

Dated

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Wolverhampton City Council

-and-

[Supplier]

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Contract for Public Sector Fibre Network

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**CITY OF  
WOLVERHAMPTON  
C O U N C I L**

Ref: RR/CEC013746

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**THIS CONTRACT** is made on

**BETWEEN:**

- (1) **Wolverhampton City Council** of Civic Centre, St Peter's Square, Wolverhampton, WV1 1RG ("**the Council**")
- (2) **[Full Company Name]** incorporated and registered in England and Wales with company number **[Number]** whose registered office is at **[Registered Office Address]** ("**Supplier**")

each of the above being a "Party" and together being "the Parties".

**BACKGROUND**

- (A) The Council have secured £4.9 million from the Department of Digital Culture, Media and Sport (DCMS) Local Full Fibre Network (LFFN) to connect 196 public sector premises across Wolverhampton to fibre broadband.
- (B) The Council placed a contract notice **[reference]** on **[insert date]** in the Official Journal of the European Union seeking expressions of interest from potential providers for the provision of Public Sector Fibre Network.
- (C) The Council has, through a competitive process, selected the Supplier to provide these services in accordance with the terms and conditions of this Contract

**IT IS AGREED** as follows:

**1. INTERPRETATIONS**

1.1 The following terms shall have the following meanings for the purpose of this Contract:

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| <b>Achieve(s)</b>                | means <ol style="list-style-type: none"><li>(a) in respect of a Test, to successfully pass testing and the issue of an Acceptance Notice; and</li><li>(b) in respect of a Milestone, the issue of a Milestone Achievement Certificate in respect of that Milestone;</li></ol>   |
| <b>Acceptance Testing</b>        | means the tests to be undertaken on a Segment as described in [Schedule [1] (Testing, Commissioning and Acceptance)];   |
| <b>Associated Company</b>        | means any company that is a holding company of the Supplier or the Council, or a subsidiary of such holding company as the case may be, a reference to a <b>holding company</b> or a <b>subsidiary</b> means a holding company or a subsidiary (as the case may be) as defined in section 1159 of the Companies Act 2006; |
| <b>Auditor(s)</b>                | Means the auditor appointed by the Council to carry out their annual statutory audit;   |
| <b>Authorised Representative</b> | means the person(s) listed in clause 28.1   |
| <b>Annual Lease Fee</b>          | means the fee paid for the Lease of the fibre cables set out in [Schedule [3] (Charges)]  |
| <b>Business Day(s)</b>           | a day other than a Saturday, Sunday or public holiday in England when banks in London are open for business   |
| <b>Cable(s)</b>                  | means the fibre optic cable (which contains the Digital Infrastructure) and all   |

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|  | ancillary equipment (the routes of which and other details being set out in Schedule [4] (Digital Infrastructure Design), which are installed or pre-exist in the Supplier's underground ducts including without limitation any alternative or replacement cable which the Supplier may install in accordance with this Contract and any alternative or replacement cable which the Supplier obtains the right to use;  |
| <b>CDM Regulations</b>                         | means Regulation 11 of Construction (Design and Management) Regulations 2015 (CDM2015);   |
| <b>Change Of Control</b>                       | means a change in Control of the Contractor Supplier or a Sub-Contractor;   |
| <b>Charges</b>                                 | means the charges in [Schedule [3] (Charges)]   |
| <b>Circuit</b>                                 | means a fully terminated point to point dark fibre pair between a Site and the Suppliers network contained within a Segment;  |
| <b>Commencement Date</b>                       | means the date this Contract is dated;  |
| <b>Completion Date</b>                         | means the completion date [as informed by the Contractors proposal] which is no later than the Funding Cut Off Date   |
| <b>Connectivity Provider</b>                   | means the current provider of connectivity to the Council;  |
| <b>Contract Year</b>                           | Means a consecutive period of twelve (12) months commencing on the Commencement Date or each anniversary thereof;   |
| <b>Correction Plan</b>                         | means the correction plan detailed in clause [10] of this Contract  |
| <b>Corrective Maintenance/Fault Resolution</b> | means any or all of those activities described at [Schedule [1] (Maintenance)];   |
| <b>Council Data</b>                            | any Personal Data for which the Council is the Data Controller;   |
| <b>Data Controller</b>                         | has the meaning given to that term in the Data Protection Legislation in force from time to time;   |
| <b>Data Processor</b>                          | has the meaning given to that term in the Data Protection Legislation in force from time to time;   |
| <b>Data Protection Impact Assessment</b>       | means an assessment carried out pursuant to Article 35 of the General Data Protection Regulation;   |
| <b>Data Protection Legislation</b>             | the UK Data Protection Legislation and any other European Union legislation relating to personal data and all other legislation and regulatory requirements in force from time to time which apply to a party relating to the use of Personal Data (including, without limitation, the privacy of electronic communications);   |
| <b>Data Security Breach</b>                    | means any breach of security or confidentiality leading to the accidental or unlawful destruction, loss, alteration, unauthorised disclosure of, or access to, Personal Data;   |
| <b>Default</b>                                 | means any breach of the obligations of the Supplier (including but not limited to the abandonment of this Contract in breach of its terms) or any other default (including material Default), act, omission, negligence or statement of the Supplier, of its Sub--Contractors or any Supplier Personnel howsoever arising in connection with or in relation to the subject--matter of this Contract and in respect of which the Supplier is liable to the Customer; |
| <b>DCMS Data</b>                               | means any data that the Department for Digital, Culture, Media and Sport requests in writing that the Council is to produce in respect of this Contract as listed in Schedule [9] (DCMS Data);  |
| <b>Digital Infrastructure</b>                  | means the various Segments and Fibres to be delivered to the Site(s) as detailed in the Proposal;   |
| <b>Effective Date</b>                          | means the date of the Final Acceptance Notice in clause [9.10];   |
| <b>Efficiency Saving</b>                       | means a reduction in the price that is the result of greater use of information   |

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|                              | and communication technology, better utilisation of assets, a fundamental change in the technology used and/ or delivery method and any originally anticipated risk and/ or contingency priced in to the Charges and that is to be shared in accordance with Schedule [3] (the Charges).  |
| <b>EIRs</b>                  | means the Environmental Information Regulations 2004, together with any guidance and/or codes of practice issues by the Information Commissioner or any Central Government Body in relation to such Regulations;  |
| <b>Emergency</b>             | means an event causing or, in the reasonable opinion of a party, threatening to cause, death or injury to any individual, or serious disruption to the lives of a number of people or extensive damage to property, or contamination of the environment, preventing the delivery and / or implementation of the Fibre and / or Services operating under normal circumstances and requiring the mobilisation and organisation of the emergency services;   |
| <b>Excluded Information</b>  | means <ul style="list-style-type: none"> <li>a) all Council and any information, however it is conveyed, that relates to the business, affairs, developments, trade secrets, know-how, personnel, and suppliers of the Council, including all IPRs, together with all information derived from any of the above, and any other information clearly designated as being confidential (whether or not it is marked “confidential”) or which ought reasonably be considered to be confidential;</li> <li>b) any information, which has been designated as confidential by the Supplier in writing or that ought reasonably to be considered as confidential information, however it is conveyed, including information that relates to the business, affairs, developments, trade secrets, know-how, personnel and suppliers of the Supplier, including IPRs and Documentation which is proprietary to the Supplier and its Sub-contractors, together with all information clearly designated as being confidential (whether or not it is marked as “confidential”) and Commercially Sensitive Information;</li> </ul> |
| <b>Exit Plan</b>             | means the plan to be prepared by the Supplier pursuant to clauses [27.9] and [27.10];   |
| <b>Fibres</b>                | means the lengths of fibre optic pairs contained within the Digital Infrastructure as described in the Order and the Proposal and any fibres which become additional fibres in accordance with [clause 13 (Optional Services)];   |
| <b>Final Acceptance Date</b> | means the date upon which all the Segments contained within an Order have successfully passed acceptance;   |
| <b>FOIA</b>                  | means the Freedom of Information Act 2000 and any subordinate legislation made under that Act from time to time, together with any guidance and/or codes of practice issued by the Information Commissioner or any relevant Central Government Body in relation to such Act;  |
| <b>Force Majeure Event</b>   | means any circumstance not within a party's reasonable control including, without <i>limitation</i> : <ul style="list-style-type: none"> <li>a) acts of God, flood, drought, earthquake or other natural disaster;</li> <li>b) epidemic or pandemic;</li> <li>c) terrorist attack, civil war, civil commotion or riots, war, threat of or preparation for war, armed conflict, imposition of sanctions, embargo, or breaking off of diplomatic relations;</li> <li>d) nuclear, chemical or biological contamination or sonic boom;</li> <li>e) any law or any action taken by a government or public authority, including without limitation imposing an export or import restriction, quota or prohibition [or failing to grant a necessary licence or consent];</li> <li>f) collapse of buildings, fire, explosion or accident; [and]</li> <li>g) [any labour or trade dispute, strikes, industrial action or lockouts [(other than in each case by the party seeking to rely on this clause, or</li> </ul>   |

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|   |  | companies in the same group as that party));]  |
|   |  | h) [non-performance by suppliers or subcontractors [(other than by companies in the same group as the party seeking to rely on this clause)]; and]   |
|   |  | i) interruption or failure of utility service.   |
| <b>Funding Cut Off Date</b>                     |  | is the date that any funding from DCMS ceases to be available to the Council, namely 30 March 2021;  |
| <b>General Data Protection Regulations/GDPR</b> |  | means Regulation (EU) 2016/679 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC;  |
| <b>[Guarantee</b>                               |  | means the deed of guarantee in favour of the Council entered into by the Guarantor [on or about the date of this Contract] (which is in the form set out in Schedule [11] (Guarantee))] or any guarantee acceptable to the Council that replaces it from time to time;]  |
| <b>[Guarantor]</b>                              |  | [means <b>[INSERT NAME]</b> ]  |
| <b>Good Industry Practice</b>                   |  | means the exercise of that degree of skill and diligence which would reasonably and ordinarily be expected to be exercised by an operator engaged in the same type of undertaking under the same circumstances and conditions;   |
| <b>Health and Safety Policy</b>                 |  | means the health and safety policy of the Council and/or other relevant Central Government Body as provided to the Supplier on or before the Effective Date and as subsequently provided to the Supplier from time to time except any provision of any such subsequently provided policy that cannot be reasonably reconciled to ensuring compliance with applicable Law regarding health and safety;  |
| <b>Implementation Period</b>                    |  | means the period between Commencement Date and circuits being Ready for Service  |
| <b>Implementation Plan</b>                      |  | means the Supplier's detailed delivery plan agreed following the Commencement Date that includes mobilisation, planning, design and survey, infrastructure build, circuit delivery, testing and handover detailing the Milestones and the Milestone Dates as attached at Schedule [4] (Implementation Plan));  |
| <b>Indefeasible Right To Use or IRU</b>         |  | means the exclusive and indefeasible right to use the Digital Infrastructure connecting the Sites for the remainder of the IRU Term;   |
| <b>Insolvency Event</b>                         |  | means, in respect of the Supplier or [Guarantor (as applicable)]:<br>a proposal is made for a voluntary arrangement within Part I of the Insolvency Act 1986 or of any other composition scheme or arrangement with, or assignment for the benefit of, its creditors; or<br>a shareholders' meeting is convened for the purpose of considering a resolution that it be wound up or a resolution for its winding--up is passed (other than as part of, and exclusively for the purpose of, a bona fide reconstruction or amalgamation) ; or<br>a petition is presented for its winding up (which is not dismissed within fourteen (14) Working Days of its service) or an application is made for the appointment of a provisional liquidator or a creditors' meeting is convened pursuant to section 98 of the Insolvency Act 1986; or<br>a receiver, administrative receiver or similar officer is appointed over the whole or any part of its business or assets; or<br>an application order is made either for the appointment of an administrator or for an administration order, an administrator is appointed, or notice of intention to appoint an administrator is given; or<br>it is or becomes insolvent within the meaning of section 123 of the Insolvency Act 1986; or<br>being a "small company" within the meaning of section 382(3) of the Companies Act 2006, a moratorium comes into force pursuant to Schedule A1 of the Insolvency Act 1986;; or |

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|  | where the Supplier [or Guarantor] is an individual or partnership, any event analogous to those listed in limbs (a) to (g) (inclusive) occurs in relation to that individual or partnership; or<br>any event analogous to those listed in limbs (a) to (h) (inclusive) occurs under the law of any other jurisdiction;  |
| <b>IRU Term</b>                          | means [twenty (20)] years from Final Acceptance;  |
| <b>Law</b>                               | means any law, statute, subordinate legislation within the meaning of section 21(1) of the Interpretation Act 1978, bye-law, enforceable right within the meaning of section 2 of the European Communities Act 1972, regulation, order, mandatory guidance or code of practice, judgment of a relevant court of law, or directives or requirements of any regulatory body with which the Supplier is bound to comply;   |
| <b>Lease Cost</b>                        | means the reoccurring charges as detailed in Schedule [3] (the Charges);  |
| <b>Legal Requirement</b>                 | means all necessary licenses, approvals, permits and consents required by any statute, regulation, or government or regulatory authority having jurisdiction.   |
| <b>Licensed Software</b>                 | means specially written software, contractor software and third party software  |
| <b>Managed Service Provider</b>          | means any service provider to the Council that requires access to the Fibre to provide connectivity and/or Services to the Council for its own purposes;  |
| <b>Migration Period</b>                  | means the migration period as set out in the Migration Plan   |
| <b>Migration Plan</b>                    | means the plan set out in Schedule [5]  |
| <b>Milestone</b>                         | means the milestones in the Implementation Plan   |
| <b>Milestone Achievement Certificate</b> | means the certificate in clause [7.4];  |
| <b>Milestone Date</b>                    | means the date that a particular milestone is reached as detailed in the Implementation Plan;   |
| <b>Milestone Payment</b>                 | Date means the target date set out against the relevant Milestone in the payment schedule by which the Milestone becomes invoiceable in accordance with Schedule [3] (the Charges));  |
| <b>Optional Services Order</b>           | means those services described in the [the Specification];<br>means the written instruction from the Council detailing, the Sites, its requirements and Services it requires as attached at Schedule [2] (The Order and the Proposal));   |
| <b>Planned Work</b>                      | means any Preventative Maintenance, engineering or other works that are necessary to renew, refurbish or re-route the Cables and which are planned in accordance with Schedule [1] (Specifiacione));  |
| <b>Personal Data</b>                     | means personal data as defined in Data Protection Legislation   |
| <b>Preventative Maintenance</b>          | means any or all of those activities described in Schedule [] (Specifiacion);   |
| <b>Prohibited Act</b>                    | means any offer or agreement to give any person working for or engaged by the Council any commission, gift or other consideration of any kind, which could act as an inducement or a reward for any act or failure to act connected to this Contract including:<br>a) the award of this Contract to the Supplier or any other agreement to the Contractor or a Sub-contractor; and<br>b) any award of the rights and obligations contained within this Agreement or the showing of any favour or disfavour to any person in relation to this Contract |
| <b>Proposal</b>                          | means the Proposal generated by the Supplier that includes the Charges and the Implementation Plan in the form as attached at Schedule [2] (The Order and the Proposal));   |
| <b>Public Body Sites</b>                 | means those sites listed in the Order at Schedule [2] (the Order and the Proposal);   |
| <b>Ready for</b>                         | means the notification from the Supplier to the Council that a Segment has  |

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| <b>Acceptance (RFA) Ready for Service</b> | successfully tested and are ready to be accepted by the Council means a Segment that has been accepted by the Council and it is ready for service and are available for the Migration Services by the Council or its chosen Service Provider;  |
| <b>Ready for Testing</b>                  | means the notification from the Supplier to the Council that a Segment is ready for the Acceptance Tests;  |
| <b>Regulated Activity</b>                 | has the meaning contained in the Safeguarding Vulnerable Groups Act 2006, as amended;  |
| <b>Relevant Conviction</b>                | means a conviction that is relevant to the nature of the Services to be provided;  |
| <b>Relevant Requirements</b>              | all applicable Law relating to bribery, corruption and fraud, including the Bribery Act 2010 and any guidance issued by the Secretary of State for Justice pursuant to section 9 of the Bribery Act 2010   |
| <b>Request For Information</b>            | means a request for Information or an apparent request under the Code of Practice on Access to Government Information, FOIA or EIR   |
| <b>Schedules</b>                          | means the schedules to this Contract   |
| <b>SED</b>                                | means special engineering difficulties as defined in schedule 4 of the New Roads and Street Work Act 1991;   |
| <b>Segment</b>                            | means a group of Circuits within an Order associated with the same Milestone Date and the RFA Date;  |
| <b>Services</b>                           | means the services requested from the Specification (including any Optional Services) as detailed in the Order and confirmed in the Proposal as attached at Schedule [2] (The Order and the Proposal)];  |
| <b>Site(s)</b>                            | means a Public Body Site(s) as listed in the Order;  |
| <b>Specification</b>                      | means the specification at Schedule [1]  |
| <b>Step In Procedure</b>                  | means the procedure undertaken by the Council pursuant to [clause 10.1.5 and 14] and more particularly detailed in Schedule [7] (Step In Procedure);   |
| <b>Standards</b>                          | means without limitation those standards listed in Schedule [1] and/or their replacements from time to time;   |
| <b>Sub-Contract</b>                       | means any contract or agreement or proposed contract or agreement between the Supplier and any third party whereby that third party agrees to provide to the Supplier the Services or any part thereof or facilities, goods or services necessary for the provision of the Services or any part thereof or necessary for the management, direction or control of the Services or any part thereof;   |
| <b>Sub-Contractor(s)</b>                  | means the third party with whom the Supplier enters into a Sub-Contract or its servants or agents and any third party with whom that third party enters into a Sub-Contract or its servants or agents  |
| <b>Suppliers</b>                          | means  |
| <b>Background IPRs</b>                    | (a) copyright, rights related to or affording protection similar to copyright, rights in databases, patents and rights in inventions, semi-conductor topography rights, trade marks, rights in Internet domain names and website addresses and other rights in trade names, designs, Know-How, trade secrets and other rights in Confidential Information;<br>(b) applications for registration, and the right to apply for registration, for any of the rights listed at (a) that are capable of being registered in any country or jurisdiction; and<br>(c) all other rights having equivalent or similar effect in any country or jurisdiction; |
| <b>Supplier Equipment</b>                 | means equipment owned by the Supplier;   |
| <b>Supplier's Personnel</b>               | means all employees, staff, other workers, agents and consultants of the Supplier and of any Sub-Contractors who are engaged in the provision of the Services from time to time:   |
| <b>Termination Notice</b>                 | means a written notice of termination given by one Party to the other, notifying   |



