

SCHEDULE 5.1

MILESTONE PAYMENTS AND CLAIMS PROCEDURE

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VERSION CONTROL

VERSION NUMBER	DATE	COMMENT
0.1	27 July 2016	Preliminary draft template version made available for general comment
0.2	2 September 2016	Uplifted draft, following feedback, made available for final comment
0.3	25 October 2016	Uplifted following local body and supplier feedback

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;
 - 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 classification criteria for Qualifying Capital Expenditure, Qualifying Operating Expenditure, Non-Qualifying Capital Expenditure, Non-Qualifying Operating Expenditure and Excluded Expenditure; and
 - 1.1.5 the financial mechanisms applicable to avoid Supplier over-compensation.

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.

- 2.2 If actual cost for a Milestone Payment is impacted or is anticipated to be impacted due to:

- 2.2.1 a Post-Effective Date Survey completion taking into account the Survey Assumptions in accordance with paragraph 8 of Schedule 4.1 (Implementation);
- 2.2.2 the cost of Network Deployment to affected Premises being likely to exceed the higher of the Premises Cap or cost forecast for the affected End User Premises at M0, in accordance with paragraph 10 of Schedule 4.1 (Implementation);
- 2.2.3 a Relief Event;
- 2.2.4 a Force Majeure Event; or
- 2.2.5 a Specific Change in Law,

then any adjustment to the Milestone Payments shall be dealt with in accordance with the mechanisms set out in this Contract.

- 2.3 Notwithstanding the above provisions of this paragraph 2, the Supplier shall in any event only be entitled to claim the lower of the (up to that point) unclaimed balance of:

- 2.3.1 cumulative Milestone Payments for Achieved Milestones;
- 2.3.2 (cumulative Actual Qualifying Capital Expenditure plus Actual Qualifying Operating Expenditure) x (1-PIR) for Achieved Milestones; or
- 2.3.3 cumulative Actual Qualifying Capital Expenditure for Achieved Milestones.

- 2.4 Qualifying Capital Expenditure, other than that falling within the scope of paragraph 2.5, for an Achieved Milestone may only be claimed (and Qualifying Operating Expenditure may only be counted within the mechanisms under this Schedule 5.1), by

the end of the second Quarter immediately following the Quarter in which the corresponding Milestone Achievement Certificate is issued by the Authority. Any such Qualifying Capital Expenditure not claimed within that period cannot be claimed from the Authority nor applied within any of the mechanisms under this Schedule 5.1 but the corresponding parts of the Network to which the expenditure relates will otherwise remain subject to the terms of this Agreement.

- 2.5 Qualifying Capital Expenditure that cannot be directly and uniquely associated with any given milestone (i.e. "time based" NGA Network Build Costs such as PMO), may only be claimed (and Qualifying Operating Expenditure may only be counted within the mechanisms under this Schedule 5.1), by the end of the Quarter immediately following the Quarter in which the relevant cost is incurred. Any such Qualifying Capital Expenditure not claimed within that period cannot be claimed from the Authority nor applied within any of the mechanisms under this Schedule 5.1 but the corresponding parts of the Network to which the expenditure relates will otherwise remain subject to the terms of this Agreement.
- 2.6 Paragraphs 2.4 and 2.5 above are subject to the additional requirements on submitting Milestone Payment Claims for Qualifying Capital Expenditure as specified in paragraph 8.1 of 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 claim (subject to any constraints on claims specified in this Schedule) the corresponding Qualifying Capital Expenditure in respect of that Milestone, in accordance with the MPC process and other requirements of this Schedule.

3.2 The Authority shall make payment to the Supplier within 30 calendar days of receipt of a MPC that complies with the requirements of this Schedule 5.1. The Authority shall consider and verify MPCs in a timely fashion (undue delay in doing so is not to be sufficient justification for failing to regard an MPC as complying with the requirements of this Schedule).

- 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 as specified in Appendix 1 (Milestone Payments);
- 3.3.4 Milestone Achievement Certificate identification reference;
- 3.3.5 the period and activity to which the MPC relates;
- 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 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 and to such address as the Authority may reasonably specify, with a copy (including all supporting information) to the Programme 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 is identified by the Authority as not conforming 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, unless otherwise agreed by the Authority.
- 3.9 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:
- 3.9.1 where the next planned MPC payment date is less than 90 days after identification of the overpayment, reduce the claim for the next MPC payment; or
- 3.9.2 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.

