

docheader

SCHEDULE 5.1

MILESTONE PAYMENTS AND CLAIMS PROCEDURE

CONTENTS

1	BACKGROUND	1
2	MILESTONE PAYMENTS	1
3	MILESTONE PAYMENT CLAIMS	1
4	MPC SUPPORTING DOCUMENTATION	3
5	PROJECT ACCOUNTS AND FINANCIAL RECORDS	5
6	SUPPLIER AUDIT	5
7	INVESTMENT RATIOS	5
8	CLAW-BACK	6
9	OVER-SUBSIDY CLAW-BACK: CAPITAL EXPENDITURE	6
10	OVER-SUBSIDY CLAW-BACK: POST IMPLEMENTATION	6
11	CLAW-BACK: ADDITIONAL SERVICES	7
12	INVESTMENT FUND: REINVESTMENT AND RETURN	8
13	INVESTMENT FUND: ACCOUNTS AND INTEREST	8
14	NOT USED	9
15	SURVEY ASSUMPTIONS	9
16	NOT USED	9

SCHEDULE 5.1 – MILESTONE PAYMENTS AND CLAIMS PROCEDURE

1. BACKGROUND

1.1 This Schedule 5.1 sets out:

- 1.1.1 the Milestone Payment amounts associated with each Milestone (with the full description of each Milestone and the associated Milestone Date and Milestone Achievement Criteria set out in Schedule 4.1 (Implementation));
- 1.1.2 the claims procedure applicable to Milestone Payments;
- 1.1.3 certain payment specific record keeping, audit and reporting obligations;
- 1.1.4 details of eligibility criteria for Qualifying Capital Expenditure; and
- 1.1.5 the claw-back mechanism applicable to Qualifying Capital Expenditure.

1.2 Not used

2. MILESTONE PAYMENTS

2.1 The Milestone Payments payable, subject to the terms of this Contract, to the Supplier for Achievement of each Milestone (in accordance with Schedule 4.1 (Implementation)) are as detailed in Appendix 1 to this Schedule 5.1.

3. MILESTONE PAYMENT CLAIMS

3.1 Where the Authority has issued a Milestone Achievement Certificate in respect of a Milestone the Supplier shall be entitled to submit a Milestone Payment Claim (MPC) to the Authority.

3.2 The Authority shall make payment to the Supplier within 30 days of receipt of a MPC that complies with the requirements of this Schedule 5.1.

3.3 The Supplier shall ensure that each MPC contains the following information:

- 3.3.1 the date of the MPC;
- 3.3.2 a unique MPC number;
- 3.3.3 the unique Milestone reference;
- 3.3.4 the period and activity to which the MPC relates;
- 3.3.5 reference to the information required and provided for issue of the corresponding Milestone Achievement Certificate (in accordance with Schedule 4.1 (Implementation));
- 3.3.6 the MPC Supporting Documentation;
- 3.3.7 a contact name and telephone number of a responsible person in the Supplier's finance department in the event of administrative queries; and
- 3.3.8 the banking details for payment to the Supplier via electronic transfer of funds (i.e. name and address of bank, sort code, account name and number).

- 3.4 Each MPC shall at all times be accompanied by MPC Supporting Documentation along with copies of any applicable Milestone Achievement Certificates to enable the Authority to assess whether the MPC is correctly calculated and whether any public subsidy is properly payable.
- 3.5 The Supplier shall submit all MPCs and supporting information (including the MPC Supporting Documentation) required under this Schedule 5.1 in such format as the Authority may reasonably specify to the following address (or such alternative address as notified by the Authority in accordance with this Contract):
- MarkBell@Barnsley.gov.uk
- with a copy (including all supporting information) to the Framework Authority.
- 3.6 All Supplier MPCs shall be expressed in Pounds Sterling (£) or such other currency as shall be permitted by the Authority in writing.
- 3.7 The Authority shall only regard an MPC as valid if it complies with the provisions of this Contract. Where any MPC does not conform to the provisions of this Contract, the Authority shall return the deficient MPC to the Supplier identifying the deficiencies. The Supplier shall promptly issue a replacement MPC.
- 3.8 Only one MPC submission shall take place in any 30 day period, save that where multiple MPCs are to be claimed, these can be consolidated in one submission provided the information noted in this paragraph 3 is clearly and distinguishably set on a Milestone basis within that submission.
- 3.9 Where a de minimis for the value of a single MPC is set out in the Service Requirements, this must be adhered to by the Supplier save for a final balancing MPC.
- 3.10 Where either Party identifies (whether through MPC verification or otherwise) any overpayment has been made by the Authority (including administrative error and where it becomes apparent a Milestone had not in fact been achieved), the Supplier shall:
- 3.10.1 where the next milestone payment is less than 90 days after identification of the overpayment, reduce the claim for the next MPC payment; or
- 3.10.2 where no further MPC payments are to be made or the next planned MPC payment is more than 90 days after identification of the overpayment, promptly issue a refund for that overpayment to the Authority.

