion of the relevant employee from the relevant location(s) or from the Project in their entirety.

Security

- 24.8 The Contractor shall provide to all employees engaged in the carrying out of the Project the Contractor's standard form of identification and shall require such employees to wear and keep visible such identification at all times whilst engaged in the Project.

Resources and Training

- 24.9 The Contractor shall take reasonable steps to procure that:

24.9.1 there shall be at all times a sufficient number of staff (including all relevant grades of supervisory staff) engaged in the carrying out of the Project with the requisite level of skill and experience in their several professions, trades and callings. This obligation shall include ensuring that there are sufficient staff to cover periods of holiday, sickness, other absences and anticipated and actual peaks in demand for the Project; and

- 24.9.2 all staff receive such training and supervision as is necessary to ensure the proper and safe carrying out of the Project under this Agreement.

Personnel Policies and Procedures

- 24.10 The Contractor shall procure that there are set up and maintained by it and by all Sub-Contractors involved in the carrying out of the Project, appropriate personnel policies and procedures covering all relevant matters (including discipline, grievance, equal opportunities, the avoidance of harassment and health and safety). The Contractor shall procure that the terms and implementation of such policies and procedures comply with Law and Good Industry Practice and that such policies are reviewed regularly to ensure compliance with Law and Good Industry Practice and that they are published in written form.

Equal Opportunities

- 24.11 The Contractor shall take all reasonable steps in relation to the carrying out of the Project comply with and maintain policies to ensure that the Contractor and all Sub-Contractors comply with their and the Authorities' statutory obligations under the equal opportunities legislation from time to time in force, including but not limited to the following statutes and statutory instruments as amended from time to time (together the "**Acts**"), and all relevant Guidance:

24.11.1 the Equality Act 2010;

24.11.2 the Part-Time Workers (Prevention of Less Favourable Treatment Regulations) 2000; and

24.11.3 the Fixed-Term Employees (Prevention of Less Favourable Treatment Regulations) 2002,

such obligations to include, for the avoidance of doubt, assisting each Authority with compliance with their (and, if applicable under the Acts, the Contractor's and all sub-contractors') duties under Part 11 of the Equality Act 2010 and assisting each Authority with compliance with any equality scheme in respect of all "Protected Characteristics" (as defined in the Equality Act 2010) as may reasonably and expressly be directed by the Authorities (or either Authority) and, accordingly, the Contractor shall not and shall where reasonable use its reasonable endeavours to procure that all employees and agents of the Contractor and its Sub-Contractors do not discriminate contrary to the Acts (whether directly or indirectly or whether by

victimisation or harassment or otherwise) against any person in relation to any of the Protected Characteristics, part-time or fixed-term status.

24.12 The Contractor shall satisfy the Authorities that (save to the extent permitted by Law):

24.12.1 its working practices do not involve the treatment of one group or individual less favourably than any others because of any Protected Characteristic; and

24.12.2 any decision relating to the recruitment or employment of any person in relation to the delivery of the Project shall not be related to any Protected Characteristic.

24.13 The Contractor shall ensure that the policies referred to in clause 24.11 are set out or referred to or otherwise made available:

24.13.1 in instructions to those concerned with recruitment, training and promotion;

24.13.2 in documents available to employees, recognised trade unions or other representative groups of employees;

24.13.3 in recruitment advertisements or other literature; and

24.13.4 in instructions to those concerned with the delivery of the Project.

24.14 Not used.

24.15 If in relation to the Project:

24.15.1 a finding of unlawful discrimination is made by any court or tribunal against the Contractor or any Sub-contractor due to failure to comply by Contractor or any Sub-contractor with clause 24.11 or any other relevant legal obligation; or

24.15.2 there is an adverse finding against the Contractor or any Sub-Contractor in any formal investigation pursuant to the exercise of any statutory powers or duties by the Equality and Human Rights Commission (or any equivalent bodies which replace (or any body which replaces) that Commission,

the Contractor shall:

24.15.2.1 inform the Authorities of this finding promptly upon becoming aware of it and (if any unlawful discrimination is any way connected with this Agreement or the carrying out of the Implementation Works and/or the delivery of the Wholesale Broadband Provision) shall (but, in the event of an appeal, only after the final and unsuccessful outcome of the appellate process) take appropriate steps to the reasonable satisfaction of the Authorities to prevent repetition of the unlawful discrimination; and

24.15.2.2 Withheld

24.16 The Contractor shall, and shall procure that any relevant sub-contractor shall, where any investigation is undertaken by any body in respect of equal opportunities ("**Investigation Body**") and/or proceedings are instituted in connection with any matter which is or is alleged to be contrary to any legislation or Guidance described in clause 24.11 without prejudice to the Contractor's or sub-contractor's right to object to, appeal against or seek a review of any order, direction, request or requirement of the Investigation Body, Court or Tribunal:

24.16.1 provide any information requested by the Investigation Body or relevant Court or Tribunal or any information reasonably requested by each Authority in the reasonable time allotted;

24.16.2 attend any meetings on reasonable notice as required by the Investigation Body or relevant Court and Tribunal or as reasonably required by each Authority and take reasonable steps to require any of its employees or the employees of any sub-contractor to attend;

24.16.3 promptly allow access to and the investigation of any documents or data deemed by the Investigation Body or relevant Court or Tribunal to be relevant or as reasonably deemed relevant by each Authority;

24.16.4 take all reasonable steps to require any of its employees or the employees of any sub-contractor to appear as a witness in any investigation or proceedings; and

24.16.5 co-operate as far as reasonably practicable as required by the relevant Investigation Body or Court or Tribunal or each Authority.

24.17 The Contractor shall promptly provide the Authorities with full written details of any steps taken under clauses 24.11 to 24.13 (inclusive).

24.18 The Contractor shall provide such information as the Authorities may reasonably request for the purpose of assessing the Contractor's and its sub-contractors' compliance with its obligations pursuant to clauses 24.11 to 24.13 (inclusive), headed Equal Opportunities including, if requested, examples of any instructions, recruitment advertisements or other literature and details of the monitoring of applicants and employees.

24.19 Not used.

25. **INSURANCE POLICIES**

25.1 The Contractor shall without limiting the Contractor's or each Authority's obligations and responsibilities under this Agreement, at all times take out and maintain or procure the maintenance of insurance with reputable insurers, that would be maintained by a prudent business undertaking similar activities and with a similar risk profile to the Project and the Contractor, including but not limited to:

25.1.1 employers liability to comply with all statutory requirements;

25.1.2 motor vehicle insurance to comply with all statutory requirements;

25.1.3 third party liability insurance;

25.1.4 not used;

25.1.5 in respect of death or injury to third parties and physical damage (including property of each Authority) for not less than ten million pounds sterling (£10,000,000.00) in respect of any one claim but aggregated in any one annual period of insurance in respect of products liability and pollution and contamination;

25.1.6 professional indemnity insurance for not less than five million pounds sterling (£5,000,000.00) for any one claim and in the aggregate in any one annual period of insurance;

25.1.7 any other insurances required by Law;

together the "**Required Insurances**".

- 25.2 Not used.
- 25.3 The Contractor shall provide to the Authorities copies on request of all insurance certificates referred to in clause 25.1.
- 25.4 The Contractor shall not take any action or fail to take any reasonable action or (in so far as it is reasonable and within its power) permit or allow others to take or fail to take any action, as a result of which the insurance or indemnity arrangement may be rendered void, voidable, unenforceable, or be suspended or impaired in whole or in part.
- 25.5 Neither failure to comply nor full compliance with the insurance provisions of this Agreement shall limit or relieve the Contractor of its liabilities and obligations under this Agreement.
- 25.6 Not used.
- 25.7 All insurance proceeds received under any of the Required Insurances shall be applied in full towards the loss in respect of which such proceeds were received.
- 25.8 Not used.
- 25.9 Notwithstanding the obligation imposed upon the Contractor pursuant to clause 25.1 to maintain or procure the maintenance of the Required Insurances with reputable insurers, the Contractor may maintain or procure the maintenance of insurance relating to any Required Insurance Risk (or otherwise make arrangements in respect of liabilities which may arise from the occurrence of a Required Insurance Risk) through an Alternative Insurance Structure.
- 25.10 Where a Required Insurance Risk occurs to which an Alternative Insurance Structure relates, the Contractor shall be deemed to be:
- 25.10.1 reimbursed under such Alternative Insurance Structure in respect of any liability of the Contractor arising as a result of the occurrence of such Required Insurance Risk; and
- 25.10.2 liable for any relevant excesses and deductibles to the extent applicable, to the same extent as if the Contractor had complied with clause 25.1.