This paragraph 3.9 shall continue to be effective until 7 years following the Term or early termination of this Contract.

- 3.10 Without prejudice to paragraph 3.9, 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.
- 3.11 Following successful completion by the Authority of its standard assurance process for the final Milestone Payment Claim and without prejudice to paragraph 3.9, 3.10 or any other related right of the Authority or Regulatory Body, the Authority shall issue to the

Supplier a Milestone Completion Certificate using the pro/forma at Appendix 7 to this Schedule.

4. MPC SUPPORTING DOCUMENTATION

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

4.1.1 evidence of the NGA Network Build Cost incurred to achieve the relevant Milestone (through copies of invoices, receipts, timesheets, payroll records and other supporting information), this must include evidence to clearly demonstrate that the expenditure:

(a) falls within the parameters of Qualifying Capital Expenditure or Qualifying Operating Expenditure (as applicable);

(b) 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 NGA Network Build Cost 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, NGA Network Build Cost 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 NGA Network Build Cost 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 or counted as Qualifying Operating 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 90 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 all WIP Costs not yet claimed under an MPC, broken down by:

(a) WIP related to Achieved Milestones; and

- (b) WIP related to future Milestones not yet Achieved;
- 4.1.4 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;
- 4.1.5 signed confirmation from a suitably qualified finance representative of the Supplier that part apportionment or allocation of NGA Network Build Cost between this Contract and other contracts or services provided by the Supplier, is accurate and a fair reflection of the work carried out;
- 4.1.6 signed confirmation from a suitably qualified finance representative of the Supplier that the NGA Network Build Cost 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 NGA Network Build Cost has been incurred and is in accordance with the accounting requirements for NGA Network Build Cost, and is consistent with Generally Accepted Accountancy Principles with regard to capitalisation and the accounting policies that the Supplier applies under its corporate financial reporting and audit standards.
- 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 NGA Network Build Cost and the validity of the MPC.
- 4.3 The MPC and its supporting information must separately identify Qualifying Capital Expenditure and Qualifying Operating Expenditure in the MPC and MPC Supporting Documentation to support the operation of the mechanisms under this Schedule 5.1.
- 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 this Schedule). 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 details of any re-payments made to the Authority pursuant to this Schedule 5.1;
 - 5.1.4 supporting notes and information as appropriate for the reasonable understanding of the Project Accounts; and
 - 5.1.5 actual Take-up per Project Period.
- 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 NGA Network Build Costs under 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 AND FINANCIAL CONTROL**

6.1 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.

6.2 As part of the Authority's own internal financial control process or otherwise complying with its legal duties, the Authority (and/or its agents or representatives) and/or the Programme Authority may undertake reviews of the NGA Network Build Cost under this Contract. In such circumstances, the Authority (and/or its agents or representatives) and/or the Programme Authority 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).

6.3 Paragraphs 3.10 and 6.2 of this Schedule shall continue to be effective until:

6.3.1 12 months following the Term, subject to early termination of this Contract;
or

6.3.2 in the event of early termination of this Agreement, 24 months following such termination date.

7. **PROJECT MODEL OUTPUTS**

7.1 The Supplier shall ensure that the Project Model:

7.1.1 contains the details of the Supplier NGA Network Build Investment that is forecast to be incurred over the Deployment Period;

7.1.2 calculates a Project Investment Ratio; and

7.1.3 calculates a Project Unit Margin.

7.2 Where the forecast NGA Network Build Cost is expected to be less than that forecast in Project Model, then the Authority shall require an appropriate reduction to the Milestone Payments such that on Achievement of the final NGA Milestone type 2, Actual Supplier NGA Network Investment should be equal to that forecast in the Project Model.