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|                                       | the Party receiving the notice of the intention of the Party giving the notice to terminate this Contract on a specified date and setting out the grounds for termination;  |
| <b>UK Data Protection Legislation</b> | all applicable data protection and privacy legislation in force from time to time in the UK including the General Data Protection Regulation ((EU) 2016/679); the Data Protection Act 2018; the Privacy and Electronic Communications Directive 2002/58/EC (as updated by Directive 2009/136/EC) and the Privacy and Electronic Communications Regulations 2003 (SI 2003/2426) as amended |
| <b>Unforeseen SEDs</b>                | means any unforeseen SED that was not listed at <a href="http://www.wolverhampton.gov.uk/roadworks">http://www.wolverhampton.gov.uk/roadworks</a> at the Commencement Date;   |
| <b>Vulnerable Adult</b>               | means any adult to whom an activity which is a Regulated Activity relating to vulnerable adults by virtue of any paragraph of paragraph 7(1) of Schedule 4 of the Safeguarding Vulnerable Groups Act 2006 is provided;  |
| <b>Wayleave</b>                       | means the standard Wayleave of the Council in the substantially in the same format at Schedule [12] (Wayleave)  |

- 1.2 Clause and Schedule headings shall not affect the interpretation of this Contract.
- 1.3 A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).
- 1.4 The Schedules form part of this Contract and shall have effect as if set out in full in the body of this Contract. Any reference to this Contract includes the Schedules.
- 1.5 A reference to a **company** shall include any company, corporation or other body corporate, wherever and however incorporated or established.
- 1.6 Unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular.
- 1.7 Unless the context otherwise requires, a reference to one gender shall include a reference to the other genders.
- 1.8 A reference to any party shall include that party's personal representatives, successors and permitted assigns.
- 1.9 A reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time.
- 1.10 A reference to a statute or statutory provision shall include all subordinate legislation made from time to time under that statute or statutory provision.
- 1.11 A reference to writing or written excludes faxes and e-mail.
- 1.12 Any obligation on a party not to do something includes an obligation not to allow that thing to be done.
- 1.13 Any reference to an English legal term for any action, remedy, method of judicial proceeding, legal document, legal status, court, official or any legal concept or thing shall, in respect of any jurisdiction other than England, be deemed to include a reference to that which most nearly approximates to the English legal term in that jurisdiction.

1.14 A reference to this Contract or to any other Contract or document referred to in this Contract is a reference to this Contract or such other document or Contract as varied or novated (in each case, other than in breach of the provisions of this Contract) from time to time.

1.15 References to clauses and Schedules are to the clauses and Schedules of this Contract.

1.16 Any words following the terms **including, include, in particular** or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.

## **2. COMMENCEMENT AND DURATION**

2.1 This Contract shall come into force on the Commencement Date and shall continue unless terminated pursuant to clause [27] (Suspension and Termination).

2.2 For the avoidance of doubt any IRU granted by the Supplier to the Council pursuant to clause [18] (IRU) shall be valid from the Effective Date and continue for the IRU Term and shall survive circumstances in clause [27] (Suspension and Termination)

## **3. [GUARENTEE]**

[Before the Commencement Date [OR on the Council's request,] the Supplier shall procure that the Guarantor shall:

3.1 execute and deliver to the Council the Guarantee;

3.2 deliver to the Council a certified copy extract of the board minutes of the Guarantor approving the execution of the Guarantee.]

## **4. NOT USED**

## **5. NOT USED**

## **6. THE SITES**

6.1 The Supplier shall provide the Services at the Public Body Sites in accordance with the Specification. The Supplier acknowledges that throughout the life of this Contract the Council may have the need to redevelop, close and/ or open a new Site(s).

6.2 If the Council wishes to change the number and/or location of a Site(s) it shall provide the Supplier written details within the relevant meeting as detailed within [clause 15 (Contract Management and Governance)] below. The Parties shall follow the [Change Procedure (Schedule 6)] to deal with such a change.

6.3 Where the Supplier undertakes works in the Public Body Sites and any other premises within the scope of this Contract to deliver the Services it shall adhere to that particular site's security arrangements.

## **7. IMPLEMENTATION PERIOD**

- 7.1 The Supplier shall roll out the Digital Infrastructure in accordance with Schedule 4 (Digital Infrastructure Design and Implementation Plan) on or by the Milestone Dates (the "Implementation Period") and Good Industry Practice and the CDM Regulations and subject to the terms and conditions of this Contract.
- 7.2 During the Implementation Period and during the IRU Term, the Supplier shall make reasonable efforts to make Efficiency Saving when providing the Service
- 7.3 During the Implementation Period and during the IRU Term where the Supplier considers that the roll out of the Digital Infrastructure detailed in the Implementation Plan and during the IRU Term are subject to either:
- 7.3.1 an Unforeseen SED; and/or
  - 7.3.2 an Efficiency Saving
- it shall follow the Change Procedure in clause [29] and [Schedule 6 (Change Procedure)] and [Part 3 of Schedule 3 (the Charges)].
- 7.4 Where the Supplier:
- 7.4.1 Achieves a Milestone Date the Council shall issue a Milestone Achievement Certificate
  - 7.4.2 in its reasonable opinion considers that it will not achieve a relevant Milestone Date, it shall follow the Correction Plan Procedure contained in clause [10] below.
- 7.5 Notwithstanding the requirements of clause [7.3] above, where the Supplier fails to achieve a relevant Milestone date it shall incur the Implementation Service Credits detailed in Schedule [1] (Specification)].
- 7.6 The Supplier shall during the term of this Contract co-operate, liaise and take instructions from the Council in respect of:
- 7.6.1 delivery, implementation, progress reporting and Acceptance Testing of the Digital Infrastructure;
  - 7.6.2 general project management including liaising with the Authorised Representative appointed pursuant to clause [15]; and
  - 7.6.3 the Supplier shall immediately inform the Council, if in its reasonable opinion, the Council is having a detrimental impact on the delivery of a Segment.
- 7.7 Once the implementation of a Segment of an order has been completed, the Supplier shall issue a notice to the Council (**Ready for Testing Notice**).

## 8. NOT USED

## 9. TESTING AND ACCEPTANCE

- 9.1 The Supplier, in respect of any equipment delivered as part of the Services and/or Optional Services shall undertake initial testing by means of manufacturer's test certificates (where applicable) to ensure such equipment meet specification prior to any Acceptance Testing.
- 9.2 The Supplier shall undertake Acceptance Testing upon each Segment and any Optional Services once a Ready For Testing Notice has been issued and in accordance with [Schedule 1 (Specification)].
- 9.3 The relevant RFA Date will be the day after the completion of successful testing of the Segment Proposal by the Supplier.
- 9.4 The Supplier shall provide the Council with five (5) Business Days' notice of the Ready for Testing date in respect of each Segment. If the Council wishes to attend the Acceptance Testing it shall within two (2) Business Days inform the Supplier in writing that an Authorised Representative will be attending.
- 9.5 The Supplier will use reasonable endeavours to ensure that the RFA Date occurs in accordance with the Implementation Plan. If the Supplier becomes aware or in its reasonable belief considers that there will be a delay then it shall notify the Council and follow the Correction Plan Process at [clause 10 (Correction Plan)].
- 9.6 The Council may begin its own Acceptance Testing of each Segment at any time on or after the RFA Date. Any such testing will be designed to confirm that the applicable Digital Infrastructure interfaces meet, in all material respects, the specifications detailed in the Proposal.
- 9.7 The Council will, within five (5) Business Days of the RFA Date, notify the Supplier either:
- 9.7.1 that it consider that the relevant Segment meets, in all material respects, the applicable specifications as set out in Schedule [2] (The Order and the Proposal)] and issue a notice to the Supplier (Acceptance Notice); or
  - 9.7.2 that it considers that the relevant Segment does not meet, in all material respects, those specifications (Non-Acceptance Notice).
- 9.8 The relevant Segment will be accepted on the date on which the relevant Acceptance Notice is received (or, if earlier, on the first date on which the Council puts the Segment into operation).
- 9.9 If the Council issues a Non-Acceptance Notice then the Supplier will make best endeavours reasonable efforts to ensure that the Segment meets the required specifications and will re-declare a new RFA Date as soon as possible. If the Supplier disagrees with the Non-Acceptance Notice then the parties will resolve the dispute in accordance with clause [10]. The Supplier shall undertake the activities required to rectify a Segment that has had a Non-Acceptance Notice issued at its own costs.
- 9.10 Once Acceptance Notices have been issued for all Segments contained within a Proposal the Supplier shall issue the Final Acceptance Notice.

## **10. CORRECTION PLAN**

### **10.1 General Provisions**

- 10.1.1 If the Supplier becomes aware that:
- 10.1.1.1 it reasonably considers that it will be unable to draw down sufficient Charges by the Funding Cut Off Date;
  - 10.1.1.2 it will not (or is unlikely) to complete the Implementation Plan by the Implementation Completion Date; or
  - 10.1.1.3 it will not achieve the Milestone Date of a particular Milestone as detailed in the Implementation Plan;
  - 10.1.1.4 it will not or it is unlikely to complete the Acceptance Testing by the RFA date;
  - 10.1.1.5 it will not or is unlikely to issue the Final Acceptance Notice by the scheduled Effective Date;
  - 10.1.1.6 has failed to comply with any other of its obligations,
- it shall notify the Council in writing.
- 10.1.2 In respect of the event envisaged in clause [10.1.1], the Supplier shall immediately inform the Council and provide details as to how the situation can be mitigated and provide any such information requested by the Council to assist in its discussions with DCMS.
- 10.1.3 The Supplier shall, as soon as possible and in any event not later than five(5) Business Days] (or such other reasonable period as agreed in writing between the Parties having regard to all the relevant circumstances) after the initial notification under clause [10.1.1] provide the Council full details in writing of:
- 10.1.3.1 the reasons for non-compliance;
  - 10.1.3.2 details of the actions (including without limitation the additional resources) that the Supplier intends to take to eliminate or mitigate the consequences of such non-compliance; and/or
  - 10.1.3.3 any suggested amends and/or modifications to its obligations;
  - 10.1.3.4 the amends it needs to make to the Implementation Plan and/ or the Migration Plan to prevent such failure re occurring (Correction Plan).
- 10.1.4 The Correction Plan shall be provided to the Council. The Supplier shall pursuant to clause [15] below promptly notify the Council on an on-going basis on of its failure to comply with a Correction Plan.
- 10.1.5 In the circumstances where the Supplier has failed to comply with a Correction Plan the Council shall have the right to:
- 10.1.5.1 withhold any Milestone Payments that are due; and/or;
  - 10.1.5.2 levy a Service Credit; and/or

10.1.5.3 use the Step In Procedure; and/or

10.1.5.4 suspend this Contract.

10.1.5.5 **NOT USED**

10.1.6 Any disputes about or arising in respect of a Correction Plan shall be resolved through the Dispute Resolution Procedure (clause [28]). Pending the resolution of the dispute both parties shall continue to work to resolve the causes of, and mitigate the effects of, non-compliance.

## **11. NOT USED**

## **12. THE CHARGES**

12.1 Subject to clause [12.2] above, in consideration of the payment of the Charges quarterly in arrears by the Council to the Supplier, the Supplier shall supply the Services where relevant in accordance with:

12.1.1 the Contract;

12.1.2 the Proposal;

12.1.3 the Specification;

12.1.4 the Implementation Plan;

12.1.5 the Migration Plan, and

12.1.6 the Service Level Credits.

12.2 The Supplier shall raise invoices for payment from the Commencement Date in accordance with the Milestones and attach any relevant Milestone Achievement Certificates and associated evidence in accordance with the Charges following the completion of all Milestones in the Implementation Plan, the Supplier shall then raise invoices for payment every three (3) calendar months from the receipt of the Acceptance Notice for one quarter of the Annual Lease Fee and attach associated evidence in accordance with Schedule [3] (the Charges).

12.3 The Supplier shall ensure that it raises invoices promptly and with correct evidence to prevent any delay and any adverse impact upon the Funding Cut Off Date.

12.4 The Charges will be paid to the Supplier in accordance with the Milestone Payments as specified in Schedule [3] (the Charges).

12.5 Invoices not paid by the Council when due will incur interest (as specified below) from the day following the date on which payment was due until the day on which they are paid. Interest will be calculated at a rate equal to [one per cent (1%)] above the Bank of England base rate. If applicable law allows the imposition of late payment interest charges only at a rate less than that established in accordance with this clause [12.5], interest will be charged at the highest rate permitted by such applicable law.

12.6 For the purposes of this Contract an invoice is not "paid" until the funds have been credited to the recipient's account.

12.7 In the case of a bona fide dispute, the Council may avoid the interest charge or a declaration of a default on payment by depositing the amount in dispute into an interest-bearing escrow account (pursuant to arrangements mutually satisfactory to the Parties), pending resolution of such dispute. All undisputed amounts will be paid in full in a timely manner. The prevailing party to such dispute will be entitled to such interest and the other party will bear the costs of the escrow account.

### **13. OPTIONAL SERVICES**

13.1 The Council may require Optional Services, the Supplier shall provide any Optional Services in accordance with this clause [13].

13.2 Where the Council requires Optional Services, an Order for such Optional Services must be made to the Supplier.

13.3 The Proposal generated in respect of the Optional Services requested shall be documented by way of clause [29] and the Change Procedure in Schedule [6].

13.4 During the provision of any Optional Services the Supplier shall comply with the terms of this Contract.

### **14. STEP IN RIGHTS**

If the Council reasonably believes that it needs to take action in connection with the delivery, of the Digital Infrastructure and/or performance of the Services because a serious risk exists to the health or safety of persons or property or to the environment or in an Emergency then the Council shall be entitled to take action to remove such risk.. Where the Council takes such action it shall inform the Supplier in writing as soon as reasonably practicable.

### **15. CONTRACT MANAGEMENT AND GOVERNANCE**

15.1 Each party shall, on or before the Commencement Date appoint Authorised Representative(s) and notify the other in writing of the identity of the persons appointed and their relevant roles.and responsibilities.

15.2 The Authorised Representatives shall have the authority to act on behalf of their respective party on the matters set out in, or in connection with, this Contract. Either party may appoint a new Authorised Representative by written notice to the other party.

15.3 The Authorised Representatives shall be sufficiently senior within the relevant organisation and be granted sufficient authority by the relevant party to ensure full co-operation in relation to the operation and management of this Contract.

15.4 The Authorised Representatives shall meet:

15.4.1 face to face [every week] during the Implementation Period;

15.4.2 face to face [every month] during the Migration Period;

15.4.3 face to face at each [months] project board; and

15.4.4 at each anniversary of the Effective Date to undertake an annual review and discuss (without limitation):

15.4.4.1 NOT USED

15.4.4.2 any improvements to the Services due to technology;

15.4.4.3 review the Specification; and

15.4.4.4 discuss any complains that have not been resolved.

15.5 The Authorised Representatives shall call or e-mail during the course of this Agreement as and when required.

## **16. OPERATION AND MAINTENANCE**

16.1 The Supplier shall provide the Operational and Maintenance Services in accordance with Schedule [1] (Specification).

16.2 The Supplier will carry out Corrective Maintenance/Fault Resolution and Preventative Maintenance to the Digital Infrastructure. The cost of this is included in the Lease Cost.

16.3 The Supplier will carry out all Corrective Maintenance/Fault Resolution and Preventative Maintenance:

16.3.1 with reasonable skill and care;

16.3.2 in accordance with Good Industry Practice;

16.3.3 in accordance with the relevant service levels relating to maintenance set out in Schedule [1] (Specification); and

16.3.4 in a safe manner and in a manner which, as a minimum, complies with all health and safety legislation and regulations applicable from time to time.

16.4 Where Preventative Maintenance, Corrective Maintenance/Fault Resolution or Planned Works have been performed since the previous day, on each day, the Supplier will submit to the Council a written report. The written report will contain details of any work performed by the Supplier since the previous day relating to the Digital Infrastructure.

## **17. RECONFIGURATION**

17.1 The Supplier may, from time to time, modify or vary the configuration of its own network which may involve modifying a Segment, introducing new technology or modifying transmission characteristics (Reconfiguration) if, and only if, the Council will not suffer a material detriment as a result of the modification or variation.