26. **TERMINATION FOR AUTHORITIES DEFAULT**

26.1 If the Authorities jointly fail to make a payment equivalent to a Milestone Completion Payment that is due and payable (and is not the subject of a Dispute) to the Contractor under Schedule 12 (Payment Mechanism) within thirty (30) days of receipt of the Contractor's invoice then the Contractor shall serve a formal written notice on the Authorities (an "**Authorities Default Termination Notice**") which shall specify:

- 26.1.1 that it is an Authorities Default Termination Notice served under clause 26 (Termination for Authorities Default) of this Agreement;
- 26.1.2 the amount which, at the date of the notice, is due and payable and not the subject of a Dispute;
- 26.1.3 the invoices to which the amount referred to at clause 26.1.2 above relates;
- 26.1.4 that payment of the amount referred to at clause 26.1.2 above is required to be paid to the Contractor within sixty (60) Business Days of the date of service of the Authorities Default Termination Notice; and
- 26.1.5 the actual date on which this Agreement shall terminate, which shall be a date falling no earlier than sixty (60) Business Days from the date of service of the Authorities Default Termination Notice (the "**Proposed Termination Date**").

26.2 If:

- 26.2.1 The Authorities do not pay the amounts specified in the Authorities Default Termination Notice by the date and time specified in the Authorities Default Termination Notice pursuant to clause 26.1.4, this Agreement shall terminate on the Proposed Termination Date and clause 27 (Compensation for Authorities Default) and clause 36 (Consequences of Termination) shall apply; or
- 26.2.2 The Authorities pay the amounts specified in the Authorities Default Termination Notice (either together or separately) before the Proposed Termination Date then:

26.2.2.1 the Authorities Default Termination Notice shall be deemed withdrawn by the Contractor; and

26.2.2.2 this Agreement shall continue in full force and effect.

26.3 Not used.

27. COMPENSATION FOR AUTHORITIES DEFAULT

27.1 Withheld

27A. NOT USED

27B. NOT USED

28. TERMINATION ON CONTRACTOR DEFAULT

28.1 Right to Terminate on Contractor Default

28.1.1 If a Contractor Default has occurred and the Authorities wish to terminate this Agreement, they must jointly serve a termination notice on the Contractor (a **"Contractor Default Termination Notice"**).

28.1.2 The Contractor Default Termination Notice must specify:

28.1.2.1 the type and nature of Contractor Default that has occurred giving reasonable details of the same; and

28.1.2.2 that in the case of any Contractor Default falling within limbs (a), (h), (k), (n), (p), (q) or (r) of the definition of Contractor Default this Agreement will terminate on the day falling forty (40) Business Days after the date the Contractor receives the Contractor Default Termination Notice, unless:

- (i) in the case of a breach under limb (a) of the definition of Contractor Default, the Contractor puts forward an acceptable rectification programme within thirty (30) Business Days after the date that Contractor receives the Contractor Default Termination Notice which is acceptable to the Authorities, such acceptance not to be unreasonably withheld or delayed (and implements such programme in accordance with its terms and

rectifies the Contractor Default in accordance with the programme); or

- (ii) in the case of any Contractor Default falling within limb (k) of the definition of Contractor Default the Contractor rectifies the Contractor Default within forty (40) Business Days after the date that the Contractor receives the Contractor Default Termination Notice;
- (iii) in the case of a Contractor Default falling within limbs (h), (n) or (q) of the definition of Contractor Default the Contractor rectifies the Contractor Default within ten (10) Business Days after the date that the Contractor receives the Contractor Default Termination Notice;
- (iv) in the case of a Contractor Default falling within limbs (p) or (r) of the definition of Contractor Default the Contractor rectifies the Contractor Default within twenty (20) Business Days after the date the Contractor receives the Contractor Default Termination Notice;

28.1.2.3 that in the case of any other Contractor Default (not being limbs (a), (h), (k), (n), (p), (q) or (r)), this Agreement will terminate on the date falling thirty (30) Business Days after the date that the Contractor receives the Contractor Default Termination Notice.

28.1.3 If the Contractor either rectifies the Contractor Default within the time period specified in the Contractor Default Termination Notice or implements the rectification programme, if applicable, in accordance with its terms, the Contractor Default Termination Notice will be deemed to be revoked and this Agreement will continue.

28.1.4 If:

28.1.4.1 in the case of a Contractor Default within limb (a) of the definition of Contractor Default, no acceptable rectification programme has been put forward pursuant to clause 28.1.2.2; or

28.1.4.2 in the case of a Contractor Default falling within limbs (h), (k), (n), (p), (q) or (r) of the definition of Contractor Default, the Contractor fails to rectify the Contractor Default within the time period specified in the Contractor Default Termination Notice,

the Authorities may jointly give notice stating that this Agreement will terminate on the date falling ten (10) Business Days after the date of receipt of such notice.

28.1.5 If the Contractor fails to implement any rectification programme in accordance with its terms, this Agreement will terminate on the date falling ten (10) Business Days after the date of notification by the Authorities to the Contractor of such failure to implement the rectification programme in accordance with its terms.

28.1.6 If the Contractor disputes the service of or grounds concerning the Contractor Default Termination Notice or Contractor Default, the matter shall be treated as a Dispute and shall be resolved in accordance with clause 46 (Dispute Resolution Procedure) and the Authorities shall not terminate this Agreement until any such dispute has been determined by the adjudicator under that procedure.

28.2 Persistent Breach

28.2.1 If a particular breach has continued for more than ten (10) Business Days or occurred three (3) or more times in any six (6) month period then the Authorities may jointly serve a notice (a "**Warning Notice**") on the Contractor:

28.2.1.1 specifying that it is a formal warning notice;

28.2.1.2 giving reasonable details of the breach; and

28.2.1.3 stating that such breach is a breach which, if it recurs frequently or continues, may result in a termination of this Agreement.

28.2.2 If, following service of a Warning Notice, the breach specified has continued beyond twenty (20) Business Days or recurred three (3) or more times within

the six (6) month period after the date of service of the Warning Notice, then the Authorities may jointly serve another notice ("**Final Warning Notice**") on the Contractor:

28.2.2.1 specifying that it is a Final Warning Notice;

28.2.2.2 stating that the breach specified has been the subject of a Warning Notice served, in the case of a recurring breach, within the six (6) month period prior to the date of service of the Final Warning Notice; and

28.2.2.3 stating that if such breach continues for more than ten (10) Business Days or recurs in three (3) or more Months within the six (6) month period after the date of service of the Final Warning Notice, this Agreement may be terminated.

28.2.3 A Warning Notice may not be served in respect of any breach which has previously been counted in the making of a separate Warning Notice.

29. **COMPENSATION ON TERMINATION FOR CONTRACTOR DEFAULT AND PERSISTENT BREACH**

29.1 Withheld

30. **TERMINATION ON FORCE MAJEURE**

30.1 Neither the Contractor nor the Authorities shall be entitled to bring a claim for a breach of obligations under this Agreement by the other Parties nor incur any liability to the other Parties for any Losses incurred by those other Parties to the extent that a Force Majeure Event occurs and it is prevented from carrying out its obligations by the occurrence of that Force Majeure Event. For the avoidance of doubt, the Authorities shall not be entitled to terminate this Agreement for a Contractor Default if such Contractor Default arises from a Force Majeure Event (but without prejudice to clause 30.5 or 30.6).

30.2 Not used.

30.3 On the occurrence of a Force Majeure Event, the affected Party (or Parties, as the case may be) shall notify the other Parties as soon as practicable. The notification shall include details of the Force Majeure Event, including evidence of its effect on

the obligations of the affected Party (or Parties) and any action proposed to mitigate its effect.

