

**SCHEDULE 1**  
**DEFINITIONS**

## VERSION CONTROL

VERSION NUMBER	DATE	COMMENT
0.1	27 July 2016	Preliminary draft template version made available for general comment
0.2	2 September 2016	Uplifted draft, following feedback, made available for final comment
0.3	25 October 2016 plus 14 November 2016 update of Premises Cap definition	Uplifted following local body and supplier feedback
1.0	16 November 2016	Baselined Version 1.0
1.1	26 January 2018	Updated for Next Generation Access Broadband Wales – Phase 2 Procurement
1.2	27 <sup>th</sup> September 2018	Updated following ITT
1.3	09 October 2018	Change of Expiry date definition to 31 <sup>st</sup> March 2028
1.4	12 October	Amendment of commission decision text

## SCHEDULE 1 – DEFINITIONS

In this Agreement the following words shall have the meanings set out below.

<b>Access Line Speed</b>	the maximum speed of the data connection between the End User termination point and the handover point, local exchange or cable head end. This constitutes the maximum speed a consumer will be able to experience and will take into account any contention built into the Grantee Solution but will not take into account any contention introduced by RSPs;
<b>Achieve</b>	in relation to a Milestone, the Milestone Achievement Criteria for that Milestone have been satisfied and " <b>Achieved</b> " and " <b>Achievement</b> " shall be construed accordingly;
<b>Actual Grantee NGA Network Build Investment</b>	the actual Grantee NGA Network Build Investment incurred;
<b>Actual Qualifying Capital Expenditure</b>	the actual Qualifying Capital Expenditure incurred;
<b>Actual Qualifying Operating Expenditure</b>	the actual Qualifying Operating Expenditure incurred;
<b>Additional Approved Funding</b>	funding, whether from the Welsh Ministers, the Programme Authority and/or other third parties, which (i) is in addition to that which has already been provided for within the Milestone Payments agreed at the Effective Date; (ii) has been approved by the NCC as public funding eligible to be used to further the project aims in the Coverage Area under this Agreement, subject to (a) agreement by the Parties in accordance with Schedule 5.4 (Additional Approved Funding); and (b) such utilisation meeting the requirements of the Commission Decision;
<b>Additional Service</b>	those wholesale access products and services offered over and above the reference offer in the Wholesale Access Products and Services;
<b>Additional Service Claw Back Amount</b>	an amount calculated in accordance with paragraph 10.2 of Schedule 5.1 (Milestone Payments and Claims Procedure), which is repayable to the Welsh Ministers;
<b>Additional Service Revenue</b>	gross revenue derived by the Grantee from Wholesale Access Products and Services, other than broadband revenues (excluding RSP services that utilise Wholesale Access Products and Services);
<b>Additional Service Review Point</b>	(a) each anniversary of the Effective Date (each being an 'interim Additional Service Review Point'); and  (b) the Expiry Date (being the 'final Additional Service Review Point');
<b>Affected Party</b>	the Party affected by a Force Majeure Event;
<b>Affected Premises</b>	has the meaning given in paragraph 10.1 of Schedule 4.1 (Implementation);
<b>Affiliate</b>	in relation to any person, any Holding Company or Subsidiary of

	that person or any Subsidiary of such Holding Company;
<b>Agreement</b>	the Clauses of this Agreement together with the Schedules and Appendices to it and the terms set out in any executed Change Form;
<b>Agreement Consolidation</b>	has the meaning given in Clause 6.4;
<b>Benchmark Data</b>	that data used to form the basis of comparison in a Wholesale Access Prices Benchmarking, as described in paragraphs 3.3 and 3.4 of Schedule 5.2 (Wholesale Access Pricing);
<b>Bribery Act</b>	the Bribery Act 2010 and any subordinate legislation made under that Act from time to time together with any guidance or codes of practice issued by the relevant government department concerning the legislation;
<b>Broadband Delivery Programme</b>	the UK Government's Programme supporting the roll-out of NGA, Ultrafast Broadband and Gigabit Broadband services, managed by the Programme Authority;
<b>Build/No-Build Changes</b>	shall have the meaning set out in paragraph 9.4 of Schedule 4.1 (Implementation);
<b>Case Summary</b>	a concise summary of a Party's case in a Dispute subjected to mediation;
<b>CEDR</b>	the Centre for Effective Dispute Resolution, International Dispute Resolution Centre, 70 Fleet Street, London, EC4Y 1EU;
<b>Change Authorisation</b>	Part 3 of the Change Form executed by the Parties in accordance with paragraph 4 of Schedule 6.2 (Change Control Procedure);
<b>Change Control Procedure</b>	the procedure set out in Schedule 6.2 (Change Control Procedure);
<b>Change Form</b>	a form for dealing with Contract Changes in accordance with the Change Control Procedure, substantially in the form set out in the Appendix to Schedule 6.2 (Change Control Procedure);
<b>Change Impact Assessment</b>	Part 2 of the Change Form completed by the Grantee in accordance with paragraphs 2 and 3 of Schedule 6.2 (Change Control Procedure);
<b>Change of Control</b>	a change in Control of the Grantee;
<b>Change Request</b>	Part 1 of the Change Form completed by a Party in accordance with paragraph 2 of Schedule 6.2 (Change Control Procedure);
<b>Change in Law</b>	any change in Law which impacts on the performance of the Deployed Services and which comes into force after the Effective Date;
<b>Claim</b>	any action, claim, demand or proceedings;
<b>Clawback Adjustment</b>	an amount calculated in accordance with paragraph 11 of Schedule 5.1 (Milestone Payments and Claims Procedure);