At the Authority's discretion, where the overpayment is due to a Default of the Supplier, the refund (or reduced claim, as applicable) shall also include an interest rate based uplift calculated as follows:

$$C = O + (O \times (\text{interest rate}) \times (T \div 365))$$

Where:

C = the amount of credit;

O = the overpayment;

Interest rate = an annual rate equivalent to 2% above the Bank of England base rate (as adjusted from time to time and set out in the London Financial Times);

T = the number of days between the date on which the overpayment arose and the date on which the notification of the overpayment was made by the Authority or the Supplier to the other Party.

- 3.11 Without prejudice to paragraph 3.10, where the Authority has reasonable grounds for believing that an overpayment has been made in respect of any MPC, it may request that the Supplier reviews and re-submits verification of the supporting evidence provided pursuant to paragraph 4.1. Such verification shall be provided by the Supplier within 15 Working Days of receiving that Authority request.

4. MPC SUPPORTING DOCUMENTATION

- 4.1 Each MPC shall be provided with the following MPC Supporting Documentation:

- 4.1.1 evidence (through copies of invoices, receipts, timesheets, payroll records and other accounting information) that the MPC is for Qualifying Capital Expenditure only and is in relation to the scope of this Contract only;
- 4.1.2 evidence (through payment or bank records and statements, BACS lists, receipts or other confirmation) that the Qualifying Capital Expenditure has actually been incurred by the Supplier at the date of the MPC, provided that in relation to Deployed Services performed by the Supplier's Subcontractors, Qualifying Capital Expenditure shall for the purposes of this Schedule be deemed "incurred" if the circumstances in paragraph 4.1.2A are satisfied (this qualification of how the word "incurred" shall be construed herein is without prejudice to any other requirement in this Schedule);
- 4.1.2A Qualifying Capital Expenditure in respect of Deployed Services performed by the Supplier's Subcontractors shall be deemed incurred when the Subcontractor has invoiced the Supplier for the amount to be claimed by the Supplier as Qualifying Capital Expenditure, provided that:
 - 4.1.2A(a) the Supplier confirms in the MPC Supporting Documentation that the expenditure does not represent an advance payment for work or services;
 - 4.1.2A(b) the Supplier confirms in the MPC Supporting Documentation that the invoice(s) in question are otherwise correct, due and payable by the Supplier in accordance with the terms of the relevant Subcontract; and
 - 4.1.2A(c) providing a minimum of 120 days has elapsed since payment of the relevant MPC, the Authority may subsequently request that the Supplier provide evidence to demonstrate that applicable amounts were in due course actually paid to the Subcontractors. If no such evidence can be provided, then, if the Authority requests a refunding of the payment made by the Authority, the Supplier shall refund (as soon as reasonably practical) in the form of an electronic re-payment (with the payment details to be notified to the Supplier by the Authority) any such amounts claimed as being incurred Qualifying Capital Expenditure. If subsequently the Supplier provides evidence to demonstrate that applicable amounts

were actually paid to the Subcontractors such amounts will then be re-paid by the Authority to the Supplier.