- 30.4 As soon as practicable following such notification, the Parties shall consult with each other in good faith and use all reasonable endeavours to agree appropriate terms to mitigate the effects of the Force Majeure Event and facilitate the continued performance of this Agreement.
- 30.5 If no such terms are agreed on or before the date falling one hundred and twenty days (120) Business Days after the date of commencement of the Force Majeure Event and such Force Majeure Event is continuing or its consequence remains such that the affected Party is (or Parties are) unable to comply with its (or their) obligations under this Agreement for a period of more than one hundred and twenty (120) Business Days, then, subject to clause 30.6 any Party may terminate this Agreement by giving twenty (20) Business Days written notice to the other.
- 30.6 If this Agreement is terminated under clause 30.5 then compensation shall be payable in accordance with clause 31 (Compensation on Termination for Force Majeure).
- 30.7 The Parties shall at all times following the occurrence of a Force Majeure Event use all reasonable endeavours to prevent and mitigate the effects of any delay and the Parties shall at all times during which a Force Majeure Event is subsisting take all steps to overcome or minimise the consequences of the Force Majeure Event. Nothing in this provision shall prevent the Contractor or the Authorities from completing any obligations that are not affected by the Force Majeure Event.
- 30.8 The affected Party (or Parties) shall notify the other Party (or Parties) as soon as practicable after the Force Majeure Event ceases or no longer causes the affected Party (as applicable) to be unable to comply with its (or their, as applicable) obligations under this Agreement. Following such notification this Agreement shall continue to be performed on the terms existing immediately prior to the occurrence of the Force Majeure Event unless otherwise agreed by the Parties in writing.

31. COMPENSATION ON TERMINATION FOR FORCE MAJEURE

- 31.1 Withheld

32. TERMINATION ON CORRUPT GIFTS AND FRAUD

- 32.1 If the Contractor or any sub-contractor (or anyone employed by or acting on behalf of any of them) or any of its or their agents or shareholders commits any Prohibited Act, the Authorities shall be entitled to act in accordance with this clause 32 (Termination on Corrupt Gifts and Fraud).
- 32.2 If a Prohibited Act is committed by the Contractor or by an employee of the Contractor not acting independently of the Contractor then the Authorities may terminate this Agreement by jointly giving notice to the Contractor.
- 32.3 If the Prohibited Act is committed by an employee of the Contractor acting independently of the Contractor then the Authorities may jointly give notice to the Contractor of termination and this Agreement shall terminate, unless within fifteen (15) Business Days of receipt of such notice the Contractor terminates that employee's employment and (if necessary) procures the performance of such part of the Implementation Works and/or Wholesale Broadband Provision by another person.
- 32.4 If the Prohibited Act is committed by a sub-contractor or by an employee of that sub-contractor not acting independently of that sub-contractor, then the Authorities may jointly give notice to the Contractor of termination and this Agreement will terminate, unless within twenty (20) Business Days of receipt of such notice the relevant employee is disengaged from or the relevant sub-contractor is disengaged from the Project by the Contractor and the Contractor procures the performance of such part of the Implementation Works and/or Wholesale Broadband Provision by another person.
- 32.5 If the Prohibited Act is committed by an employee of a sub-contractor acting independently of that sub-contractor, then the Authorities may jointly give a Corrupt Gifts Termination Notice and this Agreement will terminate, unless within fifteen (15) Business Days of receipt of such notice the sub-contractor terminates the employee's employment and (if necessary) procures the performance of such part of the Implementation Works and/or Wholesale Broadband Provision by another person.
- 32.6 Any notice issued under this clause 32 (Termination on Corrupt Gifts and Fraud) shall specify:

- 32.6.1 the nature of the Prohibited Act;
- 32.6.2 the identity of the Party whom the Authorities believe has committed the Prohibited Act; and
- 32.6.3 the date on which this Agreement will terminate, in accordance with the applicable provision of this clause 32 (Termination on Corrupt Gifts and Fraud).

33. COMPENSATION ON TERMINATION FOR CORRUPT GIFTS AND FRAUD

- 33.1 Withheld

34. CONSEQUENCES OF TERMINATION

Withheld

35. EXPIRY

- 35.1 This Agreement shall terminate automatically on the expiry of the Term unless it shall have been terminated earlier in accordance with the provisions of this Agreement. The Contractor shall not be entitled to any compensation for termination of this Agreement on expiry of the Term.

36. HEALTH AND SAFETY INTERVENTION

- 36.1 If the Authorities (or either Authority) reasonably believes that it needs to take action in connection with this Agreement during the period of the Implementation Works:

- 36.1.1 because a serious risk exists to the health or safety of persons or property or to the environment which would amount to an infringement of any Law relating to health and safety;

- 36.1.2 not used; and/or

- 36.1.3 not used,

then the Authorities (or either Authority) shall be entitled to take action in accordance with the provisions of this clause 36 (Health and Safety Intervention).

- 36.2 If clause 36.1 applies and the Authorities (or either Authority) wish to take action, the Authorities (or either Authority) shall contact the Contractor's Representative to

notify the Contractor of the serious risk identified under clause 36.1 and shall notify (by way of an "**Action Notice**") the Contractor of the following:

- 36.2.1 the action it wishes to take, such action being limited to that required to ensure compliance with the Law relating to health and safety;
- 36.2.2 the reason for such action;
- 36.2.3 the date it wishes to commence such action, which shall provide the Contractor with a period of time to rectify the problem appropriate to the level of risk identified;
- 36.2.4 the time period which it believes will be necessary for such action; and
- 36.2.5 the effect on the Contractor and its obligations to provide the Implementation Works and/or Wholesale Broadband Provision during the period such action is being taken,

provided always that where the Contractor has remedied the problem to the reasonable satisfaction of the Authorities (or either Authority), prior to the date referred to in clause 36.2.3, the Action Notice shall be deemed to be withdrawn and therefore clause 36.3 shall not apply.

- 36.3 Following service of any Action Notice, the Authorities (or either Authority) may take such action as notified under clause 36.2 above and any consequential additional action as it reasonably believes to be necessary (together the "**Required Action**"):

- 36.3.1 at the Contractor's cost if such action results from a breach of this Agreement; or
- 36.3.2 at the Authorities' cost if such action does not result from a breach of this Agreement and the Contractor shall give all reasonable assistance to the Authorities (or either Authority) while they are taking such Required Action.

- 36.4 The taking of the Required Action shall be subject to the following conditions:

- 36.4.1 the Authorities (or either Authority) shall employ suitably qualified contractors or personnel;
- 36.4.2 the Authorities (or either Authority) shall take reasonable steps to properly manage any contractors or works being carried out so as to procure that any

rights and/or remedies available to it or the Contractor against any contractors are preserved;

36.4.3 the Authorities (or either Authority) shall take all reasonable steps to mitigate the effects of the circumstances to the extent that such effects are giving rise to the Required Action including taking all reasonable steps to minimise the period of the Required Action; and

36.4.4 the Authorities (or either Authority) shall have due regard to all reasonable recommendations put forward by the Contractor.

36.5 The Authorities (or either Authority) shall be entitled to take the Required Action until the circumstances giving rise thereto have ceased to subsist or until such times as the Contractor is able to demonstrate to the Authorities' reasonable satisfaction that it has implemented sufficient measures to allow resumption of the carrying out of the Implementation Works and/or the performance of the Wholesale Broadband Provision without such circumstances persisting.

36.6 To the extent that the Required Action affects the ability of the Contractor to carry out any part of the Implementation Works and/or provide any part of the Wholesale Broadband Provision, then without prejudice to each Authority's rights under clauses 28 (Termination on Contractor Default) and 29 (Compensation on Termination for Contractor Default and Persistent Breach), the Contractor shall be relieved of its obligations to provide such part of the Implementation Works and/or Wholesale Broadband Provision provided that if the Authorities (or either Authority) take the Required Action shall be deemed to be a Delay Event.

37. EXTENSIONS OF TIME AND RELIEF EVENTS

37.1 Notice

If at any time the Contractor becomes aware that there will be or is likely to be a delay in the Implementation Works, such that a Planned Milestone Completion Date may not be achieved, or (following the Planned Milestone Completion Date) such that there is a delay in the achievement of Milestone Completion, the Contractor shall as soon as reasonably practicable and in any event within twenty (20) Business Days of becoming aware of the likely delay give notice to the Authorities to that effect specifying:

37.1.1 the reason for the delay or likely delay; and

- 37.1.2 an estimate of the likely effect of the delay on the Implementation Works including any Planned Milestone Completion Date or Milestone Completion Longstop Date (taking into account any measures that the Contractor proposes to adopt to mitigate the consequences of the delay in accordance with clause 37.3 (Duty to Mitigate)).

37.2 Supply of Information

Following service of a notice by the Contractor pursuant to clause 37.1 (Notice), the Contractor shall promptly supply to the Authorities any further information relating to the delay which:

- 37.2.1 is received by the Contractor; or
- 37.2.2 is reasonably requested by the Authorities (or either Authority).

