

**DATED**

**2012**

**(1) CUMBRIA COUNTY COUNCIL**

**- and -**

**(2) BRITISH TELECOMMUNICATIONS PLC**

**AGREEMENT**

relating to

the provision, management and operation of  
a next generation broadband network  
infrastructure for the Cumbria region

Redacted Contract

## CONTENTS

<b>SECTION A - PRELIMINARIES</b> .....	1
1. DEFINITIONS AND INTERPRETATION .....	1
2. CONDITIONALITY .....	2
3. NO EXCLUSIVITY .....	2
4. DUE DILIGENCE .....	2
<b>SECTION B - IMPLEMENTATION</b> .....	3
5. IMPLEMENTATION .....	3
6. DELAYS.....	3
<b>SECTION C - PROVISION OF SERVICE</b> .....	4
7. NETWORK AND WHOLESALE SERVICE.....	4
8. WHOLESALE OFFERING.....	6
9. CONTRACTOR INFRASTRUCTURE AND EXISTING INFRASTRUCTURE.....	6
10. SERVICES.....	8
11. SERVICE LEVELS .....	11
12. QUALITY ASSURANCE AND PERFORMANCE MONITORING .....	11
<b>SECTION F - FINANCIAL MATTERS</b> .....	11
13. MILESTONE PAYMENTS AND CLAIMS PROCEDURE.....	11
14. TAX .....	12
15. RECOVERY OF SUMS DUE.....	12
16. VALUE FOR MONEY.....	12
17. PROJECT MODEL .....	12
18. FUNDING REQUIREMENTS.....	12
19. STATE AID.....	12
20. INVESTMENT AMOUNT AND GRANT FUNDING .....	12
21. CONTRACTOR COSTS BORNE BY THE AUTHORITY .....	12
22. REPRESENTATIVES .....	12
23. GOVERNANCE.....	13

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24.	SUPPLY CHAIN RIGHTS.....	13
25.	AUDITS.....	13
26.	REGULATION OF LOCAL GOVERNMENT .....	14
27.	RECORDS AND REPORTS.....	15
28.	CHANGE CONTROL.....	16
29.	DISPUTES.....	16
	<b>SECTION H - PERSONNEL.....</b>	<b>16</b>
30.	CONTRACTOR PERSONNEL .....	16
31.	HEALTH AND SAFETY AND ENVIRONMENT.....	16
32.	EQUALITY AND DIVERSITY.....	17
33.	NON-SOLICITATION.....	17
	<b>SECTION I - INTELLECTUAL PROPERTY, DATA AND CONFIDENTIALITY .....</b>	<b>17</b>
34.	INTELLECTUAL PROPERTY RIGHTS .....	17
35.	LICENCES GRANTED BY THE CONTRACTOR.....	17
36.	LICENCES GRANTED BY THE AUTHORITY.....	17
37.	AUTHORITY DATA AND MANAGEMENT INFORMATION.....	17
38.	DATA PROTECTION LEGISLATION .....	18
39.	FREEDOM OF INFORMATION .....	18
40.	CONFIDENTIALITY.....	18
	<b>SECTION J - CONTRACTOR AND AUTHORITY PROTECTIONS .....</b>	<b>19</b>
41.	WARRANTIES .....	19
42.	CONFLICTS OF INTEREST.....	20
43.	FINANCIAL DISTRESS.....	20
44.	CHANGE IN LAW.....	20
	<b>SECTION K - RISK PROTECTION.....</b>	<b>21</b>
45.	FORCE MAJEURE .....	21
	<b>SECTION L - INDEMNITIES, LIABILITY AND INSURANCE.....</b>	<b>21</b>
46.	IPR INDEMNITY.....	21

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47.	FURTHER INDEMNITIES.....	22
48.	LIMITATIONS ON LIABILITY .....	22
49.	INSURANCE.....	23
50.	CONDUCT OF CLAIMS .....	23
<b>SECTION M - TERM, TERMINATION AND EXIT MANAGEMENT.....</b>		<b>24</b>
51.	TERM .....	24
52.	TERMINATION RIGHTS .....	24
53.	REMEDIAL PLAN PROCESS .....	25
54.	CONSEQUENCES OF TERMINATION .....	25
<b>SECTION N - MISCELLANEOUS AND GOVERNING LAW .....</b>		<b>25</b>
55.	ASSIGNMENT AND NOVATION.....	25
56.	WAIVER AND CUMULATIVE REMEDIES.....	25
57.	RELATIONSHIP OF THE PARTIES.....	26
58.	PREVENTION OF BRIBERY .....	26
59.	PUBLICITY.....	26
60.	SEVERANCE.....	27
61.	FURTHER ASSURANCES .....	27
62.	ENTIRE AGREEMENT.....	27
63.	THIRD PARTY RIGHTS.....	27
64.	NOTICES.....	28
65.	VARIATION .....	28
66.	GOVERNING LAW AND JURISDICTION .....	28

## **SCHEDULES**

1. **Definitions**
2. **Service Requirement**
3. **Contractor Matters**
  - 3.1 Contractor Solution
  - 3.2 Commercially Sensitive Information
  - 3.3 Key Sub-contractors
  - 3.4 Key Personnel
4. **Implementation**
  - 4.1 Implementation
  - 4.2 Existing Infrastructure
5. **Financial Matters**
  - 5.1 Milestone Payments and Claims Procedure
  - 5.2 Wholesale Access Pricing
  - 5.3 Project Model
  - 5.4 Funding
6. **Governance and Key Procedures**
  - 6.1 Governance
  - 6.2 Change Control Procedure
  - 6.3 Dispute Resolution Procedure
  - 6.4 Reports
  - 6.5 Remedial Plan Process

Redacted Contract

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**BETWEEN**

- (1) **CUMBRIA COUNTY COUNCIL** whose headquarters are at the Courts, Carlisle, Cumbria CA3 8NA (the "**Authority**"); and
- (2) **BRITISH TELECOMMUNICATIONS PLC** a company registered in England and Wales under company number 01800000 whose registered office is at 81 Newgate Street, London, EC1A 7AJ (the "**Contractor**").

**INTRODUCTION**

- (A) The Authority has agreed to select and appoint a service provider for the Project.. The Funders are providing certain funding for the Project.
- (B) The Authority selected the Contractor to provide the Network and Wholesale Services following an open competition in accordance with State Aid Terms. The Authority issued its OJEU Notice, which was published on 22 March 2011 under reference 2011/5 59-096120.
- (C) The Contractor has agreed to supply the Network and the Wholesale Services in Cumbria subject to the terms and conditions contained in this Agreement.

**IT IS AGREED** as follows:

**SECTION A - PRELIMINARIES**

**1. DEFINITIONS AND INTERPRETATION**

- 1.1 In this Agreement the definitions set out in schedule 1 (Definitions) shall apply.
- 1.2 In this Agreement, unless the context otherwise requires:
  - 1.2.1 the singular includes the plural and vice versa;
  - 1.2.2 reference to a gender includes the other gender and the neuter;
  - 1.2.3 references to an Act of Parliament, statutory provision or statutory instrument include a reference to that Act of Parliament, statutory provision or statutory instrument as amended, extended or re-enacted from time to time and to any regulations made under it. The impact of any such amendment, extension or re-enactment on this Agreement shall be dealt with in accordance with clause 44 (Change in Law); and
  - 1.2.4 any phrase introduced by the words "including", "includes", "in particular", "for example" or similar, shall be construed as illustrative and without limitation to the generality of the related general words.
- 1.3 The headings in this Agreement are for ease of reference only and shall not affect its interpretation.
- 1.4 References to clauses and schedules are, unless otherwise provided, references to the clauses of and schedules to this Agreement.

