

# Contract Summary

---

Key Provisions of the Agreement in Respect of the National  
Broadband Intervention Project

---

# Introduction

## Context

*This Document provides an outline of the key contractual provisions of the Agreement between NBI and the Department of the Environment, Climate and Communications for the rollout of the National Broadband Plan.*

*The Agreement is divided into Sections A – M. Each Section contains a number of Clauses, that deal with a specific theme. Underlying the Sections are Schedules, that provide further detail on the relevant Clauses. Some Schedules also have appendices and Annexes attached.*

*This document provides a summary of each Section of the Agreement and the key Schedules and their Appendices and Annexes. It is intended to provide readers with an overview of the Agreement and indicate where further detail regarding specific provisions can be identified. It is important to note that not every Clause or Schedule is included in this document and it is not an exhaustive list. In particular, it should be noted that Schedule 3 comprises the original Tender that NBI submitted to DECC in respect of the National Broadband Plan; as such it is NBI's commercially sensitive solution to the DECC's requirements and so the specifics relating to same are not referenced in any detail here. In any case, while Schedule 3 is contractually binding, it is subordinate to the other Clauses and Schedules of the Agreement. This means that where there is a conflict between Schedule 3 and the rest of the Agreement, the provisions of the Agreement prevail, save where Schedule 3 would give rise to a safer and more conservative result from the Minister's perspective and/or a higher standard of work, service, products or network than that contemplated by the Agreement.*

|                         |                    |              |              |              |              |              |                    |              |                        |                |
|-------------------------|--------------------|--------------|--------------|--------------|--------------|--------------|--------------------|--------------|------------------------|----------------|
| 1. Overview of Contract | 2. Section A and B | 3. Section C | 4. Section D | 5. Section E | 6. Section F | 7. Section G | 8. Section H and I | 9. Section J | 10. Section K, L and M | 11. Appendices |
|-------------------------|--------------------|--------------|--------------|--------------|--------------|--------------|--------------------|--------------|------------------------|----------------|

## Contents

|                    |                    |
|--------------------|--------------------|
| Overview           | <a href="#">3</a>  |
| Section A and B    | <a href="#">16</a> |
| Section C          | <a href="#">29</a> |
| Section D          | <a href="#">38</a> |
| Section E          | <a href="#">45</a> |
| Section F          | <a href="#">50</a> |
| Section G          | <a href="#">54</a> |
| Section H and I    | <a href="#">57</a> |
| Section J          | <a href="#">62</a> |
| Section K, L and M | <a href="#">64</a> |
| Appendix 1         | <a href="#">71</a> |
| Appendix 2         | <a href="#">81</a> |
| Appendix 3         | <a href="#">82</a> |

# Introduction

## How is the Agreement Structured?

|                         |                    |              |              |              |              |              |                    |              |                        |                |
|-------------------------|--------------------|--------------|--------------|--------------|--------------|--------------|--------------------|--------------|------------------------|----------------|
| 1. Overview of Contract | 2. Section A and B | 3. Section C | 4. Section D | 5. Section E | 6. Section F | 7. Section G | 8. Section H and I | 9. Section J | 10. Section K, L and M | 11. Appendices |
|-------------------------|--------------------|--------------|--------------|--------------|--------------|--------------|--------------------|--------------|------------------------|----------------|

### The Agreement

#### Clause 1 - 94

The Agreement is divided into Sections A – M. Every Section has a number of Clauses, that deal with different topics

#### The Schedules

The Schedules provide more detailed information on the matters addressed in the Clauses of the Agreement

#### Appendices & Annexes

Certain Schedules also have Appendices or Annexes. These provide further detail such as lists, maps, forms or calculations

| Clause 1- 24                   | Clause 27- 41                          | Clause 42- 44                                       | Clause 45- 50                 | Clause 51- 53     | Clause 54- 60 | Clause 61- 69          | Clause 70- 71 | Clause 72- 94                   |
|--------------------------------|--|---|-------------------------------|-------------------|---------------|------------------------|---------------|---------------------------------|
| Schedule 1 – Definitions       |  |   |                               |                   |               |                        |               |                                 |
| 2.1 Technical Specification    | 2.6 Communications, Demand Stimulation | 2.8 Key Subcontractor Provisions                    | 6.2 Change Control            | 3.8 Key Personnel |               | 2.7 NBPco Requirements |               | 6.1 Contract Liaison Board      |
| 2.2 Reference Offers           | 5.1 Subsidy Payment                    | 3.9 Key Subcontractors                              | 6.3 Dispute Resolution        |                   |               | 5.6 Required Insurance |               | 6.9 Consequences of Termination |
| 2.3 Deployment                 | 5.2 Wholesale Price Rules              | 6.5 Reports and Records                             | 6.5 Reports and Records       |                   |               | 7.6 Guarantees         |               | 10 Termination Events           |
| 2.4 Operational Performance    | 5.3 Project Financial Model            | 6.13 Ministerial Oversight of Procurement Processes | 6.10 Independence & Assurance |                   |               | 7.7 Share Charge       |               | 6.1 - Appendix 1                |
| 2.5 Environmental              | 5.4 ERDF Funding                       | 7.1-7.5 Form of Contracts                           | 6.11 Audits                   |                   |               | 2.7 - Appendix 1       |               |                                 |
| 3.4 Solution - Reference Offer | 5.5 Accounting Separation              | 6.5 - Appendix 1                                    | 6.12 Benchmarking             |                   |               |                        |               |                                 |
| 4 Relief Events                | 5.7 Financial Distress                 | 6.5.1 - Annex 1                                     | 6.2 - Annex 1                 |                   |               |                        |               |                                 |
| 6.4 Future Proofing            | 5.1 - Appendix 2                       | 6.5 - Appendix 2                                    | 6.2 - Annex 3                 |                   |               |                        |               |                                 |
| 6.7 Performance Levels         | 5.1 - Appendix 4                       | 6.5.2 - Annex 1                                     | 6.2 - Annex 4                 |                   |               |                        |               |                                 |
| 6.8 Defaults & Remedial Plan   | 5.1 - Appendix 5                       |   | 6.2 - Annex 5                 |                   |               |                        |               |                                 |
| 2.3 - Appendix 3               | 5.2 - Appendix 1                       |   | 6.3 - Appendix 2              |                   |               |                        |               |                                 |
| 2.3 - Appendix 4               | 5.2 - Appendix 3                       |   |                               |                   |               |                        |               |                                 |
| 2.4 - Appendix 1               | 5.3 - Appendix 6                       |   |                               |                   |               |                        |               |                                 |
| 2.4 - Appendix 2               | 5.3 - Appendix 7                       |   |                               |                   |               |                        |               |                                 |
| 6.7 - Appendix 1               | 5.7 - Appendix 3                       |   |                               |                   |               |                        |               |                                 |
|                                | 5.7 - Annex 1                          |   |                               |                   |               |                        |               |                                 |

# Introduction

## What do I need to understand about the Agreement?

|                         |                    |              |              |              |              |              |                    |              |                        |                |
|-------------------------|--------------------|--------------|--------------|--------------|--------------|--------------|--------------------|--------------|------------------------|----------------|
| 1. Overview of Contract | 2. Section A and B | 3. Section C | 4. Section D | 5. Section E | 6. Section F | 7. Section G | 8. Section H and I | 9. Section J | 10. Section K, L and M | 11. Appendices |
|-------------------------|--------------------|--------------|--------------|--------------|--------------|--------------|--------------------|--------------|------------------------|----------------|

### The Services / NBPCo Solution


The Services / NBPCo Solution are the terms used to describe all of the activities required for NBPCo to deliver broadband across the Intervention Area including:

1. undertaking and completion of Detailed Design and Network Deployment;
2. implementation and completion of the Implementation Programme and Project Plans, the Wholesale Product Roadmap, Technology Roadmap and Wholesale Product & Coverage Template;
3. the provision, operation and maintenance of the Network and the Operational Environment;
4. Demand Stimulation; and
5. provision of the Wholesale Products and monitoring and reporting on the Services, Network and Wholesale Products.

### The Key Deliverables

#### The Network

This is the passive and active electronic communications network that is used to deliver the Wholesale Products that ultimately reach End Users

An illustration of a hand holding a tree-like structure. The trunk is a hand pointing upwards. The branches are composed of various communication icons such as a speech bubble, a music note, a smiley face, a mail envelope, a person icon, a thumbs up, a gear, a plus sign, and a globe. The background is light blue with faint icons.

#### The Products

**Wholesale Products** are the technical products NBI must make available. There are three kinds of Wholesale Product – Active Access, Passive Access and Passive Backhaul,

**Wholesale Service Providers** are the customers of NBI that purchase the Wholesale Products, for resale to a Retail Service Provider.

**Retail Service Providers** are customers of either NBI or a Wholesale Service Provider whose use of the Wholesale Products is only for onward direct sale to an End User in the Intervention Area, although NBI does not sell products directly to End Users. **End Users** are the customers in the Intervention Area who purchase the products for use in their homes and businesses.

An illustration of a desk setup. On the desk is a computer monitor displaying a webpage, a laptop, a pair of blue headphones, and a small blue mug. There are two white pendant lamps hanging above the desk. A window in the background shows a city skyline.

### The Plans

The **Network Deployment Plan** describes how the Network will be designed and built, including the implementation of all Equipment such as the infrastructure, equipment, facilities, software and hardware.

The **Technology Roadmap** shows all major architectural and technology changes and upgrades for the Network and Equipment over a rolling ten year period

The **Wholesale Product Roadmap** provides information on product testing, product availability and enhancement of functionality/processes associated with the Universal Wholesale Gateway over a rolling ten year period,

An illustration of a winding road with a dashed center line and a solid arrow at the end pointing towards the right. The road is grey and set against a light green background.

# Introduction

## How the Intervention Area is divided

The Intervention Area (IA) is the entire area that NBPco must deliver broadband for and is divided into a number of geographic areas known as Deployment Areas. The IA is a static contiguous geographic area and cannot be amended without going through the Change Control Procedure. The Premises within the IA are dynamic and can change for a number of reasons, including updates to the GeoDirectory.

|                         |                    |              |              |              |              |              |                    |              |                        |                |
|-------------------------|--------------------|--------------|--------------|--------------|--------------|--------------|--------------------|--------------|------------------------|----------------|
| 1. Overview of Contract | 2. Section A and B | 3. Section C | 4. Section D | 5. Section E | 6. Section F | 7. Section G | 8. Section H and I | 9. Section J | 10. Section K, L and M | 11. Appendices |
|-------------------------|--------------------|--------------|--------------|--------------|--------------|--------------|--------------------|--------------|------------------------|----------------|

### Dividing the rollout into areas – Deployment Areas

- Include all Premises in a defined contiguous geographic area;
- each and every Premises within the relevant Deployment Area is identified;
- each include all Premises served by a single OLT (Optical Line Termination) in its OLT Service Area (Premises in the Technical Solution which are connected to the OLT in the Detailed Design); and
- identifies each Premises by Eircode or, in respect of Strategic Community Points which do not have an Eircode, by the geolocation coordinate identifier.

Every Premises in the Intervention Area must be included in a Deployment Area with a total maximum of two hundred and thirty (230) Deployment Areas.

The following Milestones will apply to each Deployment Area:

- M1 Milestone (Detailed Design Complete); and
- M2 Milestone (Network Deployment Complete).

### Strategic Community Points

For the purposes of Passing and Connecting of Strategic Community Points (SCPs), NBPco must plan its Network Deployment to the Priority 1, the Priority 2, and the Priority 3 Strategic Community Points on a stand-alone basis, separate from the Deployment Area Plans. The following milestones will apply to the SCPs:

- the P4B1-M1 Milestone (Priority 1 Strategic Community Points Detailed Design Complete);
- P4B.1 Milestone (100% of Priority 1 Strategic Community Points Passed),
- the P4B2-M1 Milestone (Priority 2 Strategic Community Points Detailed Design Complete);
- P4B.2 Milestone (100% of Priority 2 Strategic Community Points Passed),
- the P4B3-M1 Milestone (Priority 3 Strategic Community Points Detailed Design Complete);
- P4B.3 Milestone (100% of Priority 3 Strategic Community Points Passed).

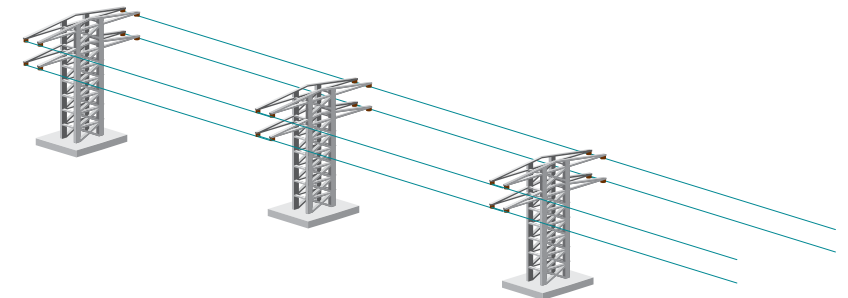
### Dividing the rollout into areas – Rollout Areas

The Intervention Area is also divided into a number of geographic areas known as Rollout Areas which must be defined in the NBPco Solution so that:

- each includes all Premises in a defined contiguous geographic area;
- each and every Premises within the relevant geographic area is identified and identifiable;
- each includes all Premises served by one or more OLT Service Areas; and
- identify each Premises by Eircode or, in respect of Strategic Community Points which do not have an Eircode, by the geolocation coordinate identifier applicable to it.

Appendix 6 of Schedule 2.3 maps each of the Deployment Areas to one of the 110 Rollout Areas.

Each M3 Milestone (Rollout Area Complete) must have a Milestone Date for Achieving that Milestone for the respective Rollout Area, which date must be set out in the Network Deployment Plan.



# Introduction

## Premises Passed

This means a Premises is capable of being connected to the Network. It is when a Premises (for which the wireline network has a distribution point that is sufficiently close or, for which the wireless network has sufficient signal quality) to that Premises such that the Minimum Bitstream Wholesale Product can be provisioned for that Premises within the service provisioning targets outlined in Appendix 1 of Schedule 2.4. There are a number of different types of Premises within the Intervention Area, including:

### Types of Premises

- **Type 1 Premises:** means an **Existing Premises** identified within the Intervention Area prior to the Commencement Date and **available for Detailed Design** in advance of Network being rolled out (pre-design build).
- **Type 2 Premises** means an **Existing Premises** within the Intervention Area **not identified prior to the Commencement Date** and subsequently identified on the most recent Quarterly GeoDirectory release relevant to the Intervention Area prior to its respective Deployment Area Network rollout commencement date
- **Type 3 Premises** means a **New Premises** identified in the End User Information Management Data Sources as at the date **6 months prior** to the date that NBPCo is due to **complete Detailed Design** for the relevant Deployment Area as notified by NBPCo to the Minister in a timely manner.
- **Type 4 Premises** means a **New Premises** identified in the End User Information Management Data Sources as at the date **6 months prior** to the date that NBPCo **substantially commences any build, lay, rollout or installation activity** of Network Deployment in the relevant Deployment Area, in accordance with the Detailed Design for the Deployment Area.

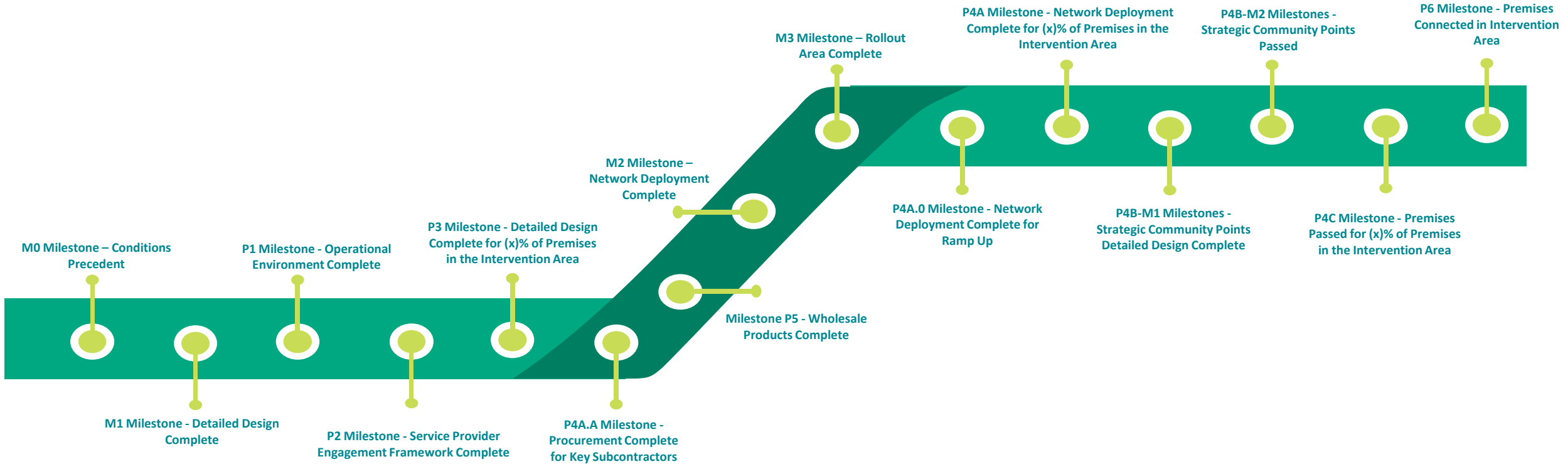
|                         |                    |              |              |              |              |              |                    |              |                        |                |
|-------------------------|--------------------|--------------|--------------|--------------|--------------|--------------|--------------------|--------------|------------------------|----------------|
| 1. Overview of Contract | 2. Section A and B | 3. Section C | 4. Section D | 5. Section E | 6. Section F | 7. Section G | 8. Section H and I | 9. Section J | 10. Section K, L and M | 11. Appendices |
|-------------------------|--------------------|--------------|--------------|--------------|--------------|--------------|--------------------|--------------|------------------------|----------------|



# Introduction

## The Milestones

|                         |                    |              |              |              |              |              |                    |              |                        |                |
|-------------------------|--------------------|--------------|--------------|--------------|--------------|--------------|--------------------|--------------|------------------------|----------------|
| 1. Overview of Contract | 2. Section A and B | 3. Section C | 4. Section D | 5. Section E | 6. Section F | 7. Section G | 8. Section H and I | 9. Section J | 10. Section K, L and M | 11. Appendices |
|-------------------------|--------------------|--------------|--------------|--------------|--------------|--------------|--------------------|--------------|------------------------|----------------|



|                         |                    |              |              |              |              |              |                    |              |                        |                |
|-------------------------|--------------------|--------------|--------------|--------------|--------------|--------------|--------------------|--------------|------------------------|----------------|
| 1. Overview of Contract | 2. Section A and B | 3. Section C | 4. Section D | 5. Section E | 6. Section F | 7. Section G | 8. Section H and I | 9. Section J | 10. Section K, L and M | 11. Appendices |
|-------------------------|--------------------|--------------|--------------|--------------|--------------|--------------|--------------------|--------------|------------------------|----------------|

## Subsidy Payments – Deployment Milestone Payments

These amounts are payable (on a DA-by-DA basis) upon Achievement of Deployment Payment Milestones. These are fixed amounts paid on Achievement\* of **M0, M1 and M2 milestones**.

Payment is subject to the PE Test and the State Aid Intensity Test.

NBPco is entitled to submit a **Deployment Milestone Payment Claim (DMPC)** when the Independent Certifier has issued the Milestone Achievement Certificate and for M1 Milestones only, the Minister has issued an Authority to Proceed Certificate. The Minister must make the payment in Euro within thirty days of receipt of a valid DMPC or where the original DMPC was deficient and was returned to NBPco, within thirty days of receipt of the original DMPC provided that an acceptable replacement DMPC was received by the Minister at least ten days prior to the thirty day deadline. Each DMPC should contain the following information:

- the date of the DMPC and a unique DMPC number;
- the unique Deployment Area Milestone, Deployment Payment Milestone and Deployment Milestone Payment references (as applicable);
- the period and activity to which the DMPC relates;
- the correct reference for this Agreement;
- for an M1 Milestone for a Deployment Area, the total Permitted Expenditure Passed (DA) incurred by NBPco directly in relation to the Achievement of that M1 Milestone for that Deployment Area;
- for an M2 Milestone:
  - the total Permitted Expenditure Passed (DA) incurred: directly in relation to the Achievement of that M2 Milestone for that Deployment Area; in respect of Deferred Premises (if any) that have been included in the Milestone Achievement Report for the Achievement of that M2; and incurred in respect of Expensive Premises (if any) that have been included in the Milestone Achievement Report for the Achievement of that M2; and
  - details of the amount of the Permitted Expenditure Passed (DA) that was incurred by NBPco in respect of each ERDF Programme Area;
- for an M0 Milestone, an updated calculation of the PE Test;
- an invoice, including the Milestone Achievement Certificate and, if applicable, Change Authorisation and/or the Authority to Proceed Certificate numbers for the relevant Deployment Payment Milestone;
- for an M1 or M2 Milestone, reference to the DMPC Supporting Documentation;
- the contact name and telephone number of the NBPco Representative; and the banking details for payment to NBPco via electronic transfer of funds

\*Achievement of a Milestone means that a Milestone Achievement Certificate has been issued by the Independent Certifier.



|                         |                    |              |              |              |              |              |                    |              |                        |                |
|-------------------------|--------------------|--------------|--------------|--------------|--------------|--------------|--------------------|--------------|------------------------|----------------|
| 1. Overview of Contract | 2. Section A and B | 3. Section C | 4. Section D | 5. Section E | 6. Section F | 7. Section G | 8. Section H and I | 9. Section J | 10. Section K, L and M | 11. Appendices |
|-------------------------|--------------------|--------------|--------------|--------------|--------------|--------------|--------------------|--------------|------------------------|----------------|

## Subsidy Payments – Ongoing Capital Payments

These are payable on a Quarterly basis on achievement of **M2 Deployment Payment Milestones**. They are streams of quarterly payments commencing each time a DA Achieves M2 and ending on the end of the 10th Contract Year. These Ongoing Capital Payments are subject to the application of Delay Penalties and Performance Credits and any adjustment as a result of the application of Build Related Contract Assumptions and Post Build Contract Assumptions. They are calculated as follows:

$$TOCP_n = \left( \sum_{1}^m OCP_{nm} \right) + OCP_{na} - (PC_{n-1})$$

**PC<sub>n-1</sub>** is the Performance Credits in respect of NBPco's performance in Quarter n-1, calculated in accordance with Paragraph 10 (Performance Points and Performance Credits).