37.3 Duty to Mitigate

The Contractor shall take all reasonable steps to mitigate the delay and consequences of any delay which is the subject of a notice pursuant to clause 37.1 (Notice).

37.4 Effect of a Delay Event

- 37.4.1 If, for any Milestone, on or before the Milestone Completion Date for that Milestone, as a direct result of the occurrence of a Delay Event the Contractor will:

- 37.4.1.1 be unable to commence the Implementation Works in accordance with the Method Statements and/or Deployment Plan; and/or
- 37.4.1.2 be unable to achieve Milestone Completion on or before a Planned Milestone Completion Date, or (following the Planned Milestone Completion Date but before a Milestone Completion Longstop Date will be delayed in achieving Milestone Completion,

then the Contractor is entitled to apply for an extension of time to the Planned Milestone Completion Date and/or (following a Planned

Milestone Completion Date) to the relevant Milestone Completion Longstop Date.

37.5 Procedure for Extension of Time

Subject to clause 37.7 (Late Provision of Notice of Information) below, to obtain an extension of time the Contractor must:

- 37.5.1 as soon as practicable, and in any event within fifteen (15) Business Days after it became aware that the Delay Event has caused or is likely to cause delay, give to the Authorities a notice of its claim for an extension of time to the relevant Planned Milestone Completion Date or (following the relevant Planned Milestone Completion Date) to the relevant Milestone Completion Longstop Date;
- 37.5.2 within ten (10) Business Days of receipt by the Authorities of the notice referred to in clause 37.5.1, give full details of the Delay Event and the estimated extension of time required; and
- 37.5.3 demonstrate to the reasonable satisfaction of each Authority that:
 - 37.5.3.1 the Delay Event was the direct cause of:
 - (i) any delay in the commencement of the Implementation Works; and/or
 - (ii) any delay in achievement of Milestone Completion on or before the relevant Planned Milestone Completion Date or, (following the relevant Planned Milestone Completion Date but before the relevant Milestone Completion Longstop Date), any delay in the achievement of Milestone Completion.

37.6 Giving of Extension of Time

In the event that the Contractor has complied with its obligations under clause 37.5 (Procedure for Extension of Time), then the relevant Planned Milestone Completion Date or, following the relevant Planned Milestone Completion Date, the relevant Milestone Completion Longstop Date shall be postponed by such time as shall be reasonable for such a Delay Event, taking into account the likely effect of the delay.

37.7 Late Provision of Notice or Information

In the event that information is provided after the dates referred to in clause 37.5 (Procedure for Extension of Time), then the Contractor shall not be entitled to any extension of time under this Agreement in respect of the period for which the relevant information is delayed.

37.8 Failure to Agree

If the Parties cannot agree the extent of any delay incurred, or if either Authority disagrees that a Delay Event has occurred (or as to its consequences), or that the Contractor is entitled to an extension of time under this clause 37 (Extensions of Time and Relief Events), the Parties shall resolve the matter in accordance with clause 46 (Dispute Resolution Procedure).

37.9 Relief Events

The Parties acknowledge that the provisions of Schedule 27 (Relief Events) apply to this Agreement.

38. **INTELLECTUAL PROPERTY**

38.1 This Agreement does not affect the ownership of any Intellectual Property Rights, and such rights shall remain the property of the party that contributes the same to the Project (or its licensors).

38.2 Withheld

38.3 Withheld

39. **CONTRACTOR'S RECORDS**

39.1 Records of Costs and Revenues

The Contractor shall at all times:

39.1.1 maintain a full record of particulars of Contractor Costs and Contractor Revenues in such form as may be reasonably required by the Authorities (or either Authority);

39.1.2 upon request by the Authorities (or either Authority):

- 39.1.2.1 provide a written summary of any of Contractor Costs and Contractor Revenues referred to in clause 39.1.1, including details of any funds held by the Contractor specifically to cover any such costs, in such form and detail as the Authorities (or either Authority) may reasonably require to enable the Authorities (or either Authority) to monitor the performance by the Contractor of its obligations under this Agreement;
- 39.1.2.2 provide to the Authorities (or either Authority) such information (financial or otherwise) in relation to the Implementation Works and/or the Wholesale Broadband Provision as may be reasonably necessary for the Authorities (or either Authority) to satisfy any accounting, or reporting requirements; and
- 39.1.2.3 provide such facilities as the Authorities (or either Authority), the Authorities' Representative or the Authority Related Party may reasonably require for such persons to visit any place where the records are held and examine the records maintained under this clause 39.1 (Records of Costs and Revenues).

39.2 Asset Register

The Contractor shall at all times:

- 39.2.1 maintain a full record of the Assets held by the Contractor in such form as may be reasonably required by the Authorities (or either Authority) (the **"Asset Register"**);
- 39.2.2 upon request by the Authorities (or either Authority):
 - 39.2.2.1 provide a written summary of all Assets held with a value of over one thousand pounds (£1,000.00) grouped into items of up to fifty thousand pounds (£50,000.00) containing a description of the Assets, the number of Assets in that Asset type, a unique identifier for each Asset, the location of each Asset and the value of the Assets; and

- 39.2.2.2 provide such facilities as the Authorities (or either Authority), the Authorities' Representative or the Authority Related Party may reasonably require for such persons to visit any place where the records are held and examine the records maintained under this clause 39.2 (Asset Register).

39.3 Maintenance of Records

The Contractor shall maintain or procure that the following are maintained:

- 39.3.1 a full record of all incidents relating to health, safety and security which occur during the term of this Agreement;
- 39.3.2 full records of all maintenance procedures carried out during the Term;
- 39.3.3 a full list of employees, their names, salaries, age, length of service;
- 39.3.4 health surveillance records;
- 39.3.5 personal accident records;
- 39.3.6 financial records;
- 39.3.7 vehicle accident records;
- 39.3.8 employee personal files;
- 39.3.9 any notices of any kind served on the Contractor by any Relevant Authorities;
- 39.3.10 all Deployment Plans, Operational Plans, Marketing Plans and Business Plans created in accordance with this Agreement;
- 39.3.11 minutes of meetings between the Contractor and either Authority;
- 39.3.12 emails between the Authorities (or either Authority) and the Contractor;
- 39.3.13 original data sets used to provide the Monitoring Reports and all reports in Schedule 13 (Monitoring and Reporting);
- 39.3.14 all press releases and marketing material related to the Project;
- 39.3.15 the following records required in respect of the Grant Agreement:

39.3.15.1 all records required to enable the Authorities to comply with their requirements under clauses 7 and 8 and Schedules 3, 4 and 5 of the Grant Agreement; and

39.3.16 any other records relating to this Agreement which the Contractor is obliged to maintain in order to comply with Law, Guidance and/or any other requirements set out in Schedule 2 (Authorities' Requirements),

and the Contractor shall procure that the items referred to in clauses 39.3.1 to 39.3.16 shall be made available on inspection subject to an order from a Court of England and Wales.

39.4 Auditor

If a report listed in clause 39.3 above or an audit is imposed on the Authorities (or either Authority) and/or this Agreement by any Regulatory Body at any time throughout the Term, the Contractor shall permit all records referred to in this clause 39 (Contractor's Records) to be examined and copied from time to time by the Authorities (or either Authority), any authorised representative of the Authorities (or either Authority) and/or the Authorities' Representative, the Authorities' (or either Authority's) auditor and any Authority Related Party.

39.5 Retention

Subject to clause 39.6, the records referred to in this clause 39 (Contractor's Records) shall be retained for a period of at least seven (7) years after this Agreement terminates.

39.6 The following records shall be maintained by the Contractor for the periods set out below (or the Term, if shorter and shall then be handed back to the Authorities (or either Authority)):

39.6.1 Not used; and

39.6.2 any other records which are required in accordance with the Law and/or guidance to be kept for a period other than that set out in clause 39.5 (Retention) shall be retained for the period required by the relevant Law.

39.7 Termination or Expiry

Upon expiry of this Agreement as a result of the effluxion of time or earlier termination in accordance with its terms, and in the event that the Authorities (or either Authority) wish to enter into another agreement for the carrying out of works and/or the provision of services the same as or similar to the Implementation Works and/or Wholesale Broadband Provision (as applicable), the Contractor shall provide the Authorities (or either Authority) for their own use, copies of any of the records set out in this clause 39 (Contractor's Records)

39.8 Confidentiality

All information referred to in this clause 38.1 is subject to the obligations set out in clause 40 (Confidentiality, Publicity and Branding).