- 17.2 The Supplier must give the Council as much notice of the Reconfiguration as is reasonably practical, but not less than six (6) months. The Council will not be liable for any costs, losses or expenses incurred by the Supplier as a result of or in connection with any Reconfiguration, other than with respect to the voluntary relocation of a POP as described in clause [17.3] below.
- 17.3 The Supplier will not voluntarily relocate a POP to which the Council is directly connected unless:
- 17.3.1 the Supplier reimburses the Council for the actual cost that such relocation imposes on the Council; or
  - 17.3.2 the Supplier has received written consent for the relocation from the Council [(such consent not to be unreasonably withheld or delayed)].
- 17.4 For the avoidance of doubt neither consent nor reimbursement is required if the Supplier must relocate a POP as a result of a Legal Requirement [or as a result of a Force Majeure Event]. If the Supplier must relocate a POP, it will make reasonable efforts to minimise disruption of the Digital Infrastructure and to locate the POP as close as reasonably possible to the existing facilities.
- 17.5 For the avoidance of doubt, a Reconfiguration under clause [17.1] could include replacing the infrastructure or cables comprising the Digital Infrastructure with new infrastructure or cables, whether provided by the Supplier directly or supplied by a third party, and whether or not on the same route, so long as the Council will not suffer a material detriment as a result of such a change.
- 17.6 In the event of any disruption of service on the Digital Infrastructure due to any event, including a Force Majeure Event, the Supplier will take all reasonable steps to cause service to be restored as quickly as reasonably possible.
- 17.7 [The Supplier will establish and maintain an NOC that will be available at all times to the Council and will be entitled to utilise free of charge to report issues, obtain current operational status on outstanding calls/services and Digital Infrastructure status information. The Supplier will promptly provide all information as to its operations and utilisation of the Digital Infrastructure as may be reasonably requested from time to time by the Council in the performance of its functions.]

## **18. INDEFEASIBLE RIGHT TO USE (IRU)**

- 18.1 Upon the Effective Date the Supplier shall grant the IRU to the Council.
- 18.2 The Council shall not charge, mortgage or otherwise encumber the Fibre and agrees that all equipment it uses to interconnect with the Fibre will comply with international standards and communications regulations.

## **19. THE SUPPLIER'S OBLIGATIONS**

- 19.1 The Supplier will:

19.1.1 allow the Council the right to access/use to its Service Provider(s) the right to use the Digital Infrastructure; and

19.1.2 use reasonable endeavours not to do anything which is likely to cause damage, interference or disruption to either the Digital Infrastructure.

19.2 The Supplier shall comply with the requirements of any Act of Parliament, regulation, authorisation or registration relevant to this Contract in so far as they apply to the Supplier.

19.3 At all times, the Supplier shall ensure that:

19.3.1 each of the Supplier's Personnel is suitably qualified, adequately trained and capable of providing the applicable Services in respect of which they are engaged;

19.3.2 there is an adequate number of Supplier's Personnel to provide the Services properly;

19.3.3 only those people who are authorised by the Supplier (under the authorisation procedure to be agreed between the parties) are involved in providing the Services; and

19.3.4 all of the Supplier's Personnel comply with all of the Council's policies including those that apply to persons who are allowed access to the applicable Council's Premises.

19.4 The Council may refuse to grant access to, and remove, any of the Supplier's Personnel who do not comply with any such policies.

19.5 The Supplier shall replace any of the Supplier's Personnel who the Council reasonably decides have failed to carry out their duties with reasonable skill and care. Following the removal of any of the Supplier's Personnel for any reason, the Supplier shall ensure such person is replaced promptly with another person with the necessary training and skills to meet the requirements of the Services, and such person to be approved by the Council, acting reasonably, before that person is appointed.

19.6 Not used

19.7 The Supplier shall have an on-going obligation throughout the IRU Term to identify new or potential improvements to the Services. As part of this obligation the Supplier shall identify and report to the Council's Authorised Representative at annual review pursuant to [clause 15 (Contract Management and Governance)]:

19.7.1 the emergence of new and evolving relevant technologies which could improve the Services;

19.7.2 new or potential improvements to the Services including the quality, responsiveness, procedures, benchmarking methods, performance mechanisms and customer support services in relation to the Services;

19.7.3 new or potential improvements to the interfaces or integration of the Services with other services provided by third parties or the Council which might result in efficiency or productivity gains or in reduction of operational risk; and

19.7.4 changes in ways of working that would enable the Services to be delivered at lower costs and/or bring greater benefits to the Council.

19.8 The Supplier shall not employ, engage or use the service of any person who:

- 19.8.1 is barred from, or whose previous conduct or records indicate that he or she would not be suitable to carry out any Regulated Activity or who may otherwise present a risk to children or Vulnerable Adults or any other person, in the provision of any part of the Services involving a Regulated Activity or access to or unsupervised contact with children or Vulnerable Adults without the Council prior and express written consent; or
- 19.8.2 discloses that he or she has a Relevant Conviction, or who is found by the Supplier to have any Relevant Convictions (whether as a result of a police check or through the Disclosure and Barring Service (or any successor body) procedures or otherwise), in the provision of any part of the Services involving access to or processing of financial data, or access to or processing of sensitive personal data without the Council prior and express written consent.

19.9 The Supplier shall (and shall procure that its Sub-Contractors shall):

- 19.9.1 ensure that all staff who, in providing the Services, will be engaged in the provision of Regulated Activity are subject to a valid enhanced disclosure check undertaken through the Disclosure and Barring Service (or any successor body) including a check against the adults' barred list or the children's barred list, as appropriate; and
- 19.9.2 monitor the level, frequency and validity of the checks required under this clause [19.9] for each member of staff

19.10 The Supplier warrants that at all times for the purposes of this Contract it has no reason to believe that any person who is or will be employed or engaged by the Supplier in the provision of the Services:

- 19.10.1 has a Relevant Conviction; or
- 19.10.2 is barred from carrying out Regulated Activity.

19.11 The Supplier shall immediately notify the Council of any information that it reasonably requests to enable it to be satisfied that the obligations of clauses [19.8 to 19.10] have been met.

19.12 The Supplier shall refer information about any person carrying out the Services to the Disclosure and Barring Service (or any successor body) where it removes permission for such person to carry out the Services (or would have, if such person had not otherwise ceased to carry out the Services) because, in its opinion, such person has harmed or poses a risk of harm to children or Vulnerable Adults.

19.13 The Supplier shall provide, maintain and permit access to records of its staff, employees and contractors in accordance with this Contract.

19.14 Subject to clause [19.16] the Council's Authorised Representative may require the Supplier, by notice in writing, which shall include his reasons for the same, to reprimand or remove from the provision of the Services any Representatives specified by such notice (including without limitation the Supplier's Authorised Representative). Where required the Supplier shall forthwith remove such staff, employees and contractors from the provision of the

Services and provide a replacement as appropriate to ensure that the Services are carried out in accordance with this Contract.

- 19.15 Any staff, employees and contractors removed from work under the provisions of this clause [19] may not be employed subsequently in the provision of the Services without the written consent of the Council's Authorised Representative.
- 19.16 The Council's Authorised Representative shall not require removal of personnel under clause [19.14] unless he has given due consideration as to whether the Council would (if the individual concerned were an employee of the Council) take the same action against such employee in the same or similar circumstances.
- 19.17 The Council shall not be liable either to the Supplier or to any Representatives in respect of any liability loss or damage occasioned by the operation of clauses [19.8 to 19.17].
- 19.18 Both the Supplier and the Council acknowledge that the Charges paid by the Council to the Supplier pursuant to this Contract are made pursuant to the LFFN Programme as supervised by DCMS. The Council's view is that the Services to be delivered under this Contract are State Aid neutral.
- 19.19 The Supplier shall provide such assistance, information and/or support as the Council may reasonably require from time to time in connection with the Council responsibilities under the LFFN Programme, or with any action, examination and/or investigation by the European Commission, in the Council view, be reasonably necessary and relevant, but for the avoidance of doubt shall not require the Supplier to provide legal advice subject to privilege to the Council, and the Supplier shall be given adequate time to provide the information.
- 19.20 If the European Commission issues a recovery decision as defined in Article 16(1) of Contracting Authority Regulation 2015/1589 in connection with this Contract naming the Supplier as beneficiary, then, unless an earlier date has been specified by the European Commission or the national court, the Supplier shall within four months of a written notice from the Council at any time (where such notice shall include a copy of the relevant European Commission decision) pay an amount equivalent to the unlawful and incompatible aid of which the Supplier is beneficiary (plus interest, as applicable) which the European Commission requires to be repaid pursuant to its decision into a blocked account to which neither Party has unilateral access pending either: (i) the expiry of the deadlines for the Supplier to bring proceedings in respect of the repayment without the Supplier having brought any proceedings before such expiry; or, where the Supplier has brought proceedings before such expiry, (ii) the final outcome of those proceedings including any appeals, provided that where the European Commission's decision does not specify the precise amount of unlawful aid to be recovered, the Parties shall (acting reasonably) calculate and agree upon the precise amount to be repaid.
- 19.21 If the European Commission issues a recovery decision as defined in Article 16(1) of Contracting Authority Regulation 2015/1589 in connection with this Contract naming the Supplier as beneficiary, the Supplier acknowledges that [clause 42.3] shall apply regardless of whether:
- 19.21.1 the Supplier is in Default; and
- 19.21.2 irrespective of the Supplier's financial circumstances, except that the Council shall apply paragraphs 60 to 68 of the 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 respect of the Supplier; and

19.21.3 in the Council's view, as previously indicated to the Supplier, Supplier, is that the Services to be delivered under this Contract are State Aid neutral.

19.22 The Supplier shall use its best endeavours to: -

19.22.1 adhere to the Funding Cut Off Date; and

19.22.2 provide any information required and requested in schedule [9] (Management Information Data and DCMS Date) or any other such information requested for the DCMS.

## **20. WARRANTIES**

20.1 The Supplier warrants that it has obtained all IRU third party rights it believes were necessary at the time the Digital Infrastructure was installed, that such IRU third party rights are in full force and effect at the date of this IRU and that such IRU third party rights are not scheduled to expire during the Term.

20.2 The Council represents and warrants that:

20.2.1 it has full capacity and authority to enter into and to perform this Contract;

20.2.2 this Contract is executed by its duly Authorised Representative;

20.2.3 there are no actions, suits or proceedings or regulatory investigations before any court or administrative body or arbitration tribunal pending or, to its knowledge, threatened against it that might affect its ability to perform its obligations under this Contract; and

20.2.4 its obligations under this Contract constitute its legal, valid and binding obligations, enforceable in accordance with their respective terms subject to applicable bankruptcy, reorganisation, insolvency, moratorium or similar laws affecting creditors' rights generally and subject, as to enforceability, to equitable principles of general application (regardless of whether enforcement is sought in a proceeding in equity or law)

20.3 The Supplier represents and warrants that:

20.3.1 it is validly incorporated, organised and subsisting in accordance with the Laws of its place of incorporation;

20.3.2 it has full capacity and authority to enter into and to perform this Contract;

20.3.3 this Contract is executed by its duly Authorised Representative;

20.3.4 it has all necessary consents and regulatory approvals to enter into this Contract;

20.3.5 there are no actions, suits or proceedings or regulatory investigations before any court or administrative body or arbitration tribunal pending or, to its knowledge, threatened against it that might affect its ability to perform its obligations under this Contract;

- 20.3.6 its execution, delivery and performance of its obligations under this Contract will not constitute a breach of any Law or obligation applicable to it and will not cause or result in a default under any agreement by which it is bound;
  - 20.3.7 its obligations under this Contract constitute its legal, valid and binding obligations, enforceable in accordance with their respective terms subject to applicable bankruptcy, reorganisation, insolvency, moratorium or similar Laws affecting creditors' rights generally and subject, as to enforceability, to equitable principles of general application (regardless of whether enforcement is sought in a proceeding in equity or law);
  - 20.3.8 all written statements and representations in any written submissions made by the Supplier as part of the procurement process, including without limitation its response to the, its tender and any other documents submitted remain true and accurate except to the extent that such statements and representations have been superseded or varied by this Contract or to the extent that the Supplier has otherwise disclosed to the Council in writing prior to the date of this Contract;
  - 20.3.9 it has all necessary rights in and to the Licensed Software, the Supplier Background IPRs and any other materials made available by the Supplier (and/or any Sub-contractor) to the Council which are necessary for the performance of the Supplier's obligations under this Contract and/or the receipt of the Services by the Council;
  - 20.3.10 it is not subject to any contractual obligation, compliance with which is likely to have a material adverse effect on its ability to perform its obligations under this Contract; and
  - 20.3.11 no proceedings or other steps have been taken and not discharged (nor, to the best of its knowledge, are threatened) for the winding up of the Supplier or for its dissolution or for the appointment of a receiver, administrative receiver, liquidator, manager, administrator or similar officer in relation to any of the Supplier's assets or revenue.
- 20.4 The representations and warranties set out in clauses [20.1] to [20.3] shall be deemed to be repeated by the Supplier in respect of the Council issuing an Order.
- 20.5 Each of the representations and warranties set out in clauses [20.1 to 20.3] shall be construed as a separate representation and warranty and shall not be limited or restricted by reference to, or inference from, the terms of any other representation, warranty or any other undertaking in this Contract.
- 20.6 If at any time a Party becomes aware that a representation or warranty given by it under clauses 20.1 to 20.3 has been breached, is untrue or is misleading, it shall immediately notify the other Party of the relevant occurrence in sufficient detail to enable the other Party to make an accurate assessment of the situation.
- 20.7 For the avoidance of doubt, the fact that any provision within this Contract is expressed as a warranty shall not preclude any right of termination which the Council may have in respect of breach of that provision by the Supplier.
- 20.8 Except as expressly stated in this Contract, all warranties and conditions whether express or implied by statute, common law or otherwise are hereby excluded to the extent permitted by Law.

## **21. USE OF FIBRE PAIR**

- 21.1 The Council acknowledges that the Supplier has obtained the Wayleaves, easements and other permissions for placement and operation of the Digital Infrastructure (IRU third party rights). It is the Suppliers responsibility to act in a way that is consistent with the requirements of those IRU third party rights and where applicable, it shall inform the Council of such IRU third party rights where the Council's assistance is required. The Council holds no responsibility for any breach that has occurred where such IRU third party rights were not known to the Council.
- 21.2 The Supplier will provide the Council with details of the IRU third party rights upon request.
- 21.3 The Parties agree that, should either Party receive notice of a breach or violation of an IRU Underlying Right as a result of this IRU, the Parties shall act in good faith and take such further reasonable actions to remedy the breach or violation or, if the breach or violation cannot be cured, take such reasonable action necessary to preserve the commercial arrangements contemplated by this Contract.
- 21.4 The Council shall use all reasonable endeavours not to do anything which does or is likely to cause damage, interference or disruption to the Fibres. The Supplier will notify the Council immediately after becoming aware that the Council is doing anything which is likely to cause any damage, interference or disruption to the Digital Infrastructure
- 21.5 Breach of this clause [21] by the Council shall entitle the Supplier to raise an issue to be dealt with via Dispute Resolution.

## **22. OPERATION AND MAINTENANCE SERVICE LEVELS**

The Supplier shall comply with the obligations in Schedule 1 (Specification).

## **23. PERMITS AND WAYLEAVE**

- 23.1 [The Council agrees that where it is the relevant permitting authority that reasonable costs of approvals and permits in respect of street works required by the Supplier shall be granted without charge provided that the Supplier follows the process required by the Council.]
- 23.2 For the avoidance of doubt, if the Supplier requires permits from any authority other than the Council the Charges for such will be as determined by Council.
- 23.3 The Supplier shall inform the Council as soon as it becomes aware of a requirement or potential requirement for any Wayleave and where the Council has the right to grant such a Wayleave the Charges shall be determined upon considering all of the circumstances.
- 23.4 The Council where it is authorised to grant a Wayleave, it will grant such Wayleave on the terms in [Schedule 12 (Wayleaves)].
- 23.5 Where it is a third party that has the right to grant a Wayleave the Supplier shall keep the Council fully informed as to the negotiations relating to such Wayleave and the likely costs expected. Any costs for a Wayleave granted by the Council and/or a third party shall be solely for the account of the Supplier and will not be a passed through.

## **24. LEASE COSTS**

- 24.1 The Council agrees to pay the Lease Cost as from the Final Acceptance Date in accordance with [Schedule 3 (the Charges)].
- 24.2 The Council may decide, on three (3) months' written notice at any time, that it wishes to cease use of a Segment, in which event it will no longer be liable to pay the Lease Cost (but, for the avoidance of doubt, the Council will not be entitled to a refund of the unused portion of any advance paid Lease Cost). Where the Council decides to exercise this option the Supplier will disconnect the Segment.

## **25. TAXES**

- 25.1 All sums payable by the Council under this Contract must be paid:
- 25.1.1 free of any restriction or condition;
  - 25.1.2 free and clear of, and (except to the extent required by law) without any deduction or withholding on account of, any foreign tax; and
  - 25.1.3 without any deduction or withholding (except to the extent required by law) on account of any other amount, whether by way of set off or otherwise.
- 25.2 If a payment due from the Supplier under this clause is subject to tax (whether by way of direct assessment or withholding at its source), the Council shall be entitled to receive from the Supplier such amounts as shall ensure that the net receipt, after tax, to the Council in respect of the payment is the same as it would have been were the payment not subject to tax.
- 25.3 Charges specified in this Contract and in Proposals do not, unless otherwise specified, include any applicable value added tax or goods and services tax. Any such taxes will be billed by the Supplier according to the laws and rates in force at the time of billing.

## **26. COUNCIL'S OBLIGATIONS**

- 26.1 The Council shall take reasonable steps and will procure that its employees and staff will at all times:
- 26.1.1 comply with the Supplier's reasonable instructions regarding use of the Digital Infrastructure and regarding types and specifications of equipment to be connected; and
  - 26.1.2 comply with the Supplier's reasonable instructions regarding physical and network security, and regarding security, health and safety when accessing any point on the Digital Infrastructure.
- 26.2 The Council will not use the service for any illegal or immoral purpose, and will comply at all times with any applicable Legal Requirement in respect of it in any jurisdiction.
- 26.3 If the Supplier, in its reasonable opinion, considers that the Council has not complied with the obligations in this clause [26] it shall provide the Council with written details and the Parties



shall work together using the Dispute Resolution Process in Clause 28. For the avoidance of doubt a breach of this Clause [26] shall not amount to a right to terminate this contract.