8. **DEPLOYMENT COMPLETION**

8.1 Notwithstanding paragraphs 2.4 and 2.5, claims evidencing NGA Network Build Cost can only be submitted by the Supplier up to the end of the Quarter immediately

following the Quarter in which the Full Service Commencement Date is Achieved. Milestone Payment Claims in respect of type M3 Milestones may be submitted after that date but these can only provide for Subsidy Payment corresponding to NGA Network Build Cost already evidenced in claims submitted within the time-limit specified in the first sentence of this paragraph. Any Milestone Payment Claims not submitted in accordance with the foregoing provisions of this paragraph are invalid and the Qualifying Capital Expenditure covered by such claims cannot be claimed from the Authority nor applied within any of the mechanisms under this Schedule 5.1 but the corresponding parts of the Network to which the expenditure relates will otherwise remain subject to the terms of this Agreement.

8.2 Where at the Full Service Commencement Date, the Supplier has not incurred and satisfied (without Subsidy Payment being paid or payable) the Supplier NGA Network Build Investment set out in the Project Model, then:

8.2.1 the Supplier shall pay directly to the Authority within 20 Working Days of receipt of the final MPC the difference between Supplier NGA Network Build Investment incurred and the Supplier NGA Network Build Investment set out in the Project Model; and

8.2.2 where, following completion by the Authority of its assurance in respect of the final MPC, if there remains any further difference between the Supplier NGA Network Build Investment incurred and the NGA Network Build Investment set out in the Project Model, then the Supplier shall pay any such residual balance directly to the Authority within 20 Working Days of the Authority issuing to the Supplier a Milestone Completion Certificate.

9. **OVER-SUBSIDY CLAW-BACK: POST IMPLEMENTATION**

9.1 At each Take-up Review Point the Supplier shall perform an assessment of Take-up in accordance with paragraph 9.2.

9.2 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 'Solution Volumes Tab' 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.

9.3 Exposure to claw-back at each interim Take-up Review Point shall be calculated as follows:

- *Exposure to claw-back at Take-up Review Point = Net Additional Take-up x Project Unit Margin x (1 – the higher of (i) the Project Investment Ratio; or (ii) the Outturn Investment Ratio if calculable at that time)*

9.4 At each interim Take-up Review Point, a Take-up Claw Back Amount shall be calculated as follows:

- *Take-up Claw Back Amount = (Exposure to claw-back at Take-up Review Point less any Take-up Claw Back Amounts previously paid back to the Authority)*

Any positive Take-up Claw Back Amount shall be repaid direct to the Authority within 20 Working Days of the Take-up Review Point.

- 9.5 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 Claw Back Amounts previously paid to the Authority.*

Any Final Take-up Claw-back Amount shall be repaid direct to the Authority within 20 Working Days of the final Take-up Review Point.

10. **OVER-SUBSIDY CLAW-BACK: ADDITIONAL SERVICES**

- 10.1 At each Additional Service Review Point the Supplier shall perform an assessment of Additional Service Revenue in accordance with paragraph 10.2.

- 10.2 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 Claw Back Amount = (Net Additional Service Revenue x A%, less any Additional Service Claw Back Amounts previously paid to the Authority)*

Any Additional Service Claw Back Amount shall be shall be repaid direct to the Authority within 20 Working Days.

- 10.3 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, as follows:

- *Final Additional Service Claw Back Amount = Net Additional Service Revenue x A%, less any Additional Service Revenue Amounts previously paid to the Authority*

Any Final Additional Service Claw Back Amount shall be repaid direct to the Authority within 20 Working Days.

- 10.4 For the purposes of paragraphs 10.2 and 10.3, "A%" shall be determined at each Additional Service Review Point as follows:

- 10.4.1 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;

- 10.4.2 As part of the Additional Service 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.

11. **NEGATIVE CLAWBACK SUM**

Where any of the calculations at paragraphs 9 or 10 demonstrate a prior over-payment by the Supplier to the Authority pursuant to those provisions, the over-payment shall be refunded by the Authority directly to the Supplier within 20 Working Days.

12. **LIABILITY IN AUDITED ACCOUNTS**

Where at any Take-up Review Point or Additional Service Review Point a greater liability is shown in the Supplier's audited accounts for anticipated re-payment pursuant to paragraphs 9 or 10 than would otherwise be re-payable at that time to the Authority under those paragraphs, the Supplier shall re-pay that higher amount in accordance with the corresponding re-payment timings noted in paragraphs 9 or 10 (as applicable).