40. **CONFIDENTIALITY, PUBLICITY AND BRANDING**

40.1 The Receiving Party shall keep and procure to be kept secret and confidential all Confidential Information belonging to the Disclosing Party disclosed or obtained as a result of the relationship of the Parties under the Project Documents and shall:

40.1.1 not use nor disclose the same save for the purposes of the proper performance of the Project Documents or with the prior written consent of the Disclosing Party.

40.1.2 where disclosure is made to any employee, consultant, sub-contractor or agent, it shall be done subject to obligations equivalent to those set out in the Project Documents and the Receiving Party agrees to use all reasonable endeavours to procure that any such employee, consultant, sub-contractor or agent complies with such obligations provided that the Receiving Party shall continue to be responsible to the Disclosing Party in respect of any disclosure or use of such Confidential Information by a person to whom disclosure is made.

40.2 The Receiving Party shall keep and procure to be kept secret and confidential the Commercially Sensitive Information for the periods specified in column 2 of Schedule 19 (Commercially Sensitive Information).

40.3 The obligations of confidentiality in this clause 40 (Confidentiality, Publicity and Branding) shall not extend to any matter which the Receiving Party can show:

- 40.3.1 is in, or has become part of, the public domain other than as a result of a breach of the obligations of confidentiality under the Project Documents; or
 - 40.3.2 (other than in relation to the Disclosed Data), it was lawfully in the possession of the Receiving Party before its disclosure under this Agreement prior to the Commencement Date and is without any confidentiality restrictions provided at the time of that disclosure; or
 - 40.3.3 was independently disclosed to it by a third party entitled to disclose the same;
 - 40.3.4 is required to be disclosed under any applicable Law, or by order of a court or governmental body or authority of competent jurisdiction; or
 - 40.3.5 was independently developed by the Receiving Party.
- 40.4 The Receiving Party shall ensure that any employees or sub-contractors are aware of and undertake to comply with the obligations of confidentiality set out in clause 40.1.
- 40.5 Subject to clause 47 (Freedom of Information Act 2000) no Party shall (and shall procure that each sub-contractor shall not) make any announcement or otherwise publicise the existence of or disclose to any person the terms of the Project Documents without the prior written consent of the other Parties.
- 40.6 The Contractor shall not carry out any publicity relating to the Project without the prior written consent of both Authorities. The Authorities shall agree joint messages to be issued in relation to the Project with the Contractor where reasonable for them to do so.
- 40.7 The Contractor shall ensure that all Publicity Materials in respect of the Project include an acknowledgement of the role of the Authorities, the Department for Culture, Media and Sport and GFirst in the Project and shall not issue such material without the prior written consent of the Authorities.
- 40.8 The Parties shall comply with the provisions of Schedule 10 (Marketing Plan).
- 40.9 No Party shall include or permit the inclusion at any time the name style and logo or similar identifying feature of any customers of the Contractor in relation to this

Agreement and/or the Project without the prior written consent of the other Parties (such consent not to be unreasonably withheld or delayed).

41. ASSIGNMENT, SUB-CONTRACTING AND THIRD PARTIES

41.1 This Agreement is personal to the Contractor. The Contractor shall not assign, delegate, sub-contract to any Key Sub-Contractor, transfer, charge or otherwise dispose of all or any of its rights and responsibilities under this Agreement, without the prior joint written consent of the Authorities. Such consent or sub-contracting to any sub-contractors shall not relieve the Contractor from any liability or obligation under this Agreement and the Contractor shall be responsible for the acts, omissions, defaults or negligence of its sub-contractors, agents or servants as fully as if they were acts, omissions, defaults or negligence of itself.

41.2 Not used.

41.3 Not used.

41.4 The Authorities may each assign, delegate, sub-contract, transfer, charge or otherwise dispose of all or any of their respective rights and responsibilities under this Agreement at any time to a public body or third party guaranteed by a public body (provided that any such third party shall not be a direct competitor of the Contractor) without the prior written consent of the Contractor.

41.5 The Contracts (Rights of Third Parties) Act 1999 shall not apply to this Agreement and no person who is not a party to this Agreement (including any employee, officer, agent, representative or sub-contractor of any Party shall have the right (whether under the Contracts (Rights of Third Parties) Act 1999 or otherwise) to enforce any term of this Agreement which expressly or by implication confers a benefit on that person without the express prior agreement in writing of the Parties which agreement must refer to this clause.

42. GENERAL

42.1 Nothing in this Agreement shall create, or be deemed to create, a partnership or joint venture or relationship of employer and employee or principal and agent between the Parties and no employee of the Contractor shall be deemed to be or have become an employee of either Authority.

42.2 Except where expressly provided in this Agreement, this Agreement constitutes the entire agreement between the Parties in connection with its subject matter and supersedes all prior representations, communications, negotiations and understandings covering the subject matter of this Agreement.

42.2.1 Each of the Parties acknowledges that:

42.2.1.1 subject to clause 5 (Warranties), it does not enter into this Agreement on the basis of and does not rely, and has not relied upon any statement or representation (whether negligent or innocent) or warranty or other provision (in any case whether oral, written, express or implied) made or agreed to by any person (whether a Party to this Agreement or not) and subject to clause 5 (Warranties), except those expressly repeated or referred to in this Agreement and the only remedy or remedies available in respect of any misrepresentation or untrue statement made to it shall be any remedy available under this Agreement; and

42.2.1.2 this clause 42 (General) shall not apply to any statement, representation or warranty made fraudulently, or to any provisions of this Agreement which were induced by fraud, for which the remedies available shall be all those available under the Law governing this Agreement.

42.3 No purported alteration or variation of this Agreement shall be effective unless it is in writing, refers specifically to this Agreement and is duly executed by each of the Parties to this Agreement.

42.4 The rights and remedies of any Party in respect of this Agreement shall not be diminished, waived or extinguished by the granting of any indulgence, forbearance or extension of time granted by such Party to the other nor by any failure of, or delay by the said Party in ascertaining or exercising any such rights or remedies. Any waiver of any breach of this Agreement shall be in writing and signed by each Party. The waiver by any Party of any breach of this Agreement shall not prevent the subsequent enforcement of any subsequent breach of that provision and shall not be deemed to be a waiver of any subsequent breach of that or any other provision.

- 42.5 If at any time any part of this Agreement (including any one or more of the clauses of this Agreement or any sub-clause or paragraph or any part of one or more of these clauses) is held to be or becomes void or otherwise unenforceable for any reason under any applicable law, the same shall be deemed omitted from this Agreement and the validity and/or enforceability of the remaining provisions of this Agreement shall not in any way be affected or impaired as a result of that omission.
- 42.6 Each of the Parties shall, and shall use their reasonable endeavours to procure that any necessary third parties shall, execute and deliver to the other Parties such other instruments and documents and take such other action as is necessary to fulfil the provisions of this Agreement in accordance with its terms.
- 42.7 Not used.
- 42.8 Not used.
- 42.9 All payments made to the Contractor by the Authorities under this Agreement are believed by the Parties to be outside the scope of VAT but if any VAT shall become chargeable all payments shall be deemed to be exclusive of VAT and the Authorities shall pay any VAT which becomes payable on receipt of a valid VAT invoice.
- 42.10 The Contractor shall not (and shall not allow, procure, encourage or assist any Affiliate or procure, encourage or assist any third party to) challenge the validity of the State aid Decisions given in respect of the Project or otherwise challenge the validity of this Agreement or any other Project Document.
- 43. SET-OFF, DISPUTED SUMS AND EXCLUSIVITY OF REMEDY**
- 43.1 The Contractor may not set off (or exercise any right of deduction or counterclaim) in respect of any amount owing to the Authorities (or either Authority) against monies owing by the Authorities (or either Authority) to the Contractor under this Agreement.
- 43.2 The Authorities (or either Authority) may not set off (or exercise any right of deduction or counterclaim) in respect of any amount owed to them by the Contractor against any monies owing by the Authorities (or either Authority) to the Contractor under this Agreement.
- 43.3 If the payment or deduction of any amount due or payable under this Agreement is disputed then any undisputed element of that amount shall be paid and the disputed

element shall be dealt with in accordance with clause 46 (Dispute Resolution Procedure).