- 4.1.3 signed confirmation from a suitably qualified finance representative of the Supplier that:
- (a) the Qualifying Capital Expenditure is not covered by (i) any other form of public subsidy; or (ii) more than one form of public subsidy; and
 - (b) the Subsidy Payment claimed is matched by an equivalent sum of Qualifying Capital Expenditure;
- 4.1.4 signed confirmation from a suitably qualified finance representative of the Supplier that part apportionment or allocation of Qualifying Capital Expenditure between this Contract and other contracts or services provided by the Supplier, is accurate and a fair reflection of the work carried out;
- 4.1.5 signed confirmation from a suitably qualified finance representative of the Supplier that the Qualifying Capital Expenditure has been properly incurred and is in accordance with the financial control, financial management and internal risk processes of the Supplier. The confirmation should also state that the Qualifying Capital Expenditure has been incurred and is in accordance with the accounting requirements for Qualifying Capital Expenditure, and is consistent with accepted accounting practice and the accounting policies that the Supplier applies under its corporate financial reporting and audit standards; and
- 4.1.6 details of Additional Supplier Expenditure incurred in the period to which the MPC relates, such that the Authority can calculate investment ratios in accordance with this Schedule 5.1.
- 4.2 In all cases the MPC Supporting Documentation shall be of sufficient detail to allow the Authority to determine the eligibility of the relevant Qualifying Capital Expenditure and the validity of the MPC.
- 4.3 As part of its own internal financial control process, the Authority (and/or its agents or representatives) may undertake a review of the payments made under this Contract (such reviews taking place on an annual basis and, in addition, where there are reasonable grounds to consider a material error has been made in respect of an MPC). In such circumstances, the Authority (and/or its agents or representatives) may require the Supplier to provide, as soon as is reasonably practical, additional reasonable assistance and reasonable supporting information regarding any MPC (as supplementary assurance to the evidence provided pursuant to paragraph 4.1).
- 4.4 Paragraphs 3.11 and 4.3 of this Schedule shall continue to be effective until:
- 4.4.1 12 months following the Term, subject to early termination of this Contract; or
 - 4.4.2 in the event of early termination of this Agreement, 24 months following such termination date.
- 4.5 Paragraphs 3.10 of this Schedule shall continue to be effective until 7 years following the Term or early termination of this Contract.

5. PROJECT ACCOUNTS AND FINANCIAL RECORDS

5.1 The Supplier shall maintain separate summary Project Accounts (for use, among other matters, for reconciliation of MPC claims to expenditure and costs incurred and to calculate the financial reporting measures relating to clawback as described in paragraphs 8 to 13). The Project Accounts shall include:

- 5.1.1 a summary revenue and expenditure statement (including public subsidy received) in respect of this Contract;
- 5.1.2 a record of Network assets created or deployed in respect of this Contract;
- 5.1.3 an Investment Fund account, including opening and closing balances; and
- 5.1.4 supporting notes and information as appropriate for the reasonable understanding of the Project Accounts.

5.2 The Project Accounts shall be:

- 5.2.1 prepared on a basis that is consistent with the accounting policies that the Supplier applies under its own corporate financial reporting and audit standards; and
- 5.2.2 subject to the Supplier's own internal and external audit procedures.

5.3 Within 30 days of each anniversary of the Effective Date the Supplier shall submit to the Authority a copy of the Project Accounts and an accompanying short narrative report for the preceding 12 months, certified by a suitably qualified finance representative or the external auditor of the Supplier. On expiry or termination of this Contract, the Supplier shall prepare an equivalent copy of the Project Accounts for the period since the preceding copy of Project Accounts produced pursuant to this paragraph 5.3 (noting that the specific timing of the production of such copy on expiry or termination must support the operation of those provisions of this Contract which themselves take effect at expiry or termination of this Contract).

5.4 The Supplier shall maintain accounting records for all Qualifying Capital Expenditure funded partly or wholly pursuant to this Contract in accordance with Clause 37. These accounting records shall include, original invoices, receipts, accounts, deeds, bank records and any other relevant documentation whether in written or electronic form.

6. SUPPLIER AUDIT

The Supplier shall ensure that all public subsidy it receives pursuant to this Contract is subject to the Supplier's own internal and external audit processes.

7. INVESTMENT RATIOS

7.1 The Supplier shall ensure that the Project Model:

- 7.1.1 contains the details of the Additional Supplier Expenditure that is forecast to be incurred over the Term; and
- 7.1.2 calculates a Project Investment Ratio.

