

SCHEDULE 5.1

MILESTONE PAYMENTS AND CLAIMS PROCEDURE

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VERSION CONTROL

VERSION NUMBER	DATE	COMMENT
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1.2		Includes Appendix 1 – Milestone Payments

SCHEDULE 5.1 – MILESTONE PAYMENTS AND CLAIMS PROCEDURE

1. BACKGROUND

1.1 This Schedule 5.1 sets out:

- 1.1.1 the Milestone Payment amounts associated with each Milestone;
- 1.1.2 the claims procedure applicable to Milestone Payments;
- 1.1.3 certain payment specific record keeping, audit and reporting obligations;
- 1.1.4 details of classification criteria for Qualifying Capital Expenditure, Qualifying Operating Expenditure, Non-Qualifying Capital Expenditure, Non-Qualifying Operating Expenditure and Excluded Expenditure; and
- 1.1.5 the financial mechanisms applicable to avoid Grantee over-compensation.

2. MILESTONE PAYMENTS

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

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

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

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

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

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

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

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

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

3. **MILESTONE PAYMENT CLAIMS**

- 3.1 Where the Welsh Ministers have issued a Milestone Achievement Certificate in respect of a Milestone, the Grantee shall be entitled to claim (subject to any constraints on claims specified in this Schedule 5.1) the corresponding Qualifying Capital Expenditure in respect of that Milestone, in accordance with the MPC process and other requirements of this Schedule 5.1.
- 3.2 The Welsh Ministers shall make payment to the Grantee within thirty (30) calendar days of receipt of a MPC that complies with the requirements of this Schedule 5.1. The Welsh Ministers shall consider and verify MPCs in a timely fashion (undue delay in doing so is not to be sufficient justification for failing to regard a MPC as complying with the requirements of this Schedule 5.1).
- 3.3 The Grantee shall ensure that each MPC contains the following information:
- 3.3.1 the date of the MPC;
 - 3.3.2 a unique MPC number;
 - 3.3.3 the unique Milestone reference as specified in Appendix 1 (Milestone Payments);
 - 3.3.4 Milestone Achievement Certificate identification reference;
 - 3.3.5 the period and activity to which the MPC relates;
 - 3.3.6 the MPC Supporting Documentation;
 - 3.3.7 a contact name and telephone number of a responsible person in the Grantee's finance department in the event of administrative queries; and
 - 3.3.8 the banking details for payment to the Grantee via electronic transfer of funds (i.e. name and address of bank, sort code, account name and number).
- 3.4 Each MPC shall at all times be accompanied by MPC Supporting Documentation to enable the Welsh Ministers to assess whether the MPC is correctly calculated and whether any public subsidy is properly payable.

- 3.5 The Grantee shall submit all MPCs and supporting information (including the MPC Supporting Documentation) required under this Schedule 5.1 in such format and to such address as the Welsh Ministers may reasonably specify, with a copy (including all supporting information) to the Programme Authority.
- 3.6 All Grantee MPCs shall be expressed in Pounds Sterling (£) or such other currency as shall be permitted by the Welsh Ministers in writing.
- 3.7 The Welsh Ministers shall only regard a MPC as valid if it complies with the provisions of this Agreement. Where any MPC is identified by the Welsh Ministers as not conforming to the provisions of this Agreement, the Welsh Ministers shall return the deficient MPC to the Grantee identifying the deficiencies. The Grantee shall promptly issue a replacement MPC.
- 3.8 Only one (1) MPC submission shall take place in any thirty (30) day period, unless otherwise agreed by the Welsh Ministers.
- 3.9 Where either Party identifies (whether through MPC verification or otherwise) any overpayment has been made by the Welsh Ministers (including administrative error and where it becomes apparent a Milestone had not in fact been Achieved), the Grantee shall:
- 3.9.1 where the next planned Milestone Payment date is less than ninety (90) days after identification of the overpayment, reduce the claim for the next Milestone Payment by the amount of the overpayment; or
- 3.9.2 where no further Milestone Payments are to be made or the next planned Milestone Payment is more than ninety (90) days after identification of the overpayment, promptly issue a refund for that overpayment to the Welsh Ministers.

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

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

Where:

C = the amount of credit;

O = the overpayment;

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

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

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

- 3.10 Without prejudice to paragraph 3.9 above, where the Welsh Ministers have reasonable grounds for believing that an overpayment has been made in respect of any MPC, they may request that the Grantee reviews and re-submits verification of the MPC Supporting Documentation. Such verification shall be provided by the Grantee within fifteen (15) Working Days of receiving that request from the Welsh Ministers.
- 3.11 Following successful completion by the Welsh Ministers of their standard assurance process for the final Milestone Payment Claim and without prejudice to paragraph 3.9

above, paragraph 3.10 above or any other related right of the Welsh Ministers or Regulatory Body, the Welsh Ministers shall issue to the Grantee a Milestone Completion Certificate using the pro/forma at Appendix 7 to this Schedule 5.1.

4. MPC SUPPORTING DOCUMENTATION

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

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

- (a) falls within the parameters of Qualifying Capital Expenditure or Qualifying Operating Expenditure (as applicable);
- (b) is in relation to the scope of this Agreement only;

4.1.2 evidence (through payment or bank records and statements, BACS lists, receipts or other confirmation) that the NGA Network Build Costs have actually been incurred by the Grantee at the date of the MPC, provided that in relation to Deployed Services performed by the Grantee's Subcontractors, NGA Network Build Costs shall for the purposes of this Schedule 5.1 be deemed "incurred" if the circumstances in paragraph 4.1.2A are satisfied (this qualification of how the word "incurred" shall be construed herein is without prejudice to any other requirement in this Schedule 5.1);

4.1.2A NGA Network Build Costs in respect of Deployed Services performed by the Grantee's Subcontractors shall be deemed incurred when the Subcontractor has invoiced the Grantee for the amount to be claimed by the Grantee as Qualifying Capital Expenditure or counted as Qualifying Operating Expenditure, provided that:

- 4.1.2A(a) the Grantee confirms in the MPC Supporting Documentation that the expenditure does not represent an advance payment for work or services;
- 4.1.2A(b) the Grantee confirms in the MPC Supporting Documentation that the invoice(s) in question are otherwise correct, due and payable by the Grantee in accordance with the terms of the relevant Subcontract; and
- 4.1.2A(c) providing a minimum of ninety (90) days has elapsed since payment of the relevant MPC, the Welsh Ministers may subsequently request that the Grantee provide evidence to demonstrate that applicable amounts were in due course actually paid to the Subcontractors. If no such evidence can be provided, then, if the Welsh Ministers request a refunding of the payment made by the Welsh Ministers, the Grantee shall refund (as soon as reasonably practical) in the form of an electronic re-payment (with the payment details to be notified to the Grantee by the Welsh Ministers) any such amounts claimed as being incurred Qualifying Capital Expenditure. If subsequently the Grantee provides evidence to demonstrate that applicable amounts were actually paid to the Subcontractors such amounts will then be re-paid by the Welsh Ministers to the Grantee.

4.1.3 all WIP Costs not yet claimed under a MPC, broken down by:

- (a) WIP related to Achieved Milestones; and
 - (b) WIP related to future Milestones not yet Achieved;
- 4.1.4 signed confirmation from a suitably qualified finance representative of the Grantee that:
- (a) the Qualifying Capital Expenditure is not covered by (i) any other form of public subsidy; or (ii) more than one form of public subsidy; and
 - (b) the Subsidy Payment claimed is matched by an equivalent sum of Qualifying Capital Expenditure;
- 4.1.5 signed confirmation from a suitably qualified finance representative of the Grantee that part apportionment or allocation of NGA Network Build Costs between this Agreement and other contracts or services provided by the Grantee, is accurate and a fair reflection of the work carried out;
- 4.1.6 signed confirmation from a suitably qualified finance representative of the Grantee that the NGA Network Build Costs have been properly incurred and are in accordance with the financial control, financial management and internal risk processes of the Grantee. The confirmation should also state that the NGA Network Build Costs have been incurred and are in accordance with the accounting requirements for NGA Network Build Costs, and are consistent with Generally Accepted Accountancy Principles with regard to capitalisation and the accounting policies that the Grantee applies under its corporate financial reporting and audit standards.
- 4.2 In all cases the MPC Supporting Documentation shall be of sufficient detail to allow the Welsh Ministers to determine the eligibility of the relevant NGA Network Build Costs and the validity of the MPC.
- 4.3 The MPC and its supporting information must separately identify Qualifying Capital Expenditure and Qualifying Operating Expenditure in the MPC and MPC Supporting Documentation to support the operation of the mechanisms under this Schedule 5.1.
- 5. PROJECT ACCOUNTS AND FINANCIAL RECORDS**
- 5.1 The Grantee shall maintain separate summary Project Accounts (for use, among other matters, for reconciliation of MPC claims to expenditure and costs incurred and to calculate the financial reporting measures relating to clawback as described in this Schedule 5.1). The Project Accounts shall include:
- 5.1.1 a summary revenue and expenditure statement (including public subsidy received) in respect of this Agreement;
 - 5.1.2 a record of Network assets created or deployed in respect of this Agreement;
 - 5.1.3 details of any re-payments made to the Welsh Ministers pursuant to this Schedule 5.1;
 - 5.1.4 supporting notes and information as appropriate for the reasonable understanding of the Project Accounts; and
 - 5.1.5 actual Take-up per Project Period.
- 5.2 The Project Accounts shall be:

- 5.2.1 prepared on a basis that is consistent with the accounting policies that the Grantee applies under its own corporate financial reporting and audit standards; and
- 5.2.2 subject to the Grantee's own internal and external audit procedures.
- 5.3 Within thirty (30) days of each anniversary of the Effective Date the Grantee shall submit to the Welsh Ministers a copy of the Project Accounts and an accompanying short narrative report for the preceding twelve (12) months, certified by a suitably qualified finance representative or the external auditor of the Grantee. On expiry or termination of this Agreement, the Grantee shall prepare an equivalent copy of the Project Accounts for the period since the preceding copy of Project Accounts produced pursuant to this paragraph 5.3 (noting that the specific timing of the production of such copy on expiry or termination must support the operation of those provisions of this Agreement which themselves take effect at expiry or termination of this Agreement).
- 5.4 The Grantee shall maintain accounting records for all NGA Network Build Costs under this Agreement in accordance with Clause 37. These accounting records shall include, original invoices, receipts, accounts, deeds, bank records and any other relevant documentation whether in written or electronic form.

6. **GRANTEE AUDIT AND FINANCIAL CONTROL**

- 6.1 The Grantee shall ensure that all public subsidy it receives pursuant to this Agreement is subject to the Grantee's own internal and external audit processes.
- 6.2 As part of the Welsh Ministers' own internal financial control process or otherwise complying with their legal duties, the Welsh Ministers (and/or their agents or representatives) and/or the Programme Authority may undertake reviews of the NGA Network Build Costs under this Agreement. In such circumstances, the Welsh Ministers (and/or their agents or representatives) and/or the Programme Authority may require the Grantee to provide, as soon as is reasonably practical, additional reasonable assistance and reasonable supporting information regarding any MPC (as supplementary assurance to the evidence provided pursuant to paragraph 4.1 above).
- 6.3 Paragraphs 3.10 and 6.2 of this Schedule 5.1 shall continue to be effective until:
 - 6.3.1 twelve (12) months following the Term, subject to early termination of this Agreement; or
 - 6.3.2 in the event of early termination of this Agreement, twenty four (24) months following such termination date.

7. **PROJECT MODEL OUTPUTS**

- 7.1 The Grantee shall ensure that the Project Model:
 - 7.1.1 contains the details of the Grantee NGA Network Build Investment that is forecast to be incurred over the Deployment Period;
 - 7.1.2 calculates a Project Investment Ratio; and
 - 7.1.3 calculates a Project Unit Margin.
- 7.2 Where the forecast NGA Network Build Costs are expected to be less than those forecast in the Project Model, then the Welsh Ministers shall require an appropriate reduction to the Milestone Payments such that on Achievement of the final Milestone M2, Actual Grantee NGA Network Build Investment should be equal to the Grantee NGA Network Build Investment forecast in the Project Model.

8. **DEPLOYMENT COMPLETION**

8.1 Notwithstanding paragraphs 2.4 and 2.5 above, Milestone Payment Claims evidencing NGA Network Build Costs can only be submitted by the Grantee up to the end of the Quarter immediately following the Quarter in which the Full Service Commencement Date is Achieved. Milestone Payment Claims in respect of Milestones M3 may be submitted after that date but these can only provide for Subsidy Payment corresponding to NGA Network Build Costs already evidenced in Milestone Payment Claims submitted within the time-limit specified in the first sentence of this paragraph. Any Milestone Payment Claims not submitted in accordance with the foregoing provisions of this paragraph are invalid and the Qualifying Capital Expenditure covered by such claims cannot be claimed from the Welsh Ministers nor applied within any of the mechanisms under this Schedule 5.1 but the corresponding parts of the Network to which the expenditure relates will otherwise remain subject to the terms of this Agreement.

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

8.2.1 the Grantee shall pay directly to the Welsh Ministers within twenty (20) Working Days of receipt of the final MPC the difference between the Grantee NGA Network Build Investment incurred and the Grantee NGA Network Build Investment set out in the Project Model; and

8.2.2 where, following completion by the Welsh Ministers of their assurance process in respect of the final MPC, there remains any further difference between the Grantee NGA Network Build Investment incurred and the Grantee NGA Network Build Investment set out in the Project Model, then the Grantee shall pay any such residual balance directly to the Welsh Ministers within twenty (20) Working Days of the Welsh Ministers issuing to the Grantee a Milestone Completion Certificate.

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

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

9.2 At each Take-up Review Point the Grantee shall submit updated Project Accounts to the Welsh Ministers which shall include actual total Take-up per Project Period. The actual Take-up shall be compared to the forecast Take-up as shown in the 'Solution Volumes Tab' in the Project Model, for each Project Period, from the Effective Date to the relevant Take-up Review Point. If the sum of the cumulative actual Take-up per Project Period (being the 'Cumulative Sum' in the column of the table exemplified below) is more than the cumulative forecast Take-up per Project Period the difference represents a "**Net Additional Take-up**" - see table below for example:

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

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

The above table is solely a simplified set of numbers to example the principles of this paragraph 9.2 – the figures have no other application or relevance.

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

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

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

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

Any positive Take-up Claw Back Amount shall be repaid direct to the Welsh Ministers within twenty (20) Working Days of the Take-up Review Point.

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

- *Final Take-up Claw-back Amount = Exposure to claw-back at Take-up Review Point less any Take-up Claw Back Amounts previously paid to the Welsh Ministers.*

Any Final Take-up Claw-back Amount shall be repaid direct to the Welsh Ministers within twenty (20) Working Days of the final Take-up Review Point.

10. OVER-SUBSIDY CLAW-BACK: ADDITIONAL SERVICES

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

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

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

Any Additional Service Claw Back Amount shall be shall be repaid direct to the Welsh Ministers within twenty (20) Working Days of the Additional Service Review Point.

10.3 At the final Additional Service Review Point a Final Additional Service Claw Back Amount shall be calculated, with reference to the Net Additional Service Revenue across the Term, as follows:

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

Any Final Additional Service Claw Back Amount shall be repaid direct to the Welsh Ministers within twenty (20) Working Days of the final Additional Service Review Point.

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

10.4.1 The Grantee shall provide to the Welsh Ministers details of the total margin achieved in respect of the Net Additional Service Revenue including the accounting principles used to calculate that margin;

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

11. **NEGATIVE CLAWBACK SUM**

Where any of the calculations at paragraphs 9 or 10 above demonstrate a prior over-payment by the Grantee to the Welsh Ministers pursuant to those provisions, the over-payment shall be refunded by the Welsh Ministers directly to the Grantee within twenty (20) Working Days.

12. **LIABILITY IN AUDITED ACCOUNTS**

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

APPENDIX 1 – MILESTONE PAYMENTS



BT Welsh Ministers
Phase 2 Lot 1 Sch 5.1

APPENDIX 2 – QUALIFYING CAPITAL EXPENDITURE CATEGORIES

Qualifying Capital Expenditure

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

Qualifying Capital Expenditure is that Grantee expenditure which (i) can be reasonably allocated or apportioned to this Agreement; (ii) is incremental to the Grantee's cost base that would otherwise have been incurred; (iii) is incurred in accordance with this Agreement; (iv) is directly attributable to bringing the wholesale access infrastructure to the location and working condition necessary for its intended use but excluding those costs directly attributable to connecting End User Premises to the Network; and (v) is capable of being capitalised under Generally Accepted Accountancy Principles.

The following examples for this expenditure category are provided:

- The cost of tangible broadband infrastructure (plant, machinery and equipment) in both active and passive layers)
- Infrastructure installation and assembly costs
- Cost of active electronics, data transport and backhaul equipment
- Cost of vectoring technologies, where such technologies are integral to a significant improvement in the available network
- Specific software and systems (including reporting systems) development costs directly attributable to bringing the broadband infrastructure into use for this Agreement
- Staff costs directly attributable to bringing the broadband infrastructure into use
- Planning, way-leaves, site investigation and site preparation costs directly attributable to bringing the broadband infrastructure into use (expenditure that will attract subsidy under Milestone M0)
- Power connection costs
- Professional fees directly attributable to bringing the broadband infrastructure into use (expenditure that will attract subsidy under Milestone M0)

APPENDIX 3 – QUALIFYING OPERATING EXPENDITURE CATEGORIES

Qualifying Operating Expenditure

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

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

The following examples for this expenditure category are provided:

- HR support solely related to direct NGA network build resource
- Non capitalisable labour costs of the direct NGA network build resource
- Direct labour costs associated with compiling all reports and claims obligated under the Agreement.
- Travel and subsistence for direct NGA network build resource
- Fleet:
 - Vehicle lease costs
 - Insurance
 - Repair and Maintenance
 - Fuel
- Operating lease rentals that do not relate to point (i) of Appendix 5 to this Schedule 5.1 in respect of Non-Qualifying Operating Expenditure.

APPENDIX 4 – NON-QUALIFYING CAPITAL EXPENDITURE CATEGORIES

Non-Qualifying Capital Expenditure

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

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

The following examples for this expenditure category are provided:

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

APPENDIX 5 – NON-QUALIFYING OPERATING EXPENDITURE CATEGORIES

Non-Qualifying Operating Expenditure

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

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

The following examples for this expenditure category are provided:

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

APPENDIX 6 – EXCLUDED EXPENDITURE CATEGORIES

Excluded Expenditure

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

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

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

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

APPENDIX 7 – MILESTONE COMPLETION CERTIFICATE

MILESTONE COMPLETION CERTIFICATE

AGREEMENT REFERENCE [•]

WELSH MINISTERS

Welsh Ministers sign below to confirm that they have completed their standard assurance process for the final contracted MPC under the Agreement:

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

Summary of completed Milestone assured:

[•]