- 1.5 Without prejudice to clause 10.7, if there is any conflict between the clauses and the schedules and/or any annexes to the schedules and/or any other documents referred to in this Agreement, the conflict shall be resolved in accordance with the following order of precedence:
- 1.5.1 the clauses and schedule 1 (Definitions);
  - 1.5.2 schedule 2 (Service Requirement);
  - 1.5.3 the other schedules to this Agreement (except for schedule 3.1);
  - 1.5.4 schedule 3.1 (Contractor Solution); and
  - 1.5.5 any other document referred to in this Agreement and any other document attached to any such document.
- 1.6 If either party becomes aware of a conflict or inconsistency between the documents referred to in clause 1.5 then it shall notify the other and the parties shall use their respective reasonable endeavours to resolve such conflict and if necessary between the parties, amend the Service Requirements and/or the Contractor Solution to address the conflict or inconsistency, through use of the Change Control Procedure (the Authority agrees to act reasonably in exercising its rights of rejection in the Change Control Procedure when considering this proposed change).

## **2. CONDITIONALITY**

2.1 [redacted]

## **3. NO EXCLUSIVITY**

The Contractor agrees that its relationship with the Authority is non exclusive and that the Authority shall be entitled to enter into any contract with any other contractor which is the same as or similar to all or any aspect of this Agreement.

## **4. DUE DILIGENCE**

4.1 [redacted]

4.2 [redacted]

4.3 [redacted]

4.4 [redacted]

4.5 [redacted]

4.6 [redacted]

## SECTION B - IMPLEMENTATION

### 5. IMPLEMENTATION

- 5.1 The Contractor shall provide the Network and Wholesale Services in accordance with the Implementation Plan and the Project Plan and ensure that Network Completion occurs on or before the Longstop Network Completion Date.
- 5.2 The Contractor shall use all reasonable commercial endeavours to ensure that:
  - 5.2.1 Network Completion occurs on or before the Anticipated Network Completion Date; and
  - 5.2.2 Key Milestones are Achieved by the relevant Milestone Dates.
- 5.3 The Contractor shall endeavour to ensure that Milestones are Achieved by the relevant Milestone Dates.
- 5.4 All changes to the Key Milestones, Longstop Network Completion Date and the Anticipated Network Completion Date shall be subject to the Change Control Procedure.
- 5.5 The Contractor shall promptly notify the Authority of any changes or anticipated changes to the date upon which any Milestones will be Achieved.
- 5.6 The parties shall comply with their respective obligations set out in schedule 4.1 (Implementation).

### 6. DELAYS

- 6.1 [redacted]
- 6.2 [redacted]
- 6.3 [redacted]

#### Correction Plan

- 6.4 [redacted]
- 6.5 [redacted]
- 6.6 [redacted]
- 6.7 [redacted]

- 6.8 The Contractor shall comply with its Correction Plan following its approval by the Authority.
- 6.9 [redacted]
- 6.10 [redacted]



## SECTION C - PROVISION OF SERVICE

### 7. NETWORK AND WHOLESALE SERVICE

- 7.1 The Contractor as and from the Effective Date shall undertake, design, build, lay, rollout, test, install, commission, complete and provide, operate and maintain the Network in the Intervention Area and in accordance with the Services Requirement, Contractor Solution, Implementation Plan, Project Plan, and without limit shall:
- 7.1.1 carry out any necessary surveys in connection with the performance of its obligations contained in the Agreement and install and complete the Network and make the same ready for use in accordance with the Implementation Plan and Project Plan;
  - 7.1.2 provide everything described in the Services Requirement which is reasonably necessary for the proper provision of the Network;
  - 7.1.3 procure the Contractor Infrastructure from third parties in accordance with the Services Requirement, Contractor Solution, the Implementation Plan and the Project Plan on the terms of licence and sale (respectively) of the relevant third party supplier;
  - 7.1.4 procure the necessary rights over Existing Infrastructure;
  - 7.1.5 obtain all necessary Relevant Consents, examinations and all other documents and pay all taxes, fees, import and export duties in connection with the supply of the Network and Wholesale Services and the supply and making ready for use of the Network and the Contractor hereby undertakes that, as of the Effective Date, it has complied with and given all notices as may be required by any national, European Union or international statute or statutory instrument, regulations, directives, rules, orders or bye-laws or any amendment or re-enactment thereof insofar as it relates to the Network, Wholesale Services and the Contractor Infrastructure (but, for the avoidance of doubt, not relating to Funding);
  - 7.1.6 to the extent required by Law consult with all relevant local planning and related organisations such as existing broadcast and telecommunications services, English Heritage, air traffic service operators and local planning and highway authorities in respect of any development proposed pursuant to this Agreement and the obtaining of the requisite Relevant Consents and to the extent that it is not required by Law use reasonable endeavours to do so;
  - 7.1.7 identify all third parties that it needs to interface with in order to provide the Network and/or Wholesale Services (including statutory undertakers and incumbent suppliers) and shall ensure that all necessary arrangements are in place to effect an efficient delivery of the Implementation Plan and Project Plan;
  - 7.1.8 ensure that the Network and Wholesale Services will provide the facilities and functions set out in the Services Requirement, Contractor Solution and the Implementation Plan and Project Plan;
  - 7.1.9 comply with the provisions of any Law, in particular, relating to health and safety and security which may be applicable to the Contractor in the

provision of the Network and supply all documents, records or other material which may be reasonably required by the Authority Representative to verify such compliance as aforesaid;

- 7.1.10 in the performance of its obligations under this Agreement, engage in the environmentally sound practices in accordance with Good Industry Practice;
  - 7.1.11 upon completion and provision of the Network, keep and maintain the same at all times in good, proper order and condition so as to enable the Network to provide the Wholesale Services to the required standards;
  - 7.1.12 not use any part of the Network (but in relation to this clause 7.1.12, the definition of Network shall not include Contractor Infrastructure) attracting funding for any use other than:
    - 7.1.12.1 as permitted by this Agreement; or
    - 7.1.12.2 NOT USED
    - 7.1.12.3 as otherwise agreed with the Authority; and
  - 7.1.13 ensure that the Network is fit for the purpose as described in the Service Requirements and in particular for the provision of the Wholesale Services, and is of high quality.
- 7.2 For the avoidance of doubt, title in the Network and the Contractor Infrastructure (excluding the Existing Infrastructure) shall vest in the Contractor.

### **Wholesale Services**

- 7.3 The Contractor shall provide the Wholesale Services from the relevant Planned Service Commencement Date and shall ensure that the Wholesale Services comply in all respects with the Services Requirement and are provided in accordance with Good Industry Practice and industry regulations applicable to the Contractor.
- 7.4 The Contractor shall ensure, in respect of the provision of the Wholesale Services, that all Retail Service Providers requesting the Wholesale Offering shall be connected without any undue delay and shall undertake to allocate all necessary resources to ensure that any backlog is avoided and the Wholesale Services are provided or connected without any undue delay and if any backlogs occur that they are dealt with urgently and expeditiously.
- 7.5 The Contractor shall provide instruction documents to Retail Service Providers for the use and operation of the Wholesale Services and shall, in accordance with industry practice and/or where reasonably required by Retail Service Providers, provide instructions documents to Retail Service Providers for the use and operation of the Network.
- 7.6 The Contractor shall:
  - 7.6.1 promote and market the Wholesale Services during the Term in a manner which will achieve the greatest number of End Users reasonably achievable in accordance with the Marketing Plan; and

- 7.6.2 endeavour to exceed the End User numbers set out in the Marketing Plan in accordance with the Contractors marketing budget as detail in the Project Model in schedule 5.3 (Project Model).