7.2 Between the Effective Date and the Full Service Commencement Date, the Authority shall from time to time calculate the Outturn Investment Ratio. The Outturn

Investment Ratio shall be compared to the Project Investment Ratio to report on the level of overall Supplier investment.

- 7.3 Where any Outturn Investment Ratio indicates that Actual Additional Supplier Expenditure is below or is likely to be below that forecast in the Project Model, then the Parties shall work together to ensure that, on achievement of the final Milestone type 2 Milestone, Actual Additional Supplier Expenditure is equal to the Additional Supplier Expenditure forecast in the Project Model.
- 7.4 Where any Outturn Investment Ratio indicates that Actual Additional Supplier Expenditure is significantly above, or is likely to be significantly above, that forecast in the Project Model, then the Authority shall use reasonable endeavours to consider with the Supplier whether any adjustments may be made to the remaining Deployed Services (without adversely impacting upon the Supplier Solution outcomes delivered). However, for the avoidance of doubt, this paragraph 7.4: (i) does not represent an obligation to agree any change to the Parties' respective contracted obligations; and (ii) any agreement arising from such consideration would be subject to the Change Control Procedure. In any event where the Outturn Investment Ratio is higher than the Project Investment Ratio, it is noted that this is relevant to the claw-back equation in paragraph 10.3.
- 7.5 Any Supplier expenditure forecast used for the purposes of the Project Model and/or the ratios described in this paragraph 7 must be consistent with the then current Project Plan.

8. CLAW-BACK

The procedures set out in paragraphs 9 to 13 apply to support the prevention of public fund over-subsidy taking place under this Contract.

9. OVER-SUBSIDY CLAW-BACK: CAPITAL EXPENDITURE

- 9.1 Where at the Full Service Commencement Date, the Outturn Investment Ratio at that time indicates that Actual Additional Supplier Expenditure is below the Additional Supplier Expenditure forecast in the Project Model (i.e. an under-spend), then the Authority shall be entitled to require:
- 9.1.1 a reasonable and proportionate adjustment to the remaining Milestone Payments or the timing of the remaining Milestone Payments in accordance with the Change Control Procedure; and/or
 - 9.1.2 the Additional Supplier Expenditure under-spend (or any remaining Additional Supplier Expenditure under-spend, having also exercised its right under paragraph 9.1.1 above) shall be credited by the Supplier to the Investment Fund.

10. OVER-SUBSIDY CLAW-BACK: POST IMPLEMENTATION

- 10.1 At each Take-up Review Point the Supplier shall perform an assessment of Take-up in accordance with paragraph 10.2.
- 10.2 At each Take-up Review Point the Supplier shall submit updated Project Accounts to the Authority which shall include actual total Take-up per Project Period. The actual Take-up shall be compared to the forecast Take-up as shown in the Project Model, for each Project Period, from the Effective Date to the relevant Take-up Review Point. If the sum of the cumulative actual Take-up per Project Period (being the Cumulative Sum in the column of the table exemplified below) is more than the cumulative forecast

Take-up per Project Period the difference represents a "**Net Additional Take-up**" - see table below for example:

Project Period	1	2	3	4	Cumulative Sum Across Periods 1-4
Project Model	150	200	250	250	850
Actual	175	200	200	300	875

Notes: The Take-up numbers included in columns 1-4 are the Take-up total at the end of the Project Period. In this example the Net Additional Take-up would be 25 i.e. 875 minus 850.

The above table is solely a simplified set of numbers to example the principles of this paragraph 10.2 – the figures have no other application or relevance.

10.4 At each interim Take-up Review Point, a Take-up Reinvestment Amount shall be calculated as follows:

- *Take-up Reinvestment Amount = (Exposure to claw-back at Take-up Review Point less any Take-up Reinvestment Amounts previously credited to the Investment Fund) x X%: 50% or higher if agreed at the time by the Parties.*

Any positive Take-up Reinvestment Amount shall be credited by the Supplier to the Investment Fund within five (5) Working Days.

10.5 At the final Take-up Review Point a Final Take-up Claw Back Amount shall be calculated, with reference to the Net Additional Take-up across the Term, as follows:

- *Final Take-up Claw-back Amount = Exposure to claw-back at Take-up Review Point less any Take-up Reinvestment Amounts previously credited to the Investment Fund*

Any Final Take-up Claw-back Amount shall be credited by the Supplier to the Investment Fund within five (5) Working Days.