43.4 Any and all sums irrevocably paid by either Party under clause 34 (Consequences of Termination) shall be in full and final settlement of each Party's rights and claims against the other Parties for breaches and/or termination of this Agreement or any Project Document whether under contract, tort, restitution or otherwise, but without prejudice to:

43.4.1 any antecedent liability of the Contractor to the Authorities (or either Authority) which the Authorities (or either Authority) have been unable to set off pursuant to clause 43.2;

43.4.2 any antecedent liability of either Party to the other that arose prior to the Termination Date (but not from the termination itself) to the extent such liability has not already been taken into account in determining or agreeing the Contractor Default Termination Sum, the Voluntary Termination Sum, the Force Majeure Termination Sum, the Corrupt Gifts Termination Sum or the Authorities Default Termination Sum; and

43.4.3 any liabilities arising in respect of any breach by either Party of their obligations under clause **Error! Reference source not found.** which arises or continues after the Termination Date to the extent not taken into account in the calculation of the Contractor Default Termination Sum, the Voluntary Termination Sum, the Force Majeure Termination Sum, the Corrupt Gifts Termination Sum or the Authorities Default Termination Sum or other payment of compensation on termination pursuant to this Agreement.

43.5 Notwithstanding anything else in this Agreement, the Contractor shall not be entitled to make any claim (or commence any claim) against, or recover any amounts from, the Authorities (or either Authority) or any Authority Related Party under this Agreement unless the relevant claim or amount relates to the Implementation Works and/or the Wholesale Broadband Provision (or any other services provided under this Agreement).

43.6 The Contractor shall not be held to be failing to comply with its obligations under this Agreement to the extent that such failure to comply is as a result of the Authorities' breach of its obligations hereunder.

43.7 Without prejudice to any entitlement of the Contractor:

43.7.1 to specific performance of any obligation under this Agreement; or

43.7.2 to injunctive relief;

43.7.3 any breach by the Authorities of clause 40 (Confidentiality, Publicity and Branding) or 48 (Data Protection) for which any such claim shall be limited to damages for Direct Losses and shall not exceed (withheld) in the aggregate; or

43.7.4 to any other express right of the Contractor pursuant to this Agreement;

the Contractor's sole remedy in relation to any breach by the Authorities (or either Authority) of this Agreement shall be the operation of clause 37 (Extensions of Time and Relief Events).

43.8 The Parties acknowledge and agree that the Contractor shall not have any contractual right or remedy against the Authorities in the event a Recovery Decision is issued to the Contractor pursuant to any obligation express or implied, in the TFEU and/or State aid Terms.

44. **INTEREST**

Save where otherwise specifically provided, where any payment or sum of money due from the Contractor to the Authorities (or either Authority) or from the Authorities and/or either of the Authorities to the Contractor under any provision of this Agreement, whether a liquidated sum or by way of damages or otherwise, and is not paid within five (5) Business Days of the due date, it shall bear interest thereon at the rate of two per cent (2%) above the base lending rate from time to time of the Bank of England accruing on a daily basis until payment is made, whether before or after any judgment.

45. **NOTICES**

45.1 Form and Service of Notices

All notices under this Agreement shall be in writing and all certificates, notices or written instructions to be given under the terms of this Agreement shall be served by sending the same by first class post, email or by hand or leaving the same at (as applicable):

Contractor	Herefordshire:	Gloucestershire
BT Plc pp HW A 310 PO Box 67501 BT Centre London EC1P 1PG	Herefordshire Council Brockington Offices 35 Hafod Road Hereford Herefordshire HR1 1SH	Gloucestershire County Council Shire Hall Westgate Street Gloucester GL1 2TG
F.A.O (withheld)	F.A.O Geoff Hughes	F.A.O Nigel Riglar
Email address: (withheld)	Email address: ghughes@herefordshire.gov.uk	Email address: Nigel.Riglar@gloucestershire.gov.uk

and such addresses as may be notified by the relevant Party to the other Parties in writing in respect of the Contractor Representative and the Authorities' Representative (as applicable).

45.2 Change of Details

Any Party may change its nominated address or email address by prior notice to the other Parties.

45.3 Notices by Post and email

Notices given by post shall be effective upon the earlier of actual receipt and five (5) Business Days after mailing. Notices delivered by hand shall be effective upon

delivery. Notices given by email shall be deemed to have been received where there is confirmation of uninterrupted transmission by a transmission report and where there has been no telephonic communication by the recipient to the senders (to be confirmed in writing by the recipient) that the email has not been received in legible form:

45.3.1 within two (2) hours after sending, if sent on a Business Day between the hours of 9am and 4pm; or

45.3.2 by 11am on the next following Business Day, if sent after 4pm on a Business Day but before 9am on that next following Business Day.

46. DISPUTE RESOLUTION PROCEDURE

46.1 Disputes

Any Dispute arising in relation to any aspect of this Agreement shall be resolved in accordance with this clause 46 (Dispute Resolution Procedure) save that any Party may refer to adjudication at any time any Dispute relating to any elements of the Implementation Works and/or the Wholesale Broadband Provision that amount to Construction Operations, and any such adjudication shall be conducted in accordance with the Adjudication Scheme.

46.2 Consultation

If a Dispute arises in relation to any aspect of this Agreement, the Parties shall consult in good faith and use reasonable endeavours to settle such Dispute through commercial negotiations as soon as possible in relation to the Dispute in accordance with this clause 46 (Dispute Resolution Procedure) and either Party may refer the matter for discussion between the senior management of the Authorities and the Contractor at an Operational Meeting and/or a Project Board Meeting in accordance with Schedule 9 (Management Groups and Meetings).

46.3 Alternative Dispute Resolution

Without prejudice to clause 46.2 (Consultation), either Party may give the other Party notice of its intention to refer the Dispute for resolution (the "**Notice of Escalation**"). The Notice of Escalation shall include a brief statement of the issue which forms the subject matter of the Dispute, the redress sought and the identity of a neutral adviser which the Party giving the Notice of Escalation proposes to act as

the Neutral Adviser for the purposes of clause 46.5 (ADR Procedure) and clause 46.6 (Resolution through ADR Procedure) below.

46.4 Identity of Neutral Adviser

The Parties shall seek to agree the identity of a suitable neutral adviser to assist the Parties in resolving the Dispute. If the Parties are unable to agree the identity of the neutral adviser within fourteen (14) Business Days of the Notice of Escalation being given, either Party may request that the Centre for Dispute Resolution appoint a neutral adviser.

46.5 ADR Procedure

The Parties shall, with the assistance of the Neutral Adviser appointed in accordance with clause 46.4 (Identity of Neutral Advisor) above, seek to resolve the dispute by using an alternative dispute resolution procedure agreed between the Parties or, in default of such agreement established by the Neutral Adviser (the "**ADR Procedure**").

46.6 Resolution through an ADR Procedure

If the Parties accept any recommendations made by the Neutral Adviser or otherwise reach agreement as to the resolution of the dispute pursuant to the ADR Procedure, such agreement shall be recorded in writing and signed by the Parties and, if applicable, the Neutral Adviser and it shall be binding upon both Parties.

46.7 No Resolution through an ADR Procedure

If:

46.7.1 the Dispute has not been resolved to the satisfaction of the Parties within sixty (60) Business Days after the appointment of the Neutral Adviser; or

46.7.2 either Party fails or refuses to agree or participate in the ADR Procedure,

either Party shall be entitled to service a notice on the other Party which contains a statement that this clause applies, a brief statement of the issue to be referred, the redress sought and the identity of an independent expert which it proposes act as the "Adjudicator" for the purposes of clauses 46.9 to 46.18 below (a "**Notice of Adjudication**"). Upon the service of a Notice of Adjudication clause 46.8 (Identity of the Adjudicator) shall apply.

46.8 Identity of the Adjudicator

Where this clause applies, the Parties shall seek to agree the identity of a suitable independent expert to assist the Parties in resolving the Dispute. If the Parties are unable to agree the identity of the expert within fourteen (14) Business Days of the Notice of Adjudication being given, either Party may request that the President for the time being of the Chartered Institute of Arbitrators appoint an independent expert.

46.9 Referral of the Dispute

Within five (5) Business Days of the service of the Notice of Adjudication, or as soon thereafter as the Adjudicator is appointed, the Party which gave the Notice of Adjudication (the "**Referring Party**") shall serve its statement of case (the "**Referral Notice**") on the Adjudicator and the other Party (the "**Responding Party**"). The Referral Notice shall include a copy of this Agreement, details of the circumstances giving rise to the dispute as set out in the Notice of Adjudication, the reasons why the Referring Party is entitled to the redress sought, and the evidence upon which it relies.