## **8. WHOLESALE OFFERING**

- 8.1 The Contractor shall make available to Retail Service Providers the Wholesale Offering for the Wholesale Services throughout the Term.
- 8.2 The Contractor shall make the Wholesale Offering available at the Project Wholesale Access Prices in accordance with the relevant terms of this Agreement.
- 8.3 The Project Wholesale Access Prices shall be benchmarked in accordance with schedule 5.2 (Wholesale Access Pricing).

## **9. CONTRACTOR INFRASTRUCTURE AND EXISTING INFRASTRUCTURE**

### **Contractor Infrastructure**

- 9.1 All Contractor Infrastructure used by the Contractor in the provision of the Networks and/or the Wholesale Services is used at the sole risk and responsibility of the Contractor. The Contractor shall be solely responsible for all costs and works associated with transporting, constructing, installing, commissioning, supporting, maintaining and operating the Contractor Infrastructure.
- 9.2 Subject to clause 45 (Force Majeure), the loss or destruction for any reason of the Contractor Infrastructure shall not relieve the Contractor of its obligations to supply the Network and/or the Wholesale Services in accordance with the provisions of this Agreement.
- 9.3 The Contractor shall ensure that all Contractor Infrastructure complies with all applicable Safety Legislation.

### **Alienation of Contractor Infrastructure**

- 9.4 For the avoidance of doubt, the Contractor acknowledges and agrees that it will continue to be bound by and will comply with all of the provisions of this Agreement in the event that it sells, assigns, mortgages, pledges, leases, charges, transfers, or otherwise disposes of any or all interest it has in the Contractor Infrastructure.

### **Existing Infrastructure**

- 9.5 During the Term the Authority shall permit the Contractor to have access to and use of the Existing Infrastructure subject to clauses 9.6, 9.7 and 9.9.
- 9.6 Title to the Existing Infrastructure shall remain with the Authority (or, to the extent they are leased or licensed to the Authority, the relevant third party) at all times and, subject to the permissions granted under this Agreement, the Contractor shall have no right or interest in them and shall not obtain title to the Existing Infrastructure.
- 9.7 The Authority shall not be responsible for, where applicable, the delivery of Existing Infrastructure to and from the Contractor Locations and/or to and from the Authority Premises, nor any costs of delivery, off-loading, packaging and removal of packaging or the costs of delivering the Existing Infrastructure back.

- 9.8 The Contractor acknowledges that it has had the opportunity of inspecting the Existing Infrastructure to satisfy itself as to the condition, suitability and sufficiency of the same for use in connection with the Services. As such the Existing Infrastructure is provided on an "as is" basis. To the maximum extent permitted by Law, any statements, representations, conditions and warranties whether express or implied (and whether arising under common law, statute or otherwise) in relation to the Existing Infrastructure (including their condition) and its fitness for purposes are hereby excluded. For the avoidance of doubt but subject to clause 19 it is acknowledged and agreed that the Contractor is not obliged to use the Existing Infrastructure.
- 9.9 In respect of the Existing Infrastructure, the Contractor shall:
- 9.9.1 only use, and permit its Sub-contractors to use, the Existing Infrastructure to the extent necessary in order to provide the Services and in a manner which shall minimise the disruption to the business and operations of the Authority;
  - 9.9.2 operate and manage the Existing Infrastructure in accordance with this Agreement, any other reasonable instructions provided by the Authority and otherwise in accordance with Good Industry Practice;
  - 9.9.3 be responsible for all loss or damage which occurs before the Existing Infrastructure are delivered back to the Authority in accordance with clause redacted provided that the Contractor shall not be liable for fair wear and tear of any Existing Infrastructure resulting from its normal and proper use in connection with the provision of the Services;
  - 9.9.4 not move any Existing Infrastructure from any location without the Authority's prior written consent (not to be unreasonably withheld or delayed);
  - 9.9.5 take reasonable and proper care of the Existing Infrastructure in its possession or control;
  - 9.9.6 ensure that any instructions or manuals supplied by the manufacturer of the Existing Infrastructure or the Authority for their use and which are made available to the Contractor shall be followed by the Contractor Personnel;
  - 9.9.7 take such steps as may be properly recommended by the manufacturer of the Existing Infrastructure or the Authority (to the extent that such steps have been notified to it);
  - 9.9.8 not knowingly use or permit any Existing Infrastructure to be used in contravention of any Law;
  - 9.9.9 not permit or assert any lien over, sell, offer for sale, assign, mortgage, encumbrance, pledge, sub-let or lend out any Existing Infrastructure, and ensure that no lien claims are made in respect thereof;
  - 9.9.10 where the Existing Infrastructure are leased to the Authority, ensure that these are used only in accordance with the terms of any relevant leasing agreement (to the extent that such terms have been notified to it) and the Contractor shall on demand indemnify and keep indemnified the Authority

from and against all and any Losses which the Authority may suffer or incur as a result of or in connection with any breach or any act or omission of the Contractor in relation to any Existing Infrastructure; and

- 9.9.11 keep a record of all improvements, alterations and upgrades made by or on behalf of the Contractor in and to the Existing Infrastructure.

## 10. SERVICES

- 10.1 Subject to industry regulations applicable to the Contractor, the Contractor shall at all times allocate sufficient resources to provide the Services, the Network and the Wholesale Services in accordance with the terms of this Agreement.
- 10.2 The Contractor shall perform its obligations under this Agreement (including those in relation to the Network and Wholesale Services):
- 10.2.1 in accordance with Good Industry Practice, the Codes and Standards, the Contractor's own established procedures;
  - 10.2.2 using good quality materials and assets;
  - 10.2.3 in an economic, efficient, effective and safe manner, the Service Requirements and the other terms of this Agreement;
  - 10.2.4 in a manner that is not injurious to health and that does not cause any nuisance or damage to any property or the environment;
  - 10.2.5 so as to minimise so far as reasonably practicable interference with the convenience of the public, access to public/private roads or footpaths, or other users of the Service Environment;
  - 10.2.6 so as not to unreasonably impede the Authority in carrying out its functions or increase the cost to the Authority of carrying out its functions;
  - 10.2.7 wherever reasonably practicable in accordance with all reasonably necessary directions given to the Contractor by the Authority during the Term, provided that those directions are consistent with this Agreement, or are not unreasonably burdensome to the Contractor having regard to the requirements of this Agreement;
  - 10.2.8 wherever reasonably practicable, keeping new Network installations to a minimum, which (i) is consistent with the provision of an efficient cost effective Network; (ii) utilises pre-existing locations of the least environmental impact; (iii) is consistent with applicable national planning policy;
  - 10.2.9 in accordance with the Quality Plans;
  - 10.2.10 using appropriate experienced, qualified, skilled and trained personnel; and
  - 10.2.11 using due care, skill and diligence.
- 10.3 The parties shall at all times act reasonably and in good faith towards (and co-operate fully with) each other to the extent required for the performance of this Agreement.