<b>Codes and Standards</b>	<ul style="list-style-type: none"> <li>(a) all of the codes and standards listed in the Service Requirements and/or the Grantee Solution;</li> <li>(b) all applicable codes of practice issued pursuant to the New Roads and Street Works Act 1991;</li> <li>(c) all applicable standards, specifications and codes of practice issued by the Secretary of State for Transport, the Department for Transport (or a successor body) and/or the Department for the Environment, Food and Rural Affairs including in respect of the design, construction, operation or maintenance of highways;</li> <li>(d) all applicable national and local planning policy in respect of electronic communications and sensitive locations and buildings including the natural, built and historic environment;</li> <li>(e) all applicable guidelines published by the International Commission on Non-Ionising Radiation Protection;</li> <li>(f) the Code of Best Practice on Mobile Phone Network Development published by the Office of the Deputy Prime Minister (where applicable to the Deployed Services),</li> </ul> <p>as updated or amended from time to time;</p>
<b>Commercially Sensitive Information</b>	the information listed in Schedule 3.2 (Commercially Sensitive Information) comprising the information of a commercially sensitive nature relating to the Grantee, its IPR or its business or which the Grantee has indicated to the Welsh Ministers that, if disclosed by the Welsh Ministers, would cause the Grantee significant commercial disadvantage or material financial loss;
<b>Commission Decision</b>	means the decision of the European Commission approving an aid scheme (as defined in Council Regulation (EC) 2015/1589 with reference number C(2016) 3208 (as amended by the European Commission modification decision with reference number C(2018) 229));
<b>Compliance Matrix</b>	the compliance matrix set out in the Grantee Solution which details the agreed compliance of the Grantee Solution against the Service Requirements, as further specified in Schedule 2 (Service Requirements);
<b>Confidential Information</b>	the WM Confidential Information and/or the Grantee Confidential Information;
<b>Consents</b>	all permits, licences, permissions, consents, approvals, certificates and authorisations (whether statutory or otherwise) which are required for the performance of any of the Grantee's obligations under this Agreement, whether required in order to comply with Law or as a result of the rights of any third party;
<b>Contract Change</b>	any change to the terms of this Agreement;
<b>Contracting Authority</b>	any contracting authority as defined in regulation 3 of the Public Contracts Regulations 2015 excluding the Welsh Ministers;

<b>Control</b>	where a person possesses, directly or indirectly, the power to direct or cause the direction of the management and policies of another person (whether through the ownership of voting shares, by contract or otherwise) and " <b>Controls</b> " and " <b>Controlled</b> " shall be interpreted accordingly;
<b>Conviction</b>	other than for minor road traffic offences, any previous or pending prosecutions, convictions, cautions and binding-over orders (including any spent convictions as contemplated by section 1(1) of the Rehabilitation of Offenders Act 1974 by virtue of the exemptions specified in Part II of Schedule 1 of the Rehabilitation of Offenders Act 1974 (Exemptions) Order 1975 (SI 1975/1023) or any replacement or amendment to that Order, or being placed on a list kept pursuant to section 1 of the Protection of Children Act 1999 or being made the subject of a prohibition or restriction under section 218(6) of the Education Reform Act 1988);
<b>Cost Book</b>	the relevant sheets contained in, or referenced from, the Project Model which contain certain input cost data in the form of a catalogue of components expressed and broken down, that are used in constructing infrastructure, together with any and all unit costs, such as, masts, hardware, electronic equipment, cabinets, lengths of fibre, engineer time. The Cost Book includes the Network Build Cost Book, PMO Cost Book and the In Life Cost Book, all as further described in Appendix 2 to Schedule 5.3 (Project Model);
<b>Coverage Area</b>	the area designated as white for NGA, Ultrafast Broadband or Gigabit Broadband by the Welsh Ministers within the Speed and Coverage Template within which the Deployed Services are to be provided;
<b>Crown Body</b>	any department, office or agency of the Crown;
<b>Data Processor</b>	shall have the same meaning as set out in the Data Protection Legislation;
<b>Data Protection Legislation</b>	all applicable laws, regulations and regulatory rules which govern the processing of personal data to the extent they relate to the performance of this Agreement including (i) the DPA, the EU Data Protection Directive 95/46/EC, the Regulation of Investigatory Powers Act 2000, the Telecommunications (Lawful Business Practice) (Interception of Communications) Regulations 2000 (SI 2000/2699), the Electronic Communications Data Protection Directive 2002/58/EC, the Privacy and Electronic Communications (EC Directive) Regulations 2003 (as amended) and any subsequent legislation enacted and duly in force from time to time including, from 25 May 2018, Regulation (EU) 2016/679 the General Data Protection Regulation ( <b>GDPR</b> ); and (ii) all guidance and / or codes of practice issued from time to time by the Information Commissioner or relevant government department, and any relevant rulings from time to time of the Information Commissioner or of the Courts of England and Wales relating to the processing of personal data;
<b>Data Subject</b>	shall have the same meaning as set out in the DPA;