46.10 Response to the Referral

The Responding Party shall serve its statement of case (the "**Response**") on the Adjudicator and the Referring Party within a period of time to be directed by the Adjudicator. The Response shall include any arguments in response to the Referral Notice of the dispute set out in the Notice of Adjudication and any additional evidence on which the Responding Party relies.

46.11 Procedure

Subject to clause 46.15 (Adjudicator's Powers), the Adjudicator shall have absolute discretion as to how to conduct the adjudication, including whether a meeting is necessary. He shall establish the procedure and timetable subject to any limitation within this Agreement. The Parties shall comply with any request or direction in relation to the adjudication.

46.12 Adjudicator's Decision

In any event, the Adjudicator shall provide to both Parties his written decision on the dispute, within twenty (20) Business Days after the date of receipt of the Referral

Notice (or such other period as the Parties may agree). The Adjudicator shall be entitled to extend the said period of twenty (20) Business Days by up to ten (10) Business Days with the consent of the Referring Party. Unless the Parties otherwise agree, the Adjudicator shall give reasons for his decision. Unless and until revised, cancelled or varied by the English courts, the Adjudicator's decision shall be binding on all Parties which shall forthwith give effect to the decision.

46.13 Adjudicator's Costs

The Adjudicator's costs of any referral shall be borne as the Adjudicator shall specify or, in default, equally by the Parties. Each Party shall bear its own costs arising out of the referral, including legal costs and the costs and expenses of any witnesses.

46.14 Adjudicator as Expert

The Adjudicator shall be deemed not to be an arbitrator but shall render his decision as an expert, and the provisions of the Arbitration Act 1996 and the law relating to arbitration shall not apply to the Adjudicator or his determination or the procedure by which he reached his determination.

46.15 Adjudicator's Powers

The Adjudicator shall act fairly and impartially and may take the initiative in ascertaining the facts and the law. The Adjudicator shall have the power to open up, review and revise any opinion, certificate, instruction, determination or decision of whatever nature given or made under this Agreement.

46.16 Confidentiality

All information, data or documentation disclosed or delivered by a Party to the Adjudicator in consequence of or in connection with his appointment as Adjudicator shall be treated as confidential. The Adjudicator shall not, save as permitted by clause 40 (Confidentiality and Publicity) and clause 47 (Freedom of Information Act 2000), disclose to any person or company any such information, data, documentation and all such information, data or documentation shall remain the property of the Party disclosing or delivering the same and all copies shall be returned to such Party on completion of the Adjudicator's work.

46.17 Liability of Adjudicator

The Adjudicator is not liable for anything done or omitted in the discharge or purported discharge of his functions as Adjudicator unless the act or omission is in bad faith. Any employee or agent of the Adjudicator is similarly protected from liability.

46.18 Reference to the Courts

In the event that the Adjudicator fails to give a decision within the relevant period referred to in clause 46.12 (Adjudicator's Decision), either Party may within sixty (60) Business Days of the expiry of the relevant period referred to in clause 46.12 give notice to the other Party of its intention to refer the Dispute to the courts of England and Wales for final determination.

46.19 Parties' Obligations

The Parties shall continue to comply with, observe and perform all their obligations hereunder regardless of the nature of the Dispute and notwithstanding the referral of the Dispute for resolution under this clause 46 (Dispute Resolution Procedure) and shall give effect forthwith to every agreement reached pursuant to clause 46.6 (Resolution through an ADR Procedure), decision of the Adjudicator and the courts delivered under this clause 46 (Dispute Resolution Procedure).

47. **FREEDOM OF INFORMATION ACT 2000**

47.1 The Contractor acknowledges that the Authorities are each subject to the requirements of the FOIA and the Environmental Information Regulations 2004 and shall facilitate the Authorities' compliance with its information disclosure requirements pursuant to the same in the manner provided for in clauses 47.2 to 47.7 inclusive.

47.1A The Contractor shall make all reasonable efforts to assist the Authorities in meeting their respective obligations under the FOIA and the Environmental Information Regulations 2004 and where the Authorities require the assistance of the Contractor, the Authorities shall inform the Contractor of their receipt of such disclosure request.

47.2 If the Authorities (or either Authority) receive a request for information in relation to information that the Contractor is holding on its behalf and which the Authorities (or either Authority) do not hold themselves the Authority shall refer to the Contractor such request for information that they receive as soon as practicable and in any

event within five (5) Business Days of receiving a request for information and the Contractor shall:

- 47.2.1 provide the Authorities (or either Authority) with a copy of all such information in the form that the Authorities (or either Authority) require as soon as practicable and in any event within ten (10) Business Days (or such other period as the Authorities (or either Authority) acting reasonably may specify) of the Authorities' (or either Authority's) request; and
 - 47.2.2 provide all necessary assistance as reasonably requested by the Authorities (or either Authority) in connection with any such information, to enable the Authorities (or either Authority) to respond to a request for information within the time for compliance set out in section 10 of the FOIA or Regulation 5 of the Environmental Information Regulations 2004.
- 47.3 Following notification under clause 47.2 and up until such time as the Contractor has provided the Authorities (or either Authority) with all information specified in clause 47.2.1, the Contractor may make representations to the Authorities (or either Authority) 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 Authorities (or either Authority) shall be responsible for determining at their absolute discretion:
- 47.3.1 whether information is exempt from disclosure under the FOIA and the Environmental Information Regulations 2004; and
 - 47.3.2 whether information is to be disclosed in response to a request for information;
- and in no event shall the Contractor respond directly, or allow its sub-contractors to respond directly, to a request for information unless expressly authorised to do so by the Authorities.
- 47.4 The Contractor shall ensure that all information held on behalf of the Authorities (or either Authority) is retained for disclosure for at least twelve (12) years (from the date it is acquired) and shall permit the Authorities (or either Authority) to inspect such information on reasonable notice and as requested from time to time.

- 47.5 The Contractor shall transfer to the Authorities (or either Authority) any request for information received by the Contractor as soon as practicable and in any event within five (5) Business Days of receiving it.
- 47.6 The Contractor acknowledges that any lists provided by it listing or outlining Confidential Information and/or Commercially Sensitive Information, are of indicative value only and that the Authorities may nevertheless be obliged to disclose Confidential Information and/or Commercially Sensitive Information in accordance with the requirements of the FOIA and the Environmental Information Regulations 2004.
- 47.7 In the event of a request from the Authorities (or either Authority) pursuant to clause 47.2, the Contractor shall as soon as practicable, and in any event within five (5) Business Days of receipt of such request, inform the Authorities (or either Authority) of the Contractor's estimated costs of complying with the request to the extent these would be recoverable if incurred by the Authorities (or either Authority) under Section 12(1) of the FOIA and the Fees Regulations. Where such costs (either on their own or in conjunction with the Authorities' (or either Authority's) own such costs in respect of such request for information) will exceed the appropriate limit referred to in Section 12(1) of the FOIA and as set out in the Fees Regulations (the "**Appropriate Limit**"), the Authorities (or either Authority) shall inform the Contractor in writing whether or not they still require the Contractor to comply with the request and where they do require the Contractor to comply with the request, the ten (10) Business Days period for compliance shall be extended by such number of additional days for compliance as the Authorities are entitled to under Section 10 of the FOIA. In such case, the Authorities (or either Authority) shall notify the Contractor of such additional days as soon as practicable after becoming aware of them and shall reimburse the Contractor for such costs as the Contractor incurs in complying with the request to the extent the Authorities (or either Authority) are themselves entitled to reimbursement of such costs in accordance with the Authorities' own FOIA policies from time to time.
- 47.8 The Contractor acknowledges that (notwithstanding the provisions of clause 40 (Confidentiality and Publicity)) the Authorities may, acting in accordance with the Department of Constitutional Affairs' Code of Practice on the Discharge of Functions of Public Authorities under Part I of the Freedom of Information Act 2000 (the "**Code**"), be obliged under the FOIA, or the Environmental Information Regulations 2004 to disclose information concerning the Contractor or the Project following

consultation with the Contractor, provided always that where this clause 47.8 applies the Authorities shall, in accordance with the recommendations of the Code, draw this to the attention of the Contractor prior to any disclosure.