**OCP<sub>na</sub>** is the is the Ongoing Capital Payment adjustment amount for Quarter n stated in Table 2 (Ongoing Capital Payments Adjustments) of Appendix 3 (Ongoing Capital Payments);

**OCP<sub>nm</sub>** is the Ongoing Capital Payment for Quarter n payable by the Minister in respect of each M2 Deployment Payment Milestone that has been Achieved prior to the end of Quarter n, where:

- If the relevant Deployment Payment Milestone was Achieved in a Quarter prior to Quarter n, the OCP for that Deployment Payment Milestone in Quarter n is set out in Table 1 of Appendix 3;
- If the relevant Deployment Payment Milestone was Achieved in Quarter n and was not delayed by more than twenty-eight days, the Ongoing Capital Payment for that Deployment Payment Milestone in Quarter n must be pro-rated according to the ratio of the number of days delayed to the number of days in that Quarter; and
- From the first day of the third Contract Year, where the Achievement of a M2 Deployment Payment Milestone is Delayed by more than twenty-eight days then the Ongoing Capital Payment amount to be included in the calculation must be equal to €0 for all Quarters until the Quarter in which the relevant Delayed Deployment Payment Milestone is Achieved, in which case the OCP must be calculated as:

$$OCP_{nm} = \left( \sum_p^n (OCP_m \times R_q) \right) - (SV \times (D - 28))$$

- **OCP<sub>nm</sub>** is the Ongoing Capital Payment (in respect of that relevant Delayed Deployment Payment Milestone from the Quarter p in which the relevant Delayed Deployment Payment Milestone was planned to be Achieved (i.e. the Milestone Date) to the Quarter n in which the relevant Delayed Deployment Payment Milestone is actually Achieved (inclusive);
- **OCP<sub>m</sub>** is the Ongoing Capital Payment that would be payable by the Minister as set out in Table 1: Ongoing Capital Payments of Appendix 3 (Ongoing Capital Payments);
- $R_q$  equals the number of days within the period from Quarter p to Quarter n inclusive, that are after the Delayed Milestone Date divided the number of days within the period from Quarter p to Quarter n inclusive;
- **SV** is the delay payment per day of €x;
- **D** is the number of days of Delay to the Achievement of the relevant Delayed Deployment Payment Milestone.

Where the Ongoing Capital Payment for a Quarter results in a negative amount (the **“Reverse OCP”**) NBPco must pay the Minister the Reverse OCP within thirty days of the end of the Quarter to which the Ongoing Capital Payments relates. Where a M2 Deployment Payment Milestone is Achieved prior to its Milestone Date and the OCP Delay Payments Balance at the relevant time is positive, NBPco must be entitled to claim from the Minister, in addition to Ongoing Capital Payments an **“OCP Delay Reimbursement”** calculated as follows:  $OCPDR_m = SV \times E$

**SV** is the delay payment per day of €x;

**E** is the number of days early that the Milestone was Achieved (i.e. the number of whole days between the Milestone Achievement Date and the Milestone Date).

|                         |                    |              |              |              |              |              |                    |              |                        |                |
|-------------------------|--------------------|--------------|--------------|--------------|--------------|--------------|--------------------|--------------|------------------------|----------------|
| 1. Overview of Contract | 2. Section A and B | 3. Section C | 4. Section D | 5. Section E | 6. Section F | 7. Section G | 8. Section H and I | 9. Section J | 10. Section K, L and M | 11. Appendices |
|-------------------------|--------------------|--------------|--------------|--------------|--------------|--------------|--------------------|--------------|------------------------|----------------|

## Subsidy Payments – Ongoing Capital Payments

NBPco is required to submit an **Ongoing Capital Payment Claim (OCPC)** to the Minister on a **Quarterly basis** in respect of Quarters or part Quarters commencing on and from the later of the date on which the Milestone Achievement Criteria are satisfied for Deployment Payment Milestone of type M2.01, or the Milestone Date for Deployment Payment Milestone of type M2.01.

The Minister must make the payment in Euro within thirty days of receipt of a valid OCPC or where the original OCPC was deficient and was returned to NBPco, within thirty days of receipt of the original OCPC provided that an acceptable replacement OCPC was received by the Minister at least ten days prior to the thirty day deadline. Each OCPC should contain the following information:

- the date of the OCPC and a unique OCPC number;
- the Ongoing Capital Payment reference to which the OCPC relates;
- the Quarter to which the OCPC relates;
- the correct reference for this Agreement;
- the Performance Credits determined by the Minister in respect of NBPco's performance in the previous Quarter;
- the calculation of the total Ongoing Capital Payment, which must include a breakdown showing:
  - the Ongoing Capital Payment that would be payable by the Minister for a full Quarter as set out in Table 1: Ongoing Capital Payments of Appendix 3 prior to any adjustments;
  - if applicable, the change in the Ongoing Capital Payment agreed with the Minister in a Change Authorisation in accordance with Annex 6 of Schedule 6.2 as a result of the application of the Build Related Contract Assumptions;
  - if applicable, any adjustment to the Ongoing Capital Payment Claim in accordance with Paragraphs 11-13 (Conditional Exceptional Subsidy) of Annex 6 of Schedule 6.2;
  - if applicable, the change in the Ongoing Capital Payment agreed with the Minister in a Change Authorisation in accordance with Annex 5 of Schedule 6.2 as a result of the application of the Post Build Contract Assumptions;
  - if applicable, any adjustment in accordance with Paragraph 7 (Conditional Post Deployment Subsidy) of Annex 5 of Schedule 6.2 (Change Control Procedure);
  - the amount agreed in respect of the Ongoing Capital Payments and set out in any other Change Authorisation, together with the applicable reference numbers for such Change Authorisation(s);
  - the deduction of Performance Credits for the Quarter; and
  - the final calculation of the Ongoing Capital Payment, in accordance with the provisions of Paragraph 8 (Ongoing Capital Payments) of this Schedule 5.1 (Subsidy Payments).
- a copy of the latest CA Tracker which must include calculations detailing the amount of Conditional Build Related Subsidy, Equipment and Materials Cap, Conditional Exceptional Subsidy and Conditional Post Deployment Subsidy prior to the submission of the OCPC; and assuming the OCPC is accepted as valid and paid by the Minister;
- a copy of the latest approved PE Tracker;
- an updated calculation of the PE Test assuming the DMPC is accepted as valid and paid by the Minister;
- a contact name and telephone number of the NBPco Representative (or a responsible person in NBPco's finance department) in the event of administrative queries; and
- the banking details for payment to NBPco via electronic transfer of funds (i.e. name and address of bank, account name, BIC (Bank Identifier Code) and IBAN (International Bank Account Number)).

|                         |                    |              |              |              |              |              |                    |              |                        |                |
|-------------------------|--------------------|--------------|--------------|--------------|--------------|--------------|--------------------|--------------|------------------------|----------------|
| 1. Overview of Contract | 2. Section A and B | 3. Section C | 4. Section D | 5. Section E | 6. Section F | 7. Section G | 8. Section H and I | 9. Section J | 10. Section K, L and M | 11. Appendices |
|-------------------------|--------------------|--------------|--------------|--------------|--------------|--------------|--------------------|--------------|------------------------|----------------|

## Subsidy Payments – Connection Milestone Payments

These amounts are payable upon achievement of Connection Payment Milestones (**P6 Milestone**). A Connection Payment Milestone is achieved for every 1,000 new Premises Connected up to 469,000 new Premises Connected. They are payments of capital related subsidy provided by the Minister in respect of Permitted Expenditure Connect and are not payments in respect of Permitted Expenditure Passed. The intention of the Connection Milestone Payments is to incentivise NBPco to Achieve the Connection Payment Milestones.

NBPco is entitled to submit a **Connection Milestone Payment Claim** when the Independent Certifier has issued the Milestone Achievement Certificate in respect of the Connection Payment Milestone. The Minister must make the payment in Euro within thirty days of receipt of a valid CMPC or where the original CMPC was deficient and was returned to NBPco, within thirty days of receipt of the original CMPC provided that an acceptable replacement CMPC was received by the Minister at least ten days prior to the thirty day deadline. Each CMPC should contain the following information:

- the date of the CMPC and a unique CMPC number;
- the unique Connection Payment Milestone and Connection Milestone Payment references;
- the period, amount and Connection activity to which the CMPC relates;
- the correct reference for this Agreement;
- an invoice specifying the Connection Milestone Payment due in respect of the Achievement of the Connection Payment Milestone (gross and net of any deductions), including the Milestone Achievement Certificate number for the relevant Connection Payment Milestone;
- the contact name and telephone number of the NBPco Representative (or a responsible person in NBPco's finance department) in the event of administrative queries;
- the banking details for payment to NBPco via electronic transfer of funds (i.e. name and address of bank, account name, BIC (Bank Identifier Code) and IBAN (International Bank Account Number)); and
- reference to the CMPC Supporting Documentation.
- NBPco must ensure that each CMPC is at all times accompanied by:
  - the CMPC Supporting Documentation in respect of the Connections included in the CMPC; and
  - copies of any applicable Milestone Achievement Certificates and Change Authorisations,

|                         |                    |              |              |              |              |              |                    |              |                        |                |
|-------------------------|--------------------|--------------|--------------|--------------|--------------|--------------|--------------------|--------------|------------------------|----------------|
| 1. Overview of Contract | 2. Section A and B | 3. Section C | 4. Section D | 5. Section E | 6. Section F | 7. Section G | 8. Section H and I | 9. Section J | 10. Section K, L and M | 11. Appendices |
|-------------------------|--------------------|--------------|--------------|--------------|--------------|--------------|--------------------|--------------|------------------------|----------------|

## Subsidy Payments – Additional Connection Milestone Payments

These amounts are payable upon Achievement of Connection Payment Milestones (**P6 Milestones**), following the same process outlined for CMPC payments. They are paid by the Minister or NBPco in respect of the excess or shortfall of actual per-Premise Connection costs over the per-Premise Connection Milestone Payments (less Customer Contributions). If NBPco incurred excess actual connection costs, the Minister will be responsible for 85% of those costs. If there is a cost saving, NBPco must pay 75% of the saving to the Minister.

NBPco must ensure that each ACMPC contains the following information:

- the date of the ACMPC and the period, amount and Connection activity to which it relates;
- a unique ACMPC number and corresponding CMPC number for the relevant Connection Payment Milestone;
- the following information in respect of the Connections to which the Connection Payment Milestone relates:
  - the addresses of the Premises where the cost of the completed Connection Cost exceeded AMCCn and the dates on which the Premises where the Connection Cost exceeded AMCCn were completed;
  - the number of each type of Connection, whether Initial Standard Connections or Initial Non-Standard Connections;
  - the number of Connections relating to each relevant scenario of Initial Standard Connection as set out in Appendix 1 of Schedule 2.4 (Operational Performance);
  - the number of Connections of Initial Non-Standard Connections;
  - the Connection Payment Milestone ID or IDs to which the Connections relate;
  - the type of new Infrastructure required for the Connections which exceeded AMCCn including an itemised breakdown of poles, ducts and other costs. Where the Connection is an Initial Non-Standard Connection, this information should be provided in respect of the Initial Standard Connection offered by NBPco and the actual Connection solution implemented;
  - the amount of ACMP Cap remaining both prior to and following the deduction of the ACMPC;
  - calculations of the Additional Connection Milestone Payment in accordance with Paragraph 6B (Additional Connection Milestone Payments) of this Schedule 5.1 (Subsidy Payments);
  - the correct reference for this Agreement;
  - where an ACMP is due from the Minister to NBPco, an invoice specifying the Additional Connection Milestone Payment due;
  - the contact name and telephone number of the NBPco Representative (or a responsible person in NBPco's finance department) in the event of administrative queries; and
  - where an ACMP is due from the Minister to NBPco, the banking details for payment to NBPco via electronic transfer of funds (i.e. name and address of bank, account name, BIC (Bank Identifier Code) and IBAN (International Bank Account Number)); and
- reference to the CMPC Supporting Documentation.
- NBPco must ensure that each ACMPC is at all times accompanied by:
  - the CMPC Supporting Documentation in respect of the Connections included in the ACMPC; and
  - copies of any applicable Milestone Achievement Certificates and Change Authorisations,

# Introduction

|                         |                    |              |              |              |              |              |                    |              |                        |                |
|-------------------------|--------------------|--------------|--------------|--------------|--------------|--------------|--------------------|--------------|------------------------|----------------|
| 1. Overview of Contract | 2. Section A and B | 3. Section C | 4. Section D | 5. Section E | 6. Section F | 7. Section G | 8. Section H and I | 9. Section J | 10. Section K, L and M | 11. Appendices |
|-------------------------|--------------------|--------------|--------------|--------------|--------------|--------------|--------------------|--------------|------------------------|----------------|

## Subsidy Payments – Performance Credits

Performance Credits are calculated by reference to the number of Performance Points accrued in each Quarter. Schedule 6.7 (Performance Levels) outlines the circumstances in which performance credits may be incurred. The number of Performance Points that accrue to NBPco in respect of a KPI Failure is set out in Appendix 1 Schedule 6.7 depending on whether the KPI Failure is:

- a Minor KPI Failure;
- a Serious KPI Failure;
- a Severe KPI Failure;
- a failure to meet the KPI Performance Threshold; or
- a repeat KPI Failure.

For each Quarter (or part Quarter) during the Contract Period, the total Performance Points accrued are converted to a payment deduction (i.e. Performance Credit) that must be applied to the calculation of the Ongoing Capital Payment for the subsequent Quarter.

# Introduction

## Key Contractual Dates

|                         |                    |              |              |              |              |              |                    |              |                        |                |
|-------------------------|--------------------|--------------|--------------|--------------|--------------|--------------|--------------------|--------------|------------------------|----------------|
| 1. Overview of Contract | 2. Section A and B | 3. Section C | 4. Section D | 5. Section E | 6. Section F | 7. Section G | 8. Section H and I | 9. Section J | 10. Section K, L and M | 11. Appendices |
|-------------------------|--------------------|--------------|--------------|--------------|--------------|--------------|--------------------|--------------|------------------------|----------------|

|  |   |
|--|---|
| <b>First M2 Completion Date</b>            | <p><b>When:</b> The date on which the first M2 Level Milestone is completed</p> <p><b>What:</b> The date on which the first M2 Level Milestone Achievement Cert is provided</p> <p><b>Significance:</b> From this date, NBI is entitled to claim M2 Deployment Milestone Payments and Ongoing Capital Payments. These OCPs are also the subject of Performance Credits.</p>   |
| <b>Deployment Contract Viability Check</b> | <p><b>When:</b> <b>The first check date</b> is the date that is the earlier of the last day of the 4th Contract Year and the date on which Network Deployment Complete for 104 Deployment Areas is Achieved. <b>The second check date</b> is the date that is the earlier of the last day of the sixth (6th) Contract Year and the date on which Network Deployment Complete for 178 Deployment Areas is Achieved.</p> <p><b>What:</b> Determine the <i>Deployment Subsidy Checkpoint Variance</i> as a percentage of the <i>Conditional Deployment Subsidy Checkpoint Portion</i></p> <p><i>Deployment Subsidy Checkpoint Variance</i> is the difference between:</p> <ul style="list-style-type: none"> <li>▪ [(total Conditional actual Deployment Milestone Payments and Ongoing Capital Payments paid or payable to NBPco pursuant to Deployment Milestone Payment Claims and Ongoing Capital Payment Claims submitted by the relevant Deployment Contract Viability Check Date in respect of the Relevant M3 Deployment Areas; and</li> <li>▪ the Deployment Milestone Payments and Ongoing Capital Payments attributed, in the version of the Project Financial Model at the Effective Date, to the Relevant M3 Deployment Areas for the Contract Period,</li> </ul> <p><i>Conditional Deployment Subsidy Checkpoint Portion</i> is calculated using the following formula:</p> $\frac{\text{Total Conditional Deployment Subsidy at the Effective Date} \times (\text{aggregate cost of the Deployment Area Cost Templates at the Effective Date for the Relevant M3 Deployment Area})}{(\text{aggregate cost of the Deployment Area Cost Templates for all Deployment Areas at the Effective Date})}$ <p><b>Significance:</b> If the Deployment Subsidy Checkpoint Variance is less than 10% higher than the Conditional Deployment Subsidy Checkpoint Portion, then the Deployment Contract Viability Check is passed and the Agreement will continue as normal. If it is 10.0% (or more) higher than the Conditional Deployment Subsidy Checkpoint Portion, then the relevant Deployment Contract Viability Check is failed in which case Non-Default Termination may apply.</p> |
| <b>Five Year Review Date</b>               | <p><b>When:</b> The fifth anniversary of the Commencement Date and every five years thereafter (the "<b>Five Year Review Date</b>"),</p> <p><b>What:</b> A review will be completed by the Minister to assess the suitability and availability of Wholesale Products, Benchmark Reference Products, Benchmark Reference Prices, Benchmark Reference Performance Specifications and the Retail Pricing Rules, to ensure the attainment of the key objectives as set out in Paragraph 1 of Schedule 5.2, Clause 26 of Schedule 6.4, Paragraphs 3.5.1 and 5.4.7 of Schedule 2.1, Paragraph 4.1.3 of Schedule 2.2 and Paragraph 1.1 of Schedule 2.4 (Operational Performance),</p> <p><b>Significance:</b> The Five Year Review may result in a change to a particular Wholesale Product, Wholesale Products, Wholesale Prices, Wholesale Product Specifications, Benchmark Reference Products, Benchmark Reference Prices, Benchmark Reference Performance Specifications and the Retail Pricing Rules by application of the definition, principles and methodology set out in the provisions of Schedule 5.2.</p>   |
| <b>Market Testing Review Date</b>          | <p><b>When:</b> The date of the fifth anniversary of the Effective Date, the date that is the tenth anniversary of the Effective Date, the date that is the fifteenth anniversary of the Effective Date, the date that is the twentieth anniversary of the Effective Date and the date that is the twenty-fifth anniversary of the Effective Date.</p> <p><b>What:</b> A review will be completed by the Minister to assess whether a service or services provided by a Key Subcontractor under a Key Subcontract must be Good Value and to call for Tenders from other Parties.</p> <p><b>Significance:</b> The evaluation panel will select the most economically advantageous tender based on the evaluation criteria agreed in the Market Testing Procedure and will not be obliged to accept the lowest tender. Where the evaluation panel fails to agree which of the tenders is the most economically advantageous within 30 Working Days following the expiry of the tender period, any Dispute will be determined in accordance with the Dispute Resolution Procedure. The Employer will appoint any tenderer selected in accordance with the Market Testing Procedure as the applicable Key Subcontractor in respect of the market tested Key Subcontract services as soon as reasonably practicable.</p>   |
| <b>Deployment Completion Date</b>          | <p><b>When:</b> The date on which the Programme Level Milestone P4A.100 (which, for the avoidance of doubt, relates to Network Deployment Complete for one hundred percent (100%) of Premises in the Intervention Area) is Achieved</p> <p><b>What:</b> Date on which Network Deployment is complete.</p> <p><b>Significance:</b> This is the start of the <b>Operational Period</b>.</p>   |