11. OVER-SUBSIDY CLAW-BACK: ADDITIONAL SERVICES

11.1 At each Additional Service Review Point the Supplier shall perform an assessment of Additional Service Revenue in accordance with paragraph 11.2.

11.2 At each Additional Service Review Point the Supplier shall submit updated Project Accounts to the Authority, additionally showing actual total Additional Service Revenue in relation to this Contract. The actual Additional Service Revenue shall be compared to the forecast Additional Service Revenue as shown in the Project Model, from the Effective Date to the relevant Additional Service Review Point. If the actual Additional Service Revenue is more than the forecast Additional Service Revenue the difference represents a "**Net Additional Service Revenue**". Exposure to claw-back at each interim Additional Service Review Point shall be calculated as follows:

- *Additional Service Revenue Amount = (Net Additional Service Revenue x A%, less any Additional Service Revenue Amounts previously credited to the Investment Fund) x X%: (50% or higher if agreed at the time by the Parties).*

Any Additional Service Revenue Amounts shall be credited by the Supplier to the Investment Fund within five (5) Working Days.

- 11.3 At the final Additional Service Review Point a Final Additional Service Claw Back Amount shall be calculated, with reference to the Net Additional Service Revenue across the Term (i.e. less any amounts reinvested pursuant to paragraph 12.1), as follows:

- *Final Additional Service Claw Back Amount = Net Additional Service Revenue x A%, less any Additional Service Revenue Amounts previously credited to the Investment Fund.*

- 11.4 Any Final Additional Service Claw Back Amount shall be credited by the Supplier to the Investment Fund within five (5) Working Days.

- 11.5 For the purposes of paragraphs 11.2 and 11.3, "A%" shall be determined at each Additional Service Review Point as follows:

11.5.1 The Supplier shall provide to the Authority details of the total margin achieved in respect of the Net Additional Service Revenue including the accounting principles used to calculate that margin;

11.5.2 As part of the Additional Services Review Point concerned, the Parties shall, acting reasonably, agree A% such that it represents an appropriate portion of the margin achieved on the Net Additional Service Revenue (taking into account relevant factors including (i) the extent to which the infrastructure used by the Wholesale Access Products and Services concerned was funded under this Contract; and (ii) the Commission Decision). If agreement of A% is not achieved within 10 Working Days from commencing that Additional Services Review Point this shall represent a Dispute.

12. **INVESTMENT FUND: REINVESTMENT AND FUND RETURN**

- 12.1 During the Term the Parties shall work together to invest the Investment Fund, in a manner consistent with the Commission Decision, on capital investment in the Network such that, by the end of the Term, the Investment Fund is reduced to zero. This will be a collaborative process, between the Parties, using the Change Control Procedure and applying the implementation regime as provided under this Contract (including as set out in Schedule 4.1 (Implementation), with MPCs submitted in accordance with this Schedule 5.1).

- 12.2 If at the end of the Term (following completion of the processes described in paragraphs 9 to 11) the Investment Fund remains a positive amount, this shall be returned by the Supplier to the Authority as soon as reasonably practical in the form of an electronic re-payment (with the payment details to be notified to the Supplier by the Authority). The amounts returned pursuant to this provision or otherwise re-invested from the Investment Fund shall not exceed the total public subsidy received by the Supplier during the Term.

13. **INVESTMENT FUND: ACCOUNTS AND INTEREST**

- 13.1 The Investment Fund shall be detailed in the Project Accounts.

13.2 The Supplier shall supplement the Investment Fund by depositing into it an amount equivalent to interest on the sum in the Investment Fund calculated on a monthly compound basis at an annual rate equivalent to 2% above the Bank of England base rate (as adjusted from time to time and set out in the London Financial Times).

14. **NOT USED**

15. **SURVEY ASSUMPTIONS**

15.1 The Milestone Payments are based on the Survey Assumptions set out in Appendix 3 to this Schedule 5.1. Save for those Survey Assumptions detailed in Appendix 3 and then only to the extent provided in this paragraph 15, no other survey or cost assumptions (whether contained in the Project Model or otherwise) are intended by the Parties to vary the Milestone Payments or any other obligation under this Contract.