- 10.4 If the Contractor fails to provide the Services or otherwise comply with its obligations in accordance with this Agreement the Authority may, in addition to its other rights, require the Contractor to re-perform the relevant Services and/or to comply with its obligations at the Contractor's cost.
- 10.5 The Contractor shall use all reasonable endeavours to the extent permitted by Law:
- 10.5.1 as part of any further necessary detailed Contractor Solution design work under this Agreement, to facilitate efficient geographical and technical synergies between the Network and the Funded Mobile Projects; and
- 10.5.2 to co-operate with any telecommunications provider appointed under a Funded Mobile Project in relation to the Network and Wholesale Services and/or the delivery of services pursuant to that Funded Mobile Project,
- provided that the Contractor shall be entitled to (i) manage such facilitation and/or cooperation in accordance with its normal business practices; and (ii) reject any request made pursuant to this clause 10.5 where the Contractor can reasonably demonstrate that any such request will place an unreasonable burden on the Contractor's resource.
- 10.6 The Contractor, in performing its obligations under this Agreement, shall and shall procure that its Sub-contractors shall comply with the Codes and Standards.
- 10.7 The parties shall discuss any conflict that either party reasonably believes that there is or will be between any of the Codes and Standards, or between any of the Codes and Standards and any other obligation under this Agreement, and the Contractor shall make proposals in accordance with Good Industry Practice for resolution of the conflict for consideration by the Authority which the Authority shall consider promptly and in good faith.

### **Planning**

- 10.8 The following clauses 10.9 to 10.16 (inclusive) apply to the extent required by Law and to the extent they are relevant to implementation of the Network in accordance with the Contractor's Solution. To the extent clauses 10.9 to 10.16 (inclusive) are not required by Law then the Contractor shall use reasonable endeavours to perform these obligations to the extent they are relevant to implementation of the Network in accordance with the Contractor's Solution.
- 10.9 The Contractor warrants, represents and undertakes that it is a Code Operator and that both the Contractor and any Sub-contractor shall:
- 10.9.1 comply with the relevant planning policy guidance regarding electronic communications and the development plan; and
- 10.9.2 comply with the principles set out in the Code of Best Practice on Mobile Phone Network Development (or any revision or further Best Practice relating to communication infrastructure).
- 10.10 In relation to the siting and design of electronic communication apparatus, the Contractor shall:
- 10.10.1 consider the benefits of siting electronic communication apparatus on existing buildings and other structures;

- 10.10.2 consider the use of sympathetic designs and camouflage to minimise the impact of additional or new electronic communication apparatus; and
- 10.10.3 consider the use of screening and planting in order to reduce adverse impact and provide enhancement.
- 10.11 The Contractor and all Sub-contractors shall provide information across Local Planning Authority areas setting out where there is a need to site electronic communication apparatus to fulfil the implementation and roll out of the Network.
- 10.12 The Contractor and all Sub-contractors shall carry out pre-application discussions with Local Planning Authorities to discuss technical and environmental constraints, to explore possible alternative approaches to the location and design of the proposed apparatus and to discuss site specific proposals.
- 10.13 The Contractor and all Sub-contractors shall undertake pre-application discussions with all other organisations that may have an interest in the proposed development including but not limited to English Heritage, Natural England, Highways Agency and Local Highways Authorities.
- 10.14 **[redacted]**
- 10.15 The Contractor and all Sub-contractors shall comply with the requirements of the Town and Country (General Permitted Development) Order 1995 (as amended) in relation to electronic communication development. Prior to submitting notifications, prior approval application or planning application, the Contractor shall confirm the scope of the proposed development and establish the type of notification or application required to be submitted to the Local Planning Authority.
- 10.16 Following confirmation that a notification or planning application is required, the Contractor and all Sub-contractors shall submit the following information:
- 10.16.1 "Notifications under the Electronic Communications Code Regulations of Intention to Utilise Permitted Development Rights" (for those proposals which constitute permitted development) and written descriptions of the apparatus and scaled plans advising the Local Planning Authority of electronic code operators intention to install;
- 10.16.2 for those proposals which constitute permitted development but which require a prior approval application to be made to the Local Planning Authority for its siting and appearance the following statutory information:
- 10.16.2.1 a written description of the proposed development;
- 10.16.2.2 a plan indicating its proposed location;
- 10.16.2.3 evidence that the owner or agricultural tenant of the land to which the application relates has been notified of the proposed development;
- 10.16.2.4 where the proposed development consists of the installation within 3 kilometres of the perimeter of an aerodrome, evidence that the CAA, SoS for Defence or the aerodrome operator (as appropriate) has been notified of the proposal; and

- 10.16.2.5 the appropriate fee;
- 10.16.3 evidence that the possible use of an existing mast, building or structure has been considered before an application to submitting an application to erect a new mast;
- 10.16.4 information about the purpose and need for the proposed development;
- 10.16.5 where the proposed development consists of the installation, alteration or replacement of a base station on or near a school or college, evidence that the relevant body of the school or college have been consulted about the proposal;
- 10.16.6 a statement that a proposed base station, when operational, will meet ICNIRP guidelines; and
- 10.16.7 a statement indicating the height of the proposed antenna, the frequency and modulation characteristics and details of power input.

## **11. SERVICE LEVELS**

[redacted]

## **12. QUALITY ASSURANCE AND PERFORMANCE MONITORING**

### **Quality Plans**

- 12.1 The Contractor shall develop and provide to the Authority, within [redacted] Working Days of the Effective Date, Quality Plans that:
  - 12.1.1 ensure that all aspects of the Network and Wholesale Services are the subject of quality management systems; and
  - 12.1.2 are consistent with ISO 9001:2000 or any equivalent standard which is generally recognised as having replaced it.

### **Quality Monitoring**

- 12.2 The Authority Representative may carry out audits and monitoring of the Contractor's and Key Sub-contractor's quality management systems (including all relevant Quality Plans and any quality manuals and procedures) and the rollout and implementation of the Network and the provisions and performance of the Wholesale Services at regular intervals and may also carry out other periodic monitoring or spot checks at any other time. In each case, the Contractor shall co-operate, and shall procure that its Key Sub-contractors co-operate, with the Authority Representative at no additional charge to the Authority.

## **SECTION F - FINANCIAL MATTERS**

## **13. MILESTONE PAYMENTS AND CLAIMS PROCEDURE**

[redacted]



**14. TAX**

[redacted]

**15. RECOVERY OF SUMS DUE**

[redacted]

**16. VALUE FOR MONEY**

The parties shall comply with their respective obligations set out in schedule 6.1 (Governance).

**17. PROJECT MODEL**

The provisions of schedule 5.3 (Project Model) shall apply in relation to the Project Model and the parties shall comply with their respective obligations in schedule 5.3 (Project Model).

**18. FUNDING REQUIREMENTS**

The Authority is responsible for meeting the term and conditions of its Funding Conditions and will not commit any act or omission which would cause the Funding to be ceased, withdrawn or terminated..

**19. STATE AID**

[redacted].

**20. INVESTMENT AMOUNT AND GRANT FUNDING**

[redacted]

**21. CONTRACTOR COSTS BORNE BY THE AUTHORITY**

[redacted]

**SECTION G - CONTRACT GOVERNANCE**

**22. REPRESENTATIVES**

22.1 Each party appoints the persons named as such in schedule 3.4 (Key Personnel) as the Authority Representative and the Contractor Representative respectively. The Representatives shall have the authority to act on behalf of their respective party on the matters set out in, or in connection with, this Agreement. Either party may, by further written notice to the other party, revoke or amend the authority of its Representative or appoint a new Representative.

22.2 The respective Representatives shall be sufficiently senior within the organisation of the appointing party, and granted sufficient authority by that party, to ensure full cooperation in relation to the operation and the management of this Agreement.

## 23. GOVERNANCE

The parties agree to manage this Agreement through the governance structure detailed in schedule 6.1 (Governance).

## 24. SUPPLY CHAIN RIGHTS

[redacted]

### Retention of Legal Obligations

[redacted].