## **27. SUSPENSION AND TERMINATION**

### **SUPPLIER'S RIGHT TO TERMINATE**

27.1 The Supplier may terminate this Contract immediately by notice in writing to the Council if:

- 27.1.1 an Insolvency Event occurs in respect of the Council; or
- 27.1.2 the Council is in material breach of this Contract or the terms of any Order and (if the breach is capable of remedy) continues to be in breach for one hundred and twenty (120) days after being served with notice demanding correction of the breach.

27.2 Where the Supplier is entitled to terminate a Segment in accordance with clause [27.1] it may, at its option, elect instead to suspend that Segment, in which event it will notify the Council of such suspension and of the basis on which it would be prepared to re-activate the Segment (including giving details of any applicable re-activation fee).

27.3 In the event of termination under clause [27.1] the Council will, without prejudice to the Council's other remedies in accordance with applicable law, be entitled to repayment of the unused portion of any Lease Cost that has been paid in advance.

### **COUNCIL'S RIGHT TO TERMINATE**

#### **27.4 Termination on Material Default**

- 27.4.1 The Council may terminate this Contract immediately for a material Default by issuing a Termination Notice to the Supplier where:
  - a) the representation and warranty given by the Supplier pursuant to clause [20] (Warranties) is materially untrue or misleading;
  - b) as a result of any Defaults, the Council incurs losses in any Contract Year which exceed eighty per cent (80%) of the value of the Supplier's aggregate annual liability limit for that Contract Year as set out in clause [32];
  - c) the Supplier commits any material Default of this Contract which is not, in the reasonable opinion of the Council, capable of remedy; and
  - d) the Supplier commits a Default, including a material Default which in the opinion of the Council is remediable but not remedied such Default to the satisfaction of the Council;

for the purpose of this clause [27.4.1], a material default may be a single material Default or a number of Defaults or repeated Defaults (whether of the same or different obligations and regardless of whether such Defaults are remedied) which taken together constitute a material Default.

#### **27.5 Termination in relation to financial standing**

- 27.5.1 The Council may terminate this Contract by issuing a Termination Notice to the Supplier where in the reasonable opinion of the Council there is a material detrimental change in the financial standing and/or the credit rating of the Supplier which:

- a) adversely impacts on the Supplier's ability to supply the Services under this Contract; or
- b) could reasonably be expected to have an adverse impact on the Suppliers ability to supply the Services under this Contract.

**27.6 Termination on insolvency**

- 27.6.1 The Council may terminate this Contract by issuing a Termination Notice to the Supplier where an Insolvency Event affecting the Supplier occurs.

**27.7 Termination without cause**

- 27.7.1 The Council shall have the right to terminate this Contract by giving at least thirty 120 Business Days' written notice to the Supplier, such notice to be served no earlier than the first anniversary of the Commencement Date.

**27.8 TERMINATION BY EITHER PARTY**

**27.8.1 Termination for continuing Force Majeure Event**

- 27.8.1.1 Either Party may terminate this Contract in accordance with clause [31.4]

**27.9 PARTIAL TERMINATION, SUSPENSION AND PARTIAL SUSPENSION**

- 27.9.1 Where the Council has the right to terminate this contract, the Council shall be entitled to terminate or suspend all or part of this Contract provided always that, if the Council elects to terminate or suspend this Contract in part, the parts of the Contract not terminated or suspended can, in the Council's reasonable opinion, operate effectively to deliver the intended purpose of the surviving parts of this Contract

- 27.9.2 Any suspension of this Contract under clause [27.9.1] shall be for such period as the Council may specify and without prejudice to any right of termination which has already accrued, or subsequently accrues, to the Council

- 27.9.3 The Parties shall seek to agree the effect of any variations necessitated by a partial termination, suspension or partial suspension, including the effect that the partial termination, suspension or partial suspension may have on the provision of any other Services and the Charges, provided that the Supplier shall not be entitled to:

- 27.9.3.1 an increase in the Charges in respect of the provision of the Service that have not been terminated if the partial termination arises due to the exercise of any of the Council's termination rights under this Contract; and

- 27.9.3.2 reject the variation.

**27.10 CONSEQUENCE OF TERMINATION**

- 27.10.1 **Consequence of expiry or termination under clause [[27.12](Termination in relation to Guarantee)], [27.4] Termination on Material Default, and [27.5] Termination in Relation to Financial Standing)**

- 27.10.1.1 Where the Council:
  - a) terminates (in whole or in part) this Contract under clauses [27.12], [27.4] and [27.5]; and
  - b) then makes other arrangements for the supply of the Services,

the Council may recover from the Supplier to cost reasonably incurred of making those other arrangements and any additional expenditure incurred by the Council throughout the remainder of the term of this Contract provided that the Council shall take all reasonable steps to mitigate such additional expenditure. No further payments shall be payable by the Council to the Supplier until the Council has established the final costs of making those other arrangements

**27.10.2 Consequence of termination under clause [43.4] (Sub-Contracting - Change of Control), 27.7 (Termination without cause), and 27.1 (Suppliers Right to Terminate)**

**27.10.2.1 Where**

- a) the Council terminates (in whole or in part) this Contract under clause 43.4 or 27.7; or
- b) the Supplier terminates this Contract pursuant to clause 27.1,

the Council shall, subject to clause [x], indemnify the Supplier against any reasonable and proven losses which would otherwise represent an unavoidable loss by the Supplier by reason of the termination of this Contract, provided that the Supplier takes all reasonable steps to mitigate such losses. The Supplier shall submit a fully itemised and costed list of such losses, with supporting evidence including such further evidence as the Council may require, reasonably and actually incurred by the Supplier as a result of termination under clause [27.7]

**27.10.2.2 The Council shall not be liable under clause [27.10.2.1], to pay any sum which:**

- a) was claimable under insurance held by the Supplier, and the Supplier has failed to make a claim on its insurance, or has failed to make a claim in accordance with the procedural requirements of the insurance policy; or
- b) when added to any sums paid or due to the Supplier under this Contract, exceed the total sum that would have been payable to the Supplier if this contract had not been terminated.

**27.10.3 Consequence of termination under clause [31.4] (Force Majeure)**

- 27.10.3.1** The cost of termination incurred by the Parties shall lie with the party who bears that loss.

**27.10.4 Consequence of Termination for Any Reason**

**27.10.5 Save as otherwise expressly provided in this Contract:**

- a) termination or expiry of this Contract shall be without prejudice to any right, remedies or obligations under this Contract prior to termination or expiration and nothing in this Contract shall prejudice the right of either party to recover any amount outstanding at the time of such termination or expiry; and
- b) termination of this Contract shall not affect the continuing rights, remedies or obligations of the Customer or the Supplier under clause [33] (Records, Audit Access and Open Book Data), [39] (Cyber Security and Data Protection), [32] (Liability and Insurance), 28 (Dispute Resolution), 46 (Governing Law and Jurisdiction), and the provisions of clause [1] (Interpretations), Schedule [3] (Charges), Schedule [10] (Exit and Service Transfer) and, without limitation to the

foregoing, any other provision of this Contract which expressly or by implication is to be performed or observed notwithstanding termination or expiry shall survive the expiry of this Contract.

#### 27.11 **EXIT MANAGEMENT**

27.11.1 Following the service of a notice for termination for any reason and/or by no later than the fourth (4th) anniversary of the IRU Term, the Supplier shall prepare an Exit Plan for the consideration of the Council.

27.11.2 Such Exit Plan shall be drafted in accordance of current Good Industry Practice and shall deal with matters to ensure a smooth transition from the provision of the Services by the Supplier to a replacement supplier and or extension of this Contract, such as (without limitation:

27.11.2.1 appointment of exit managers;

27.11.2.2 the transfer of services;

27.11.2.3 working with any Council nominated Managed Service Provider(s);

27.11.2.4 ability to extend the IRU Term;

and then be attached at [Schedule 10 (Exit and Service Transfer)].

27.11.3 The Supplier shall review the Exit Plan every fourth anniversary of the IRU Term and provide an updated Exit Plan to the Council.

#### 27.12 **[Termination in relation to Guarantee**

27.12.1 Where the Supplier has procured a Guarantee pursuant to clause [3], the Council may termination this where:

a) the Guarantor withdraws the Guarantee for any reason whatsoever;

b) the Guarantor is in breach or anticipatory breach of the Guarantee;

c) an Insolvency Event occurs in respect of the Guarantor;

d) the Guarantee becomes invalid or unenforceable for any reason whatsoever

and in each case the Guarantee (as applicable) is not replaced by an alternative guarantee agreement acceptable to the Council.]

## **28. DISPUTE RESOLUTION**

28.1 The Parties shall escalate all disputes that arise and that relate to this Contract in accordance with the following procedure, with timescales starting from the date on which the issue is first referred to this procedure.

| Level | First level | Second level | Third level |
|-------|-------------|--------------|-------------|
|-------|-------------|--------------|-------------|

| <b>Escalation point</b> | [Ten (10)]<br>Business Days | [Fifteen (15)]<br>Business Days | [Thirty (30)]<br>Business Days |
|-------------------------|-----------------------------|---------------------------------|--------------------------------|
| <b>Supplier</b>         |                             |                                 |                                |
| <b>Council</b>          | Authorised Representative   | [Service Director]              | [Managing Director]            |

28.2 The above timeframes may be extended by written agreement of the Parties.

28.3 If a dispute arises out of or in connection with this Contract or the performance, validity or enforceability of it and the processes set out in clause 28.1 has been exhausted then, except as expressly provided in this Contract, either party may take any further steps as it considers appropriate to resolve the dispute, including the initiation of formal proceedings.

## 29. CHANGE PROCEDURE

If either party requires a change to this Contract or any Public Body Site and/or the IRU, the Parties shall follow the process set out in Schedule [6] (Change Procedure)].

## 30. CONFIDENTIALITY

30.1 Confidential Information under this Contract excludes Excluded Information but otherwise includes the provisions of this Contract and all software and other data associated with the business and customers of either Party, as well as any specifications, drawings, designs, computer software, know how, patent, licenses, data, process techniques and formulae, information relating to any research or other project, future development, marketing and sales leads and work in progress, and any engineering, technical, electronic, technological, manufacturing, service, commercial, financial and personnel information relating to past present and future business, whether in oral, written, graphic, electronic, machine readable or other form.

30.2 Each Party will, subject to clause [30.4]:

- 30.2.1 keep all Confidential Information secret and confidential, using reasonable skill and care, and in any event at least the same degree of care that they would normally use in protecting their own proprietary and confidential information of a similar nature;
- 30.2.2 not disclose or divulge any such information to any third party, except solely as necessary for the purposes of this Contract, and then only provided that any such third parties are subject to a duty of confidence at least as strict as that contained at this clause [30];

- 30.2.3 not use or allow any such Confidential Information to be used, for any other purpose, in whole or in part, except solely in relation to the purpose, and for the duration of, this Contract unless and only to the extent to which such further use has previously been specifically authorised in writing by the Party to whom it relates;
  - 30.2.4 not copy or have copies made of such Confidential Information, in whole or in part, other than as required solely for the purposes of this Contract; and
  - 30.2.5 at the other Party's written request, either return to that Party such of their Confidential Information as is in tangible form (together with all copies within their possession or control) or else destroy all copies of such Confidential Information.
- 30.3 If a party becomes aware of any disclosure concerning Confidential Information not permitted by this Contract, it shall immediately inform the other Party and they shall jointly seek to remedy the situation, without prejudice to any other rights the Parties may have under this Contract.
- 30.4 A party may disclose Confidential Information relating to the other party if necessary to comply with a Legal Requirement, provided that the disclosing party must first, to the extent it is able to do so, inform the other party and comply with their reasonable lawful instructions in relation to that disclosure.

## **31. FORCE MAJEURE**

- 31.1 A party shall not be in breach of this Contract nor liable for any failure or delay in performance of any obligations under this Contract (and, subject to clause 31.4, the time for performance of the obligations shall be extended accordingly) arising from or attributable to a Force Majeure Event.
- 31.2 The corresponding obligations of the other Party will be suspended to the same extent as those of the party first affected by the Force Majeure Event.
- 31.3 Any party that is subject to a Force Majeure Event shall not be in breach of this Contract provided that it promptly notifies the other party in writing of the nature and extent of the Force Majeure Event causing its failure or delay in performance.
- 31.4 If the Force Majeure Event prevails for a continuous period of more than [ninety (90)] days from the date of notification under clause [31.3], the party not claiming the benefit of this clause [31] may terminate this Contract by giving [ninety (90) days]' written notice to the other party. On the expiry of this notice period, this Contract will terminate. This termination shall be without prejudice to the rights of the Parties in respect of any breach of this Contract occurring before this termination.
- 31.5 For the avoidance of doubt, the Supplier's obligations under clause [22] apply notwithstanding a Force Majeure Event that causes a cut or break in the Digital Infrastructure (or in any Segment of the Digital Infrastructure).

## **32. LIABILITY AND INSURANCE**

32.1 This clause [32] prevails over all other clauses and sets out the Supplier's entire liability whether in contract, tort (including the tort of negligence) or otherwise, and it sets out the sole and exclusive remedies of the Council, in respect of: the performance, non-performance, purported performance or delay in performance of this Contract.

32.2 Nothing in this Contract shall exclude or limit either party's liability for death or personal injury caused by its (or its agents or subcontractor's) negligence or for fraud or fraudulent misrepresentation or any other liability that cannot, as a matter of applicable law, be limited or excluded.

32.3 Except as expressly stated in this Contract, all warranties, conditions and other terms that may be implied by statute, by course of dealing or by common law are, to the fullest extent permitted by law, excluded from this Contract.

32.4 Subject to clause [32.2], neither Party shall, under any circumstances whatever, be liable whether in tort (including for negligence or breach of statutory duty), contract, misrepresentation (whether innocent or negligent) or otherwise for:

32.4.1 loss of profits;

32.4.2 depletion of good will or similar losses;

32.4.3 loss of anticipated savings;

32.4.4 loss of goods;

32.4.5 loss of contract

32.4.6 loss of use;

32.4.7 loss or corruption of data or information; or

32.4.8 any special, indirect, consequential or pure economic loss, costs, damages, charges or expenses,

howsoever caused and whether or not foreseeable.

32.5 Except as provided in clause [32.4], the total aggregate liability of the Supplier to the Council in contract, tort (including negligence or breach of statutory duty), in connection with each Order made under this Contract shall in no circumstances exceed a sum equal to 125% of the total amount of Charges paid or payable, in respect of this Contract.

32.6 The Supplier will take out and, during the IRU Term, maintain insurance against its liability for physical damage to the Digital Infrastructure caused by its negligence or breach of this Contract, or caused by the negligence of its staff, employees, Sub-Contractors or customers. The amount of such insurance shall be not less than 125% of the total of all Charges.

32.7 The Supplier shall at all times maintain in force with reputable insurers the following types of insurance policies:

32.7.1 product liability insurance for an insured amount of not less than ten million pounds (£10,000,000) per occurrence and unlimited in number of occurrences during any one insurance period;

- 32.7.2 professional indemnity insurance for an insured amount of not less than ten million pounds (£10,000,000) per occurrence and unlimited in number of occurrences during any one insurance period;
- 32.7.3 public liability insurance including cover for bodily injury and property damage arising in connection with this Contract including as a result of the acts or omissions of the Supplier and/or its employees, Sub-Contractors and agents for an insured amount of not less than ten million pounds (£10,000,000) per occurrence and unlimited in number of occurrences; and
- 32.7.4 employer's liability insurance as required by Law including cover for legal liability to make payment in respect of death, injury and/or disability of its employees and with limits of at least ten million pounds (£10,000,000) per occurrence and unlimited in number of occurrences during any one insurance period.

All monies which may at any time be received or receivable under any such insurance shall be applied in respect of a loss or damage contemplated by this clause [32.7] and shall be applied in making good the same

### **33. RECORDS, AUDIT ACCESS AND OPEN BOOK DATA**

33.1 The Supplier shall keep and maintain for seven years after the expiry of this Contract (or as long a period as may be agreed between the Parties), full and accurate records and accounts of the operation of this Contract including the Services provided under it, and the amounts paid by the Council.

33.2 The Supplier acknowledges that the Council may request the Supplier to capture and maintain for seven years after the expiry of this Contract.

33.3 The Supplier shall:

33.3.1 keep the records and accounts referred to in clauses [33.1] and [33.2] and in accordance with Good Industry Practice and Law; and

33.3.2 afford any Auditor access to the records and accounts at the Supplier's premises and/or provide copies of such records and accounts (including copies of the Supplier's published accounts), as may be required by any of the Auditors from time to time during the term of a Purchased RU in order that the Auditor(s) may carry out an inspection to assess compliance by the Supplier of its obligations under this Contract including for the following purposes:

33.3.2.1 to verify the accuracy of the Charges and any other amounts payable by the Council under this Contract;

33.3.2.2 to verify the costs of the Supplier (including the costs of all Sub-Contractors and any third party suppliers) in connection with the provision of the Services;

33.3.2.3 to verify that the Charges paid by the Council do not amount to state aid;

33.3.2.4 to verify the Open Book Data and the DCMS Data;



33.3.2.5 to verify the Supplier's and each Sub-Contractor's compliance with the applicable Law;

33.3.2.6 to identify or investigate an actual or suspected Prohibited Act, impropriety or accounting mistakes or any breach or threatened breach of security and in these circumstances the Council shall have no obligation to inform the Supplier of the purpose or objective of its investigations;

33.3.2.7 to identify or investigate any circumstances which may impact upon the financial stability of the Supplier and/or any Sub-Contractors or their ability to perform the Services;

33.3.2.8 to obtain such information as is necessary to fulfil the Council's obligations to supply information for parliamentary, ministerial, judicial or administrative purposes;

33.3.2.9 to review any books of account and the internal contract management accounts kept by the Supplier in connection with this Contract;

33.3.2.10 to carry out the Council's internal and statutory audits and to prepare, examine and/or certify the Council's annual and interim reports and accounts;

33.3.2.11 to enable the National Audit Office to carry out an examination pursuant to Section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which the Council has used its resources;

33.3.2.12 to verify the accuracy and completeness of any information delivered or required by this Contract; and

33.3.2.13 to review the integrity, confidentiality and security of the Council's Data.