# Introduction

## Key Contractual Dates

|                         |                    |              |              |              |              |              |                    |              |                        |                |
|-------------------------|--------------------|--------------|--------------|--------------|--------------|--------------|--------------------|--------------|------------------------|----------------|
| 1. Overview of Contract | 2. Section A and B | 3. Section C | 4. Section D | 5. Section E | 6. Section F | 7. Section G | 8. Section H and I | 9. Section J | 10. Section K, L and M | 11. Appendices |
|-------------------------|--------------------|--------------|--------------|--------------|--------------|--------------|--------------------|--------------|------------------------|----------------|

|  |   |
|--|---|
| <b>IRR Review Points</b>                 | <p><b>When:</b> the date that is ten years from the Effective Date (being the “First IRR Review Point”); the date that is fifteen years from the Effective Date (being the “Second IRR Review Point”); the date that is twenty years from the Effective Date (being the “Third IRR Review Point”); the earlier of the Termination Date or the Expiry Date (being the “Final IRR Review Point”); and any other time during the Contract Period that NBPCo is proposing to pay a Distribution to its Shareholders.</p> <p><b>What:</b> At each IRR Review Point, NBPCo must, prior to paying any Distribution to the Shareholders:<br/>         Calculate the <i>Outturn Clawback IRR</i> and <i>Provisional Clawback IRR</i>;<br/>         Calculate the <i>IRR Comparator</i>;<br/>         Only if the Provisional Clawback IRR is greater than the IRR Comparator, calculate the IRR Claw-Back Benefit, IRR Claw-Back Excess Benefit and IRR Claw-Back Amount;<br/>         Submit the calculations for the Minister’s review.</p> <p><b>Significance:</b> If the Provisional Clawback IRR is greater than the IRR Comparator, NBI must pay into the IRR Clawback Account the IRR Claw-Back Amount; and<br/>         Only after (or at the same time as) any positive IRR Claw-Back Amount has been paid into the IRR Clawback Account in accordance with Paragraph 16.7 (Over-Subsidy Claw-back: IRR), pay as the Distribution to the Shareholders an amount equal to (A) minus (B), where: <b>A</b> is the full amount that is available for distribution to Shareholders at that IRR Review Point that was included in the calculation of the Provisional Claw-Back IRR at that IRR Review Point; and <b>B</b> is the positive IRR Claw-Back Amount.</p>   |
| <b>Ten Year Contract Viability Check</b> | <p><b>When:</b> The 1<sup>st</sup> day of the 10th Contract Year.</p> <p><b>What:</b> Provide the Minister with a draft version of its Project Financial Model and Project Revenues for NBPCo for the Ten Year Contract Viability Check Review Period and expected Shareholder IRR within one week of the Check Date and an express statement of whether or not NBPCo is requesting Additional Subsidy and if so, the full details of the amount and profile of the requested Additional Subsidy.</p> <p><b>Significance:</b> If NBPCo does not request any Additional Subsidy in the NBPCo Ten Year Contract Viability Check Submission, NBPCo will continue to perform its obligations subject to, and in accordance with, the provisions of this Agreement.<br/>         If NBPCo requests any Additional Subsidy the Minister has six months to complete and issue a written outcome of the Ten Year Contract Viability Check.<br/>         If the Minister determines that NBPCo requires Additional Subsidy over the Ten Year Contract Viability Check Review Period the Minister must have the right (at its discretion) to:<br/>         - approve Additional Subsidy subject to State Aid and Procurement Law and proceed with a corresponding Change over some or all of the period starting at the beginning of the eleventh Contract Year and ending on the last day of the twenty-fifth Contract Year;<br/>         - issue a Termination Notice to NBPCo stating that the Minister is terminating the Agreement on the specific date in the notice, which must be between 30 and 90 Working Days after date of receipt of the Termination Notice; or<br/>         - take no further action in which case the provisions of this Agreement must continue to apply in all respects without modification (that is without any Additional Subsidy).</p> |
| <b>Expiry Date</b>                       | <p><b>When:</b> The date that is twenty-five 25 years from the Effective Date (except as may be altered pursuant to the provisions of this Agreement including Clause 71.8 (Force Majeure) and Clause 74.1 (Term of this Agreement and Service Continuity)).</p> <p><b>What:</b> Date the Contract ends.</p> <p><b>Significance:</b> It is the date of the <b>Terminal Value Review Point</b>, and the start of the <b>Service Continuity Period</b>, which runs for 10 years, should NBI choose to enter it.</p>   |
| <b>Terminal Value Review Point</b>       | <p><b>When:</b> Expiry Date</p> <p><b>What:</b> At the Terminal Value Review Point, the Terminal Value Claw-Back Amount must be calculated by the Minister</p> <p><b>Significance:</b> If the Terminal Value Claw-Back Amount is greater than zero at the Terminal Value Review Point, NBPCo must pay the Minister, at the same point in time as any Distributions are paid to Shareholders, an amount equal to the Distributions paid to the Shareholders until the Terminal Value Claw Back Amount is paid to the Minister in its entirety provided that, if the total amount of the Terminal Value Claw-Back Amount has not been paid in full to the Minister by the date which is three years from the Terminal Value Review Point (the “TV Longstop Date”), NBPCo must be required to pay the unpaid balance of the Terminal Value Claw-Back Amount to the Minister.</p>   |

# Section A and Section B

|                         |                    |              |              |              |              |              |                    |              |                        |                |
|-------------------------|--------------------|--------------|--------------|--------------|--------------|--------------|--------------------|--------------|------------------------|----------------|
| 1. Overview of Contract | 2. Section A and B | 3. Section C | 4. Section D | 5. Section E | 6. Section F | 7. Section G | 8. Section H and I | 9. Section J | 10. Section K, L and M | 11. Appendices |
|-------------------------|--------------------|--------------|--------------|--------------|--------------|--------------|--------------------|--------------|------------------------|----------------|

## Interpretation, Confirmations and Appointment; and The Services and Network







### Clauses

Sections A and B include Clauses 1 – 26 of the Agreement, which outline that NBPco has been appointed by the Minister to deliver broadband to the Intervention Area and provides details of the Services, Wholesale Products and Network required in order to do so.

In rolling out the National Broadband Plan, NBPco must act with due skill, care and diligence and ensure both it and the Wholesale Products and Network it delivers comply with all relevant Laws, regulations and the provisions of the Agreement. It must also act in accordance with Best Industry Practice. This means using the skill, diligence, prudence and foresight expected from a skilled, experienced and expert supplier in the Irish or United Kingdom electronic communications services and network industry and sector engaged to carry out similar activities.

NBPco must fully comply with and satisfy all aspects of the Service Requirements, NBPco Solution, Wholesale Product Roadmap, Technology Roadmap and Wholesale Product & Coverage Template that are outlined in Section B and the accompanying Schedules. It must procure, design, build, test, commission, connect, enable, InterConnect and complete the Network, including all Equipment forming part of the Network, Services and Wholesale Products and Pass Premises. Once this is complete, NBPco must operate, maintain and upgrade the Network, Wholesale Products and Services and it must undertake and generate Demand Stimulation and promote the Services, Wholesale Products and Network. It must connect and enable Wholesale Products to Service Providers in accordance with the Service Provider Terms, Reference Offer and at the Wholesale Prices and where necessary, connect and enable an End User Product to a Named Unserved End User.

### Schedules

|  |  |  |  |  |
|--|--|--|--|--|
| <br>2.1 | <br>2.2 | <br>2.3 | <br>2.4 | <br>2.5 |
| Technical Solution Specification   | Reference Offer Requirements   | Deployment Requirements  | Operational Performance  | Environmental  |
| <br>3.4 | <br>4   | <br>6.4 | <br>6.7 | <br>6.8 |
| NBPco Solution Reference Offers  | Relief Events  | Service, Network and Wholesale Product Compliance and Future Proofing                      | Performance Levels   | Persistent Default and Remedial Plan Process   |



# Section A and Section B

## Clause 1 – Clause 26

|                         |                    |              |              |              |              |              |                    |              |                        |                |
|-------------------------|--------------------|--------------|--------------|--------------|--------------|--------------|--------------------|--------------|------------------------|----------------|
| 1. Overview of Contract | 2. Section A and B | 3. Section C | 4. Section D | 5. Section E | 6. Section F | 7. Section G | 8. Section H and I | 9. Section J | 10. Section K, L and M | 11. Appendices |
|-------------------------|--------------------|--------------|--------------|--------------|--------------|--------------|--------------------|--------------|------------------------|----------------|

| Clause | Detail  |
|--------|---|
| 6.3    | NBPco provides general undertakings regarding the financing of operations, incorporation, trade and tax residency in Ireland, sale or transfer of trade or assets and granting of credit.   |
| 6.3    | NBPco must notify the minister of any pending litigation against NBPco, a Shareholder, Buildco, a Buildco Shareholder or a Critical Key Subcontractor.  |
| 6.7    | NBPco must provide the Minister with notice in the event that warranties previously given become incorrect or misleading.   |
| 7.3.4  | Any person may provide services or products within or from outside the Intervention Area that compete with the NBPco Network and Services (and, in particular, the Wholesale Products). This means NBPco does not have exclusive rights.  |
| 7.4    | NBPco must ensure the continuation of the Network, Wholesale Products and Services despite any withholding by the Minister or failure by the Minister to pay any Subsidies or the existence of a dispute between the parties.   |
| 7.7    | NBPco acknowledges and agrees that nothing in the Agreement fetters the Minister's discretion (or the discretion of Government or any other Public Service Body) to acquire, provide, invest in, fund or promote other projects similar to or competing with the Project or services, products or networks similar to or competing with the Services, Wholesale Products or Network in Ireland or elsewhere (provided that, for the avoidance of doubt, the Minister shall be subject to applicable requirements under State Aid Law in such case).<br>If, during the Similar Project Period, NBPco becomes aware of any proposal or confirmation that the Minister or a State Body proposes or intends to provide Subsidised State Aid to or in respect of a Similar Project, it shall be entitled to notify the Minister and to request that the Parties shall meet as soon as reasonably practicable with a view to discussing the effects of any such proposal or intention and any mitigating steps in respect of the Project and this Agreement which may be appropriate in respect of such proposal. For the avoidance of doubt, other than reasonable consultation, the Minister shall not be bound to take any particular steps or to accept a Change to this Agreement arising from such reasonable consultation. |
| 8.1    | NBPco must, throughout the Contract Period, support the Irish Government's policy objectives in relation to the Project by ensuring that the NBPco Solution:<br>is capable of providing high quality, reliable and affordable High Speed Broadband for one hundred percent (100%) of Premises in the Intervention Area;<br>is consistent with the provision of value for money in line with Best Industry Practice; and<br>is capable of underpinning Irish Government policy on economic jobs and recovery.  |
| 8.5    | NBPco must employ 10% of workers from registered apprenticeship schemes.  |

# Section A and Section B

## Clause 1 – Clause 26

|                         |                    |              |              |              |              |              |                    |              |                        |                |
|-------------------------|--------------------|--------------|--------------|--------------|--------------|--------------|--------------------|--------------|------------------------|----------------|
| 1. Overview of Contract | 2. Section A and B | 3. Section C | 4. Section D | 5. Section E | 6. Section F | 7. Section G | 8. Section H and I | 9. Section J | 10. Section K, L and M | 11. Appendices |
|-------------------------|--------------------|--------------|--------------|--------------|--------------|--------------|--------------------|--------------|------------------------|----------------|

| Clause | Detail   |
|--------|--|
| 9.2    | <p>NBPCo must discharge its duties with due skill, care and diligence and comply with, and ensure that the Services, Wholesale Products and Network comply with, all Laws in carrying out its obligations under this Agreement.</p> <p>NBPCo must fully comply with and satisfy all aspects of the Service Requirements, NBPCo Solution, Wholesale Product Roadmap, Technology Roadmap and Wholesale Product &amp; Coverage Template.</p> <p>It must procure, design, build, test, commission, connect, enable, InterConnect and complete the Network, including all Equipment forming part of the Network, Services and Wholesale Products and Pass Premises.</p> <p>NBPCo must operate, maintain and upgrade the Network, Wholesale Products and Services and it must undertake and generate Demand Stimulation and promote the Services, Wholesale Products and Network.</p> <p>It must connect and enable Wholesale Products to Service Providers in accordance with the Service Provider Terms, Reference Offer and at the Wholesale Prices and where necessary, connect and enable an End User Product to a Named Unserved End User.</p>   |
| 9.4    | All risk and liability is born by NBI and NBI must not be relieved of obligations or duties as a result of loss, damage, theft or destruction of the Network, Wholesale Products, Equipment, Third Party Infrastructure of Services (except Relief Events, Force Majeure and inaccurate Contract Assumptions).   |
| 10.4   | NBPCo must notify the Minister of any inconsistency between Service Requirements and NBPCo solution and within 10 days of notification provide additional detail and proposals for resolution.   |
| 11.1   | NBPCo must deliver the Project in compliance with the Performance Standards (including Best Industry Practice).  |
| 12.1   | There is an obligation to deliver the project in accordance with the: Implementation Programme, Project Plan, Wholesale Product Roadmap and Technology Roadmap   |
| 13.1   | Subject to Delay, Relief Event and Force Majeure exceptions, NBPCo must do all that is necessary to ensure the Achievement of Milestones.  |
| 14.2   | <p>NBPCo must deliver Network Deployment in compliance with the Project Agreement and provide the Network, Wholesale Products and Services in compliance with the Project Agreement.</p> <p>NBPCo must ensure from the point of Network Deployment Complete:</p> <ul style="list-style-type: none"> <li>- for each Deployment Area, all Wholesale Products are available to all Premises throughout the Deployment Area;</li> <li>- for the entire Intervention Area, all Wholesale Products are available to all Premises throughout the remainder of the Intervention Area;</li> <li>- for each New Deployment Area, all Wholesale Products are available to all Premises throughout the New Deployment Area;</li> </ul> <p>NBPCo must also ensure:</p> <ul style="list-style-type: none"> <li>- on and from Achievement of the relevant Milestone for each New Wholesale Product, the New Wholesale Product is available to all Premises throughout the Deployment Area(s) or Intervention Area;</li> <li>- the Assets are maintained to achieve their full Serviceable Life and in a safe and serviceable condition; and</li> <li>- any item of Equipment or part of the Network is replaced before it becomes unsafe, unreliable, unsuitable or unable to properly operate and function;</li> </ul> |

# Section A and Section B

## Clause 1 – Clause 26

|                         |                    |              |              |              |              |              |                    |              |                        |                |
|-------------------------|--------------------|--------------|--------------|--------------|--------------|--------------|--------------------|--------------|------------------------|----------------|
| 1. Overview of Contract | 2. Section A and B | 3. Section C | 4. Section D | 5. Section E | 6. Section F | 7. Section G | 8. Section H and I | 9. Section J | 10. Section K, L and M | 11. Appendices |
|-------------------------|--------------------|--------------|--------------|--------------|--------------|--------------|--------------------|--------------|------------------------|----------------|

| Clause | Detail  |
|--------|---|
| 14.3   | <p>Network Deployment and Network operation and maintenance should be provided in a way that:</p> <ul style="list-style-type: none"> <li>- minimises interference with the convenience of the public and access to public/private roads or footpaths;</li> <li>- does not damage health and safety, security or the environment;</li> <li>- tries not to cause any nuisance or damage to any property, person or the environment unless agreed with the Minister in a Change Authorisation</li> <li>- if applicable, ensures that all Construction Activities and Works are pro-actively undertaken by NBPco in consultation, co-operation and co-ordination with the Other NBP Supplier</li> </ul> |
| 15.1   | <p>NBPco must, as soon as reasonably practicable after discovery or notification of any Defect, repair or otherwise remedy it in a manner consistent with Best Industry Practice; and promptly enforce (and not by any act or omission waive or compromise) its rights, remedies and entitlements (if any) against any relevant Subcontractor or third party under any Subcontract, warranty, collateral warranty, guarantee or indemnity in a manner consistent with Best Industry Practice.</p>   |
| 15.2   | <p>If NBPco has not properly repaired or otherwise remedied a Defect as soon as reasonably practicable, the Minister may instigate the Remedial Plan Process with respect to that Defect.</p>   |
| 16.1   | <p>NBPco must ensure compliance with the Implementation Programme and Project Plans, and timely achievement of Milestones.</p>  |
| 17.1   | <p>NBPco must notify the Minister of a likely delay of 15 days or more in achieving a Milestone and comply with the Remedial Plan Process to address the impact of this delay.</p>  |
| 17.4   | <p>If a Milestone is not Achieved within 28 Days of the contractual Milestone Achievement Date, Ongoing Capital Payments will be reduced in line with the specified formula up to a maximum until the quarter in which the Milestone is Achieved.</p>   |
| 17.5   | <p>Disputes regarding Delays must be resolved through the Dispute Resolution Procedure and steps should be taken to mitigate delays throughout this process.</p>  |
| 18.2   | <p>NBPco can apply for relief where a Relief Event occurs by writing to the Minister within 10 Working Days of becoming aware that there has been an impacting Relief Event stating:</p> <ul style="list-style-type: none"> <li>- A claim for relief;</li> <li>- statement of which of the Relief Events has occurred;</li> <li>- date of occurrence and likely duration of the Relief Event;</li> <li>- if applicable length or likely length of the Delay</li> <li>- specific extension to any Milestone Dates and/or Longstop Date and relief from its obligations being requested</li> </ul>  |

# Section A and Section B

## Clause 1 – Clause 26

|                         |                    |              |              |              |              |              |                    |              |                        |                |
|-------------------------|--------------------|--------------|--------------|--------------|--------------|--------------|--------------------|--------------|------------------------|----------------|
| 1. Overview of Contract | 2. Section A and B | 3. Section C | 4. Section D | 5. Section E | 6. Section F | 7. Section G | 8. Section H and I | 9. Section J | 10. Section K, L and M | 11. Appendices |
|-------------------------|--------------------|--------------|--------------|--------------|--------------|--------------|--------------------|--------------|------------------------|----------------|

| Clause         | Detail  |
|----------------|---|
| 18.4 – 18.6    | Provided that NBPco has notified the Minister of the Relief Event in accordance with the Contract, Performance Points and Performance Credits will not apply during a Relief Event and the Minister will not be entitled to exercise its right to terminate this Agreement as a result of a failure to meet an obligation due to a Relief Event. The occurrence of a Relief Event does not relieve the Minister from its obligation to pay any Ongoing Capital Payments.  |
| 19.1           | If Programme Milestones P1A, P2 and P5A are complete, NBPco may Connect Premises and make available Wholesale Products before Network Deployment Complete if the appropriate Network is in place to deliver the Wholesale Product.  |
| 19.2           | NBPco must make Wholesale Products available to Service Providers throughout the Intervention Area during the Contract Period at the Wholesale Price.   |
| 19.5           | Wholesale Products can only be made available by way of the Service Provider Terms and Reference Offer and at the Wholesale Price   |
| 19.6           | Where the Minister issues a RoLR Authorisation Form to NBPco, it must procure the provision of the RoLR End User Product to the specific Named Unserved End User identified in the RoLR Authorisation Form within twenty Working Days.<br>If all RSPs on the RoLR List refuse, NBPco must notify the Minister within five Working Days and, if the Minister issues an NBPco RoLR Authorisation Form, NBPco must provide as final retailer of last resort the RoLR End User Product to the specific Named Unserved End User within twenty Working Days of the issue of the NBPco RoLR Authorisation Form.  |
| 19.18<br>19.19 | NBPco must not sell, lease or license Wholesale Products, directly or indirectly, to any:<br>(A) Associated WSP; or<br>(B) other entity providing wholesale services in the NBPco Economic Group without the prior written approval of the Minister.<br>This does not affect:<br>- the NBPco Economic Group providing products or services in the Excluded Area;<br>- any member of the NBPco Economic Group providing products or services in the Intervention Area by means other than the Network and the NBPco Assets.<br>- the provision of a Wholesale Product that is used only for transit of electronic communications or signals through the Intervention Area and not to any part of the Intervention Area.<br>- any arrangement whereby NBPco jointly sells the Wholesale Products with the wholesale products of any other person within the NBPco Economic Group, provided that NBPco must be represented in any such selling arrangement |
| 19.21          | NBPco can only provide a New Wholesale Product, or change or remove an existing Wholesale Product by way of the Wholesale Product Control Procedure and subject to the grant of a Change Authorisation. The inclusion of a change in the Product Roadmap or Coverage Template does not mitigate this.   |

# Section A and Section B

## Clause 1 – Clause 26

|                         |                    |              |              |              |              |              |                    |              |                        |                |
|-------------------------|--------------------|--------------|--------------|--------------|--------------|--------------|--------------------|--------------|------------------------|----------------|
| 1. Overview of Contract | 2. Section A and B | 3. Section C | 4. Section D | 5. Section E | 6. Section F | 7. Section G | 8. Section H and I | 9. Section J | 10. Section K, L and M | 11. Appendices |
|-------------------------|--------------------|--------------|--------------|--------------|--------------|--------------|--------------------|--------------|------------------------|----------------|

| Clause       | Detail  |
|--------------|---|
| 20           | NBPco must provide the Services, Wholesale Products and Network in accordance with particular standards and take steps to remedy any failures.  |
| 21.1         | NBPco is responsible for ensuring compliance with conditions of all Consents it may require in a diligent, timely and expeditious manner. This does not impose any obligation on NBPco to make a notification to the European Commission pursuant to State Aid Law.   |
| 22.1<br>22.3 | NBPco must comply with all relevant Laws and Regulations and maintain proper records for inspection.<br>In particular, it will ensure compliance with law and regulation in all Demand Stimulation, Advertising and Promotional activity  |
| 23.3         | NBPco is responsible for the health, safety, stability and security of the Services, Network, Wholesale Products, Equipment and Project and any impact or resulting change in the environment throughout the Contract Period.   |
| 23.5<br>23.6 | Between NBPco and the Minister, NBPco is the “client” for the purposes of the Construction Regulations. Between NBPco and Buildco, Buildco must be the “client” for the purposes of the Construction Regulations. NBPco agrees to adherence to the Construction Regulations.  |
| 24.2         | Services, Wholesale Products and Network must comply with the security requirements in the Service Requirements, NBPco Solution, Best Industry Practice and Law   |
| 24.3         | In maintaining the security of the Network, NBPco is to ensure that: <ul style="list-style-type: none"> <li>- The Services, Wholesale Products and Network to be designed and maintained consistent with Best Industry Practice and the security requirements</li> <li>- appropriate security systems and measures are maintained and enforced to prevent unauthorised access</li> <li>- the Services, Wholesale Products and Network are monitored to detect behaviour indicative of a compromise of the Services, Wholesale Products or Network</li> <li>- it is knowledgeable about the most recent trends in threat, vulnerability and exploitation that are relevant</li> <li>- it pro-actively scans the Services, Wholesale Products and Network for vulnerable components and quickly address discovered vulnerabilities</li> </ul> |
| 26.1         | NBPco has an ongoing obligation to ensure the Network is future proof   |