## 25. AUDITS

25.1 If an audit is:

25.1.1 imposed on the Authority and/or this Agreement by any Regulatory Body; and/or

25.1.2 necessary in relation to the PRG Funding,

at any time during the Term and [redacted] period following the Term the provisions set out in this clause 25 shall apply and the relevant Regulatory Body (and/or its agents or representatives) may perform any such audit in accordance with this clause 25.

25.2 The Authority shall use its reasonable endeavours to ensure that the conduct of each audit does not unnecessarily disrupt the Contractor or the provision of the Wholesale Services.

25.3 Subject to clause 25.4 and the Authority's obligations of confidentiality in clause 40, the Contractor shall on demand provide, the Authority (and/or its agents or representatives) with all reasonable co-operation and assistance as is reasonably necessary in relation to each audit, including:

25.3.1 where the audit is being conducted due to the requirement by a Regulatory Body to conduct an audit, such relevant information requested by the Regulatory Body (and/or its agents or representatives) within the scope of the audit imposed by the Regulatory Body (provided that the Authority shall use reasonable endeavours to procure that the Regulatory Body shall limit the scope of any audit to the information provided or maintained pursuant to clause 27 and the verification of such information, with the Contractor acknowledging that the relevant powers of the Regulatory Body cannot be fettered and that the Regulatory Body may as a result request additional information pursuant to this clause 25.3.1); and

25.3.2 where the audit relates to PRG Funding, such relevant information requested by the Authority (and/or its agents or representatives) provided that the Authority shall use reasonable endeavours to limit the scope of such audit to the information provided or maintained pursuant to clause 27 and the verification of such information, with the Contractor acknowledging that the Authority is required by Law to conduct audits and the obligations

of the Authority cannot be limited and that the Authority may as a result request additional information pursuant to this clause 25.3.2); and

25.3.3 reasonable access to any Sites controlled by the Contractor or any Key Subcontractor (including any Network implementation or maintenance works conducted pursuant to this Agreement) and/or reasonable access to Contractor Personnel, in each case where the scope of the relevant audit cannot be satisfied by the provision of the information provided pursuant to clause 25.3.1.

25.4 The parties agree that:

25.4.1 the provision of information by electronic means shall be used to satisfy an audit pursuant to this clause 25 unless in the Authority's (or its agent's or representative's) reasonable opinion this will not satisfy the audit requirement; and

25.4.2 where the inspection at any site controlled by the Contractor is required, such inspection shall be subject to the Contractor's then current standard security policies to the extent notified to the Authority (or where applicable its agents or representatives) in advance of the relevant inspection.

25.5 The Authority shall endeavour to (but is not obliged to) provide at least **[redacted]** notice of its intention to conduct an audit pursuant to this clause 25, except where the audit is required to be conducted as a result of:

25.5.1 a regulatory instruction;

25.5.2 suspicion of criminal activity;

25.5.3 suspicion of fraud; or

25.5.4 in connection with the Funding.

25.6 **[redacted]**

25.7 **[redacted]**

25.8 **[redacted]**

25.9 **[redacted]**

## **26. REGULATION OF LOCAL GOVERNMENT**

### **Local Government Ombudsman**

26.1 Where any investigation by a Local Government Ombudsman (as appointed by the Commission for Local Administration in England) ("**Ombudsman**") takes place the Contractor shall support the Authority in connection with such investigation and shall:

26.1.1 provide the Authority with any information reasonably requested in connection with such investigation in the timescale required by the requesting party;

- 26.1.2 attend any meetings with the Authority as reasonably required by the Authority and permit its personnel so to attend;
  - 26.1.3 promptly allow the Authority reasonable access to any documents deemed by the Ombudsman and/or the Authority to be relevant;
  - 26.1.4 allow itself and any Key Personnel reasonably deemed to be relevant to be interviewed by the Ombudsman and/or the Authority; and
  - 26.1.5 co-operate fully and promptly in every way reasonably required by the Authority during the course of any investigation initiated by the Ombudsman.
- 26.2 The Authority agrees to use reasonable endeavours to limit the scope of information any information requested pursuant to clause 26.1 to the information provided or maintained pursuant to clause 27 (Records and Reports).
- 26.3 For the avoidance of doubt, no additional payment shall be made to the Contractor for performing the requirements set out in this clause 26 unless otherwise agreed with the Authority (such agreement not to be unreasonably withheld or delayed).

**Best Value**

- 26.4 The Contractor shall, as reasonably requested by the Authority, support and assist the Authority in complying with its Best Value Duty to the extent that it is relevant in connection with the Contractor's obligations under this Agreement.

**27. RECORDS AND REPORTS**

- 27.1 The Contractor shall produce and provide to the Authority the reports set out in schedule 6.4 (Reports) concerning the operation of this Agreement.
- 27.2 Subject to clause 27.5, in addition to its obligations under clause 27.1, the Contractor shall, as a continuing obligation throughout the Term, as soon as reasonably practicable provide the Authority with such further reports and information concerning the operation of this Agreement as the parties agree (such agreement not to be unreasonably withheld or delayed).
- 27.3 The Contractor shall keep and maintain until **[redacted]** years or such longer period if required by Law after the termination or expiry of this Agreement or such longer period if required by Law and provide to the Authority upon request:
- 27.3.1 all reports, records and information produced as a result of the operation of this Agreement; and
  - 27.3.2 full and accurate records (to the extent consistent with Good Industry Practice) of the operation of this Agreement or concerning the provision of the Services.
- 27.4 Subject to clause 40, the Authority (acting reasonably) may share the reports, records and information provided or made available to it pursuant to this clause 27 with any Regulatory Body on a need to know basis.

27.5 In making requests for further reports and information the Authority will act reasonably and provide sufficient detail to the Contractor to enable the Contractor to assess any associated cost impact for the Contractor. Where the additional reports and information increase the costs for the Contractor then these will be discussed and agreed pursuant to the Change Control Procedure (the Authority agrees to act reasonably in exercising its rights of rejection in the Change Control Procedure when considering this proposed change).

## 28. CHANGE CONTROL

28.1 Subject to clause 28.2 any requirement for a Change shall be subject to the Change Control Procedure and the parties shall comply with their respective obligations in schedule 6.2 (Change Control Procedure).

28.2 Subject to clause 28.3, if and to the extent that the Wholesale Access Products and Services incorporate (expressly in this Agreement or by reference) any regulated published list prices, regulated terms and/or other regulated items then such prices, terms and/or other items shall be maintained by the Contractor in accordance with the Contractor's normal business practice and not in accordance with the Change Control Procedure, provided that:

28.2.1 the Contractor shall promptly identify to the Authority in writing any relevant and material change to such prices, terms and/or other items; and

28.2.2 to the extent that such prices, terms and/or other items are expressly included in this Agreement, the parties shall document a variation to the relevant term of this Agreement in writing.

28.3 Where any change to the regulated published list prices, regulated terms and/or regulated items referred to in clause 28.2 affects any relevant compliance statement set out in the Compliance Matrix or any other provision in this Agreement, the Contractor shall promptly notify the Authority and the parties shall use their respective reasonable endeavours to address the matter using the Change Control Procedure.

## 29. DISPUTES

The parties shall resolve Disputes arising out of or in connection with this Agreement in accordance with the Dispute Resolution Procedure.

## SECTION H - PERSONNEL

### 30. CONTRACTOR PERSONNEL

[redacted]

### 31. HEALTH AND SAFETY AND ENVIRONMENT

31.1 The Contractor shall comply with its health and safety policies (the "**Policies**") and all applicable health and safety legislation, statutory rules and regulations (the "**Safety Legislation**"). The Contractor may from time to time amend such Policies provided that the amended Policies shall be no less stringent than the Policies in place as at the Agreement Date. The Contractor shall in addition review its policies from time to time to ensure that they are compliant with all Safety Legislation.