15.2 Where and to the extent any Post-Effective Date Survey demonstrates that the actual circumstances differ from those set out in a relevant Survey Assumption, then provided and to the extent:

15.2.1 the reason for the Survey Assumption no longer holding true is not due, directly or indirectly, to any act or omission of the Supplier, its Subcontractors and/or agents; and

15.2.2 as a consequence of the Survey Assumption no longer holding true, the Supplier's costs for provision of the Network are impacted (including increases or decreases in cost),

the Parties shall as soon as reasonably practicable after completion of the Post-Effective Date Surveys review the options to address the impact under this Contract (noting those options referred to at Clause 31 and the additional information concerning the Survey Assumption provided in the table at Appendix 3). The Supplier shall raise a Change Request based on the conclusions from that review. The Parties shall work together to reach agreement in accordance with the Change Control Procedure (such agreement not to be unreasonably withheld).

16. **NOT USED**

APPENDIX 1 – MILESTONE PAYMENTS

South Yorkshire - Schedule 5.1 Appendix 1 - Milestone Payments

South Yorkshire - Schedule 5.1 Appendix 1 - Milestone Payments		MILESTONE PAYMENTS										M2 Total Homes Passed Target within the Coverage Area	
		MILESTONE PAYMENTS											
MILESTONE	QUARTER / FINANCIAL YEAR	M0 £'s	Milestone ID	M1 £'s	Milestone ID	M2 £'s	Milestone ID	M3 £'s	Milestone ID	TOTAL	QUARTER / FINANCIAL YEAR	FTTX	Total
Planning and Site Survey	Q1 15/16									0	Q1 15/16	0	0
	Q2 15/16	120,738	M0 001							120,738	Q2 15/16	0	0
	Planning and Site Survey, Infrastructure Build & Availability of Wholesale Access Products and Services	Q3 15/16	119,443	M0 002	276,710	M1 001	113,812	M2 001		509,966	Q3 15/16	6,686	6,686
	Planning and Site Survey, Infrastructure Build & Availability of Wholesale Access Products and Services	Q4 15/16	134,110	M0 003	643,386	M1 002	461,226	M2 002		1,238,722	Q4 15/16	12,138	12,138
Planning and Site Survey, Infrastructure Build & Availability of Wholesale Access Products and Services	Q1 16/17	212,099	M0 004	558,214	M1 003	609,304	M2 003			1,379,617	Q1 16/17	7,568	7,568
Planning and Site Survey, Infrastructure Build & Availability of Wholesale Access Products and Services	Q2 16/17	179,870	M0 005	1,378,084	M1 004	821,210	M2 004			2,379,165	Q2 16/17	15,805	15,805
Planning and Site Survey, Infrastructure Build & Availability of Wholesale Access Products and Services	Q3 16/17	185,014	M0 006	555,923	M1 005	1,063,971	M2 005			1,804,908	Q3 16/17	14,445	14,445
Planning and Site Survey, Infrastructure Build & Availability of Wholesale Access Products and Services	Q4 16/17	201,247	M0 007	1,195,630	M1 006	604,425	M2 006			2,001,302	Q4 16/17	13,082	13,082
Planning and Site Survey, Infrastructure Build & Availability of Wholesale Access Products and Services	Q1 17/18	219,274	M0 008	864,607	M1 007	1,100,188	M2 007			2,184,069	Q1 17/18	15,132	15,132
Planning and Site Survey, Infrastructure Build & Availability of Wholesale Access Products and Services and Take up	Q2 17/18			766,381	M1 008	329,716	M2 008			1,096,097	Q2 17/18	14,589	14,589
Planning and Site Survey, Infrastructure Build & Availability of Wholesale Access Products and Services	Q3 17/18					650,417	M2 009			650,417	Q3 17/18	3,547	3,547
Infrastructure Build & Availability of Wholesale Access Products and Services	Q4 17/18							1,485,000	M3 001	1,485,000	Q4 17/18	0	0
TOTAL		1,371,796		6,238,935		5,754,269		1,485,000		14,850,000		102,990	102,990

Both Parties acknowledge that:

- (a) at the Effective Date the Milestone Payments set out in this Appendix are forecasted costs assumed by the Supplier in the Supplier's Project Model and that the Supplier's Milestone Payment Claims shall be based on actual cost incurred capped at the corresponding Milestone Payment amount (noting (b) below with regard to adjustments to these Milestone Payment amounts). Consequently, a Milestone Payment Claim could be different to the associated Milestone Payment shown in this Appendix.
- (b) if actual cost for a Milestone Payment is impacted or is anticipated to be impacted due to a:
 - (i) Post Effective Date Survey completion taking into account the Survey Assumptions in accordance with the procedure set out in paragraph 15.2 of Schedule 5.1;
 - (ii) Relief Event;
 - (iii) Force Majeure Event; or
 - (iv) Specific Change in Law,
 - (v) The cost of Network Deployment to affected Premises exceeding or is likely to exceed the Premises Capthen any adjustment to the Milestone Payments shall be dealt with in accordance with the mechanisms agreed under this Contract.
- (c) Notwithstanding (b) above:
 - (i) where actual costs incurred by the Supplier in a Milestone Payment Claim are in excess of the corresponding Milestone Payment due to one of the factors identified in (b), in circumstances where any adjustment to the Milestone Payments as noted in (b) above has not yet been formally agreed and payment for the corresponding Milestone Payment Claim is due, the Supplier shall still be entitled to be paid the then stated Milestone Payment with the Parties subsequently dealing with any adjustment to the Milestone Payment in accordance with the mechanisms agreed under this Contract;
 - (ii) in particular where such excess is not significant, the Authority may (at its own discretion) decide to pay such additional excess actual costs incurred above the then stated Milestone Payment under the Milestone Payment Claim (with the Change Control Procedure being applied to record appropriate adjustments to take account of this after such payment);
 - (iii) where there are residual Milestone Payment sums remaining from previously paid Milestone Payment Claims for other areas of the Network Deployment (i.e. the Milestone Payment Claim was less than the specified Milestone Payment), then corresponding increases to Milestone Payments up to the amount of such residual sums:
 - shall (if Network Deployment build has not taken place and the Authority would like such Network Deployment build to continue) be applied to address actual or potential excess costs required for the Network Deployment build related to circumstances covered under (b) (i) to (v) above; or
 - may be applied by the Authority solely at its discretion to help address actual or potential excess costs in all other circumstances;
 - and
 - (iv) in the case of M0 Milestones, where there are residual M0 Milestone Payment sums remaining from an M0 Milestone Payment Claim (i.e. the Milestone Payment Claim was less than the specified Milestone Payment), such residual sums can be used to cover additional excess cost for other M0 Milestone Payment Claims with corresponding increases to the relevant M0 Milestone Payments up to the amount of such residual sums being applied by the Parties.