# Section A and Section B

## Schedule 2.1

|                         |                    |              |              |              |              |              |                    |              |                        |                |
|-------------------------|--------------------|--------------|--------------|--------------|--------------|--------------|--------------------|--------------|------------------------|----------------|
| 1. Overview of Contract | 2. Section A and B | 3. Section C | 4. Section D | 5. Section E | 6. Section F | 7. Section G | 8. Section H and I | 9. Section J | 10. Section K, L and M | 11. Appendices |
|-------------------------|--------------------|--------------|--------------|--------------|--------------|--------------|--------------------|--------------|------------------------|----------------|



### 2.1 Technical Solution Specification

- NBPCo must provide Wholesale Products to Service Providers on an **Equivalence of Input basis**. This means that all Wholesale Products, services and information must be made available to all Service Providers in the same timescales, on the same terms and conditions, and by means of the same systems and processes.
- The Schedule outlines the **Minimum Required Wholesale Products** (Active and Passive Wholesale Products and Active and Passive Backhaul Wholesale Products) and **Additional Required Wholesale Products** (Business Wholesale Products, other Wholesale Products that may be suitable for Strategic Community Points and any other variants of residential Active Wholesale Products ) that must be provided. The Schedule also states that NBPCo may choose to further provide **Other Permitted Wholesale Products** that are not defined as a Minimum or Alternative Required Products, again on an Eol basis.
- NBPCo is not permitted to sell **basic broadband** - that is, Bitstream Products which do not deliver the minimum performance and service specifications set out in Schedule 2.2.
- NBPCo must ensure that product and operational performance of Minimum Required Wholesale Products and Additional Required Wholesale Products improve in line with Equivalent Products in the Excluded Area.
- NBPCo must develop and publish on its Public Portal a rolling 10 year **Wholesale Product Roadmap** which provides information on product testing, product availability and, enhancement of functionality/processes associated with the Universal Wholesale Gateway.
- NBPCo must ensure that RSPs provide an **Anchor Residential Retail Product** based on the Minimum Bitstream Wholesale Product, which meets or exceeds the minimum performance for all specifications.
- NBPCo must implement a platform in the form of a **Universal Wholesale Gateway** which will interface with the OSS/BSS systems used by NBPCo.
- This **UWG** will allow Service Providers to select, deliver manage and maintain the delivery of Wholesale to any Premises and should provide an **Operational Environment** capable of accommodating intensification of use and are available all year.
- NBPCo to provide Service Providers with access to **Wholesale Catalogue** with relevant information about each product available along with a **Web Self Service Portal** facilitating orders, service requests and billing and a **B2B interface** where all Wholesale Products contained in the Wholesale Product Catalogue are available to order.
- NBPCo must provide an up-to-date **Premises Database** through the **Secure Portal** which must contain a complete list of all Premises, by Eircodes and buildings, which are located within the Intervention Area.
- NBPCo must design, maintain and implement its **Operating Support Systems** and **Business Support Systems** to interface with its own UWG system and allows for End User Management, Workforce Management, Inventory Management, Order Management, Fault Management and Trouble Ticketing (with a 4 hour support SLA).
- NBPCo to provide a graphical representation of the Network and continually up-to-date and accurate interactive map
- NBPCo must design, maintain and implement a **Network Operations Centre** to ensure that all relevant Performance Levels are met.
- NBPCo must provide a **Public Portal** accessible by any member of the public without login credentials that outlines information regarding the National Broadband Plan and status. It must also develop a **Secure Portal** for Service Providers.
- NBPCo must also design, build, maintain and implement a **Network** so that it is compatible with the Operational Environment above and is future proofed. The design is to include an **Access Network**, a **Backhaul Network** and a suitable number of **Points of Handover** for Active Wholesale Products and Passive Wholesale Products. It must also be capable of delivering the Minimum Required Wholesale Products, Additional Required Wholesale Products and Other Permitted Wholesale Products.
- NBPCo to acquire certain specified **quality certifications** for the build and wholesale components of the Services and Network within six months of the effective date.
- NBPCo is responsible for the publication and fulfilment of a rolling 10 year **Technology Roadmap** on the Public Portal showing all major architectural and technology changes and upgrades for the Network and Equipment.

# Section A and Section B

## Schedule 2.2 and Schedule 2.3

|                         |                    |              |              |              |              |              |                    |              |                        |                |
|-------------------------|--------------------|--------------|--------------|--------------|--------------|--------------|--------------------|--------------|------------------------|----------------|
| 1. Overview of Contract | 2. Section A and B | 3. Section C | 4. Section D | 5. Section E | 6. Section F | 7. Section G | 8. Section H and I | 9. Section J | 10. Section K, L and M | 11. Appendices |
|-------------------------|--------------------|--------------|--------------|--------------|--------------|--------------|--------------------|--------------|------------------------|----------------|



### 2.2 Reference Offer Requirements

- There are three categories of Wholesale Products; **Minimum Required Wholesale Products**; **Additional Required Wholesale Products**; and **Other Permitted Wholesale Products** (if applicable). This Schedule set out the requirements and specifications that NBPco must include in NBPco's Reference Offers for each Wholesale Product.
- NBPco must publish and keep up-to-date a **Reference Offer** in relation to all Wholesale Products offered in its portfolio on its Public Portal
- The **Minimum requirements** for Reference Offers include WP functionality, specifications and availability timing, operational processes for Service Providers to manage the lifecycle of the Wholesale Product, SP SLA for the Wholesale Product, the Wholesale Price, and Service Provider Terms for the Wholesale Product.
- NBPco must provide Wholesale Products at the **pricing and under the terms and conditions** in the relevant Reference Offer.
- NBPco must ensure that Service Provider Terms are that are fair, balanced and appropriate and sufficient to enable NBPco to comply with its obligations under this Agreement and under law.
- The Schedule also provides a **detailed technical description** of the specifics of each of the Wholesale Products to be offered and the **Operational Performance** required.
- If NBPco elects to include any Other Permitted Wholesale Products in the NBPco Solution it agrees that those Other Permitted Wholesale Products will then form part of the NBPco Solution and may not be withdrawn or changed unless permitted under this Agreement.



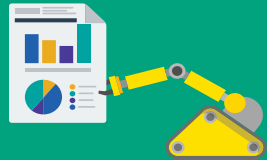
### 2.3 Deployment Requirements

- The Schedule outlines the steps and requirements necessary for NBPco to deploy the Network in order to make Wholesale Products available. In particular it has to:
  - Perform **Network Deployment** in accordance with the **Implementation Programme**, the **Wholesale Product Launch Project Plan**, the **Network Deployment Plan**, the **Operational Environment Project Plan** and the **Service Provider Engagement Framework Project Plan** so as to Achieve each Milestone by the associated Milestone Date. It must also perform the activities, tasks, functions, works and services as are necessary to achieve this;
  - Perform **Testing** in accordance with the **Test Strategy**, the Implementation Programme, the Wholesale Product Launch Project Plan, the Network Deployment Plan, the Operational Environment Project Plan and the Service Provider Engagement Framework Project Plan.
- The **Coverage Requirements** are detailed, the key criteria of which is to **Pass and provide the Wholesale Products** to all **Premises** in the Premises Database within 10 Working Days of the date the request and all **Strategic Community Points** within 45 Working Days. Schedules 2.4 and 6.7 identify the KPIs for Network Performance and Premises passed, a failure to adhere to which may incur performance points in the Measurement Period after the M2 MAC is received.
- The **Implementation Programme Requirements** outline that during the **Ramp Up Phase**, NBPco must plan the Network Deployment, scale up the number of resources, make the initial planning permission and/or wayleave applications and define processes to ensure the Network Deployment is as efficient as possible. The Schedule also outlines a number of Milestones that must be reached during this phase.
- In order for NBPco to provide the Wholesale Products it must co-ordinate and manage a number of separate activities including:
  - building the **Operational Environment** in accordance with **the Operational Environment Project Plan**;
  - setting up and running the **Service Provider Engagement Framework** in accordance with **the Service Provider Engagement Framework Project Plan**;
  - deploying the **Backhaul Network** and **Access Network** in accordance with the **Network Deployment Plan**;
  - implementing each of the **Wholesale Products** in accordance with the **Wholesale Products Launch Project Plan**; and
  - setting up and carrying out **Demand Stimulation** activities in accordance with the **Demand Stimulation Project Plan**.
  - The requirements for each of these are laid out in detail in this Schedule, with the exception of Demand Stimulation, which is addressed in Schedule 2.6
- The Schedule provides details of **Milestone Achievement and Testing**, including the process of having the Milestone Achievement certified by the Independent
- Certifier
- It also outlines the **Monitoring Deployment Requirements**, many of which must be reported on a Monthly basis.
- Appendix 3** provides details on the criteria for Achieving all **Project Milestones** whilst **Appendix 4** outlines the criteria for **Premises Passed**.

# Section A and Section B

## Schedule 2.4

|                         |                    |              |              |              |              |              |                    |              |                        |                |
|-------------------------|--------------------|--------------|--------------|--------------|--------------|--------------|--------------------|--------------|------------------------|----------------|
| 1. Overview of Contract | 2. Section A and B | 3. Section C | 4. Section D | 5. Section E | 6. Section F | 7. Section G | 8. Section H and I | 9. Section J | 10. Section K, L and M | 11. Appendices |
|-------------------------|--------------------|--------------|--------------|--------------|--------------|--------------|--------------------|--------------|------------------------|----------------|



### 2.4 Operational Performance

- NBPco must deliver the Wholesale Products with necessary monitoring to ensure achievement of **KPIs** and to identify and minimise causes of failure.
- NBPco must monitor the **UWG** and to provide real-time indications of the operational status of sub-components including:
  - **OSS/BSS performance;**
  - **Operations Support and Readiness** performance;
  - **Fulfilment and Supply Chain and Logistics ;**
  - **Billing** business processes; and
  - Conduct all required testing, maintenance and related preventative measures to minimise the risk of failures in relation to **Assurance** business process performance.
- NBPco must maintain **Network performance** throughout the Contract Period, irrespective of Service Providers and IA End User demand, and must put in place all required resources to achieve the required Performance Levels for each of the KPIs set out.
- NBPco must provide **Service Provider Testing and Report Facilities** including **Service Provider Verification Facility** enabling Service Providers to test their systems prior to deploying to production environments, **InterConnect Test Facilities** enabling Service Providers to verify the correct connectivity and interoperability between their network and **Test Rooms** enabling Service Providers perform a number of tasks.
- NBPco must also provide **Incident Management** for the Services in accordance with Best Industry Practice.
- The Schedule also outlines detailed provisions with respect to **Product Management** including the **Introduction or Modification** of Wholesale Products, the **Wholesale Product Roadmap**, the **Wholesale Product Catalogue**, the **Premises Database** and Wholesale Product **withdrawal or discontinuance**.
- The Schedule provides that NBPco must develop and operate an **Service Provider Engagement Framework** to formally engage with, and inform, industry and includes the establishment of the NBP Industry Council (see Appendix 4 of this Schedule).
- **Retail Safeguards** are included that require NBPco to demonstrate that where an RSP serves residential IA End Users, all of the residential broadband products provided by the RSP are of a specification at least equivalent to the Anchor Residential Retail Product specification and/or where an RSP serves business IA End Users, all of the business broadband products provided by the RSP are of a specification at least equivalent to the Anchor Business Retail Product specification.
- The Schedule also requires NBPco to publish a **Code of Practice**.
- **Appendix 1** of the Schedule outlines in detail all of the **KPIs** for each of the areas referenced above.
- **Appendix 2** provides details of the **Product Development Process**.



# Section A and Section B

## Schedule 2.5, Schedule 3.4 and Schedule 6.4

|                         |                    |              |              |              |              |              |                    |              |                        |                |
|-------------------------|--------------------|--------------|--------------|--------------|--------------|--------------|--------------------|--------------|------------------------|----------------|
| 1. Overview of Contract | 2. Section A and B | 3. Section C | 4. Section D | 5. Section E | 6. Section F | 7. Section G | 8. Section H and I | 9. Section J | 10. Section K, L and M | 11. Appendices |
|-------------------------|--------------------|--------------|--------------|--------------|--------------|--------------|--------------------|--------------|------------------------|----------------|



### 2.5 Environmental

- This Schedule 2.5 sets out the **environmental obligations** with which NBPCo must comply throughout the Contract Period.
- It requires that all **Environmental Law and Regulations** be complied with and lists certain Industry Guidance that regard must be had to.
- It also outlines circumstances in which **consultations** must take place with Local Authorities or the Department of Culture, Heritage and the Gaeltacht.
- The Schedule also states that where possible, NBPCo personnel must use **recycled materials** in place of virgin engineering materials in association with the Network Deployment;



### 3.4 NBPCo Solution Reference Offer

- This Schedule outlines the Reference Offer(s) for each of the Wholesale Products.
- The technical, functional and performance characteristics for the Minimum Bitstream product and the Active Backhaul – Interconnect which form the Minimum Bitstream Wholesale Product Suite are set out in the Schedule.
- Detailed Operational KPIs for Minimum Bitstream Wholesale Product Suite are also contained in the Schedule as are testing, maintenance and preventative measures and the process for fault identification and rectification.
- Reference Offers are also included for the Additional Required Wholesale Products. The NBI Symmetric Ethernet Service (SES) product is a business product aimed at the enterprise segment of the market, typically for very large businesses who require a higher SLA or those with Cloud Computing utilisation requirements. Detail is also provided on the KPIs for Additional Required Wholesale Products.
- Reference Offer(s) for Other Permitted Wholesale Products that NBI may elect to offer are also included, along with Operational KPIs.

# Section A and Section B

## Schedule 4

|                         |                    |              |              |              |              |              |                    |              |                        |                |
|-------------------------|--------------------|--------------|--------------|--------------|--------------|--------------|--------------------|--------------|------------------------|----------------|
| 1. Overview of Contract | 2. Section A and B | 3. Section C | 4. Section D | 5. Section E | 6. Section F | 7. Section G | 8. Section H and I | 9. Section J | 10. Section K, L and M | 11. Appendices |
|-------------------------|--------------------|--------------|--------------|--------------|--------------|--------------|--------------------|--------------|------------------------|----------------|



### 4 Relief Events

- This Schedule defines Relief Events, being events outside of NBPco's control so that if they occur, to the extent that NBPco is not able to comply with its obligations under the Project Agreement, then provided it takes appropriate measures to remedy the impact, it will not be considered to be in breach of the Project Agreement. Examples would be the Covid-19 pandemic or a bad storm.

# Section A and Section B

## Schedule 6.4 and Schedule 6.7

|                         |                    |              |              |              |              |              |                    |              |                        |                |
|-------------------------|--------------------|--------------|--------------|--------------|--------------|--------------|--------------------|--------------|------------------------|----------------|
| 1. Overview of Contract | 2. Section A and B | 3. Section C | 4. Section D | 5. Section E | 6. Section F | 7. Section G | 8. Section H and I | 9. Section J | 10. Section K, L and M | 11. Appendices |
|-------------------------|--------------------|--------------|--------------|--------------|--------------|--------------|--------------------|--------------|------------------------|----------------|



### 6.4 Service, Network & Wholesale Product Compliance & Future Proofing

- This Schedule imposes a number of requirements on NBPCo to:
  - comply with the Service Requirements, NBPCo Solution and Wholesale Product Benchmarking Rules;
  - design, develop and maintain the Technology Roadmap and the Wholesale Product Roadmap;
  - continuously identify, assess, evaluate, and implement new or potential improvements to the Services, Network, Operational Environment and Wholesale Products;
  - comply with the Service Requirements and the NBPCo Solution and Best Industry Practice in respect of the future proofing and continuous improvement;
  - comply with the Wholesale Product Roadmap, Technology Roadmap and Wholesale Product & Coverage Template;
  - ensure that the Minimum Required Wholesale Products and Additional Required Wholesale Products evolve in line with Equivalent Products in the Excluded Area.
- In order to achieve this, NBPCo must develop the Service, Network, Operational Environment and Wholesale Product Future Proofing Plan, the requirements of which are outlined in detail in the Schedule.
- NBPCo committed in the Project Financial Model to a level of investment in the upgrading of the Services, Network, Operational Environment and Wholesale Products that is forecast as being required following achievement of Network Deployment Complete. The Schedule requires that NBPCo must invest at least this amount.



### 6.7 Performance Levels

- **Appendix 1** of this Schedule sets out the **Performance Indicators** that will be used to measure the performance of certain aspects of the Services, Wholesale Products and Network by NBPCo.
- NBPCo must **monitor its performance** against each Performance Indicator and must send the Minister a **Performance Monitoring Report** detailing the level of service actually achieved.
- **Performance Points**, and consequently **Performance Credits**, accrue for any **KPI Failure**. The number of Performance Points that must accrue to NBPCo in respect of a KPI Failure is also set out in **Appendix 1** of this Schedule and depends on whether the KPI Failure is:
  - a Minor KPI Failure;
  - a Serious KPI Failure; or
  - a Severe KPI Failure; or
  - a failure to meet the KPI Performance Threshold.
- If a KPI Failure occurs in respect of the same Key Performance Indicator in two or more consecutive Measurement Periods, the second and any subsequent KPI Failure is a **“Repeat KPI Failure”**.
- There are limitations on the application of performance points to certain KPIs specifically during the **Deployment Period**.
- Performance points will also not accrue where a **Relief Event** is the direct cause of a KPI failure, and NBPCo has applied for Relief in accordance with clause 18.
- The Schedule also provides that NBPCo must create and maintain a rolling schedule of **planned maintenance** to the Wholesale Products, Services and Network.
- NBPCo is required to monitor its performance against these KPIs and within ten Working Days of the end of each Measurement Period, provide a **report to the Minister** which summarises the performance by NBPCo against each of the Performance Indicators. A detailed outline of the content of the Performance Monitoring Report is provided.
- A **Balanced Scorecard Report** must be prepared and presented by the Minister each year, providing a summary of NBPCo’s performance under the Agreement.
- NBPCo must keep appropriate documents and records in accordance with Best Industry Practice in relation to the Services and they must be available for inspection and audit.

# Section A and Section B

## Schedule 6.8

|                         |                    |              |              |              |              |              |                    |              |                        |                |
|-------------------------|--------------------|--------------|--------------|--------------|--------------|--------------|--------------------|--------------|------------------------|----------------|
| 1. Overview of Contract | 2. Section A and B | 3. Section C | 4. Section D | 5. Section E | 6. Section F | 7. Section G | 8. Section H and I | 9. Section J | 10. Section K, L and M | 11. Appendices |
|-------------------------|--------------------|--------------|--------------|--------------|--------------|--------------|--------------------|--------------|------------------------|----------------|



### 6.8 Persistent Default and Remedial Plan Process

- The Schedule outlines **Notifiable Events** that require NBPCo to write to the Minister of NBPCo employees becoming aware of the Notifiable Event, detailing the impact it will have. Notifiable Events include:
  - Where NBPCo commits a material Default and such Default is capable of remedy;
  - NBPCo or BuildCo commits a Persistent Default and such Persistent Default is capable of remedy;
  - there is a Delay or there is reasonably likely to be a Delay of fifteen days or more to a Programme Level Milestone or in achieving a task, milestone or activity in the Wholesale Product Roadmap, Technology Roadmap and/or Wholesale Product & Coverage Template;
  - in any Measurement Period, a Material KPI Failure or Material PI Failure occurs;
  - a Test is failed where the Test failure results or may result in a material Delay;
  - NBPCo fails to comply (or, as applicable, procure compliance) with the provisions of Schedule 5.7 - Financial Distress; or
  - any other event for which the Remedial Plan Process is commenced occurs.
- Where a Notifiable Event occurs, the **Remedial Plan Process** must also commence and be submitted to the Minister within specified timelines, unless it is a Termination Event (e.g. a Critical Performance Failure).
- The Schedule outlines the detail and content of a Remedial Plan and notes that if NBPCo fails to agree a Remedial Plan with the Minister or fails to implement the agreed Remedial Plan in accordance with its terms (including by the required timelines), the failure must constitute a Default under this Agreement.

# Section C

|                         |                    |                     |              |              |              |              |                    |              |                        |                |
|-------------------------|--------------------|---------------------|--------------|--------------|--------------|--------------|--------------------|--------------|------------------------|----------------|
| 1. Overview of Contract | 2. Section A and B | <b>3. Section C</b> | 4. Section D | 5. Section E | 6. Section F | 7. Section G | 8. Section H and I | 9. Section J | 10. Section K, L and M | 11. Appendices |
|-------------------------|--------------------|---------------------|--------------|--------------|--------------|--------------|--------------------|--------------|------------------------|----------------|

## Financial Matters, Non-discrimination, Transparency And Business Restrictions

### Clauses

Section C includes Clauses 27 – 50 of the Agreement, which outline the way that the finances between the Department and NBPCo must operate.