- 31.2 The Contractor will be responsible for procuring that:
- 31.2.1 its employees, and agents also comply with the Policies and the Safety Legislation; and
  - 31.2.2 its Sub-contractors comply with the Safety Legislation and the Policies which are no less stringent than those referred to above, unless the Authority has agreed otherwise.
- 31.3 Throughout the period of implementation of the Network each party shall notify the other as soon as practicable of any health and safety hazards at the Sites of which it becomes aware. The Contractor will draw these hazards to the attention of the Authority and the relevant Contractor Personnel and will instruct those persons in connection with any necessary associated safety measures.
- 31.4 [redacted]
- 31.5 [redacted]

**32. EQUALITY AND DIVERSITY**

[redacted]

**33. NON-SOLICITATION**

The Authority and the Contractor shall not, and the Contractor shall procure that any Key Sub-contractor shall not, during the Term and for twelve (12) Months following the termination of this Agreement either directly or indirectly solicit or entice away (or seek to attempt to solicit or entice away) from the employment of the other party any person employed by such other party in the provision of the Network and/or Wholesale Services provided that this provision shall not prevent any such person independently responding to a general recruitment advertisement.

**SECTION I - INTELLECTUAL PROPERTY, DATA AND CONFIDENTIALITY**

**34. INTELLECTUAL PROPERTY RIGHTS**

[redacted]

**35. LICENCES GRANTED BY THE CONTRACTOR**

[redacted]

**36. LICENCES GRANTED BY THE AUTHORITY**

[redacted].

**37. AUTHORITY DATA AND MANAGEMENT INFORMATION**

[redacted]

**38. DATA PROTECTION LEGISLATION**

38.1 With respect to the parties' rights and obligations under this Agreement, where either party is the Data Processor the provisions set out in clause 38.2 shall apply in respect of that party.

38.2 [redacted]

38.3 [redacted]

38.4 [redacted].

**39. FREEDOM OF INFORMATION**

39.1 The Contractor acknowledges that the Authority is subject to the requirements of the FOIA and the Environmental Information Regulations and shall assist and cooperate with the Authority to enable the Authority to comply with its Information disclosure obligations.

39.2 [redacted]

39.3 [redacted]

39.4 [redacted]

39.5 [redacted].

**40. CONFIDENTIALITY**

40.1 Except to the extent set out in this clause 40 or where disclosure is expressly permitted elsewhere in this Agreement, each party shall:

40.1.1 treat the other party's Confidential Information as confidential and safeguard it accordingly; and

40.1.2 not disclose the other party's Confidential Information to any other person without the owner's prior written consent.

40.2 [redacted]

40.3 [redacted].

40.4 [redacted]

40.5 [redacted]

40.6 [redacted]

40.7 [redacted]

40.8 [redacted]

40.9 [redacted]

40.10 [redacted]

40.11 [redacted]

40.12 [redacted]

## SECTION J - CONTRACTOR AND AUTHORITY PROTECTIONS

### 41. WARRANTIES

41.1 Each party warrants, represents and undertakes that:

41.1.1 it has full capacity and authority to enter into and to perform its obligations under this Agreement;

41.1.2 it shall at all times comply with all applicable Law in carrying out its obligations under this Agreement;

41.1.3 this Agreement is executed by a duly authorised representative of that party;

41.1.4 as at the Agreement Date, there are no actions, suits or proceedings or regulatory investigations pending or, to that party's knowledge, threatened against or affecting that party before any court or administrative body or arbitration tribunal that might affect the ability of that party to meet and carry out its obligations under this Agreement. Each party shall notify the other party immediately on becoming aware of any such actual or threatened action, suit, proceeding or regulatory investigation; and

41.1.5 once duly executed, this Agreement will constitute its legal, valid and binding obligations.

41.2 The Contractor warrants, represents and undertakes that:

41.2.1 all personnel used to provide the Network and the Wholesale Services will be vetted in accordance with Good Industry Practice and the Standards;

41.2.2 it has and will continue to hold all necessary (if any) regulatory approvals from the Regulatory Bodies necessary to perform the Contractor's obligations under this Agreement;

41.2.3 it has and will continue to have all necessary rights in and to the Contractor Infrastructure or any other materials used by the Contractor, including IPR, necessary to perform the Contractor's obligations under this Agreement;

41.2.4 as at the Agreement Date, all statements and representations in the Contractor Proposal are to the best of its knowledge, information and belief, true and accurate and that it will advise the Authority of any fact, matter or circumstance of which it may become aware which would render any such statement or representation to be false or misleading;

41.2.5 in entering into this Agreement it has not committed any Prohibited Act; and

41.3 [redacted]



41.4 Except as expressly stated in this Agreement, all warranties and conditions whether express or implied by statute, common law or otherwise are hereby excluded to the extent permitted by law.

#### 42. CONFLICTS OF INTEREST

42.1 The Contractor shall as soon as practicable disclose to the Authority any actual or potential conflict of interest between pecuniary or personal interests of the Contractor and the duties owed to the Authority under this Agreement of which it becomes aware.

42.2 The Contractor shall at its cost give effect to such measures as may reasonably be required by the Authority for ending or avoiding any such actual or potential conflict of interest, or alleviating its effect as soon as reasonably practicable.

#### 43. FINANCIAL DISTRESS

[redacted]

#### 44. CHANGE IN LAW

44.1 The Contractor shall ensure that it performs its obligations under this Agreement at all times in compliance with all applicable Laws.

44.2 The Contractor shall neither be relieved of the performance of any of its obligations under this Agreement nor be entitled to an increase in any Milestone Payment as the result of:

44.2.1 a General Change in Law; or

44.2.2 a Specific Change in Law where the effect of that Specific Change in Law on the obligations set out in this Agreement is known at the Agreement Date.

44.3 If a Specific Change in Law occurs or will occur during the Term (other than those referred to in clause 44.2.2), the Contractor shall notify the Authority of the likely effects of that change, including where the Contractor reasonably believes that:

44.3.1 a change is required to the terms of this Agreement;

44.3.2 relief from compliance with the Contractor's obligations under this Agreement is required; and/or

44.3.3 it will incur material additional cost in the performance of its obligations under this Agreement as a consequence of the Specific Change in Law.

44.4 As soon as reasonably practicable the parties shall meet to discuss the likely effects of the Specific Change in Law. Subject to clauses 44.2.2, **Error! Reference source not found.** and 21, any change to this Agreement arising from this clause 44 shall be processed by the parties in accordance with clause 21.

## **SECTION K - RISK PROTECTION**

### **45. FORCE MAJEURE**

- 45.1 Subject to the remaining provisions of this clause 45 (Force Majeure):
- 45.1.1 the Affected Party may claim relief from liability for non-performance of its obligations under this Agreement; and
  - 45.1.2 neither party shall be entitled to bring a claim for a breach of obligations under this Agreement by the Affected Party,
- to the extent this is due to a Force Majeure Event. In particular, the Contractor shall be relieved from its obligations to the extent that the Network and the Wholesale Services are affected by the Force Majeure Event.
- 45.2 A party cannot claim relief if the Force Majeure Event is attributable to its wilful act, neglect or failure to take reasonable precautions against the relevant Force Majeure Event.
- 45.3 An Affected Party cannot claim relief as a result of a failure or delay by any other person in the performance of that other person's obligations under a contract with the Affected Party (unless that other person is itself prevented from or delayed in complying with its obligations as a result of a Force Majeure Event).
- 45.4 The Affected Party shall immediately give the other party written notice on becoming aware of the Force Majeure Event. The notification shall include details of the Force Majeure Event together with evidence of its effect on the obligations of the Affected Party, and any action the Affected Party proposes to take to mitigate its effect.
- 45.5 As soon as practicable following the Affected Party's notification, the parties shall consult with each other in good faith and use all reasonable endeavours to agree appropriate terms to mitigate the effects of the Force Majeure Event and to facilitate the continued performance of this Agreement. The Affected Party, shall take all steps in accordance with Good Industry Practice to overcome or minimise the consequences of the Force Majeure Event.
- 45.6 The Affected Party shall notify the other party as soon as practicable after the Force Majeure Event ceases or no longer causes the Affected Party to be unable to comply with its obligations under this Agreement. Following such notification, this Agreement shall continue to be performed on the terms existing immediately before the occurrence of the Force Majeure Event unless agreed otherwise by the parties.