<b>DCMS</b>	the Secretary of State for Culture, Media and Sport acting through the Department for Culture, Media and Sport (or any successor body);
<b>Default</b>	any breach of the obligations of the relevant Party or any other default, act, omission, negligence or statement of the relevant Party, its employees, servants, agents or Subcontractors pursuant to this Agreement and in respect of which such Party is liable to the other;
<b>Delay</b>	any period of time by which the implementation of the Deployed Services is delayed by reference to the Implementation Plan;
<b>Demand Stimulation</b>	the stimulation of End User broadband demand and Take-up in accordance with the terms of this Agreement;
<b>Deployed Services</b>	all or any part of the services to be provided and/or obligations to be performed by the Grantee to cover the agreed number of premises within the Coverage Area as set out within the Speed and Coverage Template in order to comply with the Service Requirements, the Grantee Solution and Schedule 4.1 (Implementation), and shall include Demand Stimulation, Network Deployment and the Wholesale Access Products and Services;
<b>Deployment Period</b>	the period from the Effective Date up to and including the Full Service Commencement Date;
<b>Dispute</b>	any dispute, difference or question of interpretation pursuant to this Agreement, including any dispute, difference or question of interpretation relating to a failure to agree in accordance with the Change Control Procedure or any matter where this Agreement directs the Parties to resolve an issue by reference to the Dispute Resolution Procedure;
<b>Dispute Resolution Procedure</b>	the procedure set out in Schedule 6.3 (Dispute Resolution Procedure);
<b>Dispute Resolution Timetable</b>	the Standard Dispute Resolution Timetable or the Expedited Dispute Resolution Timetable;
<b>DPA</b>	the Data Protection Act 1998, including all subordinate legislation enacted under or pursuant to that act;
<b>Due Diligence Information</b>	all information and documents that the Grantee considers either necessary or relevant for the performance of its obligations under this Agreement, the development of the Grantee Solution and the calculation of the Milestone Payments (including all information and documents requested by the Grantee);
<b>Effective Date</b>	the date on which this Agreement is signed by both Parties;
<b>End User</b>	a consumer or a business in the Coverage Area who/which uses any communications service offered on the Network by a Retail Service Provider;
<b>End User Premises</b>	the End User's home, community or business premises;
<b>Environmental Information</b>	the Environmental Information Regulations 2004 together with any guidance and/or codes of practice issued by the Information

<b>Regulations</b>	Commissioner or relevant government department in relation to such regulations;
<b>Escalation Process</b>	the process for escalation during commercial negotiations in accordance with paragraph 3 of Schedule 6.3 (Dispute Resolution Procedure);
<b>Excluded Expenditure</b>	is expenditure falling within the parameters of Appendix 6 of Schedule 5.1 (Milestone Payments and Claims Procedure);
<b>Expedited Dispute Resolution Timetable</b>	the reduced timetable for the resolution of material Disputes set out in the Appendix to Schedule 6.3 (Dispute Resolution Procedure) to be used in accordance with paragraph 2.6 of Schedule 6.3 (Dispute Resolution Procedure);
<b>Expiry Date</b>	<p>(a) in respect of the claw back mechanisms contained in paragraphs 9 and 10 of Schedule 5.1 (Milestone Payments and Claims Procedure) is 31<sup>st</sup> March 2028, save that where the Full Service Commencement Date has not been achieved by the 'anticipated FSCD' (being a date which is fifty (50) Working Days after the planned date of the final Milestone M2 in the Implementation Plan as at the Effective Date) the Expiry Date shall be extended by a period equivalent to that from the anticipated FSCD until the actual Full Service Commencement Date (save to the extent such period of delay resulted from Force Majeure or a Relief Event);</p> <p>(b) in respect of all other provisions of this Agreement, the date that is 7 years from the actual Full Service Commencement Date;</p>
<b>External Funding</b>	funding being made available for payment under this Agreement from parties other than the Welsh Ministers and the Programme Authority, as provided for under Schedule 5.5 (External Funding);
<b>Final Additional Service Claw Back Amount</b>	an amount calculated in accordance with paragraph 10.3 of Schedule 5.1 (Milestone Payments and Claims Procedure), which is re-payable to the Welsh Ministers;
<b>Final Take-up Claw Back Amount</b>	an amount calculated in accordance with paragraph 9.5 of Schedule 5.1 (Milestone Payments and Claims Procedure), which is repayable to the Welsh Ministers;
<b>Financial Distress Event</b>	<p>the occurrence of one or more of the following events:</p> <p>(a) the Grantee's or the relevant Key Subcontractor's credit or Dun &amp; Bradstreet rating (as applicable) drops one or more levels below the level set out in Clause 28.1;</p> <p>(b) the Grantee or a Key Subcontractor issues a profits warning to a stock exchange or makes any other public announcement about a material deterioration in its financial position or prospects;</p> <p>(c) there is a public investigation into improper financial accounting and reporting, suspected fraud and/or any other impropriety of the Grantee or a Key Subcontractor;</p>

- (d) the Grantee or a Key Subcontractor commits a material breach of covenants to its lenders;
- (e) a Key Subcontractor notifies the Welsh Ministers that the Grantee has not satisfied any material sums properly due under a specified invoice and not subject to a genuine dispute;
- (f) either of the following events:
  - (i) commencement of any litigation against the Grantee or a Key Subcontractor with respect to financial indebtedness; or
  - (ii) any financial indebtedness of the Grantee or a Key Subcontractor becoming due as a result of an event of default,

which in respect of (f) only, the Welsh Ministers reasonably believe could materially impact on the continued performance and delivery of the Deployed Services in accordance with this Agreement and/or puts at risk public subsidy already granted (or to be granted) pursuant to this Agreement;

**Financial Distress Event Remedial Plan**

a plan provided by the Grantee in accordance with Clause 28 to remedy the potential adverse impact of the relevant Financial Distress Event on the continued performance of this Agreement and/or the security of public subsidy already granted (or to be granted) pursuant to this Agreement;

**FOIA**

the Freedom of Information Act 2000 and any subordinate legislation made under this Act together with any guidance and/or codes of practice issued by the Information Commissioner or relevant government department in relation to such legislation;

**Force Majeure Event**

any cause affecting the performance by a Party of its obligations arising from acts, events, omissions, happenings or non-happenings beyond its reasonable control, including:

- (a) acts of God, riots, war or armed conflict;
- (b) acts of terrorism;
- (c) acts of the Crown or any Regulatory Body;
- (d) fire, flood, storm or earthquake, subsidence or disaster (including epidemics or pandemics);
- (e) any failure or shortage of power, fuel or transport,

but excluding (i) any industrial dispute relating to the Grantee or the Grantee Personnel; or (ii) any other failure in the Grantee or any Subcontractor's supply chain;

**Forecast Qualifying Capital Expenditure**

the Grantee's forecasted capital expenditure for this Agreement as detailed in the Project Model;

**Forecast Qualifying**

the Grantee's forecasted operating expenditure for this

<b>Operating Expenditure</b>	Agreement as detailed in the Project Model;
<b>Full Service Commencement Date</b>	the date on which the Welsh Ministers sign the Milestone Achievement Certificate for the final Milestone M2;
<b>General Change in Law</b>	a Change in Law that is not a Specific Change in Law;
<b>Gigabit Broadband</b>	has the meaning set out in the Service Requirements Glossary at Schedule 2 (Service Requirements);
<b>Good Industry Practice</b>	using standards, practices, methods and procedures (as practised in the UK) and conforming to Law and exercising that degree of skill, diligence, prudence and foresight which would reasonably and ordinarily be expected from a skilled and experienced service provider, manager, operator or other person (as the case may be) engaged in a similar type of undertaking as under this Agreement under the same or similar circumstances;
<b>Grantee Confidential Information</b>	any information provided by the Grantee (or its Subcontractors or Grantee Personnel) to the Welsh Ministers in relation to this Agreement, however it is conveyed, that relates to the business, affairs, developments, trade secrets, know-how, personnel and suppliers of the Grantee, including IPR, together with all information derived from the above, and any other information clearly designated as being confidential (whether or not it is marked as "confidential") or which ought reasonably to be considered to be confidential;
<b>Grantee IPR</b>	any IPR (excluding the WM IPR) owned by the Grantee or any Subcontractor (or their respective Affiliates), or licensed to or used by the Grantee or any Subcontractor (or their respective Affiliates) in connection with this Agreement, and which shall include the Project Specific IPR;
<b>Grantee ITT Response</b>	the Grantee's response to the ITT (including any supplementary clarifications, answers and other provided information) submitted to the Welsh Ministers;
<b>Grantee Location</b>	any location at or from which the Grantee provides the Deployed Services (other than the WM Premises);
<b>Grantee NGA Network Build Investment</b>	comprises the Grantee's investment in the Network during the Deployment Period which is made up of the projected NGA Network Build Costs set out in the Project Model minus any Subsidy Payments paid to the Grantee;
<b>Grantee Personnel</b>	all employees, agents, consultants and contractors of the Grantee and/or of any Subcontractor employed or engaged in the performance of this Agreement from time to time;
<b>Grantee Representative</b>	the representative appointed by the Grantee in accordance with Clause 34.1;
<b>Grantee Solution</b>	the Grantee's solution to meet the Service Requirements, as set out in Schedule 3.1 (Grantee Solution);
<b>Handover Point</b>	a network interconnection point between different communications providers or a communications provider and an

RSP;

<b>Holding Company</b>	has the meaning given in section 1159 Companies Act 2006 (and for the purposes of the membership requirement in section 1159(1)(b) and section 1159(1)(c) a company shall be treated as a member of another company even if its shares in that other company are registered (i) in the name of its nominee; or (ii) in the name of a person (or the nominee of that person) who is holding the shares as security);
<b>Implementation Plan</b>	the implementation plan set out at Appendix 2 to Schedule 4.1 (Implementation) as updated from time to time in accordance with paragraph 5 of Schedule 4.1 (Implementation);
<b>Indemnified Claim</b>	any claim, demand, threatened or anticipated claim or demand or other similar circumstance which falls within the scope of one or more of the indemnities provided in this Agreement;
<b>Indemnified Party</b>	in respect of an indemnity being given under the terms of this Agreement, the Party being indemnified;
<b>Indemnifying Party</b>	in respect of an indemnity being given under the terms of this Agreement, the Party providing the indemnity;
<b>Information</b>	has the meaning given by section 84 of the Freedom of Information Act 2000;
<b>Information System</b>	a system for generating, sending, receiving, storing or otherwise processing electronic communications;
<b>Insolvency Event</b>	<p>the occurrence of any of the following events (or any event analogous to any of the following events in a jurisdiction other than England and Wales) in relation to the Grantee (the "entity"):</p> <ul style="list-style-type: none"><li>(a) passing a resolution for its winding up or a court of competent jurisdiction making an order for the entity to be wound up or dissolved or the entity being otherwise dissolved;</li><li>(b) the appointment of a liquidator, administrator, administrative receiver or the making of an administration order in relation to the entity or an encumbrancer taking possession of or selling all or a material part of the entity's undertaking, assets, rights or revenue;</li><li>(c) any proposal being made for a voluntary arrangement, a composition of debts or a scheme of arrangement to be approved whether under the Insolvency Act 1986 or the Companies Act 2006 or otherwise with all or a substantial majority of its creditors;</li><li>(d) being unable or admitting its inability to pay its debts as they fall due or being capable of being deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 (but with the phrase "it is proved to the satisfaction of the court that" removed from section 123(2) of the Insolvency Act 1986);</li><li>(e) enforcement of any security over all or a material part of</li></ul>

the assets of the entity; or

- (f) any expropriation, attachment, sequestration, distress or execution affecting all or any material part of any asset or assets of the entity which is not discharged within 14 days,

except, where applicable, in respect of any resolution by the relevant entity or a court order that such entity be wound up for the purpose of a bona fide solvent reconstruction or amalgamation;

**Intellectual Property Right**

- (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;
- (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
- (c) all other rights having equivalent or similar effect in any country or jurisdiction;

**Intervention Agreements**

has the meaning given in Clause 6.2;

**IPR**

Intellectual Property Right;

**ITT**

the invitation to tender for the provision of certain network deployment and broadband related services issued by the Welsh Ministers to the tenderers on 26<sup>th</sup> January 2018 (as may have been updated by the Welsh Ministers during the procurement process);

**Key Personnel**

those members of the Grantee Personnel listed in Schedule 3.4 (Key Personnel);

**Key Service**

any Deployed Service (in whole, part or under Subcontract) where in the Welsh Ministers' reasonable view from time to time:

- (a) the relevant Deployed Service is critical to the provision of the Deployed Services as a whole;
- (b) there is no immediately available equivalent or comparable replacement service; and/or
- (c) the non-performance of the relevant Deployed Service would disproportionately affect the delivery of this Agreement relative to the delivery of network and wholesale broadband related services by the Grantee in areas of the UK without public subsidy;

**Key Subcontract**

a Subcontract between the Grantee and a Key Subcontractor;

**Key Subcontractor**

in the Welsh Ministers' opinion, any Subcontractor providing, or that is proposed to provide, a Key Service, which at the Effective

Date comprises those Subcontractors listed in Schedule 3.3 (Key Subcontractors);

<b>Key Subcontractor Financial Distress Event</b>	a Financial Distress Event affecting a Key Subcontractor;
<b>Law</b>	any applicable law, statute, by-law, State Aid Terms, regulation, order, regulatory policy, rule of court or directives or requirements of any Regulatory Body, delegated or subordinate legislation or notice of any Regulatory Body;
<b>LCIA</b>	the London Court of International Arbitration;
<b>Local Body</b>	each of the following bodies within the UK borders including successors to those bodies' functions and organisations created to deliver their functions and objectives: <ul style="list-style-type: none"><li>(a) local authorities (including groups of local authorities) within the UK borders a list of which as at the date of signature of the Agreement is available at: <a href="http://webarchive.nationalarchives.gov.uk/20120604101819/http://direct.gov.uk/en/D11/Directories/Localcouncils/AToZOfLocalCouncils/DG_A-Z_LG">http://webarchive.nationalarchives.gov.uk/20120604101819/http://direct.gov.uk/en/D11/Directories/Localcouncils/AToZOfLocalCouncils/DG_A-Z_LG</a>;</li><li>(b) Local Enterprise Partnerships established (or to be established) between any of the local authorities within the UK borders referred to above and businesses;</li><li>(c) the Welsh Ministers;</li><li>(d) the Scottish Ministers;</li><li>(e) Scottish Enterprise;</li><li>(f) Highlands and Islands Enterprise; and</li><li>(g) the Department of Enterprise, Trade and Investment in Northern Ireland;</li></ul>
<b>Loss</b>	all damages, losses, liabilities, costs, expenses (including legal and other professional charges and expenses), and charges whether arising under statute, contract or at common law or in connection with judgments, proceedings, internal costs or demands;
<b>Mediator</b>	the independent third party appointed in accordance with paragraph 4.2 of Schedule 6.3 (Dispute Resolution Procedure);
<b>Milestone</b>	each of the milestones set out in the Implementation Plan;
<b>Milestone Achievement Certificate</b>	a certificate provided by the Welsh Ministers upon the Achievement of a Milestone in accordance with paragraph 6 of Schedule 4.1 (Implementation), substantially in the form set out in Appendix 3 of Schedule 4.1 (Implementation);
<b>Milestone Achievement Criteria</b>	the criteria for the Achievement of each Milestone Type as specified in Appendix 1 of Schedule 4.1 (Implementation);
<b>Milestone Achievement</b>	a report provided by the Grantee in accordance with paragraph

<b>Progress Report</b>	6.2 of Schedule 4.1 (Implementation);
<b>Milestone Achievement Report</b>	a report provided by the Grantee in accordance with paragraph 6.3 of Schedule 4.1 (Implementation);
<b>Milestone Completion Certificate</b>	a certificate issued by the Welsh Ministers pursuant to paragraph 3.11 of Schedule 5.1 (Milestone Payments and Claims Procedure);
<b>Milestone Date</b>	each of the dates described as such in the table set out in Appendix 2 of Schedule 4.1 (Implementation);
<b>Milestone M0</b>	a Milestone Type 0 specified as such in the Implementation Plan, which shall be consistent with the relevant Milestone Achievement Criteria set out in Appendix 1 of Schedule 4.1 (Implementation);
<b>Milestone M1</b>	a Milestone Type 1 specified as such in the Implementation Plan, which shall be consistent with the relevant Milestone Achievement Criteria set out in Appendix 1 of Schedule 4.1 (Implementation);
<b>Milestone M2</b>	a Milestone Type 2 specified as such in the Implementation Plan, which shall be consistent with the relevant Milestone Achievement Criteria set out in Appendix 1 of Schedule 4.1 (Implementation);
<b>Milestone M3</b>	a Milestone Type 3 specified as such in the Implementation Plan, which shall be consistent with the relevant Milestone Achievement Criteria set out in Appendix 1 of Schedule 4.1 (Implementation);
<b>Milestone Payment</b>	each of the payments specified as such in Appendix 1 of Schedule 5.1 (Milestone Payments and Claims Procedure);
<b>Milestone Payment Claim</b>	the Grantee's claim for payment in respect of the Achievement of a Milestone;
<b>Milestone Type</b>	the Milestone types (ie 0, 1, 2 or 3) specified in Appendix 1 of Schedule 4.1 (Implementation);
<b>MPC</b>	Milestone Payment Claim;
<b>MPC Supporting Documentation</b>	the documentation described in paragraph 4 of Schedule 5.1 (Milestone Payments and Claims Procedure);
<b>Net Additional Service Revenue</b>	has the meaning given in paragraph 10.2 of Schedule 5.1 (Milestone Payments and Claims Procedure);
<b>Net Additional Take-up</b>	has the meaning given in paragraph 9.2 of Schedule 5.1 (Milestone Payments and Claims Procedure);
<b>Network</b>	the electronic communications network from any Handover Point to all End User termination points as specified for the Deployed Services, which is a Solution Component and which shall be constructed, rolled out, installed, commissioned, deployed and operated by the Grantee in accordance with this Agreement;
<b>Network Deployment</b>	the design, Testing, installation, implementation, rollout, provision and ongoing maintenance of the Network in

	accordance with the Implementation Plan, the Project Plan and the other relevant terms of this Agreement;
<b>NGA</b>	has the meaning given in Schedule 2 (Service Requirements);
<b>NGA In Life Costs</b>	comprise: (a) Non-Qualifying Capital Expenditure; and (b) Non-Qualifying Operating Expenditure;
<b>NGA Network Build Costs</b>	comprise: (a) Qualifying Capital Expenditure; and (b) Qualifying Operating Expenditure;
<b>Non-Qualifying Capital Expenditure</b>	is capital expenditure falling within the parameters of Appendix 4 of Schedule 5.1 (Milestone Payments and Claims Procedure), to the extent incurred by the Grantee during the Term in respect of the implementation and making available of the Network but excluding Qualifying Capital Expenditure and Excluded Expenditure;
<b>Non-Qualifying Operating Expenditure</b>	is operating expenditure falling within the parameters of Appendix 5 of Schedule 5.1 (Milestone Payments and Claims Procedure), to the extent incurred by the Grantee during the Term in respect of the implementation and making available of the Network but excluding Qualifying Operating Expenditure and Excluded Expenditure;
<b>Notice of Dispute</b>	a written notice served by one Party on the other in accordance with paragraphs 2.1 and 2.2 of Schedule 6.3 (Dispute Resolution Procedure);
<b>Operational Integration</b>	has the meaning given in Clause 6.2;
<b>Other Beneficiary</b>	each of the following bodies:  NOT USED; and  such other public body beneficiaries notified by the Welsh Ministers to the Grantee from time to time and agreed by the Parties (acting reasonably) in accordance with the Change Control Procedure;
<b>Outturn Investment Ratio ("OIR")</b>	the Grantee NGA Network Build Investment incurred to date and forecast by the Grantee to be incurred during the Deployment Period, divided by the sum of: (i) the Grantee NGA Network Build Cost incurred to date and forecast by the Grantee to be incurred during the Deployment Period; plus (ii) Subsidy Payments received and forecast by the Grantee to be received;
<b>Parties</b>	the parties to this Agreement (which at the Effective Date are the Welsh Ministers and the Grantee) and their permitted assigns, and references to a " <b>Party</b> " shall mean one of the parties to this Agreement;
<b>Permitted SCT Changes</b>	shall have the meaning set out in paragraph 9.1 of Schedule 4.1 (Implementation);

<b>Personal Data</b>	shall have the same meaning as set out in the Data Protection Legislation;
<b>Phase</b>	each phase of Implementation as set out in the Implementation Plan;
<b>Post-Effective Date Surveys</b>	those surveys of the Service Environment agreed by the Parties to be conducted after the Effective Date pursuant to Clause 5.5, as detailed in the Grantee Solution;
<b>Premises Cap</b>	£2,934
<b>Priority Area</b>	a part of the Coverage Area designated as a priority by the Welsh Ministers and identified in the Speed and Coverage Template;
<b>Process</b>	has the meaning given to it under the Data Protection Legislation but, for the purposes of this Agreement, shall include both manual and automatic processing;
<b>Procurement Legislation</b>	Directive 2014/24/EC of the European Parliament and of the Council and Council Directive 89/665/EEC of the European Parliament and of the European Council (as amended by Directive 2007/66/EC and Directive 2014/23/EU) or any legislation implementing either or both of them;
<b>Programme Authority</b>	the Secretary of State for Culture, Media and Sport acting through the Department for Culture, Media and Sport (or any successor body);
<b>Programme Level Change Request</b>	a change request initiated by the Programme Authority which relates to more than one broadband intervention contract, including the Agreement;
<b>Prohibited Act</b>	each of the following constitutes a Prohibited Act: <ul style="list-style-type: none"> <li>(a) to directly or indirectly offer, promise or give any person working for or engaged by the Welsh Ministers a financial or other advantage to: <ul style="list-style-type: none"> <li>(i) induce that person to perform improperly a relevant function or activity; or</li> <li>(ii) reward that person for improper performance of a relevant function or activity;</li> </ul> </li> <li>(b) to directly or indirectly request, agree to receive or accept any financial or other advantage as an inducement or a reward for improper performance of a relevant function or activity in connection with this Agreement;</li> <li>(c) committing any offence: <ul style="list-style-type: none"> <li>(i) under the Bribery Act;</li> <li>(ii) under legislation creating offences concerning fraudulent acts;</li> <li>(iii) at common law concerning fraudulent acts relating to this Agreement or any other contract with the</li> </ul> </li> </ul>

Welsh Ministers; or

defrauding, attempting to defraud or conspiring to defraud the Welsh Ministers;

<b>Project Accounts</b>	the summary financial records to be maintained by the Grantee in respect of this Agreement, as described in paragraph 5 of Schedule 5.1 (Milestone Payments and Claims Procedure);
<b>Project Investment Ratio ("PIR")</b>	the Grantee NGA Network Build Investment which the Grantee forecasts to incur during the Deployment Period, divided by the sum of: (i) the Grantee NGA Network Build Investment which the Grantee forecasts to incur during the Deployment Period; plus (ii) Subsidy Payments the Grantee forecasts to receive, such resulting ratio being specified in the output tab of the Project Model;
<b>Project Model</b>	the Grantee's financial model (including the Cost Book and the Wholesale Access Price Book) for this Agreement, which at the Effective Date is set out in the Appendix to Schedule 5.3 (The Project Model), as updated from time to time in accordance with this Agreement;
<b>Project Period</b>	a defined period within the relevant Phase against which costs and revenues are set out in the Project Model – i.e. monthly/quarterly;
<b>Project Plan</b>	the Grantee's project plan, which shall comply with the requirements for such plan set out in paragraph 5 of Schedule 4.1 (Implementation) and which at the Effective Date is referenced at Appendix 2 to Schedule 4.1 (Implementation);
<b>Project Specific IPR</b>	(a) IPR in items or works created by the Grantee (or a Subcontractor or third party on behalf of the Grantee) for the purposes of this Agreement and updates and amendments of such items or works; and/or  (b) IPR arising as a result of the performance of the Grantee's obligations under this Agreement;
<b>Project Unit Margin</b>	a proxy profit margin figure per End User per Project Period expressed (before interest, tax, depreciation and amortisation) as an average over the project life or timeline as set out in the Project Model for the period following the final Milestone M2;
<b>Project Wholesale Access Prices</b>	the wholesale access prices applicable to this Agreement, as described in paragraph 2 of Schedule 5.2 (Wholesale Access Pricing);
<b>Qualifying Capital Expenditure</b>	is capital expenditure falling within the parameters of Appendix 2 of Schedule 5.1 (Milestone Payments and Claims Procedure), to the extent incurred by the Grantee during the Deployment Period in respect of the implementation of the Network but excluding Non-Qualifying Capital Expenditure and Excluded Expenditure;
<b>Qualifying Operating Expenditure</b>	is operating expenditure falling within the parameters of Appendix 3 of Schedule 5.1 (Milestone Payments and Claims Procedure), to the extent incurred by the Grantee during the Deployment Period in respect of the implementation of the

	Network but excluding Non-Qualifying Operating Expenditure and Excluded Expenditure;
<b>Quarter</b>	each sequential three (3) month period aligned with the Welsh Ministers' fiscal year;
<b>Regulator</b>	the body responsible for regulating the UK telecommunications market from time to time, which at the Effective Date is Ofcom;
<b>Regulatory Bodies</b>	those government departments including the Programme Authority and UK and EU regulatory, statutory and other entities, committees and bodies (excluding the Welsh Ministers but including the Wales Audit Office) which, whether under statute, rules, regulations or otherwise, are entitled to regulate, investigate, audit, monitor, oversee or influence the matters dealt with in this Agreement or any other affairs of the Welsh Ministers (which shall include any body required to perform any annual statutory financial audit or any value for money (VfM) audit of the Welsh Ministers or the Programme Authority and any successor body responsible from time to time for performing the audit function previously performed by the Audit Commission) and " <b>Regulatory Body</b> " shall be construed accordingly;
<b>Relief Event</b>	the failure of the Welsh Ministers to perform a dependency listed in Schedule 4.3 (Relief Events) upon which the Grantee is dependent in order to perform the Deployed Services;
<b>Relief Notice</b>	a notice provided by the Grantee in accordance with Clause 19.2;
<b>Remedial Plan</b>	a remedial plan agreed by the Parties in accordance with the Remedial Plan Process;
<b>Remedial Plan Process</b>	the remedial plan process described in Clause 38 and Schedule 6.5 (Remedial Plan Process);
<b>Replacement Services</b>	any services which are the same as or substantially similar to any of the Deployed Services and which are provided, or are to be provided, in substitution for any of the Deployed Services following the termination (in whole or in part) and/or expiry of this Agreement;
<b>Representative</b>	the WM Representative or the Grantee Representative as the context requires;
<b>Request for Information</b>	has the meaning set out in the FOIA or any apparent request for information under the FOIA or the Environmental Information Regulations;
<b>Required Insurance</b>	<p>i) public liability insurance to a minimum cover of not less than ten million pounds (£10,000,000) per event;</p> <p>ii) employers liability cover of not less than ten million pounds (£10,000,000) per event;</p> <p>iii) professional indemnity to a minimum cover of not less than five million pounds (£5,000,000) per event and in the annual aggregate; and</p> <p>iv) product liability cover of not less than five million pounds</p>

	(£5,000,000) per event and in the annual aggregate;
<b>Retail Service Provider</b>	a provider of retail internet services to End Users and/or a reseller of wholesale broadband services to providers of retail internet services to End Users;
<b>RSP</b>	Retail Service Provider;
<b>Service Environment</b>	the environment within which the Deployed Services shall be provided and/or connected to including all relevant land, property, buildings, carriageways, highways, infrastructure, networks and airspace;
<b>Service Requirements</b>	the Welsh Ministers' requirements for the Deployed Services set out in Schedule 2 (Service Requirements), as qualified by the compliance statements set out in the Compliance Matrix;
<b>SMEs</b>	small and medium sized enterprises;
<b>Solution Component</b>	a physical and/or logical component constituting the technology underlying the Grantee Solution as set out in the Solution Component Template;
<b>Solution Component Template</b>	a template setting out details for each Solution Component, as set out in the Grantee Solution;
<b>Specific Change in Law</b>	a Change in Law that solely affects or solely relates to the provision of the Deployed Services (or services equivalent to the Deployed Services) in any area in the UK which receives or which is eligible to receive public subsidy to stimulate private broadband infrastructure investment;
<b>Speed and Coverage Template ("SCT")</b>	the speed and coverage template set out at Appendix 1 of the Grantee Solution, as updated from time to time in accordance with this Agreement;
<b>Speed Category</b>	a speed or range of broadband speeds shown as a separate category within the Speed and Coverage Template;
<b>State Aid Terms</b>	the terms set out in: <ul style="list-style-type: none"> <li>(a) the Commission Decision;</li> <li>(a) the relevant articles of the Treaty on the Functioning of the European Union, in particular Articles 107 - 109; and</li> </ul> <p>the European Community rules, regulations and guidelines relating to State aid in force from time to time, including at the Effective Date the Community Guidelines for the application of State aid rules in relation to rapid deployment of broadband networks (reference 2013/C 25/01);</p>
<b>Structure</b>	a component element of the Network which is used to connect End User Premises to the wider Network, as further described in the Grantee Solution;
<b>Subcontract</b>	any agreement (other than this Agreement) in which a third party agrees to provide (i) any part of the Deployed Services; and/or (ii) any facilities or services materially required for the provision of the Deployed Services;

<b>Subcontractor</b>	a third party other than the Grantee which enters into a Subcontract;
<b>Subsidiary</b>	has the meaning given in section 1159 Companies Act 2006 (and for the purposes of the membership requirement in section 1159(1)(b) and section 1159(1)(c) a company shall be treated as a member of another company even if its shares in that other company are registered (i) in the name of its nominee; or (ii) in the name of a person (or the nominee of that person) who is holding the shares as security);
<b>Subsidy Payments</b>	those UK or European Union public funding payments paid to the Grantee pursuant to this Agreement;
<b>Superfast Broadband</b>	an Access Line Speed of 24Mbps and above;
<b>Survey Assumption</b>	a survey assumption specified in Appendix 4 of Schedule 4.1 (Implementation);
<b>Take-up</b>	the adoption by any End User of retail internet services delivered on the Network in the Coverage Area;
<b>Take-up Claw Back Amount</b>	an amount calculated in accordance with Paragraph 9.4 of Schedule 5.1 (Milestone Payments and Claims Procedure), which is repayable to the Welsh Ministers;
<b>Take-up Review Point</b>	<ul style="list-style-type: none"> <li>a) each anniversary of the Effective Date; and</li> <li>b) the Expiry Date (being the 'final Take-up Review Point');</li> </ul>
<b>Term</b>	the period that this Agreement is in force;
<b>Test</b>	a test performed by the Grantee in respect of a Test Item, in accordance with the Test Strategy and paragraph 7 of Schedule 4.1 (Implementation);
<b>Testing</b>	the performance of Tests in accordance with paragraph 7 of Schedule 4.1 (Implementation);
<b>Test Item</b>	an item or Deployed Service (or part of a Deployed Service) identified in the Test Strategy as being subject to Testing;
<b>Test Strategy</b>	the strategy for Testing that shall be maintained by the Grantee in accordance with paragraph 7 of Schedule 4.1 (Implementation), the version agreed at the Effective Date being set out in Schedule 3.1 (Grantee Solution);
<b>Test Success Criteria</b>	the test success criteria for each Test as specified in the Test Strategy;
<b>Ultrafast Broadband</b>	has the meaning set out in the Service Requirements Glossary at Schedule 2 (Service Requirements);
<b>Upper Cost Cap</b>	has the meaning given in paragraph 10.1 of Schedule 4.1 (Implementation);
<b>VAT</b>	any value added tax;

<b>Welsh Language Standards</b>	the standards of conduct in relation to the Welsh language set out in the Welsh Language Standards (No 1) Regulations 2015 (issued under the Welsh Language (Wales) Measure 2011).
<b>Wholesale Access Prices Benchmarking</b>	a benchmarking exercise as described in paragraph 3 of Schedule 5.2 (Wholesale Access Pricing);
<b>Wholesale Access Price Book</b>	the relevant sheets contained in, or referenced from, the Project Model which contain wholesale access pricing;
<b>Wholesale Access Products and Services</b>	the wholesale access products and services to be leased to Retail Service Providers as set out in the Wholesale Product Template;
<b>Wholesale Passive Product</b>	a Wholesale Access Product and Service relating to passive access products and which is identified as such in the Wholesale Product Template;
<b>Wholesale Product Template</b>	the wholesale product template set out in the Grantee Solution;
<b>WM Confidential Information</b>	all Personal Data and any information provided by or at the direction of the Welsh Ministers (or its employees, agents, consultants and contractors) to the Grantee and/or its Subcontractors in relation to this Agreement, however it is conveyed, that relates to the business, affairs, developments, trade secrets, know-how, personnel, and suppliers of the Welsh Ministers, including all IPR, 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;
<b>WM Data</b>	<p>the data, text, drawings, diagrams, images or sounds (including any database made up of any of these) which are embodied in any electronic, magnetic, optical or tangible media, and which are:</p> <p>(a) supplied to the Grantee by or on behalf of the Welsh Ministers pursuant to this Agreement; and/or</p> <p>Personal Data for which the Welsh Ministers are the Data Controller and which is processed or otherwise made available pursuant to this Agreement;</p>
<b>WM IPR</b>	any IPR (excluding the Grantee IPR) owned by, or licensed to, the Welsh Ministers in connection with this Agreement;
<b>WM Premises</b>	the premises owned, controlled and/or occupied by the Welsh Ministers or other Local Body or Crown Body;
<b>WM Representative</b>	the representative appointed by the Welsh Ministers in accordance with Clause 34.1;
<b>Work in Progress (“WIP”) Costs</b>	NGA Network Build Costs that have been incurred but where the Grantee is not, at the time, able to include them in an MPC;
<b>Working Day</b>	any day other than a Saturday, Sunday or public holiday in England and Wales or a day which falls on a privilege holiday for

the Welsh Ministers.