It outlines the way in which Subsidy payments will be made to NBPCo and the conditions that must be complied with in order to avail of these payments including at a high level, acting fairly, transparently and economically, compliance with all relevant Tax Law and accounting requirements and maintaining all finances in Ireland.

The Section states that Wholesale Products must be made available in accordance with the Wholesale Pricing and Benchmarking Rules.

The Section requires NBI to develop and maintain a Financial Model and adhere to certain provisions where it or Key Subcontractors are in Financial Distress.

NBPCo is also required to take certain actions to ensure it remains in compliance with State Aid Law and the State Aid Decision of the European Commission not to raise objections to funding awarded under the Project. Specific conditions are set out where ERDF funding is to be used in respect of the Project.

The Section provides for NBPCo to make a claim if a Compensation Events occurs where the Minister must compensate NBPCo for a failure to comply with certain provisions under the Agreement.

Finally, the section outlines the requirements for Guarantees and Performance Bonds NBPCo must execute in favour of the Minister.

### Schedules

|  |  |   |  |
|--|--|---|--|
| <br>2.6<br><b>Communications, Demand Stimulation and Brand Plan</b> | <br>5.1<br><b>Subsidy Payments</b>      | <br>5.2<br><b>Wholesale Prices, Wholesale Pricing Rules and Benchmarking Rules</b> | <br>5.3<br><b>Project Financial Model</b> |
| <br>5.4<br><b>Eligibility for ERDF Funding</b>                      | <br>5.5<br><b>Accounting Separation</b> | <br>5.7<br><b>Financial Distress</b>   |  |

# Section C

## Clause 27 – Clause 41

|                         |                    |              |              |              |              |              |                    |              |                        |                |
|-------------------------|--------------------|--------------|--------------|--------------|--------------|--------------|--------------------|--------------|------------------------|----------------|
| 1. Overview of Contract | 2. Section A and B | 3. Section C | 4. Section D | 5. Section E | 6. Section F | 7. Section G | 8. Section H and I | 9. Section J | 10. Section K, L and M | 11. Appendices |
|-------------------------|--------------------|--------------|--------------|--------------|--------------|--------------|--------------------|--------------|------------------------|----------------|

| Clause | Detail   |
|--------|--|
| 27.3   | NBPco must: Act in a way that is cost efficient and economic without compromising quality.<br>Be objective with regard to procurement without any bias for NBPco or any Associated Service Provider or Associated Company of NBPco.<br>Not risk voiding or breaching any third party warranty and obtain the full benefit of any relevant third party warranties, collateral warranties, guarantees and indemnities. |
| 27.4   | NBPco must promptly inform the Minister of any financial irregularities.   |
| 27.8   | Failure to pay any sum owed to the Minister will incur interest at an annual rate of 3% above ECB for the period of delay accruing from and including the date of the missed payment.  |
| 27.9   | NBPco must maintain all bank accounts in which Subsidy Payments and/or Project Revenue are received and/or from which Project Costs are paid in Ireland unless otherwise approved by the Minister.   |
| 28.1   | NBPco must provide Wholesale Products to Service Providers at Wholesale Prices and in accordance with Wholesale Pricing Rules.   |
| 28.3   | NBPco must provide RoLR End User Products to the Named Unserved End Users at Wholesale Prices and in accordance with Wholesale Pricing Rules.  |
| 29.1   | NBPco must comply with the Financial Model Provisions in Schedule 5.3.   |
| 30.1   | NBPco must comply with State Aid Decision and Law.   |
| 30.2   | NBPco must provide the Minister with information required to comply with the State Aid Decision and State Aid Law.   |
| 30.5   | Provides that the Agreement must be modified if required by State Aid Law and NBPco is liable to the Minister for any costs in respect of the Change.  |
| 30.11  | Obligation to place any amount equivalent to alleged State Aid received that is the subject of a recovery order or decision into a blocked account to which neither NBPco or the Minister has unilateral access within 4 months. <i>Further detail of process for repaying State Aid that is found impermissible by the European Commission is found in the remainder of Clause 30.</i>                              |
| 31.2   | NBPco must inform the Minister in writing within 25 Days of a Material Compensation Event of the claim being made, reasons for the claim and expected delays.  |
| 31.7   | There is no entitlement to relief for a period in which the notification of the Compensation Event was delayed   |
| 31.11  | If relief is paid in respect of a Compensation Event - no other remedy can be claimed.   |
| 31.8   | Subsidy Payments made by the Minister are gross however the Minister may make any deduction or withholding on account of Tax.  |
| 32.7   | NBPco must comply with all Tax Laws.   |

# Section C

## Clause 27 – Clause 41

|                         |                    |              |              |              |              |              |                    |              |                        |                |
|-------------------------|--------------------|--------------|--------------|--------------|--------------|--------------|--------------------|--------------|------------------------|----------------|
| 1. Overview of Contract | 2. Section A and B | 3. Section C | 4. Section D | 5. Section E | 6. Section F | 7. Section G | 8. Section H and I | 9. Section J | 10. Section K, L and M | 11. Appendices |
|-------------------------|--------------------|--------------|--------------|--------------|--------------|--------------|--------------------|--------------|------------------------|----------------|

| Clause | Detail  |
|--------|---|
| 32.11  | Indemnity for the Minister against any liabilities assessed on the Minister due to NBPco's failure to account for or to pay any VAT or other Tax relating to payments made to NBPco under this Agreement. This indemnity survives the termination or expiration of this Agreement for a period of six years.  |
| 35.1   | NBPco must comply with the Financial Distress provisions of Schedule 5.7 in respect of the Monitored Entities.  |
| 36.1   | NBPco must treat all Service Providers on a non-discriminatory basis and apply equivalent conditions and Wholesale Products to all Service Providers in equivalent circumstances.<br>It must charge all Service Providers the same price for a particular Wholesale Product in all circumstances and provide all Wholesale Products (including all related services and facilities) and information to all Service Providers under the same conditions and prices |
| 36.2   | NBPco must comply with: Neutral Branding Requirements; Restrictions on Management Incentives; Accounting Separation Requirements; Wholesale Pricing Requirements; and Procure all necessary key subcontractors to fulfil its obligations to complete the Agreement.   |
| 36.3   | NBPco must use all reasonable endeavours to procure that all Critical Key Subcontractors must act in a transparent manner   |
| 36.4   | NBPco must ensure that the list of Wholesale Products are sufficiently unbundled so a Service Provider is not required to pay for or order Wholesale Products that are not necessary for the Wholesale Product required by it.  |
| 36.5   | NBPco must publish and update on the Public and Secure Portals: All the components of its Reference Offer for each Wholesale Product; and A report setting out its performance achieved in each Measurement Period against each of the Key Performance Indicators chronologically from the Effective Date until the then current date.  |
| 38.1   | If a Guarantor is a Rated Monitored Entity, they must have a minimum long term rating at or above the Level 1 Financial Distress Credit Rating Threshold for the type of Guarantee concerned; or if the relevant Guarantor is an Unrated Monitored Entity, the Financial Ratios for the Guarantor concerned must be the same as or better than the Level 1 Financial Distress Financial Ratio Threshold.  |
| 38.2   | If the credit rating of a Guarantor falls below acceptable levels or if a Guarantee ceases to be valid, NBPco must comply with Schedule 5.7 (Financial Distress) and, unless agreed otherwise with the Minister in writing, use all reasonable endeavours to procure a replacement Guarantee as soon as possible in the case of a drop in rating and within 20 working days if a guarantee ceases to be valid.  |
| 39.1   | Specifies requirements in respect of Performance Bonds or equivalent.   |

# Section C

## Clause 27 – Clause 41

|                         |                    |              |              |              |              |              |                    |              |                        |                |
|-------------------------|--------------------|--------------|--------------|--------------|--------------|--------------|--------------------|--------------|------------------------|----------------|
| 1. Overview of Contract | 2. Section A and B | 3. Section C | 4. Section D | 5. Section E | 6. Section F | 7. Section G | 8. Section H and I | 9. Section J | 10. Section K, L and M | 11. Appendices |
|-------------------------|--------------------|--------------|--------------|--------------|--------------|--------------|--------------------|--------------|------------------------|----------------|

| Clause       | Detail   |
|--------------|--|
| 39.2<br>39.3 | <p>Warranty that as at the date of issue of the Performance Bond the Surety is an entity authorised to issue bonds in Ireland and has a minimum long term rating “BBB+ from at least two ratings agencies.</p> <p>If, at any time the Surety ceases to be an entity authorised to issue bonds in Ireland, the credit rating of a Surety falls below the level specified, a Performance Bond ceases to be valid for any reason or the amount held in the DPB Project Account falls a specified amount and this is not remedied in full within five Working Days of such occurring, NBPco must either:</p> <p>procure a replacement Performance Bond to the full value of the Performance Bond concerned or pay to the Minister in cleared funds and in euro the full and maximum intended value of the Performance Bond within thirty Working Days.</p> |
| 39.4         | <p>If a Performance Bond Trigger Event, the Minister may:</p> <p>(A) Serve ten days’ notice on NBPco of his intention to:</p> <ol style="list-style-type: none"> <li>(1) require NBPco to pay to the Deployment Claw-Back Amount</li> <li>(2) call in the Performance Bond concerned; and</li> </ol> <p>(B) if by the end of the ten day notice period NBPco has not remedied the Performance Bond Trigger Event the Minister may:</p> <ol style="list-style-type: none"> <li>(1) Require NBPco to pay to the Minister an amount equal to the Deployment Claw-Back Amount; or</li> <li>(2) call on the Performance Bond;</li> </ol> <p>NBPco must pay to the Minister any sums payable within five Working Days in euro, in full and in cleared funds of the date of issue by the Minister of written notice requiring such payment.</p>               |
| 40.3         | <p>NBPco must ensure that:</p> <p>It has the necessary financial standing to satisfy all of its obligations;</p> <p>It complies with the terms of any Financial Distress Service Continuity Plan and remedies any adverse impact of a Financial Distress Event;</p> <p>It complies with the financial transparency and reporting obligations; and</p> <p>Claw-backable Subcontractors fully comply with the financial transparency and reporting obligations.</p>  |
| 41.1         | <p>NBPco must comply with the ERDF Funding Requirements set out in Schedule 5.4</p>  |



# Section C

## Schedule 2.6

|                         |                    |              |              |              |              |              |                    |              |                        |                |
|-------------------------|--------------------|--------------|--------------|--------------|--------------|--------------|--------------------|--------------|------------------------|----------------|
| 1. Overview of Contract | 2. Section A and B | 3. Section C | 4. Section D | 5. Section E | 6. Section F | 7. Section G | 8. Section H and I | 9. Section J | 10. Section K, L and M | 11. Appendices |
|-------------------------|--------------------|--------------|--------------|--------------|--------------|--------------|--------------------|--------------|------------------------|----------------|



### 2.6 Communications, Demand Stimulation and Brand Plan

- This Schedule outlines the obligations NBPco has around marketing and demand stimulation.
- It requires NBPco to develop and implement the **CDB Strategic Plan** during the Take Up Target Period as a means of achieving its obligations. Detail is provided on the requirements of the CDB Strategic Plan and the Stakeholder groups it must address.
- During the **Take Up Target Period**, NBPco must ensure a high level of awareness of the Services, Network, and Wholesale Products, and to meet the objectives of the CDB Strategic Plan Requirements.
- The Schedule requires NBPco to conduct independent End User Surveys at least once in each Contract Year during the Take Up Target Period and to identify the independent surveyor how will perform the independent End User Surveys, and the methodology and assumptions to be applied.
- It also requires NBPco to develop and implement a **Demand Stimulation Project Plan** that is consistent with market analysis and tailored to identify different locations.
- NBPco must develop and implement the NBPco **Brand Development Plan** to ensure its brand is distinct from that of Service Providers.
- NBPco must have a **Communications and Engagement Plan** that details how and when NBPco will prepare, disseminate and manage relevant information regarding the Project and a separate **Communications and Engagement Plan for Service Providers**.
- The Schedule also outlines certain reports NBPco are required to provide the Minister, such as Actual Take up.

# Section C

## Schedule 5.1

|                         |                    |                     |              |              |              |              |                    |              |                        |                |
|-------------------------|--------------------|---------------------|--------------|--------------|--------------|--------------|--------------------|--------------|------------------------|----------------|
| 1. Overview of Contract | 2. Section A and B | <b>3. Section C</b> | 4. Section D | 5. Section E | 6. Section F | 7. Section G | 8. Section H and I | 9. Section J | 10. Section K, L and M | 11. Appendices |
|-------------------------|--------------------|---------------------|--------------|--------------|--------------|--------------|--------------------|--------------|------------------------|----------------|



### 5.1 – Subsidy Payments

- Where NBPco makes a valid **Subsidy Payment Claim** for Permitted Expenditure, this will be paid by the Minister subject to certain conditions and limitations. Subsidy payments must comply with the ‘PE Test’ and the ‘State Aid Intensity Test.’
- NBPco is entitled to submit a **Deployment Milestone Payment Claim** to the Minister on its or in some cases Buildco’s behalf where the Independent Certifier issues a Milestone Achievement Certificate. Specific Supporting Documentation must be maintained in respect of each DMPC.
- **Connection Milestone Payments** are calculated each January in and paid following a Connection Payment Milestone as set out in **Appendix 2** and receipt of a corresponding valid and compliant CMPC.
- Each month, the **General PE Supporting Documentation** must be submitted to the Minister showing expenditure incurred in the previous month that is not included in DMPC Supporting Documentation or CMPC Supporting Documentation.
- **Additional Connection Milestone Payments** are payments of capital related subsidy for Permitted Expenditure Connect designed to incentivise NBPco to Achieve the Connection Payment Milestones. Where the ACMP calculated is negative it will be paid by NBPco to the Minister. Where positive, it will be paid to NBPco.
- **Ongoing Capital Payments** are payable by the Minister to NBPco on a Quarterly basis on and from the end of the Quarter following a M2 Deployment Payment Milestone. Where there is a delay of greater than 28 days in the achievement of a milestone, the OCP will be reduced in line with the specified formula up to a maximum amount until the quarter in which the Milestone is achieved. This may be reclaimed if subsequent Milestones are achieved early.
- For each Quarter the total **Performance Points** accrued must be converted to a payment deduction (**Performance Credit**) that must be applied to the calculation of the Ongoing Capital Payment for the subsequent Quarter.
- A **Deployment Clawback** must be calculated and if necessary paid to the Minister at the end of the Quarter immediately following the Quarter in which the Deployment Completion Date is Achieved in order to prevent an **Over Subsidy** from occurring.
- There will be four IRR review periods during the lifetime of the Agreement at which point **IRR Clawbacks** may be payable to the Minister. If an IRR Deficit arises, there will be a reverse payment from the IRR Clawback Account to NBPco for the lesser of the IRR Deficit Amount and the balance of the IRR Clawback Account. Distributions cannot be paid to Shareholders until any IRR Clawback owed has been paid to the Minister.
- There will also be a single Terminal Value Review point on Expiry of the Agreement at which a **Terminal Value Clawback based on the future value of NBPco** may also be payable to the Minister.
- **Appendix 4** of the Schedule contains key types of expenditure, including a breakdown of what is considered **Permitted Expenditure**, meaning it can be included in a Subsidy Payment Claim.
- **Appendix 5** provides details of the **Key Reports** that must be prepared by NBPco. These include Management Accounts, Project Accounts and a State Aid Report.

# Section C

## Schedules 5.2

|                         |                    |              |              |              |              |              |                    |              |                        |                |
|-------------------------|--------------------|--------------|--------------|--------------|--------------|--------------|--------------------|--------------|------------------------|----------------|
| 1. Overview of Contract | 2. Section A and B | 3. Section C | 4. Section D | 5. Section E | 6. Section F | 7. Section G | 8. Section H and I | 9. Section J | 10. Section K, L and M | 11. Appendices |
|-------------------------|--------------------|--------------|--------------|--------------|--------------|--------------|--------------------|--------------|------------------------|----------------|



### 5.2 Wholesale Prices, Retail Prices and Benchmarking

- The **Wholesale Prices** at which NBPco makes its Wholesale Products available are listed in **Appendix 1**. These Prices may be changed pursuant to the Wholesale Price Control Procedure.
- Wholesale Prices should not exceed **Benchmark Reference Price** at any point in time. NBPco is not required to set its Wholesale Prices at the Benchmark Reference Price they may be set at any level below or at the Benchmark Reference Price.
- NBPco must notify Minister if there is no Benchmark Reference Product for the relevant Wholesale Product and agree in writing the **Adjusted Benchmark Reference Price**.
- A **Wholesale Margin Squeeze Test** must apply.
- Wholesale Prices for the Other Permitted Wholesale Products must be **justified, fair and reasonable** by reference to prices for equivalent products in the Excluded Area.
- NBPco must charge all Service Providers the same Wholesale Prices in all circumstances with exceptions allowed for pre-approved temporary reductions.
- NBPco must ensure that NBPco and relevant Service Providers comply with the “**Retail Pricing Rules**”
- NBPco must require that Associated RSPs do not set a Retail Price and where it acts as the final retailer of last resort will not set a Retail Price for a Retail Product that results in a **Retail Margin Squeeze** based upon the Retail Margin Squeeze Test.
- Must charge all Named Unserved End Users the same retail prices in all circumstances.
- There is an obligation not to **unreasonably bundle** Retail Products.
- The Minister may, following consultation with NBPco and the Regulator, require NBPco within fifteen Working Days **suspend provision** of any Wholesale Products to the relevant Associated RSP that has not complied with its obligations.
- NBPco must ensure their **Service Provider Terms** enable them to comply and procure compliance with the Retail Pricing Rules.
- NBPco must ensure that, throughout the Contract Period, the Minimum Required Wholesale Products and Additional Required Wholesale Products meet or exceed the published and actual product and service performance specifications, levels, characteristics and other aspects of the **Benchmark Reference Performance Specification**.
- If there is disagreement between NBPco and the Minister on the application of the Wholesale Pricing Rules, the Retail Pricing Rules or the Benchmark Reference Performance Specification, the Minister's determination is final and binding upon NBPco. If NBPco believe this to be a manifest and serious error, a request can be made to refer the matter to the **Dispute Resolution Procedure**.
- If a breach of the Wholesale Product Rules or the Wholesale Product Benchmarking Rules occurs, the **Non-Compliance Overpayment** must be repaid to Service Providers within thirty Working Days of the notification by the Minister that a refund is due. There must be no double recovery for Service Providers in this regard.
- NBPco must undertake an **Annual Review** within 30 Working Days of the end of each Contract Year and within 10 Working Days of the completion of the Review, provide the Minister with a **Statement of Compliance**.
- **Appendix 3** of this Schedule details the **Change Control Procedure** for any changes required to any of the Rules within this Schedule.

# Section C

## Schedules 5.3 – 5.5

|                         |                    |              |              |              |              |              |                    |              |                        |                |
|-------------------------|--------------------|--------------|--------------|--------------|--------------|--------------|--------------------|--------------|------------------------|----------------|
| 1. Overview of Contract | 2. Section A and B | 3. Section C | 4. Section D | 5. Section E | 6. Section F | 7. Section G | 8. Section H and I | 9. Section J | 10. Section K, L and M | 11. Appendices |
|-------------------------|--------------------|--------------|--------------|--------------|--------------|--------------|--------------------|--------------|------------------------|----------------|



### 5.3 – Project Finance Model

- The **Project Financial Model** is a financial model that is used:
  - to show all projected revenues, costs, funding requirements and subsidy requirements of the Project over the full twenty-five year projected Contract Period;
  - to show all the assumptions and methodologies that have been agreed between the Parties to compute these various amounts; and
  - to demonstrate consistency with NBPco Bidder’s Project Cost Model and Project Price Book.
- The **Project Cost Model** is a cost model that is used to show all forecast capital and operating expenditures, proposed bill of materials, estimated volumes, cost drivers and identification of sources of operating expenditures and Capital Expenditures.
- Where an amendment to one of the Model is required, a **Change Impact Assessment** under the **Change Control Procedure** must be completed.
- **Appendix 6** and **Appendix 7** of this Schedule sets out the detailed requirements of the Financial Models.



### 5.4 – Eligibility for ERDF Funding

- **ERDF funding** is finance that is granted to the Exchequer by the European and Regional Development Fund for the purposes of this Agreement.
- Certain **Eligibility Rules** are applied to ERDF co-funded projects regarding costs that qualify for ERDF Funding. For expenditure to be considered for eligibility under Eligible ERDF Expenditure, the expenditure must qualify as **Permitted Expenditure**, have been funded under this Agreement and comply with the Eligibility Rules for ERDF Funding.
- This Schedule outlines and incorporates the funding requirements in relation to ERDF Funding and requires NBPco to comply with the Eligibility Rules for ERDF Funding.
- The Schedule also provides that the Project Agreement may be amended from time to time in accordance with the **Change Control Procedure** if needed to comply with ERDF Funding or where new **Major Projects Approval** is received by the Minister from the ERDF.



