

**SCHEDULE 4.1**  
**IMPLEMENTATION**

## 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 11 and 14 November 2016 minor edits	Uplifted following local body and supplier feedback
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1.1	26 January 2018	Updated for Next Generation Access Broadband Wales – Phase 2 Procurement
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1.3	12 October 2018	Minor amends to footnotes in implementation and survey assumptions

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## **SCHEDULE 4.1 – IMPLEMENTATION**

### **1. BACKGROUND**

This Schedule 4.1 contains provisions relating to Network Deployment, Testing, Milestone Achievement, the Implementation Plan, the Project Plan, the Milestone Type 0 process and application of the Premises Cap.

### **2. GENERAL GRANTEE OBLIGATIONS**

2.1 In addition to its other applicable obligations set out elsewhere in this Agreement, the Grantee shall:

- 2.1.1 ensure it Achieves each Milestone by the associated Milestone Date;
- 2.1.2 perform such activities, functions and services as are necessary to perform Network Deployment in accordance with the Implementation Plan and the Project Plan;
- 2.1.3 perform Testing in accordance with paragraph 7, the Test Strategy, the Implementation Plan and the Project Plan;
- 2.1.4 be responsible for the overall management and delivery of Network Deployment, the Implementation Plan and the Project Plan;
- 2.1.5 appoint an appropriately qualified single point of contact who shall be responsible for Network Deployment and identified as Key Personnel;
- 2.1.6 identify and manage the resolution of any problems encountered in relation to Network Deployment in order to ensure the timely and effective completion of each task; and
- 2.1.7 develop and adhere to appropriate risk mitigation plans (copies of which shall be provided to the Welsh Ministers).

### **3. MILESTONES**

3.1 Subject to Clauses 5.5, 19 and 59, the Grantee shall ensure that each Milestone is Achieved on or before the associated Milestone Date in accordance with the procedure set out in paragraph 6.

3.2 The Milestone Achievement Criteria for each Milestone Type are set out in Appendix 1.

### **4. IMPLEMENTATION PHASES**

4.1 Network Deployment is comprised of Phases. Each Phase is a set of activities which shall facilitate the delivery of Network Deployment enabling availability of Wholesale Access Products and Services in the Coverage Area. The Phases and Milestones are detailed in the Implementation Plan.

4.2 Ongoing delivery by the Grantee against the Phases and individual Milestones shall be monitored by the governance meetings under Schedule 6.1 (Governance).

**5. IMPLEMENTATION PLAN AND PROJECT PLAN**

5.1 The Implementation Plan and the Project Plan shall be maintained in accordance with this paragraph 5.

5.2 At the Effective Date:

5.2.1 the Implementation Plan has been agreed by the Parties and is set out at Appendix 2 to this Schedule 4.1; and

5.2.2 the first version of the Project Plan has been agreed by the Parties and its document reference is set out at Appendix 2 to this Schedule 4.1.

5.3 The Grantee shall ensure that:

5.3.1 the Implementation Plan continues to comprise the level of detail provided in its initial version;

5.3.2 the Project Plan continues to comprise, at a minimum for the then current and next Phase, such planning data as is reasonably necessary to provide identification and notice of the individual Deployed Service activities in order to support the practical operation of this Agreement and tracking of the progress of the Deployed Services.

5.4 Changes to the Implementation Plan and the Project Plan shall be dealt with as follows:

5.4.1 Any amendment to the Implementation Plan must be agreed by the Parties in accordance with the Change Control Procedure, including the timings specified in that procedure.

5.4.2 Any update to the Project Plan may be agreed in writing by suitably authorised representatives of each Party without recourse to the Change Control Procedure, provided such amendments remain consistent with the then current Implementation Plan.

5.5 The Grantee shall establish an appropriate version control procedure so as to ensure that the agreed version of the Project Plan is made available to the Welsh Ministers at all times.

**6. MILESTONE ACHIEVEMENT PROCEDURE**

6.1 The procedure described in this paragraph 6 shall apply to the Achievement of each Milestone.

6.2 On a monthly basis (at least 5 Working Days prior to the scheduled monthly Build/Roll out meeting between the Parties pursuant to Schedule 6.1 (Governance)) the Grantee shall provide the Welsh Ministers with a Milestone Achievement Progress Report setting out at a summary level the progress made to Achieving the forthcoming Milestone(s), including anticipated dates of Achievement, any significant financial and deployment risks then known by the Grantee, and planning application and way-leave status.

6.3 The Grantee shall, not more than twenty (20) Working Days following the later of:

6.3.1 the Milestone Date for each Milestone; and

6.3.2 the date on which the corresponding (minimum) number of End User Premises for that Milestone have been covered by the Grantee Solution,

provide the Welsh Ministers with a final Milestone Achievement Report which details the Grantee's Achievement of the relevant Milestone.

- 6.4 The Grantee shall ensure that each final Milestone Achievement Report and its supporting evidence are sufficiently detailed to enable the Welsh Ministers to assure the extent of the Achievement of the Milestone.
- 6.5 The Welsh Ministers shall within ten (10) Working Days of receipt of each final Milestone Achievement Report that complies with the requirements of this Schedule either:
- 6.5.1 issue a Milestone Achievement Certificate confirming that the relevant Milestone has been Achieved; or
- 6.5.2 notify the Grantee in writing that the Welsh Ministers consider that the relevant Milestone has not been Achieved and provide supporting reasons.
- 6.6 If the Welsh Ministers notify the Grantee in accordance with paragraph 6.5.2 then, without prejudice to the Welsh Ministers' rights and remedies under this Agreement in relation to the Achievement of Milestones, the Parties shall as soon as practicable meet to discuss the Achievement of the relevant Milestone and (subject to paragraph 6.9) agree an appropriate course of action which may include compliance with the Remedial Plan Process. Unless the Welsh Ministers elect to issue a conditional Milestone Achievement Certificate in respect of a Milestone in accordance with Clause 18, the Welsh Ministers shall issue a Milestone Achievement Certificate only if and when the relevant Milestone has been Achieved.
- 6.7 The Welsh Ministers may, acting reasonably, require the provision by the Grantee of clarificatory information in relation to the specific evidence requirements noted in Appendix 1 in order to assure the extent of the Achievement of the Milestone.
- 6.8 In the event that the Parties fail to agree whether or not the relevant Milestone has been Achieved then the matter shall be treated as a Dispute which the Parties shall attempt to resolve in accordance with the Dispute Resolution Procedure.
- 6.9 The Grantee shall not be entitled to submit a Milestone Payment Claim to the Welsh Ministers for a Milestone Payment (in accordance with Schedule 5.1 (Milestone Payments and Claims Procedure)) until such time as the relevant Milestone has been Achieved and the Welsh Ministers have issued a Milestone Achievement Certificate in respect of the relevant Milestone.
- 6.10 The date of Achievement of a Milestone is the date on which the Welsh Ministers sign the Milestone Achievement Certificate. In the case of the Milestone Achievement Certificate for the final Milestone M2, the date of signature of this certificate by the Welsh Ministers also represents the Full Service Commencement Date.

## 7. TESTING

- 7.1 The Grantee shall undertake Testing in accordance with this paragraph 7, the Test Strategy and the Service Requirements.
- 7.2 Any Testing shall be without prejudice to the Welsh Ministers' rights and remedies set out elsewhere in this Agreement and the passing of any Test shall not relieve the Grantee from complying with its other obligations in this Agreement.

### 7.3 Test Strategy

- 7.3.1 The version of the Test Strategy agreed at the Effective Date is set out in Schedule 3.1 (Grantee Solution).
- 7.3.2 The Grantee shall ensure that the testing procedures specified in the Test Strategy for Milestone Types and Solution Components are applied in respect of testing under this Agreement.
- 7.3.3 The Test Strategy shall include:
- (a) an overview of how Testing shall be conducted in relation to the Implementation Plan and the Project Plan;
  - (b) full details of the testing (where applicable) of each Solution Component and Milestone Type, including the Test Success Criteria for each applicable Test;
  - (c) the process to be used to capture and record Test results and Test issues and a procedure for the resolution of Test issues;
  - (d) the method for mapping the expected Test results to the Test Success Criteria;
  - (e) the names and contact details of the Welsh Ministers' and the Grantee's Test representatives; and
  - (f) a high level identification of the resources required for Testing, including facilities, infrastructure, personnel and/or the third party involvement in the conduct of the Tests.
- 7.3.4 No later than twenty (20) Working Days prior to the planned start date for a Phase, the Grantee shall provide to the Welsh Ministers for approval an updated Test Strategy (to the extent such updates are required taking into account the existing content of the Test Strategy) providing full details for that Phase in accordance with paragraph 7.3.3.
- 7.3.5 As soon as reasonably practicable and in any event within five (5) Working Days of receipt the Welsh Ministers shall notify the Grantee that it either approves the updates to the draft Test Strategy (in which case it shall become the Test Strategy for the purpose of this Agreement) or, acting reasonably, requires the draft Test Strategy to be amended and/or developed further (in which case the Grantee shall provide such revised drafts as are necessary, taking into account any reasonable comments provided by the Welsh Ministers, until the Test Strategy is approved by the Welsh Ministers). The Welsh Ministers' approval of any Test Strategy shall not be unreasonably withheld or delayed.

### 7.4 Test Attendance

- 7.4.1 The Grantee shall notify the Welsh Ministers when any Test Item is in such state, form and completeness as to be ready for Testing. The Grantee shall give such notice at least five (5) Working Days prior to the date for commencing the applicable Testing.
- 7.4.2 The Welsh Ministers shall be entitled but are not obliged to attend any Test. Where the Welsh Ministers have notified the Grantee in writing providing not less than three (3) Working Days prior to commencement of the Test that they wish to attend a particular Test, the Grantee shall facilitate such attendance. Subject to the Grantee's compliance with this paragraph 7.4,

the Welsh Ministers' non-attendance at a Test shall not prevent completion of the Test by the Grantee.

## 8. MILESTONE M0 REVIEW PROCESS

- 8.1 Commencement of Network roll-out (build) for a Phase cannot commence before Achievement of the corresponding Milestone Type 0, save as otherwise expressly provided in paragraph 8.10 below.
- 8.2 In accordance with and without limitation to the Milestone Achievement Criteria specified in Appendix 1 to this Schedule, Achievement of a Milestone Type 0 requires, (i) completion by the Grantee and approval by the Welsh Ministers of detailed Grantee Solution design and implementation planning for that Phase; and (ii) approval of any corresponding Contract Changes, in accordance with this paragraph 8.
- 8.3 The Grantee shall, in the course of the Milestone M0 review process for each Phase:
- 8.3.1 conduct Post-Effective Date Surveys to verify the condition of the actual Service Environment for that Phase; and
- 8.3.2 review in detail the planned Deployed Services, including associated solution, implementation and cost planning for that Phase.
- 8.4 The Grantee shall, following completion of the activities noted in paragraph 8.3 above, provide the Welsh Ministers with:
- 8.4.1 confirmation that the Post-Effective Date Surveys and Deployed Services review have been completed;
- 8.4.2 its assessment of whether (a) no Contract Change is required at all; or (b) Contract Change is required (separately identifying the changes as (i) Permitted SCT Changes; (ii) Build/No Build Changes; and/or (iii) other Contract Changes); and
- 8.4.3 the supporting evidence required for Milestone M0 as identified in Appendix 1 to this Schedule 4.1. This evidence must be in sufficient detail to support the Welsh Ministers' verification of the findings of the Post-Effective Date Surveys and analysis of any proposed Contract Change.
- 8.5 In the event the Grantee indicates that no change is required to the Agreement as a result of the Milestone M0 review process, the Milestone M0 Achievement procedure will then progress from the step at paragraph 6.5 of this Schedule 4.1.
- 8.6 Where and to the extent Contract Changes are proposed by the Grantee, the Milestone M0 Achievement procedure will otherwise progress from the step at paragraph 6.5 of this Schedule 4.1 subject to the following:
- 8.6.1 Permitted SCT Changes - the Welsh Ministers shall not withhold approval as part of that Milestone Achievement procedure (unless and to the extent the supporting evidence is incorrect and/or the proposed Permitted SCT Changes are otherwise inconsistent with the requirements of this Agreement);
- 8.6.2 Build/No-Build Changes - the Welsh Ministers may withhold approval as part of that Milestone Achievement procedure;
- 8.6.3 other Contract Changes, the steps in paragraphs 8.7 to 8.9 shall apply.
- 8.7 Where and to the extent the Grantee indicates that Contract Change is required and such change is not Permitted SCT Change or Build/No-Build Change, it shall provide



a Change Impact Assessment (meeting the requirements of Schedule 6.2 (Change Control Procedure)) covering the following options:

- 8.7.1 Deferral to a subsequent Phase;
- 8.7.2 De-scoping from this Agreement;
- 8.7.3 Use of contingency funding, if any, made available under Paragraph 13 of Schedule 5.1 (Milestone Payments and Claims Procedure),

including (i) details of the impact of each option on the Agreement; (ii) the identification of the specific material, technical or operational risks (if any) associated with the delivery of each option; and (iii) any other matter considered by the Grantee (acting reasonably) to be relevant for the purpose of the Welsh Ministers' selection.

8.8 The Welsh Ministers shall as soon as reasonably practicable (and in any event within ten (10) Working Days) after receipt of the above impact assessment, select (at their sole discretion) one or more (if technically feasible to implement more than one option) of the options. Upon selection of an option:

8.8.1 the Grantee shall raise a Change Request to contractually agree and incorporate this option pursuant to the Change Control Procedure (approval to that Change Request cannot be unreasonably withheld by the Welsh Ministers); and

8.8.2 the Milestone M0 Achievement procedure will thereafter progress from the step at paragraph 6.5 of this Schedule 4.1.

8.9 With respect to any Change Request raised pursuant to paragraph 8.8.1, the Welsh Ministers will only consider granting approval where the Grantee reasonably evidences (i.e. in sufficient detail to allow assessment and assurance by the Welsh Ministers) that:

8.9.1 the Post-Effective Date Survey reasonably demonstrates that the actual Service Environment differs from those circumstances set out in a relevant Survey Assumption;

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

8.9.3 as a consequence of the Survey Assumption no longer holding true, the Grantee's costs and/or timetable for provision of the Network are impacted to an extent that cannot be mitigated through Good Industry Practice and that the corresponding changes reflect that impact only.

8.10 To enable progression of roll-out, the Grantee may, in the course of the Milestone M0 review process, but in advance of seeking full Achievement of the Milestone, complete the steps at paragraphs 8.3 and 8.4 above in respect of sub-sets of individual Structures within the Phase and submit these to the Welsh Ministers seeking approval to proceed with their build. The Welsh Ministers shall use all reasonable endeavours to support such progression of roll-out, providing written confirmation within five (5) Working Days of receipt of any such request whether they: (i) approve the request (approval by a duly authorised representative of the Welsh Ministers); (ii) reject the request (outlining the basis for such rejection); or (iii) require, acting reasonably, additional time to consider the request – for the avoidance of doubt, paragraphs 8.6 - 8.9 above shall also apply to changes proposed pursuant to this paragraph 8.10 with respect to the sub-sets of individual Structures concerned. Where the Welsh Ministers grant approval to proceed, the Grantee shall be entitled to progress with build of those Structures subject to the terms of this Agreement. Those Structures shall then be

included in the consolidated assessment of Achievement of the Milestone M0 but will be regarded as having satisfied the necessary Milestone M0 evidence and approval requirements when conducting that consolidated review.

- 8.11 For Contract Changes other than those already provided for under paragraph 8.8.1 above, the Change Control Procedure must still be applied to formally update the Agreement to reflect Contract Changes approved pursuant to this paragraph 8 within a reasonable period following such approval and in any event sufficiently promptly to ensure that the Agreement is updated prior to those changes being relevant for the purposes of Milestone Achievement and/or the application of the MPC process. Where applying the Change Control Procedure in those circumstances, provided and to the extent the updates to the Contract Changes reflect only the prior Welsh Ministers approved changes then the Welsh Ministers shall not be entitled to withhold consent to the change. Paragraph 9.5 below applies in respect of any corresponding changes to the Project Plan.
- 8.12 In the event that the Grantee proceeds with Network build without complying with the applicable procedure specified in this paragraph 8, Qualifying Capital Expenditure for the corresponding Network build cannot be claimed from the Welsh Ministers nor applied within any of the mechanisms under Schedule 5.1 (Milestone Payments and Claims Procedure) but the corresponding parts of the Network to which the expenditure relates will otherwise remain subject to the terms of this Agreement.

## 9. **PERMITTED SCT CHANGES AND BUILD/NO-BUILD CHANGES**

- 9.1 **"Permitted SCT Changes"** are any changes to the Speed and Coverage Template other than any change which:
- 9.1.1 affects the cumulative minimum volume of End User Premises within a Speed Category (other than a Speed Category below NGA speed) contracted to be delivered in any Phase;
  - 9.1.2 affects any Priority Area;
  - 9.1.3 raises a clear risk with regard to funding source availability in respect of this Agreement (where such parameters were specified in the ITT);
  - 9.1.4 comprises a Build/No-Build Change.
- 9.2 Permitted SCT Changes may be made by the Grantee as part of and in accordance with the Milestone M0 review process as described in paragraph 8 above. Following Achievement of the relevant Milestone M0 (or having received approval to proceed for the Structures concerned pursuant to paragraph 8.10) above, further corresponding Permitted SCT Changes may also be made without immediate recourse to the Change Control Procedure. In such circumstances, the Grantee must complete the steps at paragraphs 8.3 and 8.4 above in respect of the replacement Structures and submit the associated evidence to the Welsh Ministers for review and approval following an equivalent process to that described in paragraph 8.10 above. The Change Control Procedure must be applied to formally update the Speed and Coverage Template to reflect those changes within a reasonable period following such approval and in any event sufficiently promptly to ensure that the Speed and Coverage Template is updated prior to those changes being relevant for the purposes of Milestone Achievement and/or the application of the MPC process. Where applying the Change Control Procedure in those circumstances, provided and to the extent the updates to the Speed and Coverage Template reflect only the prior approved Permitted SCT Changes then the Welsh Ministers shall not be entitled to withhold consent to the change.
- 9.3 Changes in the classification of End User Premises from NGA build to no build (or vice versa) within the Speed and Coverage Template that do not fall within the scope of

paragraphs 9.1.1 to 9.1.3 above comprise "**Build/No-Build Change**". These Build/No-Build Changes may, subject to the Welsh Ministers' approval, also be made by the Grantee as part of and in accordance with the Milestone M0 review process as described in paragraph 8 above. Following Achievement of the relevant Milestone M0 (or having received approval to proceed for the Structures concerned pursuant to paragraph 8.10 above), corresponding Build/No-Build Changes may also be proposed in accordance with the process described in paragraph 9.2 above. Such proposed changes are subject to approval in writing by a suitably authorised Welsh Ministers representative in advance of the Grantee commencing the corresponding Deployed Services. The Change Control Procedure must be applied to formally update the Speed and Coverage Template to reflect any approved changes within a reasonable period following such approval, on an equivalent timing basis for application of the Change Control Procedure to that provided in paragraph 9.2 above.

9.4 Notwithstanding any other provision of paragraphs 8 or 9 of this Schedule 4.1, Permitted SCT Changes and Build/No-Build Change, whether dealt with as part of the Milestone M0 review process or subsequently, must not:

9.4.1 require a change to any part of this Agreement other than the Speed and Coverage Template and/or Project Plan; or

9.4.2 increase the cumulative Milestone Payments applicable up to the end of the then current Phase or the aggregate Milestone Payments across Phases.

9.5 Where and to the extent changes to the Project Plan are proposed by the Grantee reflecting the impact of approved SCT Permitted Changes and/or approved Build/No-Build Changes meeting the requirements of this Schedule 4.1, the Welsh Ministers shall not withhold agreement under paragraph 5.4.2 above to those Project Plan changes, unless the proposed Project Plan changes would be otherwise inconsistent with the terms of this Agreement.

9.6 The Grantee shall:

9.6.1 seek to limit the scope and frequency of SCT Permitted Changes and/or Build/No-Build Changes to that reasonably required to support the efficient and timely roll-out of the Network whilst also supporting the aims of transparency and certainty for the Welsh Ministers, Programme Authority and other stakeholders;

9.6.2 maintain and provide to the Welsh Ministers on request a written log of all Permitted SCT Changes and/or Build/No-Build Changes.

## 10. **PREMISES CAP PROCEDURE**

10.1 Where, subsequent to Achieving Milestone M0 for a Phase (or having received approval to proceed for the Structures concerned pursuant to paragraph 8.10 above), but prior to completion of a Milestone M2 for that Phase, the Grantee reasonably believes that an unexpected cost will result in the Qualifying Capital Expenditure for those End User Premises connected to a Structure affected by the unexpected cost ("**Affected Premises**") exceeding both (i) the Structure cost forecast for the affected End User Premises at Milestone M0; and (ii) the Premises Cap (the higher of the two figures (i) or (ii) being the "**Upper Cost Cap**"), the Grantee shall, subject to this paragraph 10, as soon as is reasonably practicable trigger the procedure described below. In the case of shared infrastructure, the foregoing only applies where the cost per End User Premise for all End User Premises facilitated by this shared infrastructure exceeds on average the Upper Cost Cap.

10.2 The cost capping procedure described below in this paragraph 10 shall only apply where and to the extent the Grantee can evidence to the Welsh Ministers that the unexpected cost is a result of further divergence from one or more of the Survey

Assumptions due to events or circumstances which could not reasonably have been identified by the Grantee through its application of Good Industry Practice at or before Achievement of Milestone M0 for the relevant Phase or otherwise could not reasonably have been mitigated.

- 10.3 In the event that the criteria in paragraphs 10.1 and 10.2 are not satisfied then:
- 10.3.1 the cost capping procedure in this paragraph 10 shall not apply;
  - 10.3.2 the Welsh Ministers shall be under no requirement to agree any form of associated Contract Change or take any other action to address the associated cost impact on the Grantee;
  - 10.3.3 the Grantee shall only be permitted to count NGA Network Build Costs up to the Upper Cost Cap (such costs to be claimed in accordance with the MPC process when the corresponding Milestone is Achieved). All excess costs shall be borne by the Grantee.
- 10.4 In the event that the criteria set out in paragraphs 10.1 and 10.2 are satisfied the Grantee shall first seek to implement an alternative form of Network Deployment to achieve the same or better outcome where it is reasonably practicable to do so without in respect of the Affected Premises:
- 10.4.1 exceeding the Upper Cost Cap; and/or
  - 10.4.2 requiring a Contract Change.
- 10.5 In the event it is not reasonably practicable to provide an alternative form of Network Deployment in the manner described in paragraph 10.4 above without exceeding the Upper Cost Cap; and/or (b) requiring a Contract Change, the Grantee shall as soon as reasonably practicable notify the Welsh Ministers of the following:

**If the unexpected cost is unique to a specific Structure:**

- 10.5.1 forecast cost of the Structure as established at Milestone M0, split between direct cost (being cost solely relating to the End User Premises concerned) and shared cost (being cost relating to the End User Premises concerned and other non-impacted End User Premises) as well as by Network sub-component, for the End User Premises concerned. Forecast cost should only include direct Network build costs and should exclude from the calculation, planning costs and programme-wide deployment costs (e.g. programme management);
- 10.5.2 total number of all End User Premises connected to the Structure and NGA white End User Premises passed per Structure;
- 10.5.3 unexpected incremental direct cost that is now expected to be incurred above and beyond the forecast cost established at Milestone M0, otherwise forecast and detailed on a basis equivalent to that under paragraph 10.5.1 above;

**If the unexpected cost is a shared cost, which will impact more than one Structure:**

- 10.5.4 forecast cost of all Structures and shared Network as established at Milestone M0, split between direct and shared cost and by Network sub component (direct cost for each Structure, shared cost will be across all Structures). Forecast cost should include direct Network build costs and should exclude from the calculation, planning costs and programme-wide deployment costs (e.g. programme management). For shared costs, the

Grantee shall ensure it identifies the impact on all corresponding Structures within its Grantee Solution, whether in current or subsequent Phases;

- 10.5.5 total number of all End User Premises connected to the affected Structures and NGA white End User Premises passed by the affected Structures;
- 10.5.6 unexpected incremental shared cost that is now expected to be incurred above and beyond the forecast cost established at Milestone M0, otherwise forecast and detailed on a basis equivalent to that under paragraph 10.5.4 above;

**Plus in each of the above instances:**

- 10.5.7 the technical and operational reasons why the Upper Cost Cap will be exceeded together with supporting evidence to validate such reasons; and
- 10.5.8 an impact assessment of each potential option under paragraph 10.6 below which shall include:
  - (a) the impact of each option on this Agreement including in respect of the Implementation Plan, the Speed and Coverage Template, the Milestone Payments, the Project Model and the provision of the Deployed Services;
  - (b) the identification of the specific material technical or operational risks (if any) associated with the delivery of each option; and
  - (c) any other matter considered by the Grantee to be relevant for the purpose of the Welsh Ministers' selection of the relevant option under paragraph 10.6 above.

The proposed options should seek to maintain delivery to the Affected Premises where financially reasonable (the Grantee should liaise with the Welsh Ministers to inform this assessment), with inclusion of alternative premises and/or de-scoping being a secondary preferential approach.

- 10.6 The Welsh Ministers shall as soon as reasonably practicable after receipt of the notification under paragraph 10.5 above select (at their sole discretion) one or more (if technically feasible to implement more than one option in respect of the Affected Premises) of the following options:

- 10.6.1 continue with the Network Deployment of the Affected Premises as planned, provided that agreement is reached between the Parties in accordance with paragraph 10.7 below as to the:
  - (a) eligibility of any Qualifying Capital Expenditure for Network Deployment additional to the prior forecast (i.e. prior to applying this paragraph 10 procedure) or Qualifying Capital Expenditure, calculated in accordance with paragraph 10.5; and/or
  - (b) reduction in the scope of the Deployed Services to an appropriate level to compensate the Grantee for any additional Qualifying Capital Expenditure for Network Deployment of the Affected Premises;
- 10.6.2 place Network Deployment of the Affected Premises on hold for deferral provided that:
  - (i) the number of End User Premises required to be passed under the relevant Phase in which the Affected Premises were originally placed

and the corresponding M2 Milestone is reduced by the number of deferred Affected Premises;

- (ii) the Affected Premises together with an amount equal to the forecasted value of the proportion of the Milestone Payment(s) associated with the provision of Network Deployment to the Affected Premises as calculated in accordance with paragraph 10.5 above are transferred to the relevant Milestone Payment(s) in the corresponding Phase (once such Phase is determined) with such sums/Affected Premises being held provisionally in the final Phase in the interim; and
- (iii) there is at least one subsequent Phase which has not commenced.

10.6.3 remove the Affected Premises and de-scope the Deployed Services accordingly (including de-scoping the affected Milestone(s) and Speed and Coverage Template), provided that the Milestone Payments shall be reduced by an amount equivalent to the total forecasted Qualifying Capital Expenditure for each Affected Premise calculated in accordance with paragraph 10.5 above (less any actual Qualifying Capital Expenditure in respect of the Affected Premises (i) for which the Grantee is entitled to submit a Milestone Payment Claim but has not done so or has submitted a Milestone Payment Claim and the Welsh Ministers have not made the corresponding Milestone Payment; or (ii) which has been paid by the Welsh Ministers in the form of Milestone Payment(s), in each case following the Achievement of any applicable Milestones M0, Milestones M1 and/or Milestones M2 and in accordance with the terms of this Agreement);

10.6.4 where it is reasonably practicable to provide an alternative form of Network Deployment in the manner described in paragraph 10.4 above without exceeding the Upper Cost Cap, but requiring a Contract Change, provide such alternative form of Network Deployment provided that agreement is reached between the Parties in respect of the necessary changes to this Agreement in accordance with paragraph 10.7 below;

10.6.5 use of contingency funding, if any, made available under Paragraph 13 of Schedule 5.1 (Milestone Payments and Claims Procedure).

10.7 Once an option(s) has been selected by the Welsh Ministers pursuant to paragraph 10.6 above and notified to the Grantee, the Parties shall agree in writing any consequential changes required to this Agreement without recourse to the Change Control Procedure (provided that once the changes are agreed the Grantee shall document such changes in a Change Request for authorisation by the Parties in a Change Authorisation). Any failure to agree the necessary changes in accordance with the option(s) selected by the Welsh Ministers shall be dealt with by the Parties under the Dispute Resolution Procedure.

10.8 Provided the Grantee has acted in good faith to reach formal agreement of any changes as contemplated by paragraph 10.7 above and otherwise complied with its obligations under this paragraph 10, if and to the extent that as a direct result of the operation of paragraphs 10.5 to 10.7 above the Grantee is unable to Achieve a Milestone by the associated Milestone Date as planned, such circumstance shall not be treated by the Welsh Ministers as a Grantee Default and shall not prevent or delay issue of a Milestone Achievement Certificate in respect of the Milestone Achievement Criteria that have been Achieved at the relevant Milestone Date.

10.9 If the deferral option under paragraph 10.6.2 above is selected by the Welsh Ministers, with corresponding amendments to this Agreement agreed under paragraph 10.7 above to reflect such option, then prior to the commencement of each subsequent Phase:

- 10.9.1 the Grantee shall determine whether Network Deployment can be provided to the Affected Premises as planned within the Upper Cost Cap; or
  - 10.9.2 where the Grantee determines that the Affected Premises still exceed the Upper Cost Cap, the Welsh Ministers shall determine whether to keep the Affected Premises deferred provisionally to the next Phase in accordance with paragraph 10.6.2 above or to select one of the other options under paragraph 10.6 above with relevant Contract Changes required to be agreed under paragraph 10.7 above.
- 10.10 For the purpose of paragraph 10.1 above, the number of Affected Premises and the associated Qualifying Capital Expenditure shall be determined with reference to:
- 10.10.1 the particular Network Deployment Structure(s) being implemented in respect of the Affected Premises;
  - 10.10.2 the number of End User Premises planned to be passed by such Structure(s) (which shall be the number of Affected Premises); and
  - 10.10.3 the Qualifying Capital Expenditure for Network Deployment associated with passing the Affected Premises and not passing and connecting the Affected Premises.
- 10.11 The cost capping process as provided above in this paragraph 10 shall not apply where and to the extent the Upper Cost Cap is exceeded due (in whole or in part) to any Grantee Default.
- 10.12 In the event that the Grantee proceeds with Network build without complying with the applicable procedure specified in this paragraph 10, Qualifying Capital Expenditure for the corresponding Network build cannot be claimed from the Welsh Ministers nor applied within any of the mechanisms under Schedule 5.1 (Milestone Payments and Claims Procedure) save up to the amount provided for under paragraph 10.3.3 above but the corresponding parts of the Network to which any additional expenditure relates will otherwise also remain subject to the terms of this Agreement.

## 11. **SURVEY ASSUMPTIONS**

- 11.1 The application of the Survey Assumptions to a Phase ceases on completion of the corresponding Milestone M0, subject only to the specific limited application within the cost cap process provided for under paragraph 10 of this Schedule 4.1. Survey Assumptions may not otherwise be utilised as a basis on which to claim any variation to this Agreement (including Deployed Services and/or Milestone Payments) or its associated obligations.
- 11.2 No other survey or cost assumptions (whether contained in the Project Model or otherwise) are intended by the Parties to vary the Milestone Payments or any other obligation under this Agreement.

## APPENDIX 1 – MILESTONE ACHIEVEMENT CRITERIA

MILESTONE TYPE	MILESTONE ACHIEVEMENT CRITERIA
<p><b>Milestone Type 0: Survey and Detailed Design Completion</b></p>	<p>There shall be one Milestone M0 allocated to each Phase:</p> <p><u>Outcomes:</u></p> <p>The overall outcome of a Milestone Type 0 is completion of detailed Grantee Solution design and implementation planning for that Phase. The specific contractual outcomes comprise:</p> <p>(i) Closure of Survey Assumptions, in accordance with Paragraph 8 of Schedule 4.1 (save only to the extent of application under Paragraph 10 of Schedule 4.1);</p> <p><i>Plus</i></p> <p>(ii) Confirmation that no changes to the Agreement are required; or</p> <p>(iii) Approved updates, in accordance with paragraph 8 of Schedule 4.1 (Implementation)), to the Agreement including any changes to the:</p> <ul style="list-style-type: none"> <li>a) Milestone Payments;</li> <li>b) Project Model;</li> <li>c) Implementation Plan;</li> <li>d) Speed and Coverage Template.</li> </ul> <p><i>Plus</i></p> <p>(iv) Confirmation that the minimum volume of planned NGA and Ultrafast End User Premises for that Phase (as set out in the Speed and Coverage Template as at commencement of the Milestone M0 review process but adjusted to take into account agreed adjustments in accordance with the Milestone M0 review process) is maintained.</p> <p><u>Supporting evidence:</u></p> <ul style="list-style-type: none"> <li>(a) A complete and accurate C1 Report;</li> <li>(b) Confirmation that the Post-Effective Date Surveys and detailed Deployed Services review for this Phase (as specified in the Project Plan) have been completed;</li> <li>(c) A copy of the Grantee's Post-Effective Date Survey reports (including resulting findings), together with associated supporting evidence;</li> <li>(d) An explanation of the impact of any instances of where the Survey Assumptions have not held true, including resulting cost impact and mitigation proposals (including equivalent cost information to that described in paragraph 10.5 of this Schedule 4.1);</li> <li>(e) A full list of Network Structures with corresponding End User Premises served plus estimated Access Line Speed range for each premise;</li> <li>(f) A planned cost per Network Structure comprised of direct and shared cost by Network sub-component (including identifying which other Structures outside of this Phase the shared costs apply to and the corresponding basis for allocation of the shared costs);</li> </ul>



MILESTONE TYPE	MILESTONE ACHIEVEMENT CRITERIA
	(g) A list of Structures that will or are reasonably likely to exceed the Premises Cap, with the cost identified of each Structure along with the corresponding number of NGA white End User Premises.
<b>Milestone Type 1: Network Build</b>	<p>There shall be one or more Milestones M1 allocated to each Phase:</p> <p><u>Outcomes:</u></p> <p>Implemented and operationally ready deployed shared Network to which Milestone M2 Structures will be attached, within the scope of this Milestone and in accordance with the Service Requirements.</p> <p><u>Supporting evidence:</u></p> <ul style="list-style-type: none"> <li>(a) A complete and accurate C1 Report;</li> <li>(b) Copies of 'As-built' documentation (and/or, if agreed by the Parties in writing, all reasonable access to that documentation) for the applicable Network infrastructure. Any such 'As built' documentation shall contain an updated inventory of Network sub-components and locations sufficient to comply with corresponding State Aid and public sector subsidy requirements;</li> <li>(c) Confirmation from the Grantee that the applicable Tests (supporting the Milestone outcomes noted above) have been successfully completed in accordance with the Test Strategy;</li> <li>(d) Test data (e.g. Ethernet tests, optical tests) available to the Welsh Ministers on request, evidencing that the applicable Tests have been successfully completed in accordance with the Test Strategy; and</li> <li>(e) Issued Milestone Achievement Certificate for the corresponding Milestone M0 for the corresponding Phase.</li> </ul>
<b>Milestone Type 2: Availability of Wholesale Access Products and Services</b>	<p>There shall be one or more Milestones M2 allocated to each Phase:</p> <p><u>Outcomes:</u></p> <p>Implemented and operationally ready Network Structures serving End User Premises:</p> <p><i>Plus</i></p> <p>Wholesale Access Products and Services are made available, providing Access Line Speeds at Speed Categories of 30Mbps and above on a cumulative End User Premises basis (cumulative criteria) and to End User Premises designated within those Speed Categories (individual NGA End User Premises criteria), in accordance with the Speed and Coverage Template and the Service Requirements for the scope of this Milestone. This shall include:</p> <ul style="list-style-type: none"> <li>(1) the establishment of an operational business to business (B2B) system (comprising part of the Grantee's OSS/BSS), providing Retail Service Providers the ability to access Wholesale Access Products and Services;</li> <li>(2) that the End User Premises which can be provisioned (if a Retail Service</li> </ul>

MILESTONE TYPE	MILESTONE ACHIEVEMENT CRITERIA
	<p>Provider orders corresponding Wholesale Access Products and Services) with retail broadband products and services by Retail Service Providers include as a minimum those premises specified for this Milestone;</p> <p>(3) the Access Line Speed ranges for the End User Premises in (2) above meet or exceed the Access Line Speed ranges at or above 30Mbps in the Speed and Coverage Template,</p> <p>for the scope of this Milestone and in accordance with the Service Requirements.</p> <p><u>Supporting evidence:</u></p> <p>(a) A complete and accurate C1 and C3 Report;</p> <p>(b) Copies of 'As-built' documentation (and/or, if agreed by the Parties in writing, all reasonable access to that documentation) for the applicable Network infrastructure. Any such 'As built' documentation shall contain an updated inventory of Network sub-components and locations sufficient to comply with corresponding State Aid and public sector subsidy requirements;</p> <p>(c) Confirmation from the Grantee that the applicable Tests (supporting the Milestone outcomes noted above) have been successfully completed in accordance with the Test Strategy;</p> <p>(d) Detailed test data demonstrating proof of full functionality of the Grantee's B2B system for access by Retail Service Providers;</p> <p>(e) Detailed test data showing at least one available Wholesale Access Product and Service available to Retail Service Providers through the B2B system;</p> <p>(f) Detailed data evidencing that the End User Premises can be provisioned (if a Retail Service Provider orders the corresponding Wholesale Access Product and Service) with retail broadband products and services by Retail Service Providers in accordance with the Service Requirements and include as a minimum those premises specified in the Speed and Coverage Template for this Milestone. Such data to include full address point and postcode data by premise and Access Line Speed by premise; and</p> <p>(g) Issued Milestone Achievement Certificates for the applicable Milestones M0 and Milestones M1 corresponding to this Milestone.</p>
<p><b>Milestone Type 3 End User Take Up</b></p>	<p>There shall be one or more Milestones M3 at defined stages of planned cumulative End User Take-up. Notwithstanding the criteria below, a Milestone Type 3 cannot be Achieved prior to the Full Service Commencement Date:</p> <p><u>Outcomes:</u></p> <p>(i) Required level of cumulative Take-up of NGA and Ultrafast Broadband at End User Premises on the Network, achieving the level set out below in accordance with the Service Requirements.</p> <p>(ii) The Grantee's Take-up for End User Premises in the Coverage Area meets or exceeds 20% of the Grantee's forecast Take-up for the end of the</p>

MILESTONE TYPE	MILESTONE ACHIEVEMENT CRITERIA
	<p>Term (as shown in the Project Model) to a maximum of 10% expressed in number of End User Premises – in accordance with the Milestone M3 breakdown set out in the Implementation Plan.</p> <p><u>Supporting evidence:</u></p> <ul style="list-style-type: none"> <li>(a) A complete and accurate C3 Report;</li> <li>(b) evidence, based on a OSS/BSS data, that the required minimum threshold of End User Premises Take-up has been achieved; and</li> <li>(c) data demonstrating the Take-up concerned is consistent with its definition in Schedule 1 (Definitions).</li> </ul>

## APPENDIX 2 – IMPLEMENTATION PLAN AND PROJECT PLAN

### **1. IMPLEMENTATION PLAN**



Implementation  
Plan Schedule 4.1 A}

### **2. PROJECT PLAN**

XXXXREDACTEDXXXXX

APPENDIX 3 – FORM OF MILESTONE ACHIEVEMENT CERTIFICATE

**MILESTONE ACHIEVEMENT CERTIFICATE**

**MILESTONE REFERENCE [•]**

**WELSH MINISTERS**

Welsh Ministers sign below to confirm their understanding that Milestone has been Achieved:

<b>Role</b>	<b>Name (print)</b>	<b>Signature</b>	<b>Date</b>
Welsh Ministers Project Manager			
Welsh Ministers Quality Manager <i>(if applicable)</i>			

**Description of Achievement certified (speed and coverage):**

[•]

**APPENDIX 4 – SURVEY ASSUMPTIONS**

**XXXXXREDACTEDXXXXX**