## **SECTION L - INDEMNITIES, LIABILITY AND INSURANCE**

### **46. IPR INDEMNITY**

- 46.1 Each party shall procure that the performance of its responsibilities under this Agreement shall not infringe or cause the infringement of any IPR of any third party.
- 46.2 The Contractor shall indemnify the Authority against all third party claims, demands, actions, costs (including legal fees and royalties), expenses, losses or damages arising from or incurred by reason of any infringement or alleged infringement (including the

defence of such alleged infringement) arising due to the use of Contractor IPR in accordance with the provisions of this Agreement.

46.3 The Authority shall indemnify the Contractor against all third party claims, demands, actions, costs (including legal fees and royalties), expenses, losses or damages arising from or incurred by reason of any infringement or alleged infringement (including the defence of such alleged infringement) arising due to the use of Authority IPR in accordance with the provisions of this Agreement.

#### **47. FURTHER INDEMNITIES**

##### **47.1 Indemnities not subject to financial limits**

[redacted]

##### **47.2 Indemnities subject to financial limits**

[redacted]

##### **47.3 Further provisions relating property damage**

[redacted]

#### **48. LIMITATIONS ON LIABILITY**

48.1 Neither party limits its liability for:

48.1.1 death or personal injury caused by its negligence, or that of its employees, agents or Sub-contractors (as applicable); or

48.1.2 fraud or fraudulent misrepresentation by it or its employees; or

48.1.3 breach of any obligation as to title implied by statute; or

48.1.4 any other liability to the extent it cannot be excluded at law.

48.2 [redacted]

##### **Financial Limits**

48.3 [redacted]

48.4 [redacted]

48.5 [redacted]

48.6 [redacted]

48.7 [redacted]

48.8 Nothing in this clause 48 (Limitations on Liability) shall act to reduce or affect a party's general duty to mitigate its loss.

## 49. INSURANCE

The Contractor shall ensure that it has adequate insurance coverage (including but not limited to public liability insurance) in place with an insurer of good repute to cover all claims and liabilities under or in connection with this Agreement or any other claims or demands which may be brought or made against it by any person suffering any injury damage or loss in connection with the Project and shall provide evidence of such insurance to the Authority on request.

## 50. CONDUCT OF CLAIMS

50.1 Each party shall promptly notify the other in writing of any Indemnified Claim of which it becomes aware.

50.2 In respect of each Indemnified Claim, subject to clause 50.3 the Indemnifying Party shall be entitled to defend the Indemnified Claim (acting diligently, using competent counsel and in such a way as not to bring the reputation of the Indemnified Party into disrepute) provided that (i) the Indemnifying Party consults with the Indemnified Party and keeps the Indemnified Party fully informed with respect to the Indemnified Claim; (ii) the Indemnifying Party shall not settle, admit fault or compromise the Indemnified Claim without the Indemnified Party's prior written consent (not to be unreasonably withheld or delayed); and (iii) the Indemnified Party shall (at the Indemnifying Party's cost) provide such reasonable assistance as required by the Indemnifying Party.

50.3 Where the Contractor is the Indemnifying Party, the Authority may elect (following reasonable consultation with the Contractor) to defend the Indemnified Claim itself (acting diligently and using competent counsel) with the Contractor (at the Contractor's own cost) providing such reasonable assistance as required by the Authority if the Authority considers that sole control of the Indemnified Claim by the Contractor may place at risk or adversely affect (i) national security or the threat of criminal activity; and/or (ii) the operations, reputation or good standing of the Authority.

50.4 The Indemnified Party shall not settle, admit fault or compromise any Indemnified Claim without the Indemnifying Party's prior written consent (not to be unreasonably withheld or delayed).

50.5 If an Indemnified Claim is made or the Indemnifying Party anticipates that an Indemnified Claim might be made, the Indemnifying Party may, at its own expense and reasonable discretion, procure the necessary rights or otherwise replace or modify the items or activities concerned to enable the Indemnified Party the right to continue using the relevant item or to otherwise properly permit the continuance of the activity which is the subject of the Indemnified Claim, provided that in each instance:

50.5.1 the performance and/or quality of the replacement item or activity concerned shall be at least equivalent to the performance and/or quality of the original item or activity;

50.5.2 any such action by the Indemnifying Party does not have an adverse effect on the performance of this Agreement or the Indemnified Party;

50.5.3 there is no additional cost to the Indemnified Party; and

50.5.4 the terms of this Agreement shall continue to apply to the items and activities concerned.

## **SECTION M - TERM, TERMINATION AND EXIT MANAGEMENT**

### **51. TERM**

51.1 This Agreement will begin on the Agreement Date and, unless terminated at an earlier date by operation of Law or in accordance with clause 52 will terminate **[redacted]** from the Actual Network Completion Date.

### **52. TERMINATION RIGHTS**

#### **52.1 Termination of the Funding Conditions**

**[redacted]**

#### **52.2 Termination for Contractor Default**

**[redacted]**

#### **52.3 Termination for Change of Control**

**[redacted]**

#### **52.4 Termination by the Contractor**

**[redacted]**

#### **52.5 Termination for Continuing Force Majeure Event**

52.5.1 Either party may by written notice to the other, terminate this Agreement if:

52.5.1.1 a Force Majeure Event occurs which affects all or a substantial part of the Services for a continuous period of more than ninety (90) Working Days; or

52.5.1.2 a Force Majeure Event occurs which affects a non-substantial part of the Services for a continuous period of more than one hundred and twenty (120) Working Days.

#### **52.6 Partial Termination**

52.7 **[redacted]**

52.8 **[redacted]**

52.9 **[redacted]**

52.10 **[redacted]**

**53. REMEDIAL PLAN PROCESS**

53.1 If the Contractor commits a material Default and the Default is capable of remedy, the Authority shall not be entitled to terminate this Agreement without first operating the Remedial Plan Process.

53.2 The Remedial Plan Process is as follows:

[redacted]

**54. CONSEQUENCES OF TERMINATION**

54.1 [redacted]

54.2 [redacted]

54.3 [redacted]

**Survivorship**

54.4 The provisions of clauses 1 (Definitions and Interpretation), 9 (Contractor Infrastructure and Existing Infrastructure), 13 (Milestone Payments and Claims Procedure), 25 (Audits), 33 (Non-Solicitation), 34 (Intellectual Property Rights), 35 (Licences Granted by the Contractor), 38 (Data Protection Legislation), 39 (Freedom of Information), 40 (Confidentiality), 45 (Force Majeure), 46 (IPR Indemnity), 48 (Limitations on Liability), 49 (Insurance), 50 (Conduct of Claims), 54 (Consequences of Termination), 56 (Waiver and Cumulative Remedies), 59 (Publicity), 60 (Severance), 62 (Entire Agreement), 63 (Third Party Rights) and 66 (Governing Law and Jurisdiction), and the provisions of schedules 1 (Definitions), 5.1 (Milestone Payments and Claims Procedure) and 6.3 (Dispute Resolution Procedure) shall survive the termination or expiry of this Agreement.

**SECTION N - MISCELLANEOUS AND GOVERNING LAW**

**55. ASSIGNMENT AND NOVATION**

55.1 [redacted]

55.2 [redacted]

55.3 [redacted]

55.4 [redacted]

55.5 [redacted]

**56. WAIVER AND CUMULATIVE REMEDIES**

56.1 The rights and remedies provided by this Agreement may be waived only in writing by the relevant Representative in a manner that expressly states that a waiver is intended, and such waiver shall only be operative with regard to the specific circumstances referred to.

- 56.2 Unless a right or remedy of the Authority is expressed to be an exclusive right or remedy, the exercise of it by the Authority is without prejudice to the Authority's other rights and remedies. Any failure to exercise or any delay in exercising a right or remedy by either party shall not constitute a waiver of that right or remedy or of any other rights or remedies.
- 56.3 The rights and remedies provided by this Agreement are cumulative and, unless otherwise provided in this Agreement, are not exclusive of any right or remedies provided at law or in equity or otherwise under this Agreement.

## **57. RELATIONSHIP OF THE PARTIES**

Nothing in this Agreement is intended to create a partnership, or legal relationship of any kind that would impose liability upon one party for the act or failure to act of the other party, or to authorise either party to act as agent for the other party. Neither party shall have authority to make representations, act in the name of, or on behalf of, or to otherwise bind the other party.

## **58. PREVENTION OF BRIBERY**

- 58.1 Each party shall not in connection with this Agreement commit a Prohibited Act.
- 58.2 The Authority may terminate this Agreement by written notice with immediate effect if the Contractor or any person employed by it or acting on its behalf breaches clause 58.1.
- 58.3 In determining whether to exercise the right of termination under clause 58.2 the Authority shall give all due consideration, where appropriate, to action other than termination of this Agreement unless the Prohibited Act is committed by the Contractor.
- 58.4 Any notice of termination under clause 58.2 must specify:
- 58.4.1 the nature of the Prohibited Act committed by the Contractor;
  - 58.4.2 the identity of the party whom the Authority believes has committed the Prohibited Act; and
  - 58.4.3 the date on which the Agreement will terminate.

## **59. PUBLICITY**

- 59.1 The Contractor shall not make any press announcements or publicise this Agreement or its contents in any way without the prior written consent of the Authority, which shall not be unreasonably withheld or delayed. The provisions of this clause shall not apply to disclosure of matters required to be made by any applicable law or regulation, by the rules or regulations of any stock exchange or by any court or governmental or administrative authority competent to require the same.
- 59.2 The Contractor shall, in relation to all Publicity Material created and/or used by the Contractor for the Project display the words "Funded by DCMS" to be written alongside any logos (or standing alone if no logos are used).
- 59.3 The Contractor shall, in relation to all Publicity Material created and/or used by the Contractor for this Project:

- 59.3.1 display the ERDF Logo;
- 59.3.2 acknowledge ERDF as a source of funding for the Project;
- 59.3.3 [redacted]
- 59.3.4 comply with the ERDF Publicity Guidelines.

59.4 The parties will consult and seek the others prior approval to the release of such Publicity Material, such consent not to be unreasonably withheld or delayed (provided that either party shall not be required to give its consent to the release of any Publicity Material where ERDF has not given its consent to the release of such Publicity Material).

## **60. SEVERANCE**

If any provision of this Agreement is held invalid, illegal or unenforceable for any reason by any court of competent jurisdiction, such provision shall be severed without effect to the remaining provisions. If a provision of this Agreement that is fundamental to the accomplishment of the purpose of this Agreement is held to any extent to be invalid, the Contractor and the Authority shall immediately commence good faith negotiations to remedy that invalidity.

## **61. FURTHER ASSURANCES**

Each party undertakes at the request of the other, and at the cost of the requesting party to do all acts and execute all documents which may be necessary to give effect to the meaning of this Agreement.

## **62. ENTIRE AGREEMENT**

62.1 This Agreement, together with its schedules, appendices and annexes, constitutes the entire agreement and understanding between the parties in respect of the matters dealt with in it and supersedes, cancels and nullifies any previous agreement between the parties in relation to such matters.

62.2 Each of the parties acknowledges and agrees that in entering into this Agreement and the documents attached to it does not rely on, and shall have no remedy in respect of, any statement, representation, warranty or undertaking (whether negligently or innocently made) other than as expressly set out in this Agreement or any of the documents attached or referred to in it. The only remedy available to either party in respect of any such statements, representation, warranty or understanding shall be for breach of contract under the terms of this Agreement.

62.3 Nothing in this clause 62 (Entire Agreement) shall operate to exclude any liability for fraud.

## **63. THIRD PARTY RIGHTS**

63.1 Subject to clause 40 (Confidentiality), a person who is not a party to this Agreement has no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Agreement but this does not affect any right or remedy of any person which exists or is available otherwise than pursuant to that Act.



63.2 Any rights created under clause 63.1 may be altered or extinguished by the parties without the consent of the third party beneficiaries.

#### **64. NOTICES**

64.1 Any notices given under or in relation to this Agreement shall be in writing, signed by or on behalf of the party giving it and shall be served by delivering it personally or by sending it by pre-paid first class post, recorded delivery or registered post to the address and for the attention of the relevant party notified for such purpose or to such other address as that party may have stipulated in accordance with this clause or by email, provided that the requirement for the notice to be in writing and signed shall not apply to notices served by email.

64.2 A notice shall be deemed to have been received:

64.2.1 if delivered personally, at the time of delivery;

64.2.2 in the case of pre-paid first class post, recorded delivery or registered post delivery on the second Working Day after the date of posting; and

64.2.3 in the case of email, at the time that the email enters the email system of the intended recipient as evidenced by a delivery receipt provided that no error message indicating failure to deliver has been received by the sender and provided that within (twenty four) 24 hours of transmission a hard copy of the email signed by or on behalf of the person giving it is sent by post to the intended recipient in accordance with clause 64.1.

64.3 The postal and e-mail addresses of the parties for the purposes of this clause are:

Cumbria CC Headquarters The Courts, Carlisle, Cumbria, CA3 8NA  info@cumbria.gov.uk	British Telecommunications Plc 81 Newgate Street, London, EC1A 7AJ
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64.4 In proving service, it shall be sufficient to prove that the envelope containing the notice was addressed to the relevant party at its address set out in clause 64.3 above or as otherwise notified by that party and delivered either to that address or into the custody of the postal authorities as pre-paid first class post, recorded delivery, registered post or airmail letter, in the case of email that the notice was sent to the email address set out in clause 64.3 and a delivery receipt (with no error message) was obtained and that the envelope containing the copy of the notice was addressed and delivered as set out in clause 64.1.

#### **65. VARIATION**

No variation of this Agreement or any of the documents referred to in it shall be valid unless it is in writing signed by or on behalf of each of the parties.

#### **66. GOVERNING LAW AND JURISDICTION**

This Agreement shall be governed by and construed in accordance with laws of England and Wales and without prejudice to the Dispute Resolution Procedure each party agrees to submit to the exclusive jurisdiction of the courts of England and Wales.

**THE COMMON SEAL** of )  
**CUMBRIA COUNTY COUNCIL** )  
was hereunto affixed in )  
the presence of: )

Authorised  
Signatory .....

Signed for and on behalf of **BRITISH** )  
**TELECOMMUNICATIONS PLC:** )

Signature .....

Name (block capitals) .....

Redacted contract