48. DATA PROTECTION

General

- 48.1 The Parties acknowledge that they may jointly or in common control the processing of some personal data in connection with this Agreement, including Personal Data originally processed by the Authority and/or the Contractor and subsequently accessed and further processed by the Parties. In relation to such Personal Data:
- 48.1.1 it is the Parties' intention that neither Party should be responsible for the acts or omissions of the another party in connection with such Personal Data;
 - 48.1.2 each Party shall comply with the requirements of the DPA in relation to the delivery of the Wholesale Broadband Provision and the Implementation Works and will not knowingly do anything or permit anything to be done which might lead to a breach by the other Party of the DPA; and
 - 48.1.3 each Party shall indemnify the other Party against each loss, liability and cost incurred by the other Party as a result of an act or omission of the first Party in connection with the processing of Personal Data which puts the other Party in breach of the DPA.
- 48.2 Where the Contractor is deemed to be the data controller in relation to Personal Data, the Contractor shall comply, and warrants that it has complied, in all material respects with the DPA in connection with this Agreement, including maintaining a valid and up to date notification under the DPA covering the processing of Personal Data performed in connection with the delivery of the Implementation Works and/or the Wholesale Broadband Provision or its involvement with the Project.
- 48.2A Where either and/or both of the Authorities are deemed to be the data controller in relation to Personal Data, the relevant Authority shall comply in all material respects with the DPA in connection with this Agreement, including maintaining a valid and up to date notification under the DPA covering the processing of Personal Data performed in connection with the Project.

48.3 The Authorities, the Contractor and any sub-contractor and any Contractor Related Party or Authority Related Party shall only undertake processing of Personal Data as reasonably required in connection with the Project and shall not transfer any Personal Data to any country or territory outside the European Economic Area.

No Disclosure

48.4 The Parties shall not disclose Personal Data to any third parties other than:

48.4.1 to employees and sub-contractors and any Authority Related Party to which such disclosure is reasonably necessary in order for, in the case of the Contractor, to deliver the Wholesale Broadband Provision and/or Implementation Works; or

48.4.2 to the extent required under a court order or in accordance with Law; or

48.4.3 disclosures made with a data subject's express written consent (the term "data subject" being given the meaning attributed to it in the DPA),

provided that disclosure under clause 48.4.1 is made subject to written terms substantially the same as, and no less stringent than, the terms contained in this clause 48 (Data Protection). The Parties shall give notice in writing to the other Party and/or Parties of any disclosure of Personal Data which that Party is required to make under this clause 48.4 (No Disclosure) immediately upon becoming aware of such a requirement.

48.5 Each Party shall bring into effect and maintain all technical and organisational measures to prevent unauthorised or unlawful processing of Personal Data and accidental loss or destruction of, or damage to, Personal Data including to take reasonable steps to ensure the reliability of staff having access to the Personal Data.

48.6 The Authorities (or either Authority) may, at reasonable intervals, request a written description of the technical and organisational methods employed by the Contractor or the sub-contractors referred to in clause 48.5. Within twenty (20) Business Days of such a request, the Contractor shall supply written particulars of all such measures detailed to a reasonable level such that the Authorities can determine whether or not, in connection with the Personal Data, it is compliant with the DPA.

48.7 Each Party shall indemnify and keep indemnified the other Party or Parties against all Direct Losses incurred by the other Party or Parties in respect of any breach of this clause 48 (Data Protection) by the first Party (which, where the Contractor is the indemnifying Party shall include any breach of this clause 48 (Data Protection) by any sub-contractor which causes the Contractor to be in breach of this clause 48 (Data Protection).

48.8 To the extent that the Contractor is acting as data processor (as such term is defined in the DPA), then:

48.9 Withheld

48.9.1 the Contractor shall ensure that all processing of the relevant Personal Data shall be carried out by the Contractor at all times in accordance with the DPA and that it otherwise conducts itself in accordance with the DPA and for the purposes of this clause "processing" shall be interpreted in accordance with that DPA.

48.10 In the event that the Contractor discovers or has reasonable reason to believe that it is not complying with clause 48.8, it shall promptly notify the Authorities of this and provide to the Authorities such details of the non-compliance or suspected non-compliance as the Authorities (or either Authority) may reasonably request.

48.11 The Contractor shall procure that all Sub-Contractors comply with provisions which are no less stringent than the Law.

49. CONDUCT OF CLAIMS

49.1 Where either Party (or Parties) (the "**Indemnified Party**") wishes to make a claim under this Agreement against the other Party (or Parties) (the "**Indemnifying Party**") in relation to a claim made against it by a third party (a "**Third Party Claim**"), the Indemnified Party shall give notice to the Indemnifying Party of the relevant claim as soon as reasonably practicable setting out the full particulars of that claim.

49.2 Subject to the rights of the insurers under the Required Insurances, the Indemnifying Party may at its own expense and with the assistance and co-operation of the Indemnified Party have conduct of the Third Party Claim including its settlement and the Indemnified Party shall not make any admission in relation to the Third Party Claim.

49.3 Not used.

49.4 The Indemnified Party shall at all times take all reasonable steps to minimise and mitigate any loss for which the Indemnified Party is entitled to bring a claim against the Indemnifying Party pursuant to this Agreement.

50. FINANCIAL ADJUSTMENTS

50.1 Whenever a Relevant Event occurs or the provisions of this Agreement otherwise require an amendment to a Milestone Completion Payment the financial consequences shall (save where otherwise provided in this Agreement or where the Parties mutually agree otherwise in writing) be determined in accordance with this clause 50 (Financial Adjustments).

50.2 Whenever a Relevant Event occurs and it is agreed that there shall be an adjustment to a Milestone Completion Payment:

50.2.1 the adjustment shall (save where otherwise provided for in this Agreement or where the Parties otherwise mutually agree otherwise in writing) ensure that the Contractor is left in a no better and no worse position than it would have been in immediately prior to the occurrence of the Relevant Event; and

50.2.2 in calculating any such adjustment, including the assessment of any Estimated Change in Costs, the Contractor shall be entitled to take into account, inter alia:

50.2.2.1 any Change in Costs and Change in Revenue; and

50.2.2.2 changes in the prospective technical performance of the Project arising as a result of the Relevant Event,

provided that the Authorities shall not be required (and the Contractor shall not be entitled) to take into account the financial impact up to the date of the Relevant Event of those risks which the Contractor bears under the terms of this Agreement, including (to the extent borne by the Contractor under this Agreement) changes in VAT rates, taxation and the impact of Performance Deductions.

50.3 Any reference in this Agreement to "no better and no worse" or to leaving the Contractor in a "no better and no worse position" shall be construed by reference to the Contractor's:

- 50.3.1 rights, duties and liabilities under or arising pursuant to the performance of its obligations under this Agreement;
 - 50.3.2 ability to perform its obligations and exercise its rights under this Agreement so as to ensure that the Contractor is left in a no better and no worse position in relation to the financial profile of the Project immediately prior to the Relevant Event than had the Relevant Event not occurred; and
 - 50.3.3 ability to comply with this Agreement, so that the Contractor's ability to comply with this Agreement is not adversely affected or improved as a consequence of the Relevant Event.
- 50.4 Where the Contractor and the Authorities cannot agree an adjustment to a Milestone Completion Payment then either Party may refer the matter for determination in accordance with clause 46 (Dispute Resolution procedure).

51. WHOLESALE CHARGING BENCHMARKING

- 51.1 The Contractor shall make the Wholesale Access Products and Services available to ISPs throughout the Term at the Project Wholesale Access Prices.
- 51.2 The Contractor shall benchmark the Project Wholesale Access Prices in accordance with Schedule 16 (Wholesale Access Prices).

52. COUNTERPARTS

This Agreement may be executed in any number of counterparts, each of which, when executed and delivered, shall be an original, and all the counterparts together shall constitute one and the same instrument.

53. GOVERNING LAW & JURISDICTION

- 53.1 This Agreement and any dispute or claim arising out of or in connection with it shall be governed by, and construed in accordance with, the laws of England.
- 53.2 Without prejudice to the Dispute Resolution Procedure, all disputes and claims arising out of or relating to this Agreement shall be subject to the exclusive jurisdiction of the English Courts.

THE COMMON SEAL of THE
COUNTY OF HEREFORDSHIRE
DISTRICT COUNCIL was
hereunto affixed

BY ORDER

.....Authorised Officer

THE COMMON SEAL OF
GLOUCESTERSHIRE COUNTY COUNCIL
was hereunto affixed

In the presence of:

.....Director Law & Administration

Signed for and on behalf of BRITISH TELECOMMUNICATIONS PUBLIC LIMITED
COMPANY

Signature:

Name:

Position: