

SCHEDULE 6.5
REMEDIAL PLAN PROCESS

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
1.1	26 January 2018	Updated for Next Generation Access Broadband Wales – Phase 2 Procurement

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SCHEDULE 6.5 – REMEDIAL PLAN PROCESS

1. BACKGROUND

This Schedule 6.5 sets out the Remedial Plan Process which the Grantee shall comply with in accordance with Clause 38.

2. REMEDIAL PLAN PROCESS

2.1 General

2.1.1 If:

- (a) the Grantee is required to comply with the Remedial Plan Process in accordance with the terms of this Agreement; and
- (b) a Remedial Plan has not yet been agreed by the Parties in accordance with this Schedule 6.5,

then to the extent that any problems which have triggered the Remedial Plan Process may (in the reasonable opinion of the Welsh Ministers) have a material impact upon the Welsh Ministers, the Grantee shall upon reasonable notice provided by the Welsh Ministers advise the Welsh Ministers of the status of the remedial efforts being undertaken with respect to such problems.

2.2 Remedial Plan

2.2.1 The Grantee shall provide the Welsh Ministers with a draft Remedial Plan without delay (even, where relevant, if the Grantee disputes whether or not it has committed a Default) and in any event no later than five (5) Working Days (or such other period as the Parties may agree):

- (a) where this Agreement requires service of a notice, after the notice provided by the Welsh Ministers requiring the Grantee to initiate the Remedial Plan Process; or
- (b) after the relevant circumstance giving rise to the Grantee's obligation to comply with the Remedial Plan Process has occurred.

2.2.2 The Grantee shall ensure that each Remedial Plan:

- (a) specifies the steps that the Grantee proposes to take to remedy or to avoid the relevant Default (including actions and timings); and
- (b) is in sufficient detail for it to be properly evaluated by the Welsh Ministers.

2.2.3 If the Welsh Ministers consider that a draft Remedial Plan provided by the Grantee under paragraph 2.2.1 above is:

- (a) insufficiently detailed to be properly evaluated;
- (b) will take too long to complete; and/or
- (c) will not remedy the relevant Default or address sufficiently the issues it is aimed at addressing,

the Welsh Ministers may at their sole discretion either agree a further time period for the development and agreement of the Remedial Plan or escalate

any issues with the draft Remedial Plan using the Dispute Resolution Procedure. Where the Welsh Ministers agree a further time period for the development and agreement of the Remedial Plan, the Grantee shall within the relevant time period produce such revised drafts of the Remedial Plan as the Welsh Ministers may require and shall take into account in the Remedial Plan any reasonable comments by the Welsh Ministers, so as to address the issues set out in paragraphs 2.2.3(a), (b) and/or (c) above (as applicable).

2.2.4 The Grantee shall comply with a Remedial Plan following its agreement by the Parties.

2.2.5 The Grantee shall provide to the Welsh Ministers, in accordance with the relevant timescales agreed in each Remedial Plan:

- (a) regular updates on the implementation of the Remedial Plan; and
- (b) evidence, either documentary or demonstrative as the Welsh Ministers may reasonably require, of the implementation of the Remedial Plan.

2.3 **Failure to Agree or Implement Remedial Plan**

2.3.1 If the Remedial Plan cannot be agreed (each Party acting reasonably) within the relevant time period agreed or by operation of the Dispute Resolution Procedure under paragraph 2.2.3 above, the Welsh Ministers may elect to end the Remedial Plan Process at the end of the relevant time period or the Dispute Resolution Procedure (as applicable) and serve notice to terminate this Agreement in accordance with Clause 61.1.1(b) and this Agreement shall terminate on the date specified by the Welsh Ministers in the termination notice.

2.3.2 If a Remedial Plan is agreed between the Parties but the Grantee fails to implement the Remedial Plan in accordance with its terms then the Welsh Ministers may, at their sole discretion:

- (a) give the Grantee a further opportunity to resume full implementation of the Remedial Plan (in accordance with such timescales as the Welsh Ministers may reasonably require); or
- (b) escalate any issues arising out of the failure to implement the Remedial Plan using the Dispute Resolution Procedure.

2.3.3 If the reasons for the Grantee's failure to implement the Remedial Plan have not been resolved despite the use of the Dispute Resolution Procedure in accordance with paragraphs 2.2.3 or 2.3.2 above, and the Grantee has not otherwise remedied the Default which gave rise to the Remedial Plan then the Welsh Ministers may serve notice to terminate this Agreement in accordance with Clause 61.1.1(b) and this Agreement shall terminate on the date specified by the Welsh Ministers in that notice.

2.4 **No Obligation to Follow Remedial Plan Process**

2.4.1 The Welsh Ministers shall not be obliged to follow the Remedial Plan Process (and the relevant Default shall be deemed irremediable) where a Default giving rise to compliance with the Remedial Plan Process in accordance with this Agreement arises if:

- (a) a Remedial Plan has previously been implemented in respect of the relevant Default but the Grantee failed to remedy the Default by those means; or

- (b) there is an occurrence of substantially the same Default within a period of three (3) months following the completion of any previous Remedial Plan.