APPENDIX 2 – PERMITTED EXPENDITURE CATEGORIES

FRAMEWORK AUTHORITY FUNDING

Permitted Expenditure under the Authority Capital Funding (not ERDF or local authority revenue funding)	Expenditure not attracting the Authority Capital Funding
<p>“Permitted Expenditure” is that expenditure incurred by the Supplier which will attract the capital public subsidy made available by the Framework Authority and local authorities for the purposes of this Contract. This definition does not apply to European funding which is governed by separate eligibility criteria (and termed “eligible expenditure”) or to other forms of subsidy that may be available (e.g. local authority revenue funding or RDPE)</p> <p>Permitted Expenditure is that Supplier expenditure which (i) can be reasonably allocated or apportioned to this Contract; (ii) is incurred in accordance with this Contract; (iii) is directly attributable to bringing the wholesale access infrastructure to the location and working condition necessary for its intended use; and (iv) is capable of being capitalised under generally accepted accounting practices</p> <p>In the event that expenditure pertains to broadband infrastructure that might be used to provide services to both “white” and other broadband areas, then the Supplier should apportion that expenditure according to the expected level of consumer take up in the respective areas.</p> <p>Detailed categories of Supplier Permitted Expenditure will be dependent on the solution offered. FOR GUIDANCE ONLY the following categories of Supplier expenditure are deemed to be Permitted Expenditure:</p> <p>The cost of tangible broadband infrastructure (plant, machinery and equipment) in both active and passive layers)</p> <p>Infrastructure installation and assembly costs</p> <p>Cost of active electronics, data transport and backhaul equipment</p> <p>Software and systems (including reporting systems) development costs directly attributable to bringing the broadband</p>	<p>The following are examples of expenditure by the Supplier which will not attract the capital public subsidy made available by the Framework Authority and local authorities for the purposes of this Contract. This examples do not apply to European funding which is governed by separate eligibility criteria (and termed “eligible expenditure”) or to other forms of subsidy that may be available (e.g. local authority revenue funding or RDPE)</p> <p>Supplier expenditure that will not attract the capital public subsidy made available by the Framework Authority and local authorities is any Supplier expenditure which is (i) not incurred in accordance with this Contract; (ii) not directly attributable to bringing the wholesale access infrastructure to the location and working condition necessary for its intended use; (iii) cannot be reasonably allocated or apportioned to this Contract; and/or (iv) is not capable of being capitalised under generally accepted accounting practices</p> <p>Detailed categories of Supplier expenditure will be dependent on the solution offered. FOR GUIDANCE ONLY the following categories of Supplier expenditure are considered as not attracting capital public subsidy made available by the Framework Authority and local authorities for the purposes of this Contract :</p> <p>Expenditure supported from other government sources or EC structural funds</p> <p>Operating and maintenance costs of the broadband infrastructure created</p> <p>Additional costs incurred as a result of Supplier under performance against or in breach of this Contract</p> <p>Retail connection costs and End User Premises equipment at retail level</p> <p>Operating costs of providing broadband services (wholesale or retail) to third parties</p>

Permitted Expenditure under the Authority Capital Funding (not ERDF or local authority revenue funding)	Expenditure not attracting the Authority Capital Funding
<p>infrastructure into use</p> <p>Staff costs directly attributable to bringing the broadband infrastructure into use</p> <p>Planning, way-leaves, site investigation and site preparation costs directly attributable to bringing the broadband infrastructure into use (expenditure that will attract subsidy under Milestone 0)</p> <p>Network termination equipment and End User Premises equipment as required to deliver wholesale services</p> <p>Power connection costs</p> <p>Borrowing costs (capitalised under IAS 23) which are attributable to bringing the broadband infrastructure into use and where the Authority has a policy of capitalising such costs.</p> <p>Professional fees directly attributable to bringing the broadband infrastructure into use (expenditure that will attract subsidy under Milestone 0)</p>	<p>and consumers</p> <p>Demand surveys, marketing other sales costs</p> <p>Corporation tax and non domestic rates</p> <p>Power and other utility running costs</p> <p>Costs Incurred before the date of this Contract (including bid costs)</p> <p>Any cost relating to insurance and insurance policies</p> <p>Customer acquisition and churn costs</p> <p>General corporate or unabsorbed overheads</p> <p>Depreciation, amortisation and impairment of assets</p> <p>Service and financing costs under finance leases, of broadband infrastructure, plant, machinery and equipment</p> <p>Operating lease rentals</p> <p>Provisions and contingent liabilities (including for risk related to this Contract)</p> <p>Supplier profit mark up, margin or administration charge that is added to the actual bought in costs of goods or services procured from third parties</p> <p>Administration and general management costs</p> <p>Dividends</p> <p>Other interest and financing charges</p> <p>Costs resulting from the deferral of payments to creditors</p> <p>Costs involved in winding up a company</p> <p>Payments for unfair dismissal</p> <p>Payments into private pension schemes</p>

Permitted Expenditure under the Authority Capital Funding (not ERDF or local authority revenue funding)	Expenditure not attracting the Authority Capital Funding
	<p>Payments for un-funded pensions</p> <p>Compensation for loss of office</p> <p>Bad debts arising from loans to employees, proprietors, partners, directors, guarantors, shareholders or a person connected with any of these</p> <p>Payments for gifts and donations</p> <p>Payment for entertainment</p> <p>Input VAT reclaimable by the Supplier</p> <p>Statutory fines and penalties</p> <p>Criminal fines and damages</p> <p>Legal expenses in respect of litigation</p> <p>Expenditure on works or activities which any person has a statutory duty to undertake</p> <p>Any liability arising out of negligence</p> <p>Professional fees not directly attributable to bringing the broadband infrastructure into use</p>