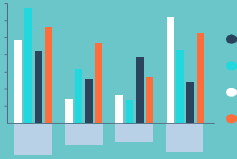
### 5.5 – Accounting Separation

- This schedule sets out the accounting separation and cost accounting obligations that will apply to NBPco.
- Detailed guidance is provided on the content and basis on which the Financial Statements must be prepared and the **Accounting Principles** to be applied including cost allocation and apportionment.
- In particular, **Separate Accounting** means the preparation of Accounts under the Historic Cost Account (HCA) Convention which are disaggregated to the level of Wholesale Products.
- NBPco will also be required to prepare **Additional Financial Statements** and **Additional Financial Information** where NBPco receives a Tier 2 Report Request from the Minister and in respect of every Financial Period following the sixth Financial Year after the Effective Date.

# Section C

## Schedule 5.7

|                         |                    |                     |              |              |              |              |                    |              |                        |                |
|-------------------------|--------------------|---------------------|--------------|--------------|--------------|--------------|--------------------|--------------|------------------------|----------------|
| 1. Overview of Contract | 2. Section A and B | <b>3. Section C</b> | 4. Section D | 5. Section E | 6. Section F | 7. Section G | 8. Section H and I | 9. Section J | 10. Section K, L and M | 11. Appendices |
|-------------------------|--------------------|---------------------|--------------|--------------|--------------|--------------|--------------------|--------------|------------------------|----------------|



### 5.7 – Financial Distress

- NBPco is required to monitor at the frequency set out in Appendix 3, **the Financial Ratios and the credit ratings** of certain individuals and Entities;
- Where these Financial Ratios and the credit ratings reach certain specified levels, an Entity may be considered to be in Financial Distress - **a Financial Distress Event.**
- A Financial Distress Event may require NBPco to meet the Minister and/or the Minister’s Representative to review the effect of the Financial Distress Event and submit to the Minister a draft **Financial Distress Service Continuity Plan** within fifteen Working Days of the initial notification of the Financial Distress Event or such other period as the Minister may permit. This plan must explain how the potential adverse impact of the Financial Distress Event will be remedied and provide such relevant financial information relating to NBPco or Monitored Entity as the Minister may reasonably require.
- The Financial Distress Service Continuity Plan must be reviewed at least monthly to assess whether it remains adequate and up to date to ensure the continued provision of the Services, Wholesale Products and Network in accordance with this Agreement and the security of public subsidies and any Deferred Equity Guarantee and Performance Bond;
- **Appendix 3** of the Schedule outlines the Financial Ratio Thresholds and Timelines
- **Annex 1** contains the Financial Ratio Calculation Methodology

# Section D

|                         |                    |              |                     |              |              |              |                    |              |                        |                |
|-------------------------|--------------------|--------------|---------------------|--------------|--------------|--------------|--------------------|--------------|------------------------|----------------|
| 1. Overview of Contract | 2. Section A and B | 3. Section C | <b>4. Section D</b> | 5. Section E | 6. Section F | 7. Section G | 8. Section H and I | 9. Section J | 10. Section K, L and M | 11. Appendices |
|-------------------------|--------------------|--------------|---------------------|--------------|--------------|--------------|--------------------|--------------|------------------------|----------------|

## Subcontracting, Supply Chain And Project Documents

### Clauses

Section D includes Clauses 42 - 44 of the Agreement, which outline the management of NBPco Subcontracts. It outlines the provisions of which both NBPco and Buildco must comply.


The Section outlines the conditions that must be complied with in the event of the appointment and/ or termination of a Key Subcontractor, including compliance with Internal Procurement Procedures. It also sets out the provisions NBPco must comply to regarding Key Subcontracts and in the case of a change in any Key Subcontract.

The Section provides NBPco with information regarding the reporting and recording of information during the Contract Period, and thereafter, by NBPco and its Subcontractors, along with the conditions under which NBPco may be reimbursed for the preparation and producing of Tier 2 Reports.

This Section also outlines the provisions for the completion of the Procurement Process for each Key Service by NBPco.


Finally, it outlines the provisions for refinancing and the conditions NBPco must comply with in order to submit any request for approval of a Refinancing.

### Schedules



2.8

**Key Sub-Contractor Provisions**



3.9

**Key Subcontractor**



6.5

**Reports and Records**



7.3

**Ministerial Oversight of Deployment Subcontract**



6.13

**Form of Key Subcontractor Direct Agreement**

# Section D

|                         |                    |              |              |              |              |              |                    |              |                        |                |
|-------------------------|--------------------|--------------|--------------|--------------|--------------|--------------|--------------------|--------------|------------------------|----------------|
| 1. Overview of Contract | 2. Section A and B | 3. Section C | 4. Section D | 5. Section E | 6. Section F | 7. Section G | 8. Section H and I | 9. Section J | 10. Section K, L and M | 11. Appendices |
|-------------------------|--------------------|--------------|--------------|--------------|--------------|--------------|--------------------|--------------|------------------------|----------------|

## Clause 42 – Clause 44

| Clause | Detail   |
|--------|--|
| 42     | Specifies obligations that NBPco must comply with when dealing with Key Subcontractors.  |
| 42.6   | Must ensure each Key Subcontract complies with the provisions of Schedule 2.8.<br>In the case of an Infrastructure Access Agreement, it must not include any Infrastructure Access Restricted Provisions   |
| 42.7   | NBPco must enter into and procure that each Critical Key Subcontractor, and each Key Subcontractor, upon its appointment will enter into a Key Subcontractor Direct Agreement with NBPco and/or Buildco in the approved form set out by Schedule 7.3.  |
| 42.8   | Ensure a Claw-backable Subcontractor pays all sums of the Buildco Key Subcontract. (Paragraph 10.3 in Schedule 5.1)<br>This does not affect Clause 17 Buildco Key Subcontractor Direct Agreement or NBPco's obligations.<br>(Paragraph 15.4 & 15.6 in Schedule 5.1)  |
| 42.11  | must not terminate the agreement or fail to extend or renew the term of a Key Subcontract without prior written consent of the Minister, unless NBPco has appointed a replacement Key Subcontractor. The Minister can give/withhold consent with respect to any non-extension or non-renewal within twenty-one (21) days of the receipt of the request.            |
| 42.9.1 | must not increase the unit rates, fees or charges payable under a Key Subcontract or other Subcontract within the scope of Paragraph 6 of Schedule 6.13.<br>must deliver a certified copy of any Key Subcontract and Key Subcontractor Direct Agreement within ten (10) Working Days of it having been signed or otherwise executed by the relevant parties to it. |
| 42.12  | must not appoint Unsuitable Third Party as a Subcontractor.<br>must supervise and manage Key Subcontractors in a manner consistent with Best Industry Practice.  |
| 42.15  | All subcontracts to which NBPco are a party will contain a provision requiring NBPco to pay any undisputed sums due to their subcontractor.  |
| 42.17  | All key subcontracts to contain provisions acknowledging and accepting the provisions of and the Ministers rights under Schedule 6.12  |
| 43.1   | NBPco must give fair access to subcontracting opportunities for SMEs, advertise its subcontracting opportunities in a form which is reasonably accessible  |
| 43.2   | NBPco must report on its engagement and opportunities made available to SMEs in accordance with Schedule 6.5.  |
| 44.1   | NBPco, and Contracting Associates, must perform its obligations and observe all terms of the Project Documents.  |

# Section D

|                         |                    |              |              |              |              |              |                    |              |                        |                |
|-------------------------|--------------------|--------------|--------------|--------------|--------------|--------------|--------------------|--------------|------------------------|----------------|
| 1. Overview of Contract | 2. Section A and B | 3. Section C | 4. Section D | 5. Section E | 6. Section F | 7. Section G | 8. Section H and I | 9. Section J | 10. Section K, L and M | 11. Appendices |
|-------------------------|--------------------|--------------|--------------|--------------|--------------|--------------|--------------------|--------------|------------------------|----------------|

## Clause 42 – Clause 44

| Clause        | Detail   |
|---------------|--|
| 44.2          | NBPco to notify the minister if either party is in material default, there is a material dispute or deterioration in the commercial relationship between the parties of the Project Document   |
| 44.5          | NBPco will obtain prior written consent from the Minister if amending or varying any Funding Document or the Project Documents   |
| 44.7          | NBPco must not grant, or suffer or permit the grant of, any Encumbrance whatsoever in any manner over or in respect of the NBPco Assets, except only to the Minister in the manner set out in the Minister Security Documents as at the date of this Agreement |
| 44.8          | NBPco will notify the Minister of the occurrence of the administrative / clerical error as soon as is reasonably practicable.  |
| 44.9          | NBPco must deliver to the Minister a certified copy of each such document or a true and complete record of such in writing within ten Working Days of the date of its execution or creation.   |
| 44.12         | Contains provisions regarding Refinancing the Project.   |
| 44.14 – 44.19 | Contains provisions relating to the Build Contract and constraints around making changes to listed Project Documents.  |



# Section D

## Schedule 2.8

|                         |                    |              |                     |              |              |              |                    |              |                        |                |
|-------------------------|--------------------|--------------|---------------------|--------------|--------------|--------------|--------------------|--------------|------------------------|----------------|
| 1. Overview of Contract | 2. Section A and B | 3. Section C | <b>4. Section D</b> | 5. Section E | 6. Section F | 7. Section G | 8. Section H and I | 9. Section J | 10. Section K, L and M | 11. Appendices |
|-------------------------|--------------------|--------------|---------------------|--------------|--------------|--------------|--------------------|--------------|------------------------|----------------|



### 2.8 Key Sub-Contractor Provisions

- Schedule contains detailed provisions governing NBPco's obligations in dealing with Key Sub-Contractors

# Section D

## Schedule 6.5

|                         |                    |              |              |              |              |              |                    |              |                        |                |
|-------------------------|--------------------|--------------|--------------|--------------|--------------|--------------|--------------------|--------------|------------------------|----------------|
| 1. Overview of Contract | 2. Section A and B | 3. Section C | 4. Section D | 5. Section E | 6. Section F | 7. Section G | 8. Section H and I | 9. Section J | 10. Section K, L and M | 11. Appendices |
|-------------------------|--------------------|--------------|--------------|--------------|--------------|--------------|--------------------|--------------|------------------------|----------------|



### 6.5 – Reports and Records

- NBPco must keep the Minister fully informed of, the progress of the Services and of any matter which materially affects, or which may materially affect, the observance and performance by NBPco of its obligations under the Agreement. Provide reports, information and records to the Minister on an Open Book Basis.
- NBPco, Buildco and all Subcontractors must retain and provide, on an Open Book basis, all reports, records and information in their possession that is required under the Project Agreement.
- NBPco must retain and maintain throughout the Contract Period and, with the exception of the End of Term Reports, for a period of **six (6) years following the termination or expiry** of this Agreement or such longer period as required by Law, records, reports and information required by any other provision of the Agreement, all documentation described in Schedule 5.1, 5.2, 5.5 and 5.4, as well as the reports identified in Appendix 1
- NBPco must provide all records, documentation, reports and information deemed necessary by the Minister to demonstrate NBPco compliancy to its obligations and the reporting requirements of the Minister European Commission and/or the ERDF.
- If requested by the Minister, NBPco will provide a Tier 2 Report in accordance with Schedule 6.5. NBPco is not required to prepare or provide a Tier 2 Report unless the Minister issues a Tier 2 Report Request or unless the Tier 2 Report becomes a Tier 1 Report
- NBPco to provide a secure Management Information System for the repository of all Reports and records and all reports to remain in the system throughout the Contract Period.
- Each Report and Record to be made accessible to the Minister by the Report Due Date otherwise Performance Points will apply.
- NBPco acknowledge the need for new or changes to records may arise during the Contract Period. Any changes to or new records, documentation, information and reports (including Reports) under this Paragraph 3.3 (Report Access And Delivery) must be deemed to be a Change and such Change must be implemented in accordance with the Change Control Procedure.
- NBPco must comply with any request made by the Minister that NBPco provides new records, documentation, information and reports.
- NBPco must ensure all necessary information is available to promptly respond to a Tier 2 Report Request.
- The Minister must reimburse NBPco for NBPco's and Buildco's reasonable aggregate costs (i.e. total costs across NBPco and Buildco) over and above a specified amount in a Contract Year incurred in preparing and producing any Tier 2 Report requested in a Tier 2 Report Request.
- 30 day extension on the first and second monthly set of Management Accounts in the first Contract Year.
- NBPco will provide a Report fulfilling the substantial information requirements of the identified Report required to enable the Minister to appraise NBPcos performance under the agreement
- The delivery of all Substantially Similar Reports in respect of the first Quarter of the first Contract Year must constitute the delivery of the relevant Reports.
- **Annex 1** of the Schedule outlines the frequency, reporting period and other details to be included in each of the Reports

# Section D

## Schedule 6.13

|                         |                    |              |              |              |              |              |                    |              |                        |                |
|-------------------------|--------------------|--------------|--------------|--------------|--------------|--------------|--------------------|--------------|------------------------|----------------|
| 1. Overview of Contract | 2. Section A and B | 3. Section C | 4. Section D | 5. Section E | 6. Section F | 7. Section G | 8. Section H and I | 9. Section J | 10. Section K, L and M | 11. Appendices |
|-------------------------|--------------------|--------------|--------------|--------------|--------------|--------------|--------------------|--------------|------------------------|----------------|



### 6.13 Ministerial Oversight of Deployment Subcontract

- This Schedule applies to any Procurement Process used by NBPCo or BuildCo to select and appoint any Subcontractor to supply any labour element and/or Equipment and/or materials the cost of which is subject to applicable Contract Assumptions.
- NBPCo and Buildco will complete the Procurement Process for each Key Service within 9 months from the Commencement Date.
- NBPCo acknowledges and agrees that the Minister has no duty of care to NBPCo or Buildco in connection with any Procurement Process
- NBPCo to implement documented internal procurement procedures detailing the rules, roles and responsibilities relevant to each stage of the Procurement Process to ensure Good Procurement Practice including a process for investigating any claims and/or complaints.
- Head of Commercial to confirm, prior to each Procurement Process, that each member of the Procurement Board, the Evaluation Team and the Head of Commercial have no conflicts of interest
- Should a conflict of interest arise after the confirmation, Head of Commercial must take steps to preserve the integrity of the Procurement Process.
- NBPCo must establish a procurement board which must have responsibility for the application of and compliance with the Procurement Process and the NBPCo Internal Procurement Procedure. All decisions relating to key stages of the Pre-Procurement Design, Procurement Process and the terms of any Subcontract negotiated under any Procurement Process must be approved by the Procurement Board.
- NBPCo to submit to the Minister a notification of the commencement and the material elements of every proposed applicable Procurement Process prior to the conclusion of Pre-Procurement Design. Such notification must include the 'Preliminary Procurement Information'.
- NBPCo must consider all changes required by the Minister and must either implement the changes and resubmit the revised Preliminary Procurement Information to the Minister who will have 10 working days to review. Should NBPCo disagree with the Ministers determination the Procurement Board and the Minister must meet to resolve the issue within five (5) Working Days of NBPCo's notification of disagreement"
- Paragraph 3 (Preliminary Procurement Information) of this Schedule must not apply to any Limited Maximum Rates Review.
- Evaluation Team must make a recommendation to the Procurement Board of the suppliers proposed for advancement to preferred supplier status and contract negotiations under paragraph 4– Shortlisting.
- Final negotiations are covered under paragraph 5 - NBPCo must not award a Key Subcontract without the Ministers approval. The Minister must, within ten (10) Working Days of receiving the relevant information either respond to NBPCo with written approval to proceed/conclude the Procurement Process or that the Procurement Process has not been conducted accordingly and must be recommenced.
- Any agreed Subcontracts that are Key Subcontracts must comply with Clause 42 and Schedule 2.8 (Key Subcontractor Provisions) and be internally approved by NBPCo
- Minister has audit rights under paragraph 7 in relation to the Procurement Process carried out by NBPCo.
- NBPCo and BuildCo must implement a reconciliation process to confirm that Equipment, materials and labour ordered, purchased, delivered, invoiced and settled for under any Subcontracts awarded in accordance with Schedule 6.13 comply with the Subcontractor Rates Assumptions.

# Section D

## Schedules 3.9 and 7.3

|                         |                    |              |                     |              |              |              |                    |              |                        |                |
|-------------------------|--------------------|--------------|---------------------|--------------|--------------|--------------|--------------------|--------------|------------------------|----------------|
| 1. Overview of Contract | 2. Section A and B | 3. Section C | <b>4. Section D</b> | 5. Section E | 6. Section F | 7. Section G | 8. Section H and I | 9. Section J | 10. Section K, L and M | 11. Appendices |
|-------------------------|--------------------|--------------|---------------------|--------------|--------------|--------------|--------------------|--------------|------------------------|----------------|



### 3.9 Key Subcontractors

- NBPco entitled to subcontract its obligations under this Agreement to the listed Subcontractors
  - NBI Deployment Limited
  - Enasc Éireann Teoranta (t/a Enet)
  - Open Eir
  - Nokia Solutions and Networks Oy
  - Kelly Comms Limited
  - KN Network Services (Ire) Limited
  - Actavo (Ireland) Limited
- The scope of each Key Subcontract is determined by reference to the scope of works, service, Infrastructure or Equipment which may be provided, ordered or placed pursuant to the terms of the Key Subcontract concerned.
- Schedule to be updated to record any Key Subcontractors appointed or terminated by NBPco



### 7.3 – 7.5 Form of Key Subcontractor Direct Agreement

- This Schedule contains Information regarding the form of Key Subcontractor Direct Agreement to Minister for Infrastructure Access Services, Subcontract Works and Services.

# Section E

## Governance and Key Procedures

|                         |                    |              |              |              |              |              |                    |              |                        |                |
|-------------------------|--------------------|--------------|--------------|--------------|--------------|--------------|--------------------|--------------|------------------------|----------------|
| 1. Overview of Contract | 2. Section A and B | 3. Section C | 4. Section D | 5. Section E | 6. Section F | 7. Section G | 8. Section H and I | 9. Section J | 10. Section K, L and M | 11. Appendices |
|-------------------------|--------------------|--------------|--------------|--------------|--------------|--------------|--------------------|--------------|------------------------|----------------|

### Clauses

Section E includes Clauses 45 – 47 of the Agreement, which outline how the relationship between the Department and NBPco must operate and provides details of the key procedures and compliances NBPco are expected to operate under.

It outlines the way in which governance and key procedures are undertaken in compliance with the Agreement and in accordance with the Law.



The Section outlines the need for NBPco to appoint an NBPco representative who must have authority to act on behalf of NBPco on matters set out in and connecting to the agreement.




It also requires NBI to participate in Benchmark and Market Testing as requested by the Minister every five years, with NBPco bearing the total costs of the Benchmark Review should the review be deemed Not Good Value.

The Section states that the Minister may engage an Agency to undertake audits, spot checks and monitoring of NBPco and requires NBPco to take certain actions should an error be identified from these undertakings.

Finally the Section requires NBI to comply and procure compliance with its obligations under Independent Assurance Reviews with no result of any such review affecting the Subsidy Payments.

### Schedules

|  |  |
|--|--|
| <br>6.2 | <br>6.3 |
| Change Control   | Dispute Resolution   |

|   |   |   |
|---|---|---|
| <br>6.10 | <br>6.11 | <br>6.12 |
| Independence and Assurance  | Audits  | Benchmarking and Market Testing   |

# Section E

## Clause 45 – Clause 47

|                         |                    |              |              |              |              |              |                    |              |                        |                |
|-------------------------|--------------------|--------------|--------------|--------------|--------------|--------------|--------------------|--------------|------------------------|----------------|
| 1. Overview of Contract | 2. Section A and B | 3. Section C | 4. Section D | 5. Section E | 6. Section F | 7. Section G | 8. Section H and I | 9. Section J | 10. Section K, L and M | 11. Appendices |
|-------------------------|--------------------|--------------|--------------|--------------|--------------|--------------|--------------------|--------------|------------------------|----------------|

| Clause    | Detail   |
|-----------|--|
| 45.1      | The Minister must appoint a Ministers Representative and NBPco must appoint an NBPco Representative who must have authority to act on behalf of respective parties in matters relating to the Agreement  |
| 45.5      | NBPco must ensure that their Representative is competent to preform their duties and responsibilities and that they are granted sufficient authority to ensure the operation and management of this Agreement.   |
| 45.9      | NBPco Representative will be available for consultation and engagement with the Minister/Minister Representative upon reasonable prior written notice being given.   |
| 46.2      | The Project Agreement is subject to Schedule 6.12 (Benchmarking and Market Testing) and NBPco will participate in any Benchmark Review at the request of the Minister.   |
| 47.1-47.2 | NBPco acknowledges and agrees to undertake audits, monitoring or spot checks of NBPco at the request of the Minister and in compliance with Schedule 6.11 (Audits).  |
| 47.3      | NBPco acknowledges that the Regulatory body in respect to any audit are not confined by the Project Agreement and may undertake the audit how they see fit.  |
| 47.5      | NBPco must comply and procure compliance with Schedule 6.10 (Independent Assurance).   |
| 47.7      | NBPco must bear its own costs and expenses in respect to Clause 47 (Audit) unless such costs are recoverable as Permitted Expenditure according to Schedule 5.1 or Schedule 6.11 states otherwise.   |
| 48.1      | NBPco must maintain the Reports and Records referred to in Schedule 6.5 and ensure they are sufficient to evidence attainment of the Performance Levels outlined in Schedule 6.7.  |
| 48.2      | NBPco must put in place and maintain measurement and monitoring tools and procedures necessary to measure and report on NBPco's provision of the Services, Wholesale Products and Network against the Implementation Programme, the Project Plans, the Service Requirements. |
| 48.4      | Where NBPco receives a request for information from the Minister, the default timeline for provision of this information is ten days, unless otherwise specified and agreed by the Minister, or within this Agreement.   |
| 49.1      | Both NBPco and the Minister will comply with the Change Control Procedure set out in Schedule 6.2.   |
| 50.1      | Both NBPco and the Minister will comply with the Dispute Resolution Procedure set out in Schedule 6.3.   |
| 50.2      | Where there is a Dispute that is being resolved through the Dispute Resolution Procedure, NBPco must continue to deliver the contract and the Minister must continue to make any undisputed payments until it has been resolved as if there was no Dispute in such respect.  |
| 50.3      | Where there is a Dispute as to whether a payment is due, neither Party must be entitled to enforce or impose on the other Party any claim, liability or penalty regarding the payment until the Dispute is resolved via the Dispute Resolution Procedure.                    |

# Section E

## Schedule 6.2

|                         |                    |              |              |              |              |              |                    |              |                        |                |
|-------------------------|--------------------|--------------|--------------|--------------|--------------|--------------|--------------------|--------------|------------------------|----------------|
| 1. Overview of Contract | 2. Section A and B | 3. Section C | 4. Section D | 5. Section E | 6. Section F | 7. Section G | 8. Section H and I | 9. Section J | 10. Section K, L and M | 11. Appendices |
|-------------------------|--------------------|--------------|--------------|--------------|--------------|--------------|--------------------|--------------|------------------------|----------------|

- This Schedule outlines the **Change Control Procedure** that applies where Changes to the Agreement are required.