33.4 The Council shall use reasonable endeavours to ensure that the conduct of each audit does not unreasonably disrupt the Supplier or delay the provision of the Services save insofar as the Supplier accepts and acknowledges that control over the conduct of audits carried out by the Auditor(s) is outside of the control of the Council.

33.5 Subject to the Supplier's rights in respect of Confidential Information, the Supplier shall on demand provide the Auditor(s) with all co-operation and assistance in:

33.5.1 all information requested by the Council within the scope of the audit;

33.5.2 reasonable access to sites controlled by the Supplier and to any Supplier Equipment used in the provision of the Services; and

33.5.3 access to the Supplier Personnel.

33.6 The Parties agree that they shall bear their own respective costs and expenses incurred in respect of compliance with their obligations under this clause [33.6] unless the audit reveals a Default by the Supplier in which case the Supplier shall reimburse the Council for the Council's reasonable costs incurred in relation to the audit.

## **34. PAYMENT OF BUSINESS RATES AND TAXES**

- 34.1 The Supplier will throughout the term of this Contract be solely responsible for paying any taxation, Fibres business rates (or similar) reasonably and properly attributable to both the Supplier and Council which are imposed on the Cables from the date this Contract comes into force.
- 34.2 The Supplier shall within the appropriate time period for such payment and in any event within 10 days of the date of notice from the Council, or appropriate third party, of the same being due, pay any business rates or taxes (including hereditament) imposed on the Cables for the duration of the IRU.
- 34.3 The Supplier shall indemnify the Council on a continuing basis against any liability, including any interest, penalties or costs, incurred, which is levied, demanded or assessed on the Council at any time in respect of the Supplier's failure to account for or pay any business rates or taxes imposed on the Cables for the duration of the IRU.

## **35. HEALTH AND SAFETY**

- 35.1 The Supplier shall perform its obligations under this Contract (including those in relation to the Services) in accordance with:
- 35.1.1 all applicable Law regarding health and safety; and
  - 35.1.2 the Health and Safety Policy whilst at the Council's Sites
- 35.2 Each Party shall notify the other as soon as practicable of any health and safety incidents or material health and safety hazards at the Council Premises of which it becomes aware and which relate to or arise in connection with the performance of this Contract. The Supplier shall instruct the Supplier's Personnel to adopt any necessary associated safety measures in order to manage any such material health and safety hazards.

## **36. DATA PROTECTION**

- 36.1 Both parties shall, and the Supplier shall procure that its Authorised Representatives shall, duly observe all their obligations under the Data Protection Legislation, which arise in connection with the performance of this Contract.
- 36.2 The Supplier shall perform its obligations under this Contract in such a way as to ensure that it does not cause the Council to breach any of its applicable obligations under the Data Protection Legislation.
- 36.3 The Supplier shall be liable for and shall indemnify (and keep indemnified) the Council against each and every action, proceeding, liability, cost, claim, loss, expense (including reasonable legal fees and disbursements on a solicitor and client basis) and demands incurred by the Council which arise directly from a breach by the Supplier of its obligations under the Data Protection Legislation, including without limitation those arising out of any third party demand, claim or action, or any breach of contract, negligence, fraud, wilful misconduct, breach of statutory duty or non-compliance with any part of the Data Protection Legislation by the Supplier or its employees, servants, agents or Sub-Contractors.

- 36.4 To the extent that the parties may share Personal Data under this Contract and where each party is using the Personal Data as a Data Controller in its own right the Supplier agrees that it shall enter into a data sharing agreement with the Council if required to do so at the Council's absolute discretion so as to set out the parties obligations in relation to any Personal Data which may be shared between the parties, including but not limited to the protocols that the parties will follow to determine exactly what data will be shared, the means of transmission and how the parties will cooperate with one another to ensure compliance with the Data Protection Legislation.]
- 36.5 The provisions of this clause [36] shall apply during the continuance of this Contract and indefinitely after its expiry or termination.
- 36.6 The Supplier shall provide a copy of its policies and procedures in relation to data protection and compliance with the Data Protection Legislation, applicable privacy notices and privacy and security policies to the Council upon request and wherever such policy is updated by the Supplier from time to time and shall take into account any comments the Council has on such policy.

## **37. DATA PROCESSOR OBLIGATIONS**

- 37.1 With respect to the parties' rights and obligations under this Contract, to the extent that the Supplier in delivering the Services to the Council acts as a Data Processor for the Council as Data Controller the following provisions of this clause [37] shall apply.).
- 37.2 In respect of Personal Data that the Supplier processes on behalf of the Council in connection with this Contract, the Supplier shall and shall procure that its Representatives shall:
- 37.2.1 solely process the Personal Data for the purposes of fulfilling its obligations under this Contract and in compliance with the Council's written instructions as set out in this Contract and as may be specified from time to time in writing by the Council;
  - 37.2.2 notify the Council immediately if any instructions of the Council relating to the processing of Personal Data are unlawful;
  - 37.2.3 not transfer to or access any Personal Data from a country outside of the United Kingdom without the prior written consent of the Council;
  - 37.2.4 comply with the Council's instructions in relation to transfers of Personal Data to a country outside of the United Kingdom unless the Supplier is required pursuant to applicable Laws to transfer Personal Data outside the United Kingdom, in which case the Supplier shall inform the Council in writing of the relevant legal requirement before any such transfer occurs unless the relevant Law prohibits such notification on important grounds of public interest;
  - 37.2.5 take reasonable steps to ensure the reliability of any Sub-Contractors or Suppliers Personnel who have access to the Personal Data and ensure that all Staff used by the Supplier to process Personal Data are subject to legally binding obligations of confidentiality in relation to the Personal Data;
  - 37.2.6 ensure that none of the Supplier's Staff publish, disclose or divulge any the Personal Data to any third party unless directed in writing to do so by the Council;

- 37.2.7 not engage any Sub-Contractor to carry out any processing of Personal Data without the prior written consent of the Council provided that notwithstanding any such consent the Supplier shall remain liable for compliance with all the requirements of this Contract including in relation to the processing of Personal Data;
- 37.2.8 ensure that obligations equivalent to the obligations set out in this clause [37] are included in all contracts between the Supplier and permitted Sub-Contractors who will be processing Personal Data and who have been approved in accordance with clause [37.2.7];
- 37.2.9 take appropriate technical and organisational measures against unauthorised or unlawful processing of Personal Data and against accidental loss or destruction of, or damage to, Personal Data taking into account the harm that might result from such unauthorised or unlawful processing, loss, destruction or damage and the nature of the Personal Data to be protected including without limitation, all such measures that may be required to ensure compliance with the Data Protection Legislation;
- 37.2.10 upon request provide a written description of the technical and organisational measures employed by the Supplier pursuant to clause [37.2.9] (within the timescales required by the Council) and if the Council does not consider that such measures are adequate to enable compliance with the Data Protection Legislation, implement such additional measures as may be specified by the Council (acting reasonably) to ensure compliance;
- 37.2.11 taking into account the nature of the data processing activities undertaken by the Supplier, provide, at no cost to the Council, all possible assistance and co-operation (including without limitation putting in place appropriate technical and organisational measures) to enable the Council to fulfil its obligations to respond to requests from individuals exercising their rights under the Data Protection Legislation, including (without limitation):
  - 37.2.11.1 notifying the Council within two (2) Business Days, of receiving any request from a Data Subject exercising their rights under the Data Protection Legislation;
  - 37.2.11.2 complying with the Council's instructions in relation to complying with the Data Subject's rights under the Data Protection Legislation, which may include (without limitation) providing notices to Data Subjects in a format specified by the Council, rectifying inaccurate Personal Data, ceasing or restricting processing of Personal Data, providing access to Personal Data, permanently deleting or securely destroying Personal Data and providing copies of Personal Data in a format specified by the Council;
- 37.2.12 maintain a record of the Supplier's processing activities in accordance with the requirements of the Data Protection Legislation;
- 37.2.13 assist the Council, at no cost to the Council, in ensuring compliance with the obligations set out in Articles 32 to 36 (inclusive) of the General Data Protection Regulation (or any equivalent legislation in the UK or any subsequent legislation) taking into account the nature of the data processing undertaken by the Supplier and the information available to the Supplier, including (without limitation):

- 37.2.13.1 providing information and assistance upon request to enable the Council to notify Data Security Breaches to the Information Commissioner's and/or to affected individuals and/or to any other regulators to whom the Council is required to notify any Data Security Breaches; and
- 37.2.13.2 providing input into and carrying out Data Protection Impact Assessments in relation to the Supplier's data processing activities;
- 37.2.14 ensure that it has in place appropriate technical and organisational measures to ensure that processing of Personal Data carried out by the Supplier in connection with this Contract meets the requirements of the Data Protection Legislation and ensures protection of the rights of individuals under the Data Protection Legislation;
- 37.2.15 notify the Council immediately and in any event within twenty four (24) hours in writing if:
  - 37.2.15.1 the Supplier or any Sub-Contractor engaged by or on behalf of the Supplier suffers a breach of security leading to the accidental or unlawful destruction, loss, alteration, unauthorised disclosure of, or access to, Personal Data; or
  - 37.2.15.2 the Supplier or any Sub-Contractor engaged by or on behalf of the Supplier receives any Data Security Breach notification, complaint, notice or communication which relates directly or indirectly to the processing of the Personal Data or to either party's compliance with the Data Protection Legislation,
- and in each case the Supplier shall provide full co-operation, information and assistance to the Council in relation to any such Data Security Breach, complaint, notice or communication at no cost to the Council;
- 37.2.16 upon termination of this Contract, at the discretion of and at no cost to the Council, delete securely or return all Personal Data to the Council and delete all existing copies of the Personal Data unless and to the extent that the Supplier is required to retain copies of the Personal Data in accordance with applicable Laws in which case the Supplier shall notify the Council in writing of the applicable Laws which require the Personal Data to be retained. In the event the Personal Data is deleted or destroyed by the Supplier, the Supplier shall provide the Council with a certificate of destruction evidencing that the Personal Data has been destroyed or deleted.
- 37.2.17 make available to the Council at no cost to the Council all information necessary to demonstrate compliance with the obligations set out in this clause [37] and, upon request, allow the Council, the Information Commissioner's Office and its representatives access to the Supplier's premises, records and Supplier's Personnel or Sub-Contractor for the purposes of assessing the Supplier's compliance with its obligations under this clause [37]; and
- 37.2.18 indemnify the Council from and against all costs, expenses (including legal and other professional fees and expenses), losses, damages and other liabilities or whatever nature (whether contractual, tortious or otherwise) suffered or incurred by the Council and arising out of or in connection with any breach by the Supplier or any Sub-Contractors of this clause 37.

37.3 The provisions of this clause [37] shall apply during the continuance of the Contract and indefinitely after its expiry or termination.

#### **COUNCIL DATA ON SUPPLIER'S IT SYSTEM(S)**

37.4 The Supplier shall:

- 37.4.1 take all reasonable precautions and use all reasonable endeavours to preserve the integrity of any Council Data or other data which it stores and/or processes on behalf of the Council and to prevent any corruption or loss of such data and to have in place an appropriate archiving and back-up policy;
- 37.4.2 follow its detailed archiving procedures for Council Data as set out in its archiving and back-up policy, a copy of which is to be provided to the Council and as such policy may be updated by the Supplier from time to time, which shall include as a minimum, the Supplier making a back-up copy of Council Data at the intervals and following the process detailed in its archiving and back-up policy and recording the copy on media form which the Council Data can be reloaded if there is any corruption or loss of the Council Data;
- 37.4.3 in the event of any corruption of or loss or damage to the Council Data, use all reasonable endeavours to restore the lost or damaged Council Data, at its own expense, from the latest back-up of such Council Data maintained by the Supplier in accordance with the archiving procedure described in its archiving and back-up policy or, where the Council Data has not been restored by the Supplier within [ten (10)] Business Days, at the Council's option, promptly reimburse the Council for any reasonable expenses it incurs in having the Council Data restored by a third party;
- 37.4.4 be responsible for any loss, destruction, alteration or disclosure of Council Data caused by itself and any of its Sub-Contractors, including (but not limited to) any third parties sub-contracted by the Supplier to perform services related to Council Data maintenance and back-up; and
- 37.4.5 in providing the Services, have in place and comply with its privacy and security policy relating to the privacy and security of the Council Data. The Supplier shall provide a copy of its privacy and security policy to the Council upon request and wherever such policy is updated by the Supplier from time to time and shall take into account any comments the Council has on such policy.

#### **38. FREEDOM OF INFORMATION**

38.1 The Supplier acknowledges that the Council is subject to the requirements of the FOIA and the EIRs. The Supplier shall:

- 38.1.1 provide all necessary assistance and cooperation as reasonably requested by the Council to enable the Council to comply with its obligations under the FOIA and EIRs;
- 38.1.2 transfer to the Council all Requests for Information relating to this Contract that it receives as soon as practicable and in any event within two (2) Business Days of receipt;

- 38.1.3 provide the Council with a copy of all Information belonging to the Council requested in the Request For Information which is in its possession or control in the form that the Council requires within five (5) Business Days (or such other period as the Council may reasonably specify) of the Council 's request for such Information; and
- 38.1.4 not respond directly to a Request For Information unless authorised in writing to do so by the Council.
- 38.2 The Supplier acknowledges that the Council may be required under the FOIA and EIRs to disclose information (including Commercially Sensitive Information) without consulting or obtaining consent from the Supplier.
- 38.3 The Council shall take reasonable steps to notify the Supplier of a Request For Information (in accordance with the Secretary of State's section 45 Code of Practice on the Discharge of the Functions of Public Authorities under Part 1 of the FOIA) to the extent that it is permissible and reasonably practical for it to do so but (notwithstanding any other provision in this Contract) the Council shall be responsible for determining in its absolute discretion whether any Commercially Sensitive Information and/or any other information is exempt from disclosure in accordance with the FOIA and/or the EIRs.

## **39. CYBER SECURITY AND DATA PROTECTION**

- 39.1 The Supplier must demonstrate that they can meet the technical requirements prescribed by the Cyber Essentials Scheme. The scheme defines a set of controls which, when properly implemented, will provide organisations with basic protection from the most prevalent forms of threat coming from the internet. Evidence of holding a Cyber Essentials (or equivalent) certificate is desirable before contract award, but essential at the point when sensitive data is to be processed by the successful bidder. Further Information can be found at: <https://www.cyberstreetwise.com/cyberessentials/>
- 39.2 Written confirmation of valid certification will be required every six months to ensure the successful bidder holds a Cyber Essentials Certificate that is no more than 12 months old.
- 39.3 The Supplier must also meet the additional security requirements described in the Security Aspects Letter which supplements the Cyber Essentials Certificate.
- 39.4 The Supplier shall (and shall procure that any of its Sub-Contractors) comply with any notification requirements under the DPA and both Parties shall duly observe all their obligations under the DPA, which arise in connection with the Framework Agreement.
- 39.5 Notwithstanding the general obligation in clause [39.4] where the Supplier is processing Personal Data as a Data Processor for the Council, the Supplier shall ensure that it has in place appropriate technical and contractual measures to ensure the security of the Personal Data (and to guard against unauthorised or unlawful processing of the Personal Data and against accidental loss or destruction of, or damage to, the Personal Data), as required under the Seventh Data Protection Principle in Schedule 1 to the DPA; and
  - 39.5.1 provide the Council with such information as the Council may reasonably require to satisfy itself that the Supplier is complying with its obligations under the DPA;
  - 39.5.2 promptly notify the Council of any breach of the security measures required to be put in place pursuant to Clause [39.5] and

- 39.5.3 ensure it does not knowingly or negligently do or omit to do anything which places the Council in breach of the Council's obligations under the DPA.

## **40. COMMUNITY BENEFITS**

- 40.1 The City of Wolverhampton Council established 5 key principles that will underpin the commissioning and procurement activities of key partners in the city: develop and grow a skilled workforce through creating employment and training opportunities for local residents, encourage healthy lifestyles and independence, support more people to be active within their communities, support businesses to develop and grow and support the reduction to the carbon footprint and eliminate unnecessary waste.
- 40.2 At award of this Contract, the successful the Supplier will be expected to work with the Council and the community to maximise economic and social benefits delivered through the Contract, as set out in the City Social Value Charter. This includes a number of key priorities for the city as set out in this clause [40]
- 40.3 The Supplier shall consider the opportunities to recruit and train economically inactive persons as part of the workforce delivering this Contract. The Council is keen that the Supplier considers the opportunity to offer training during the life of the Contract.
- 40.4 If so required by the Council, the Supplier may also be required to forward details of any employment opportunities and externally advertised vacancies to [Wolves at Work].
- 40.5 The Supplier shall work with the Council to open opportunities for SMEs, including social enterprises, to bid for supply chain opportunities arising from this Contract. This will include:
- 40.5.1 Advertising opportunities on [ ]; and
  - 40.5.2 Hold 'Meet the Buyer' events to introduce new businesses
- 40.6 The Supplier will be encouraged to secure other positive outcomes that would benefit the community they operate within, for example:
- 40.6.1 working with local schools and colleges to provide work placement and work experience opportunities; support for careers days; mock interviews, CV writing, etc.;
  - 40.6.2 contributing to community regeneration schemes.

## **41. ASSIGNMENT**

- 41.1 The Supplier may not assign its rights and obligations under this Contract to an Associated Company without the prior written consent of the Council (but that consent is not to be unreasonably withheld or delayed).
- 41.2 Neither party may assign or dispose of its rights or obligations under this Contract without the prior written consent of the other party (but that consent is not to be unreasonably withheld or delayed).