13. **CONTINGENCY**

[Template Note: A Local Body may incorporate contingency arrangements in its contract – i.e. an identified contingency sum (to be funded by the parties on an agreed specified basis) for funding additional cost exposure in certain limited expressly specified circumstances. The detail of these contingency arrangements would be identified in the applicable ITT and the contractual arrangements set out here.]

APPENDIX 1 – MILESTONE PAYMENTS

ID	MILESTONE	MILESTONE PAYMENT

[Bidder Note: The Milestone Payments included in this Appendix must be consistent with the funding parameters as specified in the ITT.]

APPENDIX 2 – QUALIFYING CAPITAL EXPENDITURE CATEGORIES

Qualifying Capital Expenditure

Qualifying Capital Expenditure is that capital expenditure actually incurred by the Supplier which can attract capital public subsidy under this Contract.

Qualifying Capital Expenditure is that Supplier expenditure which (i) can be reasonably allocated or apportioned to this Contract; (ii) is incremental to the Supplier's cost base that would otherwise have been incurred; (iii) 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 but excluding those costs directly attributable to connecting End User Premises to the Network; and (iv) is capable of being capitalised under Generally Accepted Accountancy Principles.

The following examples for this expenditure category are provided:

- The cost of tangible broadband infrastructure (plant, machinery and equipment) in both active and passive layers)
- Infrastructure installation and assembly costs
- Cost of active electronics, data transport and backhaul equipment
- Cost of vectoring technologies, where such technologies are integral to a significant improvement in the available network
- Specific software and systems (including reporting systems) development costs directly attributable to bringing the broadband infrastructure into use for this Contract
- Staff costs directly attributable to bringing the broadband infrastructure into use
- 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)
- Power connection costs
- Professional fees directly attributable to bringing the broadband infrastructure into use (expenditure that will attract subsidy under Milestone 0)

APPENDIX 3 – QUALIFYING OPERATING EXPENDITURE CATEGORIES

Qualifying Operating Expenditure

Qualifying Operating Expenditure is that operating expenditure incurred by the Supplier which may be included when calculating the PIR (forecast expenditure)/OIR (actual) under this Contract.

Qualifying Operating Expenditure is that Supplier expenditure which (i) is incremental to the Supplier's cost base that would otherwise have been incurred (ii) can be reasonably allocated or apportioned to this Contract; (iii) is incurred in accordance with this Contract; (iv) is directly attributable to bringing the wholesale access infrastructure to the location and working condition necessary for its intended use (excluding customer connection and Network maintenance related costs); and (v) is not capable of being capitalised under Generally Accepted Accountancy Principles.

The following examples for this expenditure category are provided:

- HR support solely related to direct NGA network build resource
- Non capitalisable labour costs of the direct NGA network build resource
- Direct labour costs associated with compiling all reports and claims obligated under the Contract.
- Travel and subsistence for direct NGA network build resource
- Fleet:
 - Vehicle lease costs
 - Insurance
 - Repair and Maintenance
 - Fuel
- Operating lease rentals that do not relate to point (i) of Appendix 5 to this Schedule in respect of Non-Qualifying Operating Expenditure.

APPENDIX 4 – NON-QUALIFYING CAPITAL EXPENDITURE CATEGORIES

Non-Qualifying Capital Expenditure

Non-Qualifying Capital Expenditure is that capital expenditure actually incurred by the Supplier which cannot attract capital public subsidy under this Contract.

Non-Qualifying Capital Expenditure is that Supplier expenditure which (i) is directly attributable to connecting End Users to the Network (to the extent such expenditure is incurred after deployment of the Network (i.e. after Achievement of the M2 Milestone(s) for that part of the Network servicing those End Users)) and maintaining the Network post-deployment; (ii) is incremental to the Supplier's cost base that would otherwise have been incurred (iii) can be reasonably allocated or apportioned to this Contract; (iv) is incurred in accordance with this Contract; and (v) is capable of being capitalised under Generally Accepted Accountancy Principles, to the extent incurred by the Supplier during the Term;

The following examples for this expenditure category are provided:

- Connection costs including Network termination equipment and End User Premises equipment as required to deliver wholesale services

APPENDIX 5 – NON-QUALIFYING OPERATING EXPENDITURE CATEGORIES

Non-Qualifying Operating Expenditure

Non-Qualifying Operating Expenditure is that operating expenditure incurred by the Supplier which may not be included when calculating the PIR (forecast expenditure)/OIR (actual).