### 6.2 – Change Control

# Section E

## Schedules 6.3

|                         |                    |              |              |              |              |              |                    |              |                        |                |
|-------------------------|--------------------|--------------|--------------|--------------|--------------|--------------|--------------------|--------------|------------------------|----------------|
| 1. Overview of Contract | 2. Section A and B | 3. Section C | 4. Section D | 5. Section E | 6. Section F | 7. Section G | 8. Section H and I | 9. Section J | 10. Section K, L and M | 11. Appendices |
|-------------------------|--------------------|--------------|--------------|--------------|--------------|--------------|--------------------|--------------|------------------------|----------------|



### 6.3 - Dispute Resolution

- The Schedule outlines the process for resolving disputes that arise between the Parties. NBPco must continue to comply with its obligations under this Agreement notwithstanding the referral of the Dispute to the **Dispute Resolution Procedure**.
- NBPco is not entitled to commence arbitration or court proceedings until it has first complied with the provisions of the Dispute Resolution Procedure.
- Where a Dispute arises, a **Notice of Dispute** must be issued to the other party, outlining the nature of the Dispute. Further detail on the contents of the Notice is contained in the Schedule.
- Following the issue of a Notice of Dispute, the Parties must seek to resolve a Dispute by **Commercial Negotiation**, where the Parties must first refer the Dispute to the **Level 1 Representatives** to meet and engage in order to attempt to resolve the Dispute. If the Dispute is not resolved by the Level 1 Representatives (COO) within the timescales specified in the **Standard Dispute Resolution Timetable** or the **Expedited Dispute Resolution Procedure** (see **Appendix 2** for Timetables), either Party may by notice in writing to the other Party refer the Dispute to the **Level 2 Representatives** (CEO) for resolution.
- If either Party is of the reasonable opinion that the resolution of a Dispute by Commercial Negotiations, or the continuance of Commercial Negotiations, will not result in an appropriate solution, either Party may serve a written notice to proceed to mediation – a **Mediation Notice**. The Schedule outlines the process for engaging in Mediation.
- NBPco may, subject to having first complied with the above steps, refer a Dispute to **arbitration or commence court proceedings** in relation to a Dispute in the Irish Courts by serving a notice to the Minister informing the Minister of this intention.
- Either Party may at any time take proceedings or seek remedies before any court or tribunal for interim or interlocutory remedies in relation to this Agreement.
- Provisions are also made for **Multi-party disputes**.



# Section E

## Schedules 6.10 – 6.12

|                         |                    |              |              |              |              |              |                    |              |                        |                |
|-------------------------|--------------------|--------------|--------------|--------------|--------------|--------------|--------------------|--------------|------------------------|----------------|
| 1. Overview of Contract | 2. Section A and B | 3. Section C | 4. Section D | 5. Section E | 6. Section F | 7. Section G | 8. Section H and I | 9. Section J | 10. Section K, L and M | 11. Appendices |
|-------------------------|--------------------|--------------|--------------|--------------|--------------|--------------|--------------------|--------------|------------------------|----------------|



### 6.10 – Independence and Assurance

- NBPco must be subject to **Independent Assurance Reviews** at the discretion of The Minister, and is within its right to approve or suggest reasonable amendments to the Draft Plan for the Independent Assurance Review prior to its undertaking.
- NBPco is required to provide all reasonable information and documentation required by the Independent Assurance Reviewer.
- NBPco must co-operate fully with the Independent Assurance Reviewer and provide all rights of access as the Independent Assurance Reviewer may reasonably require on the same basis as an Audit or Spot Check under the provisions of Schedule 6.11.



### 6.11 – Audits

- NBPco may be subject to **audits and spot checks** as deemed appropriate by the Minister, subject to frequency limits outlined in Audit Rights, at any time without warning.
- NBPco must bear their own respective costs and expenses in compliance with their obligations under this Schedule, unless a material default by NBPco is identified and in such case NBPco will reimburse said default.
- NBPco will cooperate and assist in relation to Audits and Spot Checks
- The Minister and its **Audit Agents** may enter the registered office of NBPco and any location where it is carrying out services as necessary to carry out audits and spot checks and are entitled to be present and observe any extraction of data or information requested.
- NBPco may request the Ministers Audit Agent to enter into a confidentially undertaking so long as it does so in writing.
- If it is identified that NBPco have commit a default and/or a reporting error has occurred NBPco must rectify the error as soon as practical.
- Should an **overpayment** have been made NBPco must repay the Minister the amount overpaid and, at the Ministers discretion, interest on said overpayment.
- Should an **underpayment** be made by the Minister, NBPco will be entitled to the amount underpaid but will not be entitled to interest or to increase the subsidy Payment paid or payable to the Minister.



### 6.12 – Benchmarking and Market Testing

- NBPco will be subject to **Market Testing Reviews every five years** until the 25<sup>th</sup> anniversary of the Effective Date.
- NBPco undertakes to participate in any **Benchmark Review**, performed by an independent third party appointed by the Employer, at the request of the Minister with 10 working days **written notice** to the Minister.
- NBPco will co-operate fully with the Benchmarker providing all information described in the pre-agreed plan.
- Should the Benchmark Report find that any or all Key Subcontractor Services are not good value the Minister may require the Employer to conduct Market Testing and where necessary replace the relevant Key Subcontractor.
- Each **Benchmark Party** will bear their own costs of each Benchmark Review while the costs of the Benchmarker will be borne equally by NBPco and the Minister. NBPco will bear the total costs of the Benchmarker in the case that the review is found to be Not Good Value.

# Section F

## Personnel and Assets

|                         |                    |              |              |              |                     |              |                    |              |                        |                |
|-------------------------|--------------------|--------------|--------------|--------------|---------------------|--------------|--------------------|--------------|------------------------|----------------|
| 1. Overview of Contract | 2. Section A and B | 3. Section C | 4. Section D | 5. Section E | <b>6. Section F</b> | 7. Section G | 8. Section H and I | 9. Section J | 10. Section K, L and M | 11. Appendices |
|-------------------------|--------------------|--------------|--------------|--------------|---------------------|--------------|--------------------|--------------|------------------------|----------------|

### Clauses

Section F includes Clauses 51 – 53 of the Agreement, which outline the management of NBPco Personnel. It outlines the provisions with which both NBPco and Buildco Personnel must comply by Law and in respect to this Agreement.

The Section outlines the Key Roles and Responsibilities of NBPco Personnel, including a list of the relevant experience Key Personnel must possess to fulfil the role.

The Section contains conditions which must be passed down to subcontractors including with regard to Convictions, discrimination, visas, industrial action etc.

An indemnity is contained at Clause 51.12 to the Minister in respect of Employee Liabilities, taxes negligence etc. Time limitations are set out in respect each different indemnity.

Clause 52 and 53 sets out obligations in respect of NBPco Assets, Industry Best Practice regarding an Asset Register and procurement of warranties, guarantees and indemnities from manufacturers or suppliers of Assets.

### Schedules



# Section F

## Clause 51 – Clause 53

|                         |                    |              |              |              |              |              |                    |              |                        |                |
|-------------------------|--------------------|--------------|--------------|--------------|--------------|--------------|--------------------|--------------|------------------------|----------------|
| 1. Overview of Contract | 2. Section A and B | 3. Section C | 4. Section D | 5. Section E | 6. Section F | 7. Section G | 8. Section H and I | 9. Section J | 10. Section K, L and M | 11. Appendices |
|-------------------------|--------------------|--------------|--------------|--------------|--------------|--------------|--------------------|--------------|------------------------|----------------|

| Clause | Detail   |
|--------|--|
| 51.1   | NBPco must comply with all employment, discrimination and equality Laws in connection with NBPco Personnel and must use all reasonable endeavours to procure that all Key Subcontractors comply with such Laws.<br>NBPco must be liable for all acts or omissions of NBPco Personnel in connection with NBPco's Personnel's performance or non-performance of obligations under this Agreement.  |
| 51.4   | NBPco must, in relation to any personnel employed, engaged or proposed to be, are vetted consistent with Best Industry Practice in relation to Convictions.  |
| 51.5   | NBPco or any Key Subcontractor must not engage or continue to utilise in the provision of any part of the Services any person who discloses that they have a Relevant Conviction, or who is found by NBPco to have any Relevant Convictions  |
| 51.7   | NBPco acknowledges that the Key Personnel are essential to the proper provision of the Services and Network and must be fully competent to carry out the role with a level of qualifications appropriate to the relevant role.   |
| 51.8   | NBPco must ensure that the Key Personnel fulfil the Key Roles at all times during the Contract Period and that each of the Key Personnel work for such a period of time that is sufficient to perform the obligations of that person's role  |
| 51.9   | NBPco must not remove or replace any Key Personnel unless they are promptly replaced with someone with the appropriate qualifications necessary to perform the relevant Key Role. Any changes to the Key Personnel from time to time must be recorded by the Parties on the list of Key Personnel in Schedule 3.8. Any planned changes in Key Personnel should have adequate transfer periods, where personnel work together, to avoid adverse impact on the responsibilities of the role.                                       |
| 51.10  | In the event of any industrial action by NBPco Personnel or others which inhibits, prevents or otherwise impedes the carrying out of the Project, Services, Wholesale Products and/or Network, NBPco must use all reasonable endeavours to ensure the continuation of the Services, Project and Network in a timely, efficient and productive manner in accordance with its obligations under this Agreement.  |
| 51.12  | NBPco must, during and for a period of three (3) years after the Contract Term, be responsible for, and on demand release and indemnify the Minister on a continuing basis against, all Employee Liabilities suffered, incurred or agreed to be paid out by the Minister that may arise as a result of any act or omission of NBPco personnel during the Contract Term and/or claims that any NBPco Personnel are personnel of the Minister. The three year limitation period does not apply in the event of any fraud by NBPco. |
| 51.13  | NBPco must comply and use reasonable endeavours to procure compliance by NBPco Personnel with the provisions of the Taxes Consolidation Act 1997 and all other statutes and regulations relating to income tax, levies and social charges during and for a period of 6 years after the Contract Term. NBPco indemnify the Minister in respect of applicable taxes, interest and penalties.   |

# Section F

## Clause 51 – Clause 53

|                         |                    |              |              |              |              |              |                    |              |                        |                |
|-------------------------|--------------------|--------------|--------------|--------------|--------------|--------------|--------------------|--------------|------------------------|----------------|
| 1. Overview of Contract | 2. Section A and B | 3. Section C | 4. Section D | 5. Section E | 6. Section F | 7. Section G | 8. Section H and I | 9. Section J | 10. Section K, L and M | 11. Appendices |
|-------------------------|--------------------|--------------|--------------|--------------|--------------|--------------|--------------------|--------------|------------------------|----------------|

| Clause | Detail  |
|--------|---|
| 52.1   | NBPco must (except to the extent approved in advance by the Minister in writing in a specific case) procure and maintain absolute ownership of all NBPco Assets throughout the Contract Term. must not create, grant or suffer the grant, creation or existence of any Encumbrance over, under or in respect of the NBPco Assets on and from the Commencement Date and throughout the Contract Term (other than to the Minister); and not exercise its Implementation Discretion in such a way that its, direct or indirect, operation of the Assets breaches the State Aid Decision and/or State Aid Law |
| 52.2   | NBPco and Key Subcontractors must procure for NBPco, the benefit of all warranties, guarantees and indemnities available from any manufacturers or suppliers of the Assets.   |
| 53.1   | NBPco must throughout the Contract Term develop and maintain, and update as reasonably necessary, an accurate written inventory of the location, specific type and, where applicable, specification and configuration of all Assets in a form and manner so that it is accessible and auditable by NBPco and the Minister in real time.   |
| 53.2   | NBPco must ensure that the Asset Register contains all necessary information as outlined in Section 53.2  |
| 53.3   | NBPco must provide to the Minister real time access to the live version of the Asset Register, Network Infrastructure Map and the Inventory Management System throughout the Contract Term.   |

# Section F

## Schedule 3.8

|                         |                    |              |              |              |                     |              |                    |              |                        |                |
|-------------------------|--------------------|--------------|--------------|--------------|---------------------|--------------|--------------------|--------------|------------------------|----------------|
| 1. Overview of Contract | 2. Section A and B | 3. Section C | 4. Section D | 5. Section E | <b>6. Section F</b> | 7. Section G | 8. Section H and I | 9. Section J | 10. Section K, L and M | 11. Appendices |
|-------------------------|--------------------|--------------|--------------|--------------|---------------------|--------------|--------------------|--------------|------------------------|----------------|



### 3.8 Key Personnel

- Schedule contains specifications regarding particular personnel in NBPco, including ensuring that they are fully competent to carry out and have a level of qualifications, training, skills, experience and technical experience necessary and appropriate to carry out relevant Key Roles.

# Section G

## IPR, Data and Confidentiality

### Clauses

Section G includes Clauses 54 - 60 of the Agreement, which outline the confidentiality agreement in relation to the sharing of information between NBPco and the Department. It also outlines the rights, obligations and restrictions upon NBPco in relation to IPR, Data Protection and Information Requests.

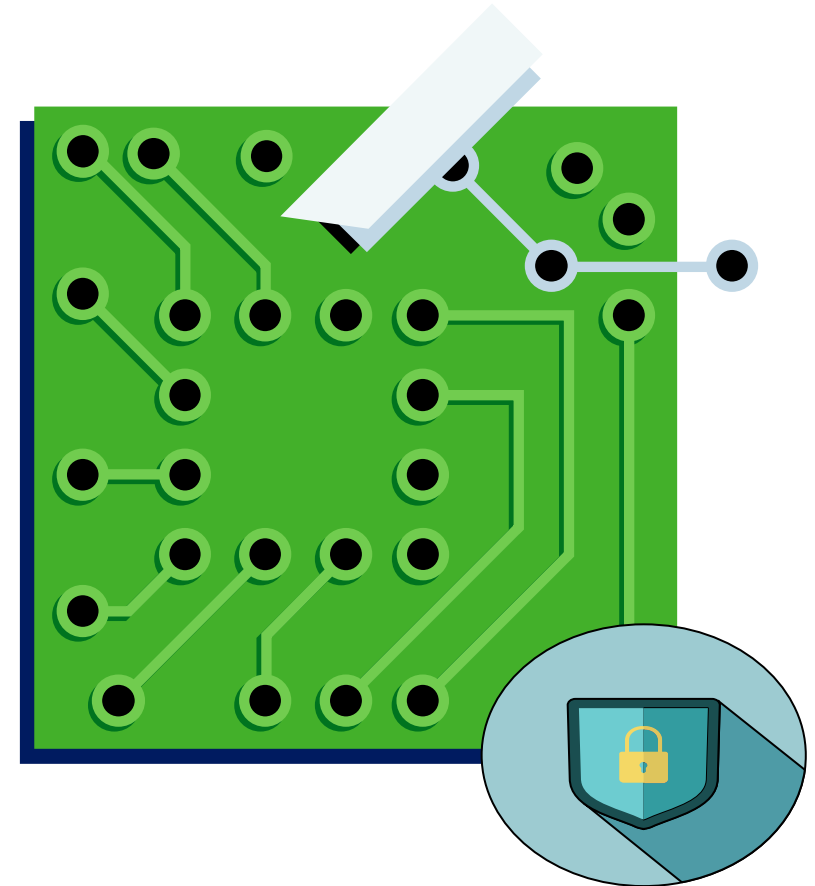
The Section provides the confidentiality requirements of NBPco and its Subcontractors in order to limit the extent of confidential information in the making of any disclosure.

The Section outlines NBPco's obligations under the data rights of the Minister whereby NBPco have no lien over any of the Ministers IPR or Data. NBPco must comply with its obligations in accordance with Data Protection Legislation and must not perform any obligations under this agreement so as to breach any of those obligations.

The Section also outlines the actions required by NBPco to ensure it remains in compliance with the IP rights of the Minister and all other third parties, in particular in the sharing and copying of software.

NBPco also acknowledge the Minister, Regulator and Agency may be subject to the requirements of the FOI Act and Environmental Information Regulations and that information may be released by the Minister and Regulator in accordance with the law. Specific provisions in relation to such information are set out in Clause 59.

|                         |                    |              |              |              |              |              |                    |              |                        |                |
|-------------------------|--------------------|--------------|--------------|--------------|--------------|--------------|--------------------|--------------|------------------------|----------------|
| 1. Overview of Contract | 2. Section A and B | 3. Section C | 4. Section D | 5. Section E | 6. Section F | 7. Section G | 8. Section H and I | 9. Section J | 10. Section K, L and M | 11. Appendices |
|-------------------------|--------------------|--------------|--------------|--------------|--------------|--------------|--------------------|--------------|------------------------|----------------|



# Section G

## Clause 54 – Clause 60

|                         |                    |              |              |              |              |              |                    |              |                        |                |
|-------------------------|--------------------|--------------|--------------|--------------|--------------|--------------|--------------------|--------------|------------------------|----------------|
| 1. Overview of Contract | 2. Section A and B | 3. Section C | 4. Section D | 5. Section E | 6. Section F | 7. Section G | 8. Section H and I | 9. Section J | 10. Section K, L and M | 11. Appendices |
|-------------------------|--------------------|--------------|--------------|--------------|--------------|--------------|--------------------|--------------|------------------------|----------------|

| Clause      | Detail  |
|-------------|---|
| 54.2        | NBPco and associates to assign or convey IP rights to the Minister in accordance with clause 54.1.  |
| 54.4        | NBPco has no right to use the Minister's names, logos or trade marks on any products or services or otherwise without prior written consent.  |
| 54.6        | NBPco must not infringe the IPR of any third parties during the Contract Term   |
| 55.2        | NBPco holds no right to take a copy of third party software where NBPco does not have the legal or contractual right to provide such a copy for the minister. In such event the Minister is entitled to take a copy of the relevant data rather than the underlying software.   |
| 56.2        | Only those entered into a written and legally binding confidentiality undertaking with NBPco may copy, distribute or use the Minister IPR.  |
| 56.4        | The licence granted to NBPco will apply for the duration of the contract period and any longer period as is necessary and agreed in writing. NBPco will destroy or deliver to the Minister all IPR and Minister data in its possession or in the possession of any Subcontractor after such period.                             |
| 56.5        | NBPco and its Personnel have no lien over any of the Ministers IPR or Data. And must not attempt to exercise any lien over any of said IPR or Data.   |
| 57.1-57.5   | NBPco must not cover, obscure, delete or remove any proprietary notices contained within or relating to the Minister Data.  |
| 58.1        | NBPco must comply with its obligations under the Data Protection Legislation relating to all personal data and must not perform any obligations under this Agreement in such a way as to cause the Minister, Regulator or Agency to breach any of their obligations under the Data protection Legislation.                      |
| 59.1 – 59.2 | The Minister and Regulator are subject to the requirements of FOI Act and Environmental Information Regulations and that information may be released by any of them in accordance to law. NBPco must assist and cooperate to comply with disclosure obligations under the FOI act, Environmental Information Regulations or Law |
| 59.4        | Upon written request from the Minister NBPco will provide a copy of all information in its possession within seven working days of the request  |
| 59.6        | In no event must NBPco respond directly to a Request for Information addressed to the Minister, Regulator or Agency unless expressly authorised to do so by the Minister in writing by specific reference to this Clause.   |
| 60.3        | NBPco must take reasonable steps to limit the extent of confidential information in the making of any disclosure and to notify the other party of any disclosure  |

# Section G

## Clause 54 – Clause 60

|                         |                    |              |              |              |              |              |                    |              |                        |                |
|-------------------------|--------------------|--------------|--------------|--------------|--------------|--------------|--------------------|--------------|------------------------|----------------|
| 1. Overview of Contract | 2. Section A and B | 3. Section C | 4. Section D | 5. Section E | 6. Section F | 7. Section G | 8. Section H and I | 9. Section J | 10. Section K, L and M | 11. Appendices |
|-------------------------|--------------------|--------------|--------------|--------------|--------------|--------------|--------------------|--------------|------------------------|----------------|

| Clause | Detail  |
|--------|---|
| 60.4   | Parties must only use the other Party's Confidential Information in accordance with the terms of the Project Agreement  |
| 60.5   | NBPCo may only disclose Minister Confidential Information if obligations on the receiver are subject to the same confidentiality standards as provided in the Project Agreement |
| 60.6   | NBPco acknowledge the Minister's contractual rights in respect of Confidential Information.   |
| 60.7   | NBPco to cooperate with the Minister in respect of publishing the redacted Project Agreement  |
| 60.8   | Remedies which are available to the affected party, in the case of default where damages not sufficient.  |
| 60.9   | Perpetual nature of confidentiality obligations survive the expiration of the Agreement.  |



# Section H & I

## Restricted Acts & Occurrences and Undertaking & Indemnities

|                         |                    |              |              |              |              |              |                    |              |                        |                |
|-------------------------|--------------------|--------------|--------------|--------------|--------------|--------------|--------------------|--------------|------------------------|----------------|
| 1. Overview of Contract | 2. Section A and B | 3. Section C | 4. Section D | 5. Section E | 6. Section F | 7. Section G | 8. Section H and I | 9. Section J | 10. Section K, L and M | 11. Appendices |
|-------------------------|--------------------|--------------|--------------|--------------|--------------|--------------|--------------------|--------------|------------------------|----------------|




### Clauses

Section H outlines a number of Prohibited Acts that NBPco and its Subsidiaries promise they have not and will not commit. These acts include fraud, bribery and insider trading. The Section also outlines the procedures to be followed should any of these Prohibited Acts arise.