## **42. PREVENT DUTY**

42.1 The Supplier acknowledges that the Council has a duty under the Counter Terrorism and Security Act 2015 (CTSA 2015) to have due regard to the requirement to prevent people from being drawn into terrorism (Prevent Duty). The Supplier shall, and shall procure that its Representatives shall, give all reasonable assistance and support to the Council in meeting its duty as a specified authority pursuant to the CTSA 2015 (and all regulations made thereunder) and the Supplier shall have regard to the statutory guidance issued under section 29 of the CTSA 2015.

42.2 Where the Supplier identifies or suspects that someone may be engaged in illegal terrorist related activity, the Supplier must refer such person or activity to the police.

## **43. SUB-CONTRACTING**

43.1 If the Supplier is considering a Change of Control, it shall notify the Council as soon as possible and in any event within one (1) month of the Change of Control.

43.2 . The Council may terminate the Contract by giving notice in writing to the Supplier with immediate effect within six (6) months of such notice;

43.2.1 where no notification has been made, the date that the Council becomes aware of the Change of Control; or

43.2.2 the Change of Control results in the Supplier's financial standing being adversely affected.

43.3 The Council may, acting reasonably, terminate this Contract by written notice without penalty if there is a Change of Control to which the Council objects pursuant to clause [43.1 and 43.2].

43.4 The Supplier shall not assign, transfer or otherwise deal with any of its rights or obligations under this Contract or Sub-Contract the performance of any of its obligations under this Contract without compliance with the provisions in this clause [43].

## **44. NOT USED**

## **45. PREVENTION OF FRAUD AND BRIBERY**

45.1 The Supplier represents and warrants that neither it, nor to the best of its knowledge any Supplier Personnel, have at any time prior to the Effective Date:

45.1.1 committed a Prohibited Act or been formally notified that it is subject to an investigation or prosecution which relates to an alleged Prohibited Act; and/or

- 45.1.2 been listed by any government department or agency as being debarred, suspended, proposed for suspension or debarment, or otherwise ineligible for participation in government procurement programs or contracts on the grounds of a Prohibited Act.

45.2 The Supplier shall not during the term of this Contract:

- 45.2.1 commit a Prohibited Act; and/or
- 45.2.2 do or suffer anything to be done which would cause the Council or any of its employees, consultants, contractors, Sub-Contractors or agents to contravene any of the Relevant Requirements or otherwise incur any liability in relation to the Relevant Requirements.

45.3 The Supplier shall during the term of this Contract:

- 45.3.1 establish, maintain and enforce, and require that its Sub-Contractors establish, maintain and enforce, policies and procedures which are adequate to ensure compliance with the Relevant Requirements and prevent the occurrence of a Prohibited Act; and
- 45.3.2 keep appropriate records of its compliance with its obligations under this clause [45] and make such records available to the Council on request.

45.4 The Supplier shall immediately notify the Council in writing if it becomes aware of any breach of Clause [45.1] and [45.2], or has reason to believe that it has or any of the Supplier Personnel have:

- 45.4.1 been subject to an investigation or prosecution which relates to an alleged Prohibited Act;
- 45.4.2 been listed by any government department or agency as being debarred, suspended, proposed for suspension or debarment, or otherwise ineligible for participation in government procurement programs or contracts on the grounds of a Prohibited Act; and/or
- 45.4.3 received a request or demand for any undue financial or other advantage of any kind in connection with the performance of this Contract or otherwise suspects that any person or Party directly or indirectly connected with this Contracting Agreement and/or a Contract, has committed or attempted to commit a Prohibited Act.

45.5 If the Supplier makes a notification to the Council pursuant to clause [33.2], the Supplier shall respond promptly to the Council' enquiries, co-operate with any investigation, and allow the Council to Audit any books, records and/or any other relevant documentation in accordance with [clause [33] (Records, Reports, Audits and Open Book Data).]

45.6 If the Supplier is in Default under clauses [45.1] and/or [45.2], the Council may by notice:

- 45.6.1 require the Supplier to remove from performance of this Contract any Supplier Personnel whose acts or omissions have caused the Default; or
- 45.6.2 immediately terminate this Contract.

45.7 Any notice served by the Council under clause 45.6 shall specify the nature of the Prohibited Act, the identity of the Party who the Council believes has committed the Prohibited Act and the action that the Council has elected to take (including, where relevant, the date on which this Contract shall terminate).

## **46. GOVERNING LAW AND JURISDICTION**

46.1 This Contract shall be governed by and construed in accordance with the law of England and Wales.

46.2 The parties irrevocably submit for all purposes in connection with this Contract to the exclusive jurisdiction of the courts of England.

## **SCHEDULE 1 – SPECIFICATION**

**[to be inserted but already provided]**

## **SCHEDULE [2] – ORDER AND SUPPLIERS PROPOSAL**

### **Part 1 – Order**

## Part 2 – The Proposal

[suppliers submission to be inserted here]

## **SCHEDULE [3] – CHARGES**

**[suppliers submission to be inserted here]**

## **SCHEDULE [4] – INFRASTRUCTURE DESIGN AND SUPPLIERS IMPLEMENTATION PLAN**

[suppliers submission to be inserted here]



## **SCHEDULE [5] – MIGRATION PLAN**

**[suppliers submission to be inserted here]**

## **SCHEDULE [6] –CHANGE PROCEDURE**

## CHANGE PROCEDURE

## **1. INTRODUCTION**

This Schedule sets out the procedure for dealing with Contract Changes.

## **2. GENERAL PRINCIPLES OF CHANGE CONTROL PROCEDURE**

Under this Change Control Procedure:

Either Party shall have the right to request a Contract Change which they shall initiate by issuing a Change Request in accordance with Paragraph 4 below;

The impacted party shall assess and document the potential impact of a proposed Contract Change in accordance with Paragraph 5 below before the Contract Change can be either approved or implemented;

the Council shall have the right to request amendments to a Change Request and approve or reject it, in the manner set out in Paragraph 6 below;

the Supplier shall have the right to reject a Change Request solely in the manner set out in Paragraph 7 below;

no proposed Contract Change shall be implemented by the Supplier until such time as a Change Authorisation Note has been signed and issued by the Council in accordance with Appendix Three below; and

To the extent that any Contract Change requires testing and/or a programme for implementation, then the Parties shall follow the procedures set out in Schedule 1 (Specification) and, where appropriate, the Change Authorisation Note relating to such a Contract Change shall specify a Key Milestone and Key Milestone Date in respect of such Contract Changes for the purposes of such procedures.

Until such time as a Change Authorisation Note has been signed and issued by the Council in accordance with Appendix Three below, then:

unless the Council expressly agrees otherwise in writing, the Supplier shall continue to supply the Services in accordance with the existing terms of this Agreement as if the proposed Contract Change did not apply; and

any discussions, negotiations or other communications which may take place between the Council and the Supplier in connection with any proposed Contract Change, including the submission of any Change Communications, shall be without prejudice to each Party's other rights under this Agreement.

Nothing in this Schedule limits the Council's rights to receive a reduction in the Charges as a result of a Change.

### **3. COSTS**

Subject to Paragraph 3, each Party shall bear its own costs in relation to the preparation and agreement of each Change Request

All Contract Changes shall be calculated and charged in accordance with the prices set out in Schedule 3 (Charges).

If a Change is needed due to any error or Default by the Supplier, the Supplier shall bear both Parties' costs incurred in relation to this Change Control Procedure.

### **4. CHANGE REQUEST**

The Council may issue a Change Request to the other Party at any time during the Term. The Change Request shall be substantially in the form of Appendix One to this Schedule.

The Supplier shall provide an Impact Assessment to the Council as soon as is reasonably practicable but in any event within ten (10) Working Days (or such other period as agreed by the Parties in writing) of the date of receiving the Change Request from the Council provided that if the Supplier requires any clarifications in relation to the Change Request before it can deliver the Impact Assessment, then it shall promptly notify the Council in writing and the time period shall be extended by the time taken by the Council to provide those clarifications. The Council shall respond to the request for clarifications as soon as is reasonably practicable and the Supplier shall provide the Council with sufficient information to enable it to understand fully the nature of the request for clarification.

### **5. IMPACT ASSESSMENT**

Each Impact Assessment shall be completed in good faith and shall include:

details of the proposed Contract Change including the reason for the Contract Change;

details of the impact of the proposed Contract Change on the Services and the Supplier's ability to meet its other obligations under this Agreement;

any variation to the terms of this Agreement that will be required as a result of that impact and including changes to:

the Service Requirements, Supplier Service Descriptions and the Service Levels;

the Milestones, Implementation Plan and any other timetable previously agreed in writing by the Parties;

other services provided by third party Suppliers to the Council, including any changes required by the proposed Contract Change to the Council's ICT infrastructure;

details of the cost of implementing the proposed Contract Change including any payment profile;

details of the ongoing costs required by the proposed Contract Change when implemented, including any increase or decrease in the Charges, any alteration in the resources and/or expenditure required by either Party and any alteration to the working practices of either Party;

a timetable for the implementation, together with a detailed Test Plan for any part of the Change which is technical in nature and any proposals for the acceptance of the Contract Change;

such other information as the Council may reasonably request in (or in response to) the Change Request;

an analysis of the risks arising from the implementation of the Change and a proposal as to pro-active management of the risks identified by both the Council and the Supplier;

Subject to the provisions of Paragraph 5, the Council shall review the Impact Assessment and, within fifteen (15) Working Days (or such other period as the Council determines) of receiving the Impact Assessment, it shall respond to the Supplier in accordance with Paragraph 6 below.

If the Council reasonably considers that it requires further information regarding the proposed Contract Change so that it may properly evaluate the Change Request and the Impact Assessment then, within five (5) Working Days (or such other period as agreed by the Parties in writing) of receiving the Impact Assessment, it shall notify the Supplier in writing of this fact and detail the further information that it requires. The Supplier shall then re-issue the relevant Impact Assessment to the Council within ten (10) Working Days (or such other period as agreed by the Parties in writing) of receiving such notification. At the Council's discretion, acting reasonably, the Parties shall repeat the process described in

this Paragraph 5 until the Council is satisfied that it has sufficient information to properly evaluate the Change Request and Impact Assessment.

## **6. COUNCIL'S RIGHT OF APPROVAL AND REJECTION**

Within fifteen (15) Working Days (or such other period as agreed by the Parties in writing) of receiving the Impact Assessment from the Supplier or within ten (10) Working Days (or such other period as agreed by the Parties in writing) of receiving the further information that it may request pursuant to Paragraph 5 above, the Council shall evaluate the Change Request and the Impact Assessment and shall do one of the following:

Approve the proposed Contract Change, in which case the Parties shall follow the procedure set out in Paragraph 6;

in its absolute discretion reject the Contract Change, in which case it shall notify the Supplier in writing of the rejection. If the Council does reject a Contract Change, then it shall explain its reasons in writing to the Supplier as soon as is reasonably practicable following such rejection; or

in the event that it reasonably believes that a Change Request or Impact Assessment contains errors or omissions, require the Supplier to modify the Change Request and/or Impact Assessment in which event the Supplier shall make such modifications within five (5) Working Days (or such other period as agreed by the Parties in writing) of such request. Subject to Paragraph 5 above, on receiving the modified Change Request and/or Impact Assessment, the Council shall approve or reject the proposed Contract Change within ten (10) Working Days (or such other period as agreed by the Parties in writing) of such receipt.

If the Council Approves the proposed Contract Change pursuant to Paragraph 6 above and it has not been rejected by the Supplier in accordance with Paragraph 7 below, then it shall inform the Supplier and the Supplier shall prepare two (2) copies of a Change Authorisation Note which it shall sign and deliver to the Council for its signature. Following receipt by the Council of the Change Authorisation Note, it shall sign both copies and return one (1) copy to the Supplier. On the Council's signature, the Change Authorisation Note shall constitute a binding variation to this Agreement provided that the Change Authorisation Note is signed by:

the appropriate person(s) specified in Appendix Three below; and

the Council within ten (10) Working Days (or such other period as agreed by the Parties in writing) of receiving the Supplier's signed copy. If the Council does not sign the Change Authorisation Note within this time period, then the Supplier shall notify the Council in writing and if the Council does not sign the Change Authorisation Note within five (5) Working Days (or such other period as agreed by the Parties in writing) of the date of such notification, then the Supplier may refer the matter to the Expedited Dispute Timetable.

## **7. SUPPLIER'S RIGHT OF REJECTION**

The Supplier may reject a proposed Contract Change if (and only if) following an Impact Assessment the Supplier reasonably believes that any proposed Contract Change which is requested by the Council would:

materially and adversely affect the Supplier's ability to deliver the Services;

require the Supplier to implement the Change in Service in an unreasonable period of time;

(if implemented) materially and adversely change the nature of the Services (including the risk profile); and/or

If the Supplier rejects a Contract Change (in accordance with Paragraph 7 above) which is requested by the Council it shall notify the Council in writing of its reasons for doing so within five (5) Working Days (or such other period as agreed by the Parties in writing) after the date on which it is obliged to deliver the Impact Assessment in accordance with Paragraph 4 above.

## **8. CHANGE AUTHORISATION**

Any proposed Contract Change processed in accordance with this Schedule shall not be authorised and the Supplier shall not implement any proposed Contract Change until the Change Authorisation Note is signed and executed by the Council's senior responsible officer (or any other individual authorised and identified from time to time by the Council) in accordance with the Council's contract change authorisation and sign off procedure(s), as notified to the Supplier in writing from time to time.





## APPENDIX 1

### CHANGE REQUEST FORM

|  |        |                   |
|--|--------|-------------------|
| CR NO.:  | TITLE: | TYPE OF CHANGE:   |
| PROJECT:   |        | REQUIRED BY DATE: |
| ACTION:  | NAME:  | DATE:             |
| RAISED BY:   |        |                   |
| AREA(S) IMPACTED (OPTIONAL FIELD):                                       |        |                   |
| ASSIGNED FOR IMPACT ASSESSMENT BY:                                       |        |                   |
| ASSIGNED FOR IMPACT ASSESSMENT TO:                                       |        |                   |
| SUPPLIER REFERENCE NO.:  |        |                   |
| FULL DESCRIPTION OF REQUESTED CONTRACT CHANGE:                           |        |                   |
| DETAILS OF ANY PROPOSED ALTERNATIVE SCENARIOS:                           |        |                   |
| REASONS FOR AND BENEFITS AND DISADVANTAGES OF REQUESTED CONTRACT CHANGE: |        |                   |
| SIGNATURE OF REQUESTING CHANGE OWNER:                                    |        |                   |
| DATE OF REQUEST:   |        |                   |

## APPENDIX 2

### IMPACT ASSESSMENT FORM

|  |                   |              |
|--|-------------------|--------------|
| CR NO.:  | TITLE:            | DATE RAISED: |
| PROJECT:   | REQUIRED BY DATE: |              |
| DETAILED DESCRIPTION OF CONTRACT CHANGE FOR WHICH IMPACT ASSESSMENT IS BEING PREPARED AND DETAILS OF ANY RELATED CONTRACT CHANGES: |                   |              |
| PROPOSED ADJUSTMENT TO THE CHARGES RESULTING FROM THE CONTRACT CHANGE:   |                   |              |
| DETAILS OF PROPOSED ONE-OFF ADDITIONAL CHARGES AND MEANS FOR DETERMINING THESE (E.G. FIXED PRICE OR COST-PLUS BASIS):              |                   |              |
| DETAILS OF ANY PROPOSED CONTRACT AMENDMENTS:   |                   |              |
| DETAILS OF ANY SERVICE LEVEL TARGETS AFFECTED:   |                   |              |
| DETAILS OF ANY OPERATIONAL SERVICE IMPACT:   |                   |              |
| DETAILS OF ANY INTERFACES AFFECTED:  |                   |              |
| DETAILED RISK ASSESSMENT:  |                   |              |
| RECOMMENDATIONS:   |                   |              |

## APPENDIX 3

### CHANGE AUTHORISATION NOTE

|  |                  |                                   |
|--|------------------|-----------------------------------|
| CR NO.:  | TITLE:           | DATE RAISED:                      |
| PROJECT:   | TYPE OF CHANGE:  | REQUIRED BY DATE:                 |
| [KEY MILESTONE DATE(S): <i>[if any]</i> ]  |                  |                                   |
| DETAILED DESCRIPTION OF CONTRACT CHANGE FOR WHICH IMPACT ASSESSMENT IS BEING PREPARED AND DETAILS OF ANY RELATED CONTRACT CHANGES: |                  |                                   |
| PROPOSED ADJUSTMENT TO THE CHARGES RESULTING FROM THE CONTRACT CHANGE:   |                  |                                   |
| DETAILS OF PROPOSED ONE-OFF ADDITIONAL CHARGES AND MEANS FOR DETERMINING THESE (E.G. FIXED PRICE OR COST-PLUS BASIS):              |                  |                                   |
| SIGNED ON BEHALF OF THE COUNCIL:   |                  | SIGNED ON BEHALF OF THE SUPPLIER: |
| Signature: _____   | Signature: _____ |                                   |
| Name: _____  | Name: _____      |                                   |
| Position: _____  | Position: _____  |                                   |
| Date: _____  | Date: _____      |                                   |

**SCHEDULE [7] – NOT USED**

**SCHEDULE [8] - NOT USED**

## SCHEDULE [9] – MANAGAMENT INFORMATION DATA AND DCMS DATA

The winning tenderer will be required to contribute the following information as a requirement of our funding.

Management information will be provided as stated below but may be subject to further change as determined by the funder or the Council with 1 months' notice.

To be provided monthly:

Management information will be provided with regard to the NOC and KPIs on a monthly basis

To be provided on a quarterly basis.