Non-Qualifying Operating Expenditure is that Supplier expenditure which (i) is directly attributable to connecting End Users to the Network (to the extent such expenditure is incurred after deployment of the Network (i.e. after Achievement of the M2 Milestone(s) for that part of the Network servicing those End Users)) and maintaining Network post-deployment; (ii) is incremental to the Supplier's cost base that would otherwise have been incurred; (iii) can be reasonably allocated or apportioned to this Contract; (iv) is incurred in accordance with this Contract; and (v) is not capable of being capitalised under Generally Accepted Accountancy Principles, to the extent incurred by the Supplier during the Term.

The following examples for this expenditure category are provided:

- Operating costs of providing broadband services (wholesale) to third parties and consumers
- Power and other utility running costs
- Operating and maintenance costs of the broadband infrastructure created
- Operating lease rentals
- Connection costs including Network termination equipment and End User Premises equipment as required to deliver wholesale services

APPENDIX 6 – EXCLUDED EXPENDITURE CATEGORIES

Excluded Expenditure

Excluded Expenditure is that expenditure which may not be classified as Qualifying Capital Expenditure, Qualifying Operating Expenditure, Non-Qualifying Capital Expenditure or Non-Qualifying Operating Expenditure for the purposes of this Contract.

The **Excluded Expenditure** examples below are, for the avoidance of doubt, without limitation to other forms of Excluded Expenditure which does not meet the descriptions of Qualifying Capital Expenditure, Qualifying Operating Expenditure, Non-Qualifying Capital Expenditure or Non-Qualifying Operating Expenditure:

- Costs involved in re-working of design and build due to Supplier Default (including non-compliance with Clause 10)
- Costs of planning, design and build for Structures that did not Achieve M2 (abortive Structures), unless due to Authority requested de-scope (provided such Authority requested de-scope is not required due to Supplier Default (including non-compliance with Clause 10))
- Costs involved in winding up a company
- Payments for unfair dismissal
- Payments into private pension schemes
- Payments for un-funded pensions
- Compensation for loss of office
- Bad debts arising from loans to employees, proprietors, partners, directors, guarantors, shareholders or a person connected with any of these
- Payments for gifts and donations
- Payment for entertainment
- Input VAT reclaimable by the Supplier
- Statutory fines and penalties
- Criminal fines and damages
- Legal expenses in respect of litigation
- Expenditure on works or activities which any person has a statutory duty to undertake
- Any liability arising out of negligence
- Professional fees not directly attributable to bringing the broadband infrastructure into use
- Provisions and contingent liabilities (including for risk related to this Contract)
- 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

- Administration and general management costs
- Dividends
- Interest and financing charges
- Costs resulting from the deferral of payments to creditors
- Costs incurred before the Effective Date of this Contract (including bid costs)
- Any cost relating to insurance and insurance policies
- Customer acquisition and churn costs
- General corporate or unabsorbed overheads
- Depreciation, amortisation and impairment of assets
- Service and financing costs under finance leases, of broadband infrastructure, plant, machinery and equipment
- Operating costs of providing broadband services (retail) to third parties and consumers
- Demand surveys, marketing other sales costs
- Corporation tax and non domestic rates
- Retail connection costs and End User Premises equipment at retail level
- Any premium rates of overtime, unless prior approval given by the Authority
- Cost of vectoring technologies, where such technologies are not integral to a significant improvement in the available network
- Additional costs incurred as a result of Supplier Default
- Any other costs expressly identified in this Agreement as not recoverable from the Authority

APPENDIX 7 – MILESTONE COMPLETION CERTIFICATE

MILESTONE COMPLETION CERTIFICATE

CONTRACT REFERENCE [•]

AUTHORITY			
Authority signs below to confirm that it has completed its standard assurance process for the final contracted MPC under the Contract:			
Role	Name (print)	Signature	Date
Authority Project Manager			
Authority Quality Manager <i>(if applicable)</i>			

Summary of completed Milestone assured:

[•]