### REGULAR MANAGEMENT INFORMATION REPORTING:

The following information on the Project will need to be collected by Recipients and Suppliers and reported to the Authority. The information enables the programme to report against its overall objectives, progress against these and to establish the extent of success of different delivery mechanisms. As the LFFN Programme is seeking to understand what role each of the delivery mechanisms has, and the effectiveness of these, the information will need to be collected separately by each individual delivery mechanism type.

### How programme data/information will be collected on LFFN?

There are a number of mechanisms that the Authority will use to collect programme information, not all of these will be the responsibility of the Recipient to provide, but as a minimum many will require the Recipient to be aware of them to ensure the necessary data is built in to arrangements with Suppliers and connection recipients:

|                   |  |
|-------------------|--|
| <b>BEFORE</b>     | <ul style="list-style-type: none"> <li>Challenge Fund Bid content</li> <li>Contracts and grant fund agreements (including build specifications, site lists, market reviews and local area baselines).</li> <li>Asset Register - where specific assets are delivered or re-used as part of the LFFN Programme (information on asset, (re)use type, subsequent use of asset elements)</li> </ul> |
| <b>DURING</b>     | <ul style="list-style-type: none"> <li>MI and Progress Reporting</li> <li>Annual Monitoring Report (project level),</li> <li>Some small scale, light touch and targeted survey work with end users/suppliers (undertaken by the Authority)</li> </ul>  |
| <b>AFTER</b>      | <ul style="list-style-type: none"> <li>Delivery Mechanism Build Finalisation Reports and/or End of Wave Impact and Lessons Learnt Report</li> <li>Contract follow up</li> <li>Full Project Level Summary</li> <li>Follow up information at a set point up to 5 years post build</li> </ul>   |
| <b>THROUGHOUT</b> | <ul style="list-style-type: none"> <li>Programme and Local Level evaluation: baseline and follow up evidence gathering from Suppliers, local bodies and end users of connections.</li> </ul>   |

The following tables provide an outline of the information required, the measures, and the mechanisms by which we expect to collect this information. Much of this will involve close working with your eventual supplier to ensure that the information required by the programme as part of the funding agreement can be provided either at specific points or regularly throughout the lifetime of the build, and for a period up to 5

years beyond build completion date (for subsequent outcomes relating to LFFN funded projects<sup>1</sup> - the programme will maintain an interest in 3rd party build from LFFN enabled infrastructure). Consequently, we will require some further basic information from 3rd party projects resulting from LFFN, such as premises connected/passed. We would require this information to be collected for 5 years post deployment for most delivery methods.

Included in the tables below is the Management Information where the Recipient provides information themselves directly to the Authority. This includes where they will need to establish, through contractual arrangements with their Supplier, what and when the relevant information is to be provided. Recipients should also be aware where possible a direct information gathering or reporting mechanism may be established with their Suppliers (i.e. with Suppliers of grant funded public building connections).

The Authority reserves the right to amend this information requirement in consultation with the Recipient. Wherever possible information gathering processes will be facilitated through dedicated, purpose built templates, with guidance, that ensures simple completion.

## Public Sector Anchor Tenancy

The following metrics are an example of the data that must be collected by the Recipient and/or the Suppliers.

| HOW reported   | WHO reports:<br>Data collected from and reported by   | Information required  |  |
|--|---|---|--|
|  |   | OUTPUT  | OUTCOME  |
| <b>Business Case, Permits and Build Specifications</b> | Data from:<br><b>Suppliers and Local Bodies</b><br><br>Reported by:<br><b>Local Bodies</b>  | <ul style="list-style-type: none"> <li>Public sector buildings connections</li> <li>Type and size of public sector building</li> <li>Speed/capability/technology/cost of current package</li> <li># of premises passed (&lt;50m)</li> <li>Detail of any backhaul upgrades required</li> <li>Supplier Information (build and retail where known)</li> <li>Build milestones/completion dates</li> </ul> | <ul style="list-style-type: none"> <li># of premises &lt;200m from LFFN connections and breaking in points</li> <li>Km fibre required</li> <li>Other build requirements (i.e. fulfill requirements for backhaul upgrade)</li> <li>Evidence of coordination within and between council/district/city departments</li> </ul>   |
| <b>Quarterly Update</b>                                | Data from:<br><b>Suppliers and Local Bodies</b><br><br>Reported by:<br><b>Local Bodies</b><br><br>(will require this specific requirement to be part of contractual arrangement with Supplier for necessary data) | <ul style="list-style-type: none"> <li>Public Sector buildings connected so far</li> <li>Date connected</li> <li>Capability/technology at connection</li> <li>Speed on connection</li> </ul>  | <ul style="list-style-type: none"> <li>Km fibre deployed so far with details of any access points deployed as part of the solution</li> <li>Details of any additional ducting (km, location (co-ordination efficiencys relaised)</li> <li>Km fibre deployed so far with details of any access points deployed as part of any additional supplier investment</li> </ul> |



|  |  |   |   |
|--|--|---|---|
| <p><b>Build Finalisation Report &amp; Bid/Contract Follow Up</b></p> | <p>Data from: <b>Suppliers and Local Bodies</b></p> <p>Reported by: <b>Local Bodies</b></p> <p>(will require this specific requirement to be part of contractual arrangement with Supplier for necessary data)</p> | <ul style="list-style-type: none"> <li>● Public sector connections (number/type)</li> <li>● # of premises passed (connectable) by type</li> <li>● Total local investment</li> <li>● Total supplier investment</li> <li>● # of breaking in points in fibre added so far (Distribution Points and/or Nodes added) - where part of original build contract AND where additional delivered by the supplier for third party access to its retained infrastructure (i.e. not used by Local Body)</li> <li>● Total public sector investment Local Authority</li> </ul> | <ul style="list-style-type: none"> <li>● Number of premises passed by the solution and or through additional supplier activity, defined as the number of residential and business premises within 50m of any access point or termination point delivered as part of the solution</li> <li>● UPRN, Address, Postcode, type (eg. Residential/business/public) of premises passed</li> <li>● Number of premises addressed by the solution, defined as the number of residential and business premises within 200m of any access point or termination point inherent within the solution</li> <li>● UPRN, Address, Postcode, type (eg. Residential/business/public) of premises addressable</li> <li>● Total supplier investment</li> <li>● Additional Km Fibre deployed not related to Local Authority deployment</li> <li>● Detail of any backhaul upgrades</li> <li>● Potential and fibre 'realisation' of 5G mast/ base station sites</li> <li>● Evidence of Coordination (time/money saved)</li> <li>● Further buildings connected using extended network (address, postcode type)</li> <li>● Number and location (coordinates, address etc) of additional access points/ termination points</li> <li>● Improvement of financial efficiency of greater estate coordination (more of its estate on new network )</li> <li>● Potential and fibre 'realisation' of 5G mast/ base station sites</li> <li>● 'Replicability': <ul style="list-style-type: none"> <li>○ Supplier/provider uses the lessons it has learned about the benefit it can extract from a PSAT to accelerate future deployment of fibre.</li> </ul> </li> <li>● Evidence of Coordination (time/money saved)</li> <li>● Further buildings connected using or extending PSAT Commercial Model</li> <li>● Improvement of financial efficiency of greater estate</li> </ul> |
|--|--|---|---|

|  |  |  |  |
|--|--|--|--|
|  |  |  | coordination (more of its estate<br>on new network ) |
|--|--|--|--|

**SCHEDULE [10] –EXIT AND SERVICE TRANSFER**

**[to be provided within the suppliers bid]**

**[SCHEDULE [11] – GUARANTEE]**

## **SCHEDULE [12] – WAYLEAVE**

DATED

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**WOLVERHAMPTON CITY COUNCIL**

and

**[OPERATOR]**

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**DIGITAL FIXED LINE INFRASTRUCTURE WAYLEAVE AGREEMENT**

in respect of the installation of electronic communication apparatus at  
land at various streets in the city of Wolverhampton

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## DATED

## PARTIES

(1) **Wolverhampton City Council** of Civic Centre, St Peters Square, Wolverhampton, WV1 1RG (the "Grantor"); and

(2) **[Name of Operator]** (incorporated and registered in England and Wales under company registration number [company number]), the registered office of which is at [registered address] (the "Operator")

## BACKGROUND

(A) This Agreement is a code agreement under, and made in accordance with, Part 2 of the Code by the Grantor, as "occupier", and by the Operator, as "operator", conferring upon the Operator rights for statutory purposes with respect to the Works described in clause 3.1 and certain powers under the Code.

(B) The Grantor is the freeholder of the Property (as defined in clause 1)

(C) The expressions, "Code", "Operator" "Property", "Tenant" and "Works" are defined in clause 1.

IT IS AGREED as follows:

### 1 Definitions

In this Agreement:

**Apparatus** means the apparatus described in Schedule 2, (being "electronic communications apparatus" as defined by the Code), supplied by the Operator for the use of the Grantor and of its tenants of the Property as altered or upgraded in accordance with this Agreement from time to time in any of the ways permitted under clause 3.1.3; a reference to the Apparatus is to all or part of it as the context so allows;

**Code** means the Electronic Communications Code contained in Schedule 3A to the Communications Act 2003;

**Code Rights** means such of the rights granted by the Grantor to the Operator in clause 3.1 of this Agreement as are referred to in paragraph 3 of the Code;

**Extra Apparatus** means apparatus added to the Apparatus, or otherwise installed, or which is treated under clause 3.1.3 as permitted; once Extra Apparatus has been added, installed or treated as permitted in accordance with this Agreement, the expression "Apparatus" is to be treated as including the Extra Apparatus without differentiation;

**Group Company** means a member of the group of companies of which the Operator is a member; for this purpose, two bodies corporate are to be taken as member of a group if one is a subsidiary of the other or both are subsidiaries of a third body corporate within the meaning of section 1159 of the Companies Act 2006;

**Operator** means the Operator named above in the Parties clause, or such other party to whom this Agreement is from time to time assigned in accordance with its terms during its continuance;

**Plan(s)** means the plan(s), drawings and specifications referred to and annexed in Schedule 2;

**Property** means the Grantor's properties comprised in the Property Stock List from time to time; a reference to the Property is to all or part of it as the context so allows;

**Property Stock List** means the property stock list attached at Schedule 1 as modified from time to time;

**Property Stock List Plan** means the plan at Schedule 1 as modified from time to time;

**Route** means such part of the Property as now shown edged red on the Plan, but as may be changed from time to time by the Grantor, acting reasonably, to accommodate the Apparatus or as determined in accordance with clause 7.8;

**Works** means any of the works to the Property necessary for the purposes set out in clause 3.1 whether by way of initial installation of the Apparatus, upgrading, other alteration to the Apparatus, repairs or otherwise, and includes any related works.

## **2 Interpretation**

**2.1** A reference to the Grantor includes those other persons bound by this Agreement, or who will become bound by it, under the Code.

**2.2** A reference to the Operator includes an entity to whom the benefit of this Agreement is assigned, or with whom the Apparatus is shared, under clause 9.

**2.3** NOT USED

**2.4** A reference to particular legislation includes that legislation as amended, consolidated, re-enacted or replaced, and all subordinate legislation made under it as is, in each case, from time to time in force.

**2.5** In this Agreement where the context so allows:

**2.5.1** words importing the singular meaning include the plural meaning and vice versa;

**2.5.2** an obligation of a party includes the obligation to procure its observance or performance;

**2.5.3** a restriction on a party includes the obligation not to permit the infringement of the restriction; and

**2.5.4** a reference to a Schedule or to a clause is to a Schedule to or to a clause in this Agreement.

**2.6** Where the consent or approval of the Grantor to any matter is required under this Agreement:

**2.6.1** the consent or approval is not to be unreasonably withheld unless expressly indicated otherwise; but

**2.6.2** in order to be effective, the consent or approval must be in writing.

## **3 Rights of the Operator**

**3.1** The Grantor grants to the Operator, for the period until it is terminated in accordance with clause 11, or the Code Rights of the Operator later come to an end, the rights for it and its duly authorised agents to:

**3.1.1** install, keep installed and operate the Apparatus in, on, under, over or through the Route and to connect to a power supply;

**3.1.2** inspect, maintain, adjust, repair, decommission and power down the Apparatus;

**3.1.3** upgrade the Apparatus, and to alter the Apparatus whether or not by the addition of Extra Apparatus within the limits of the Route, but not outside those limits without the consent of the Grantor;



**3.1.4** remove the Apparatus as required or entitled so to do under this Agreement on or after the coming to an end of this Agreement; and

**3.1.5** carry out the Works, with such rights over the Property (but none other) as are necessary, reasonably to gain access to the Route and Apparatus in the execution of the rights granted under this clause 3.1.

The rights so granted to the Operator are to be exercised in accordance with the Operator's obligations under this Agreement.

**3.2** For the purposes of clause 3.1.3, Extra Apparatus is to be treated as kept within the limits of the Route if it does not involve taking up substantially more space within, or enlarging, the Route.

**3.3** Subject to clause 11.6.2, the Apparatus is at all times to remain the property of the Operator.

**3.4** For the purposes of clause 3.1, the Operator and its duly authorised agents may enter the Property at reasonable times, subject to clause 4.4, with or without vehicles (where appropriate), and with workmen, plant, equipment or machinery as may reasonably be required to carry out the Works.

**3.5** This clause 3.5 applies where an alteration is made to the Apparatus or it is relocated:

**3.5.1** the provisions of this Agreement are to continue to apply to the Property and the Apparatus as altered and, so far as applicable, in the new location; and

**3.5.2** each party shall promptly sign a memorandum recording the details of the alterations to the Apparatus and, (if applicable) the new location and any consequential adjustment of the terms of this Agreement, and retain a copy with its part of this Agreement.

**3.6** The Operator may use the Apparatus only for the purpose of providing an electronic communications service (as defined by and construed in accordance with the Code) to the Property until this Agreement is terminated under clause 11, or the Code Rights of the Operator later come to an end.

**3.7** [This Agreement does not, or will not, apply to any part of the Property which is, or becomes, adopted as a highway maintainable at public expense.]

**3.8** This Agreement does not create the relationship of landlord and tenant between the Grantor and the Operator in respect of the Property.

#### **4 The Operator's Obligations**

**4.1** The Operator undertakes with the Grantor to observe and perform the obligations in the following provisions of this clause 4.

**4.2** Before commencing any Works:

**4.2.1** to obtain such statutory consents, permits to work, licences, permissions, approvals and authorisations as are required, necessary for the commencement, execution and retention of the Works; and

**4.2.2** unless in case of the initial installation of Apparatus the Grantor has approved the specification and the Works involved, to provide to the Grantor details of the Works for prior approval; but

**4.2.3** if consent of the Grantor is not required to Works to be carried out under clause 3.1.3, to give details of the Works within two months after they have been completed; and

**4.2.4** unless the Grantor has approved the specification for the initial installation of Apparatus and the Works, or has granted consent to the alteration of the Apparatus, to provide to the Grantor details of the Apparatus as installed or altered within two months after completion of the Works.

**4.3** Before entering the Property to carry out Works, to give to the Grantor reasonable notice to that effect (except in the case of emergency when as much notice as is reasonably practicable, or none if not practicable, has to be given).

**4.4** To carry out and complete the Works:

**4.4.1** in accordance with the Plans, and in a proper, safe and workmanlike manner;

**4.4.2** in compliance with applicable statutory requirements and international standards, and in accordance with health and safety regulations and permits to work;

**4.4.3** in accordance with the reasonable guidelines of the Grantor of which the Operator has been notified;

**4.4.4** taking all proper precautions as may reasonably be practicable:

(a) to avoid unnecessary or undue obstruction or interference with the access to or use of the Property, or any neighbouring property; and

(b) so as not to cause unnecessary or undue damage, nuisance or inconvenience to the Grantor, and the tenants or occupiers of the Property, or of any neighbouring property; and

**4.4.5** in compliance with the reasonable security and access requirements of the Grantor as notified to the Operator.

**4.5** By way of reinstatement, to make good to the reasonable satisfaction of the Grantor damage caused to the Property, or any neighbouring property of the Grantor, by the Works as soon as may reasonably be practicable, but no later than 3 months following completion of the Works. In case of temporary reinstatement of affected areas of the Property during the course of the Works, to render them safe for their intended use until final reinstatement can be carried out.

**4.6** Not to use any part of the Property apart from the Route and such other parts of the Property as it is reasonably necessary to enter in order to carry out the Works or in connection with the Works as permitted by clause 3.1.

**4.7** To maintain and keep the Apparatus:

**4.7.1** identifiably labelled with the name of the Operator; and

**4.7.2** in good repair and condition and so as not to be a danger to the Grantor, its employees or property, or to the tenants and occupiers of, or visitors to, the Property,

and to use and operate the Apparatus in accordance with applicable legislation and recommended guidelines.

**4.8** To maintain third party and public liability insurance cover in respect of the exercise of the Operator's rights and the performance of the Operator's obligations under this Agreement, whether by the Operator, its employees, agents, or persons under its control or by a Group Company:

**4.8.1** with a reputable insurance company for not less than [£10,000,000] for each insurance year:

(a) during the course of this Agreement; and then

(b) for each insurance year until the Operator is no longer actually or contingently liable in respect of matters arising from actions and omissions on its part, or for those for whom it would be vicariously liable, during the course of this Agreement; and

**4.8.2** against injury or death and loss caused to persons and damage or destruction caused to property, and to provide to the Grantor details of the insurance and evidence that cover is in force upon reasonable request, but no more than once in any insurance year applicable to the policy unless in the meantime there is a change of insurer, policy conditions or cover.

**4.9** The Operator shall serve not less than 30 days prior written notice on the Grantor of its intention to install the Apparatus at a Property such notice to include Plans to identify the Route for the Apparatus. Within 14 days of receipt of the notice referred to above, the Grantor shall provide written notification to the Operator whether or not the Apparatus and Route are approved. If not approved the Operator may submit new Plans and the provisions of this clause shall re-apply.

**4.10** If the Grantor approves the Apparatus and Route the Operator may install the Apparatus subject to complying with clause 4.

## **5 The Grantor's Obligations to the Operator**

**5.1** The Grantor undertakes with the Operator to observe and perform the obligations in this clause 5.1:

**5.1.1** to use reasonable endeavours:

(a) to prevent damage, or anything likely to cause damage to be done, to the Apparatus; and

(b) not to interfere or tamper with the Apparatus and its operation.

**5.1.2** to give reasonable notice of any activity, by way of power outages or otherwise, that it intends to carry out, that would or might affect the continuous operation of the Apparatus or otherwise limit the ability of Operator to provide electronic communications services to the Property.

**5.2** The Grantor confirms that it has obtained the required consents to enter into this Agreement.

## **6 Property Stock List**

**6.1** The Parties may modify the Property Stock List which must be in writing and signed by both Parties to be considered a valid modification;

**6.2** Where the Property Stock List is modified in accordance with clause 6.1, the Operator must provide an updated Property Stock List Plan and other documents as required by law and in this Agreement.

## **7 Relocation of Apparatus Required by the Grantor**

**7.1** This clause 7 applies if the Grantor intends to repair or redevelop the Property, necessarily involving the relocation of the Apparatus. For these purposes, the expressions:

**7.1.1** "repair" is to be construed as including any operation by way of repair, improvement, alteration, refurbishment, renewal or addition of or to the Property, or of or to the plant and equipment of the Grantor in the Property; and

**7.1.2** "relocation of the Apparatus" means the relocation of the Apparatus whether it is to be temporary or permanent.

**7.2** The parties shall use reasonable endeavours to collaborate with a view to providing acceptable solutions to situations that:

**7.2.1** allow for the Grantor's requirements to repair or redevelop the Property, and to require the relocation of the Apparatus; and

**7.2.2** enable the Operator to provide a continuous electronic communications service to its customers in the Property.

**7.3** The Grantor shall give to the Operator:

**7.3.1** not less than 3 months' notice of its intention so to repair or redevelop the Property except in case of emergency when as much notice as is reasonably practicable, or none if not practical, has to be given;

**7.3.2** details of how the relocation of the Apparatus is to be accommodated to enable, or allow for, the Property to be repaired or redeveloped; and

**7.3.3** evidence that it has obtained, if applicable, planning permission or other permissions, or licences, enabling it to commence carrying out repair or the redevelopment.

**7.4** If the nature or extent of the repair or the redevelopment is such that the continuation in the location specified in this Agreement would not be practicable, the Grantor shall use reasonable endeavours:

**7.4.1** to find an alternative, suitable, location in the Property for the Apparatus reasonably satisfactory to the Operator and the Grantor; and

**7.4.2** to meet the Operator's reasonable requirements to secure the uninterrupted service provided by the Apparatus.

**7.5** The Operator shall use reasonable endeavours not materially to hinder, prevent, impede or increase the cost to the Grantor of works of repair or redevelopment.

**7.6** The Grantor may not require relocation of the Apparatus more than three times in any consecutive period of five years during the continuance of this Agreement.

**7.7** Only where the Grantor has requested for relocation of the Apparatus, will the Grantor bear the reasonable costs of relocating such Apparatus.

**7.8** If the parties are unable to agree an alternative location for the Apparatus by a time at least one month before the expiry of the notice given by the Grantor under clause 7.3.1, either the Grantor or the Operator may refer the matter for determination under clause 13.

**7.9** The Operator acknowledges that nothing in this Agreement is intended to prevent or restrict the right of the Grantor to repair or redevelop the Property or any other buildings, property or land.

## **8 Interference**

If it is demonstrated by the Grantor that the Apparatus at any time materially interferes (electronically, electromagnetically, mechanically or otherwise) with the operation of other equipment installed at the Property before the date of this Agreement, the parties are to co-operate and use reasonable endeavours to find and implement a technical solution.

## **9 Assignment and Sharing**

**9.1** This Agreement may be assigned only to an operator to whom the Code is applied under section 106 of the Communications Act 2003.

**9.2** Unless the Grantor agrees to forgo the right to require it, the assignor shall enter into a guarantee agreement guaranteeing the performance by the assignee of the obligations under this Agreement of the assignee as Operator on terms that the guarantee may:

**9.2.1** impose on the assignor liability as a sole or principal debtor in respect of the relevant obligations in this Agreement; and

**9.2.2** impose on the assignor liabilities as guarantor in respect of the assignee's performance of the relevant obligations which are no more onerous than those to which the assignor would be subject in the event of the assignor being liable as sole or principal debtor in respect of any of the relevant obligations; and

**9.2.3** Include incidental or supplementary provisions, but may not impose on the assignor a requirement to guarantee in any way the performance of relevant obligations by a person other than the assignee, or any liability, restriction or other requirement of any kind in relation to a time after the relevant obligations cease to be binding on the assignee.

**9.3** The assignor is not liable, otherwise than under a guarantee agreement in clause 9.2, for a breach of this Agreement occurring after the assignment if:

**9.3.1** the Grantor is given notice of the name of the assignee, to whom this Agreement has been assigned, and the assignee's address for service in the form of 19(or a form of notice containing all the same information as) the notice set out in Schedule 3; and

**9.3.2** the notice has been given to the Grantor before the occurrence of the breach.

**9.4** The Operator shall notify the Grantor of the completion of the assignment of this Agreement within 28 days after the date of the assignment, and shall provide to it a certified copy of the assignment.

**9.5** The Operator may share the use of the Apparatus with another operator to whom the Code is applied under section 106 of the Communications Act 2003 subject to the conditions in clauses 10.2 and 10.3.

## **10 Upgrading and Works to facilitate sharing of Apparatus**

**10.1** The Operator may upgrade the Apparatus, or carry out Works required to give effect to sharing the Apparatus whether or not by way of upgrade to it, subject to meeting the tests applying, and the requirements, in the following provisions of this clause 10.

**10.2** The changes to the Apparatus so required may only be made if they do not:

**10.2.1** have an adverse impact, or no more than a minimal adverse impact, on the appearance of the Apparatus; or

**10.2.2** impose an additional burden of any kind on the Grantor, including anything that has an additional adverse effect on the Grantor's enjoyment of the Property, or causing it additional loss, damage or expense, unless the Grantor consents to the changes being made on terms it reasonably requires to mitigate the adverse impact or additional burden which would otherwise result, or the changes are ordered by the court.

**10.3** The Operator shall give to the Grantor not less than 4 weeks' notice of its intention to make changes to the Apparatus of more than minimal adverse impact upon the Grantor or the Property before commencing any Works, and shall provide:

**10.3.1** evidence (including drawings, specifications, plans and method statements as appropriate) to show to the reasonable satisfaction of the Grantor that the conditions in clause 10.2 are to be met; and

**10.3.2** if applicable, details of the identity of the operator with whom the Apparatus is to be shared.

## **11 Termination**

**11.1** This Agreement may be terminated in any of the circumstances set out in this Clause 11. Following termination of this Agreement by the Grantor, the Code Rights of the Operator may nevertheless continue to be exercised by it for so long as they remain exercisable in accordance with Part 5 of the Code and to be binding during that period on the Grantor.

**11.2** This Agreement terminates immediately if:

**11.2.1** the Operator ceases permanently to provide the electronic communications service to which this Agreement relates whether or not it removes the Apparatus;

**11.2.2** the Operator ceases to be a person to whom the Code is applied; or

**11.2.3** the Apparatus is no longer being used, nor likely to be used, at the Property, or is removed by the Operator otherwise than temporarily for repair or replacement;

**11.3** This Agreement may be terminated if either the Operator or the Grantor is in substantial breach of this Agreement, and has failed to remedy the breach within three months following service of notice by the other specifying the breach and requiring it to be remedied. The Grantor or the Operator (as the case may be) may then, or at a later time while the breach has not been remedied, terminate this Agreement immediately by giving notice to the other to that effect.

**11.4** The Grantor may terminate this Agreement by giving to the Operator not less than three months' notice that it intends to commence to repair (as defined in clause 7.1.1) the Property in circumstances in which the continuation of this Agreement under clause 7.4 could not be practicable.

**11.5** The Grantor may terminate this Agreement and the Operator's Code Rights by giving to the Operator not less than 18 months' notice that it intends to redevelop the whole or part of the Property and could not reasonably do so unless this Agreement is terminated, and the Code Rights come to an end.

**11.6** Following the termination of this Agreement and the coming to an end of the Code Rights of the Operator:

**11.6.1** the Operator shall, at the Grantor's reasonable request by notice given within a period, not exceeding 6 months after the date of termination of this Agreement and the coming to an end of the Operator's Code Rights:

(a) remove the Apparatus from the Property as soon as reasonably practicable; and

(b) make good damage occasioned to the Property by its removal to the reasonable satisfaction of the Grantor within a reasonable period not exceeding three months after the date of the Grantor's request; but

**11.6.2** if the Operator does not comply within 3 months with the request of the Grantor given under clause 11.6.1, the Grantor:

(a) is to be entitled to treat the Apparatus as abandoned and of no value; and

(b) may remove and dispose of the Apparatus and recover from the Operator the reasonable costs of doing so.

## **12 Indemnity provisions**

**12.1** The Operator shall keep the Grantor indemnified against liabilities suffered or incurred by it arising out of the breach, non-observance or non-performance of the obligations of the Operator in this Agreement.

**12.2** In this clause 12, “liabilities” includes losses, claims, demands, proceedings, damages, compensation, costs and expenses.

**12.3** The indemnity of the Operator under clause 12.1 applies to liabilities suffered by the Grantor arising from any cause, including the following causes:

**12.3.1** delay to, prevention or redesign of works of repair (as defined in clause 7.1) by the Grantor of the Property (or adjoining property, or the plant and machinery serving it); and

**12.3.2** loss of rent from the Property, or loss of value equal to the difference between the value of the Grantor's interest in the Property with the continuing presence of the Apparatus and the value of its interest without it.

**12.4** Claims of the Grantor under these indemnity provisions, howsoever the liability of the Operator arises, are not to exceed [£10,000,000] in aggregate in any insurance year under the policy of insurance, unless it involves death or personal injury caused by negligence of the Operator or those for whom it is vicariously responsible.

**12.5** The Grantor:

**12.5.1** shall notify the Operator as soon as may reasonably be practicable on becoming aware of any liabilities and shall use reasonable endeavours to mitigate the liabilities for which it seeks indemnity; but

**12.5.2** may not compromise or settle any of the liabilities, unless required under an order of court, without the consent of the Operator, and shall permit the Operator to defend the claims in the name of the Grantor at the expense of the Operator.

## **13 Mediation of Disputes and Dispute Resolution**

**13.1** Either the Grantor or the Operator may refer a dispute in connection with this Agreement to the respective nominated managers of each for resolution, both of whom are to use their reasonable endeavours to resolve the dispute in the first instance as soon as reasonably practicable. A nominated manager must be a senior representative empowered to make executive decisions on behalf of the party he or she represents.

**13.2** If the dispute is not so resolved within twenty-eight (28) days after referral in accordance with clause 13.1, either party may request by notice given to the other (“dispute notice”) that the dispute is referred to mediation for resolution. In that event:

**13.2.1** the parties shall appoint a single mediator to perform the mediation;

**13.2.2** where the parties are unable to agree on the appointment of a mediator within twenty-eight (28) days of the dispute notice, the mediator is to be appointed by the Centre for Effective Dispute Resolution, or its successor or replacement body, on the application of either party; and

**13.2.3** the mediation is to be conducted in England pursuant to a procedure established by the mediator in his or her absolute discretion.

**13.3** Neither party may commence court proceedings in relation to the dispute until (acting in good faith):

**13.3.1** it has first attempted to settle the dispute by mediation in accordance with clause 13.2; and

**13.3.2** either the mediation has terminated, or the other party has failed to participate in the mediation, but the right to issue proceedings is not to be prejudiced by unreasonable delay in the mediation proceedings.

**13.4** A dispute or difference between the parties (other than one in relation to the Code), that is not resolved by mediation under this clause 13, is to be referred to a single arbitrator, if the parties can agree on one, but otherwise to an arbitrator appointed by the President of the Royal Institution of Chartered Surveyors at the request of either party.

**13.5** The Arbitration Act 1996 is to apply to the reference.

**13.6** The parties acknowledge the power of the arbitrator, under section 37 of the Arbitration Act 1996, to appoint experts or legal advisers, or technical assessors to assist on technical matters.

**13.7** Disputes relating to the Code are to be resolved through the courts of England and Wales.

## **14 Notices**

**14.1** A notice or notification given under or in connection with this Agreement must be given in writing and signed by or on behalf of the party giving it.

**14.2** A notice given under the Code must comply with the provisions of Part 15 of the Code. Notice of required access to the Property may be given by email at the following email addresses:

*The Grantor: [insert email address for access requests];*

*The Operator;[insert email address for access requests];*

but in case of change of address, at such other email address as has been notified to the other party.

**14.3** Notices (other than notices of required access given by email) given under or in connection with this Agreement will be validly served if personally delivered, or if sent by a registered post service (within the meaning of the Postal Services Act 2000), or by first class recorded delivery or first-class ordinary post, and (in any such case) addressed to:

**14.3.1** the Grantor at The Chief Legal Officer, Legal Services, Civic Centre, St Peters Square, Wolverhampton, WV1 1RG; or

**14.3.2** the Operator at [insert the Operators address for notices]

but in case of change of address, at such other location as has been notified to the other party.



**14.4** Any such notice is to be deemed to have been served if it is:

**14.4.1** personally delivered and with immediate effect on delivery; or

**14.4.2** sent in accordance with clause 14.3 and having effect 48 hours after posting.

**14.5** Either of the parties may change its address for service and other relevant details by giving to the other notice of the changes in accordance with this clause 14.

## **15 Costs and VAT**

**15.1** All costs payable to a party are exclusive of value added tax chargeable on taxable supplies made by that party under or in connection with this Agreement; the tax is to be paid in addition.

**15.2** A party supplying goods or services under this Agreement is to be paid the amount of any input value added tax incurred by that party to the extent to which it is not entitled to credit under section 26 of the Value Added Tax Act 1994.

## **16 Entire Agreement**

This Agreement constitutes the entire agreement between the Grantor and the Operator.

## **17 Misrepresentation**

**17.1** The Grantor and the Operator each acknowledge to the other that no statement or representation, whether written or oral, previously made to it by or on behalf of the other has induced it to enter into this Agreement.

**17.2** Liability of the Grantor on the one hand and the Operator on the other and any remedy at law, in equity or under statute in respect of such a statement or representation, if innocently made, or for implied warranty, is excluded.

## **18 Severance of Invalid Provisions**

If a term of this Agreement, or its application to any person or circumstance, is held to be invalid or unenforceable, the term, or the relevant extent of its application, is to be treated as severable; the remainder of this Agreement is to continue in force and to be enforceable to the extent permitted by law.

## **19 Exclusion of Third-Party Rights**

Nothing in this Agreement is intended to create rights in favour of a third party under section 1(1)(b) of the Contracts (Rights of Third Parties) Act 1999.

## **20 Governing Law and Jurisdiction**

20.1 This Agreement, and a dispute or claim arising out of or in connection with it (including its formation and non-contractual disputes or claims), are to be governed by the laws of England and Wales.

20.2 The courts of England and Wales are to have the exclusive jurisdiction to determine disputes or claims that arise out of or in connection with this Agreement, including its formation and non-contractual disputes or claims.

## **21 Execution of this Agreement**

This Agreement may be signed in more than one document and in any number of duplicate counterparts.

This Agreement has been entered into on the date given at the beginning of it.

## **SCHEDULE 1**

### **Property Stock List**

[Insert List of freehold properties owned by the Landowner that the Operator will survey and include the Property Stock List Plan which shows the land on plan(s)]

## **SCHEDULE 2**

### **Apparatus**

Ducting/sub-ducting, chambers and cable trays; fibre-optic cables within the ducting/sub-ducting and chambers and supported from cable trays; terminating equipment as further shown and described in the drawings and specifications approved by the Grantor from time to time pursuant to **clause 5.3**.

### SCHEDULE 3

*Text of the Statutory notice of the assignment of an agreement under the Electronic Communications Code – Paragraph 16(5), Part 3 of Schedule 3A of the Communications Act 2003*

1. This is a statutory notice pursuant to paragraph 16(5) of the Electronics Communications Code in Schedule 3A to the Communications Act 2003 (the “Code”).

2. We, [insert name of the Operator], are currently party to an agreement under Part 2 of the Code with you [insert name of the Grantor] (the “Agreement”). Under the Agreement, you agreed to [confer][be bound by] a number of Code rights in order to facilitate the deployment by us of our electronic communications network. These Code rights relate to land occupied by you at [insert address].

3. The purpose of this notice is to inform you that, on [insert date], we assigned the Agreement to [insert name and address of assignee] (the “Assignee”). This means that we have assigned the benefit of the Code rights [conferred by] [binding on] you under the Agreement to the Assignee, and the Assignee is (from the date of the assignment) bound by the terms of the Agreement.

4. Please note that, from the date on which this notice has been given to you, we will not be liable for any breach of a term of the Agreement (unless that breach took place before the date on which this notice was given to you). As a result, should you have any concerns in the future about the exercise of Code rights on your land, please contact the Assignee.

5. The address of the Assignee is [insert address].

6. If you have any questions about this notice, please do not hesitate to contact us via telephone ([insert telephone number]) or email ([insert email address])

[insert date of notice]

Signed by Authorised Officer for  
and on behalf of **Wolverhampton City Council**:

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Signed by [NAME OF SIGNATORY] a duly  
authorised signatory for and on behalf of [Name of Operator]:

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