Section H also outlines the relevant procedures for any change in ownership or control of NBPco and its Subsidiaries.

Section I outlines a number of Undertakings and Indemnities that NBPco agrees to provide. This includes an undertaking to comply with and deliver the Services, Network and Wholesale Products as set out in the Agreement and to ensure they are fit for purpose. NBPco also indemnifies the Minister against loss or damage arising from certain obligations under the Agreement and provides the procedures for the handling of certain Indemnified Claims. The Section also sets out the Insurance Policies that NPBCo is required to take out and maintain during the Agreements.

### Schedules

|  |  |  |
|--|--|--|
| <br>2.7 | <br>5.6 | <br>7.6 & 7.7 |
| NBPco Requirement  | Required Insurance   | Guarantees   |

# Sections H & I

## Clause 61 - Clause 69

|                         |                    |              |              |              |              |              |                    |              |                        |                |
|-------------------------|--------------------|--------------|--------------|--------------|--------------|--------------|--------------------|--------------|------------------------|----------------|
| 1. Overview of Contract | 2. Section A and B | 3. Section C | 4. Section D | 5. Section E | 6. Section F | 7. Section G | 8. Section H and I | 9. Section J | 10. Section K, L and M | 11. Appendices |
|-------------------------|--------------------|--------------|--------------|--------------|--------------|--------------|--------------------|--------------|------------------------|----------------|

| Clause | Detail   |
|--------|--|
| 61.3   | NBPco, its Personnel and Subcontractors must not commit a Prohibited Act; and/or do anything which would cause the Minister or any of the Minister's employees to contravene any of the Relevant Requirements or otherwise incur any liability in relation to the Relevant Requirements. |
| 61.4   | NBPco and its Subcontractors must establish, maintain and enforce policies and procedures with a view to ensuring compliance with the Relevant Requirements.   |
| 61.5   | NBPco must promptly notify the Minister in writing if it becomes aware of any breach of Prohibited Acts  |
| 61.6   | If a Prohibited Act occurs, NBPco must respond promptly to the Minister's enquiries, co-operate with an investigation, and allow the Minister to audit any books, records and/or any other relevant documentation.   |
| 62.1   | NBPco must disclose to the Minister any actual or potential conflict of interest as soon as is reasonably practicable.   |
| 62.2   | NBPco must ensure that appropriate and effective measures are put in place, maintained and implemented to address any actual or potential conflict of interests.   |
| 63     | Details the restrictions on any Change in Ownership.   |
| 65.2   | To indemnify the Minister against all liabilities  |
| 67.2   | NBPco is entitled to defend indemnified claims   |
| 67.4   | NBPco to take all steps necessary to transfer the conduct of certain indemnified claims to the Minister if requested.  |

# Sections H & I

## Clause 61 - Clause 69

|                         |                    |              |              |              |              |              |                    |              |                        |                |
|-------------------------|--------------------|--------------|--------------|--------------|--------------|--------------|--------------------|--------------|------------------------|----------------|
| 1. Overview of Contract | 2. Section A and B | 3. Section C | 4. Section D | 5. Section E | 6. Section F | 7. Section G | 8. Section H and I | 9. Section J | 10. Section K, L and M | 11. Appendices |
|-------------------------|--------------------|--------------|--------------|--------------|--------------|--------------|--------------------|--------------|------------------------|----------------|

| Clause | Detail  |
|--------|---|
| 68     | Specifies limits for uninsured liabilities.   |
| 69.1   | To procure required insurances as stipulated in the Project Agreement   |
| 69.4   | Compliance with specified requirements in respect of Required Insurances  |
| 69.9   | To provide notice to the Minister of any claim in excess of a specified amount made on any insurance policy.  |
| 69.12  | To ensure that insurance proceeds received following a claim are properly applied in respect of the assets for which they were received                             |
| 69.13  | NBPCo to deliver Reinstatement Plan to the Minister as appropriate to repair, reinstate or replace the assets which are the subject of the relevant claim or claims |
| 69.18  | To provide the Minister with notice of a risk that has become uninsurable and to seek insurance every for months for an uninsurable risk.                           |
| 70.1   | To develop, maintain and implement a Business Continuity and Disaster Recovery Plan   |

# Section H & I

## Schedule 2.7 and Schedule 5.6

|                         |                    |              |              |              |              |              |                    |              |                        |                |
|-------------------------|--------------------|--------------|--------------|--------------|--------------|--------------|--------------------|--------------|------------------------|----------------|
| 1. Overview of Contract | 2. Section A and B | 3. Section C | 4. Section D | 5. Section E | 6. Section F | 7. Section G | 8. Section H and I | 9. Section J | 10. Section K, L and M | 11. Appendices |
|-------------------------|--------------------|--------------|--------------|--------------|--------------|--------------|--------------------|--------------|------------------------|----------------|



### 2.7 – NBPco Requirements

- This imposes a number of requirements on NBPco in order to safeguard competition, ensure transparency and non-discrimination and avoid any conflict of interest.
- NBPco must not convert to or become a different type of company under Law without the prior written consent of the Minister and must include provisions in its Constitution which reflect Non Discrimination requirements set out in **Appendix 1**.
- The Schedule outlines the Governance Structure for NBPco and defines certain positions as Top Tier Personnel and their obligations. It also outlines the composition of the Board along with the requirements of Independent Non Executive Directors.



### 5.6 – Required Insurance

- This Schedule provides insurances must be taken out against “All risks” of physical loss or damage to the Insured Property for the full reinstatement value. The Schedule also sets out whom is required to take out different types of insurances e.g. Key Subcontractors. The Insured Property is the permanent and temporary works, materials, goods, plant and Equipment for incorporation in the Network (other than constructional plant, tools, accommodation and equipment belonging to or the responsibility of Buildco) and all other property used or for use in connection with the Network.
- **Delay in Start Up Insurance** must also be taken out in respect of loss of anticipated Project Revenue arising from a delay in completion of the works as a result of loss or damage covered under the Contractors’ All Risks’ Insurance and the economic additional expenditure incurred for the purpose of avoiding or reducing the loss of anticipated Revenue of NBPco, which, without such expenditure would have taken place, during the Minimum Indemnity Period.
- **Third Party Liability Insurance** must be put in place to indemnify against accidental death, or bodily injury, illness, disease contracted by any person; loss or damage to property; and interference to property or any easement right or use thereof by obstruction, trespass, nuisance, happening during the Period of Insurance and arising out of or in connection with the Network Deployment or happening during the Operational Period in connection with the provision of the Services.
- **Employers’ Liability Insurance** must be provided against legal liability for death, illness, disease or bodily injury sustained by employees of the insured.
- **Environmental Liability Insurance** must be provided against Legal liability of the Insured to pay claims resulting from pollution conditions that result from the Network Deployment performed by the Insured or any entity for which the Insured is legally liable and loss resulting from emergency remedial actions undertaken by the Insured arising from pollution conditions that result from the Network Deployment or happening during the Operational Period in connection with the provision of the Services.
- **Property Damage Insurance** must be provided against “All risks” of physical loss or damage to the Insured Property from the start of the Operational Period until the Expiry Date.
- **Business Interruption Insurance** must be provided in respect of loss of Revenue arising from an interruption or interference as a result of loss or damage covered under Property Damage Insurance including physical loss or damage and the economic additional expenditure necessarily and reasonably incurred for the purpose of avoiding or reducing the loss of Project Revenue of NBPco which without such expenditure would have taken place, during the Indemnity Period.

# Section H & I

## Schedule 7.6 and Schedule 7.7

|                         |                    |              |              |              |              |              |                           |              |                        |                |
|-------------------------|--------------------|--------------|--------------|--------------|--------------|--------------|---------------------------|--------------|------------------------|----------------|
| 1. Overview of Contract | 2. Section A and B | 3. Section C | 4. Section D | 5. Section E | 6. Section F | 7. Section G | <b>8. Section H and I</b> | 9. Section J | 10. Section K, L and M | 11. Appendices |
|-------------------------|--------------------|--------------|--------------|--------------|--------------|--------------|---------------------------|--------------|------------------------|----------------|



### 7.6 & 7.7 Guarantees & Share Charge

- These Schedules provide the form of Limited Recourse Guarantee and Indemnity over NBPCo and Buildco shares provided to the Minister.

# Section J

|                         |                    |              |              |              |              |              |                    |              |                        |                |
|-------------------------|--------------------|--------------|--------------|--------------|--------------|--------------|--------------------|--------------|------------------------|----------------|
| 1. Overview of Contract | 2. Section A and B | 3. Section C | 4. Section D | 5. Section E | 6. Section F | 7. Section G | 8. Section H and I | 9. Section J | 10. Section K, L and M | 11. Appendices |
|-------------------------|--------------------|--------------|--------------|--------------|--------------|--------------|--------------------|--------------|------------------------|----------------|

## Business Continuity, Disaster Recovery And Force Majeure

### Clauses

Section J outlines that NBPco must develop, maintain and implement a Business Continuity and Disaster Recovery plan.

It also outlines what constitutes a Force Majeure Event and the measures that apply in such circumstances. A Force Majeure Event is defined as:

1. war, invasion, hostilities or armed conflict (but, for clarity, not including terrorism or its consequences) of foreign enemy in each case arising in or affecting the State;
2. act of terrorism causing physical damage to the Network;
3. rebellion, revolution, or insurrection which causes physical damage and long term disruption to the Network, in each case within the State;
4. nuclear explosion, combustion of nuclear fuel, radioactive or chemical or biological contamination or ionising radiation, which event is not caused or contributed to by an act, omission or default of NBPco or NBPco Personnel or person for whom NBPco is responsible; and
5. pressure waves caused by aircraft or other aerial devices travelling at supersonic speed.



# Section J

## Clause 70 & Clause 71

|                         |                    |              |              |              |              |              |                    |              |                        |                |
|-------------------------|--------------------|--------------|--------------|--------------|--------------|--------------|--------------------|--------------|------------------------|----------------|
| 1. Overview of Contract | 2. Section A and B | 3. Section C | 4. Section D | 5. Section E | 6. Section F | 7. Section G | 8. Section H and I | 9. Section J | 10. Section K, L and M | 11. Appendices |
|-------------------------|--------------------|--------------|--------------|--------------|--------------|--------------|--------------------|--------------|------------------------|----------------|

| Clause          | Detail   |
|-----------------|--|
| 70.1            | NBPco must develop, maintain and implement a Business Continuity and Disaster Recovery plan.   |
| 70.2            | NBPco must regularly test and review the BCDR Plan and to report the outcome of such test and review to the Minister   |
| Definitions     | <p>A Force Majeure event means any of the following events, as a result of which obligations of either Party under this Agreement are incapable of being performed:</p> <ol style="list-style-type: none"> <li>1. war, invasion, hostilities or armed conflict (but, for clarity, not including terrorism or its consequences) of foreign enemy in each case arising in or affecting the State;</li> <li>2. act of terrorism causing physical damage to the Network;</li> <li>3. rebellion, revolution, or insurrection (but, for clarity, not including terrorism, riots or industrial or labour disputes, strikes or lock out or their consequences or any act or omission of NBPco Personnel or person for whom NBPco is responsible) which causes physical damage and long term disruption to the Network, in each case within the State;</li> <li>4. nuclear explosion, combustion of nuclear fuel, radioactive or chemical or biological contamination or ionising radiation, which event is not caused or contributed to by an act, omission or default of NBPco or NBPco Personnel or person for whom NBPco is responsible; and</li> <li>5. pressure waves caused by aircraft or other aerial devices travelling at supersonic speed.</li> </ol> |
| 71.1            | If a Force Majeure Event occurs, NBPco must keep the Minister informed of the status of any Force Majeure Event and the actions being taken to overcome it.  |
| 71.5            | <p>The conditions for extension of Milestone Date in the case of a Force Majeure Event are:<br/>                     NBPco issues a notice to the Minister within three Working Days that a Force Majeure Event has or is reasonably likely to cause a Delay, containing the following information:</p> <ol style="list-style-type: none"> <li>A. a clear statement that NBPco is making a claim for relief in accordance with Clause 71 (Force Majeure) due to a Force Majeure Event;</li> <li>B. a clear statement of which of the Force Majeure Events has directly caused the Delay or anticipated Delay;</li> <li>C. a statement of the date of occurrence and likely duration of the Force Majeure Event;</li> <li>D. a properly reasoned and reasonably detailed explanation of how, and to what extent, the it is prevented from carrying out its obligations as a consequence of the Force Majeure Event;</li> <li>E. a statement of the length of the Delay, or likely length of the anticipated Delay, directly caused by the Force Majeure Event; and</li> <li>F. a statement of the specific extension to any Milestone Dates being requested as a direct result of the Force Majeure Event</li> </ol>                                      |
| 71.8.2 - 71.8.5 | NBPco must be relieved from its obligation to perform the its Services in the Force Majeure Affected Area for the Force Majeure Impact Period, however the Minister must still pay the Ongoing Capital Payments as if NBPco was performing the Force Majeure Affected Services in the Force Majeure Affected Area in a manner that meets the Target Performance Levels   |
| 71.8.5          | The Expiry Date and, consequently, the Contract Period must, with respect to the Force Majeure Affected Area, automatically be extended by the Force Majeure Contract Period Extension;  |
| 71.10.1         | Where any Force Majeure Event has arisen the Minister may request NBPco to accelerate the execution of the Services once the event is over so that the effects of the Force Majeure Event are alleviated or mitigated. If NBPco demonstrates in advance to the Minister that it will incur material additional expenditure, a proportionate increase in the Subsidy Payment should be made.  |

# Section K, L & M

|                         |                    |              |              |              |              |              |                    |              |                               |                |
|-------------------------|--------------------|--------------|--------------|--------------|--------------|--------------|--------------------|--------------|-------------------------------|----------------|
| 1. Overview of Contract | 2. Section A and B | 3. Section C | 4. Section D | 5. Section E | 6. Section F | 7. Section G | 8. Section H and I | 9. Section J | <b>10. Section K, L and M</b> | 11. Appendices |
|-------------------------|--------------------|--------------|--------------|--------------|--------------|--------------|--------------------|--------------|-------------------------------|----------------|

## Rights, Remedies & Relief; Contract Term, Termination & Exit; and General Clauses

Section K outlines the rights and remedies of the parties under the Agreement and the Reliefs that are available to them should they be required. This includes the ability of the Minister to ‘Step-In’ to the shoes of NBPco for a certain period of time if NBPco is not in a position to fulfil its obligations. It also provides for a ‘Step-Out’ process, for NBPco or another party appointed by the Minister to resume fulfilling the obligations of the Agreement.

Section L outlines the term of the contract, including should NBPco choose to enter the Service Continuity Period. It also outlines the procedures upon Expiry of the Agreement, or Termination by either Party due to a failure of the other Party to fulfil their obligations.

Section M contains a number of standard contractual provisions including defining the relationship between the Parties, the governing jurisdiction (Ireland), provisions regarding publicity and branding and competition law.

|  |  |   |
|--|--|---|
| <br>6.1 | <br>6.9 | <br>10 |
| <b>Contract Liaison Board</b>  | <b>Consequences of Termination</b>   | <b>Termination Events</b>   |



# Sections K, L & M

## Clause 72 - Clause 94

|                         |                    |              |              |              |              |              |                    |              |                        |                |
|-------------------------|--------------------|--------------|--------------|--------------|--------------|--------------|--------------------|--------------|------------------------|----------------|
| 1. Overview of Contract | 2. Section A and B | 3. Section C | 4. Section D | 5. Section E | 6. Section F | 7. Section G | 8. Section H and I | 9. Section J | 10. Section K, L and M | 11. Appendices |
|-------------------------|--------------------|--------------|--------------|--------------|--------------|--------------|--------------------|--------------|------------------------|----------------|

| Clause | Detail  |
|--------|---|
| 72.1   | The Parties must comply with Schedule 6.8 (Persistent Defaults and Remedial Plan Process).  |
| 73.1   | The Minister can issue NBPCo a notice stating it intends to engage a third party to take or assist with activities in connection with the Services, Wholesale Products and/or Network because an Emergency has arisen or because a Default by NBPCo is materially preventing or delaying the provision of the Minimum Required Wholesale Products or Additional Required Wholesale Products provided the Minister has:<br>(A) implemented the Remedial Plan Process in respect of the Default concerned or issued a Final Persistent Default Notice in respect of the Default concerned; and<br>(B) issued notice to NBPCo that if it does not remedy the Default within a period of not less than three months the Minister may exercise its Step-In Rights.   |
| 73.2   | If following the issue by the Minister of a notice either:<br>(A) NBPCo fails to take the steps specified by the Minister in the notice to comply with the time period specified by the Minister or to complete such steps within the time period specified by the Minister in the notice;<br>(B) NBPCo notifies the Minister that it will not take the steps specified by the Minister; or<br>(C) the Minister considers that NBPCo cannot or is not capable of completing the steps specified by the Minister; or<br>the Minister has notified NBPCo in writing that it has elected to:<br>(A) exercise the Share Option; or<br>(B) exercise the Asset Option,<br>then the Minister is entitled to take action. For the avoidance of doubt, the Minister is under no obligation to exercise its rights under the provisions of this Clause 73 (Step-In Rights). |
| 73.5   | NBPCo agrees that the Minister is entitled:<br>(A) to temporarily assume total or partial management and control of NBPCo in connection with the Network, Wholesale Products and/or the Services;<br>(B) to issue instructions to NBPCo in which case NBPCo must comply with such instructions;<br>(C) to issue instructions (to the exclusion of NBPCo) to Key Subcontractors, on behalf of and as if it was NBPCo;<br><br>NBPCo:<br>(A) is not entitled to relief from;<br>(B) continues to be responsible for compliance with and required to comply with; and<br>(C) is deemed to not be prevented from providing any part of the Services, Wholesale Products or Network or performing,<br>its obligations under this Agreement in respect of any matter in relation to which NBPCo or a Key Subcontractor is instructed by the Minister                     |

# Sections K, L & M

## Clause 72 - Clause 94

|                         |                    |              |              |              |              |              |                    |              |                        |                |
|-------------------------|--------------------|--------------|--------------|--------------|--------------|--------------|--------------------|--------------|------------------------|----------------|
| 1. Overview of Contract | 2. Section A and B | 3. Section C | 4. Section D | 5. Section E | 6. Section F | 7. Section G | 8. Section H and I | 9. Section J | 10. Section K, L and M | 11. Appendices |
|-------------------------|--------------------|--------------|--------------|--------------|--------------|--------------|--------------------|--------------|------------------------|----------------|

| Clause | Detail  |
|--------|---|
| 73.11  | Payment to the Minister of reasonable costs in compensation for Required Action where it is taken as a result of a breach in obligations by NBPco.  |
| 73.12  | Upon the expiry of the circumstances which gave rise to the step-in by the Minister, the Minister will promptly step-out and refrain from taking any further Required Action in respect of such circumstances.  |
| 73.14  | Within twenty working days of receipt of a Step Out Notice from the Minister, NBPco must develop and submit a draft plan ("Step-Out Plan") relating to the resumption by NBPco of the provision of the Services, Wholesale Products and Network.  |
| 73.15  | The Minister must notify NBPco that it approves or does not approve of the Step-Out Plan within thirty Working Days of receipt of the Step-Out Plan. If the Minister does not approve the draft Step-Out Plan NBPco must then revise it and must re-submit the revised plan to the Minister   |
| 73.16  | NBPco must resume performance of its affected obligations upon approval of the Step-Out Plan  |
| 74.4   | To provide the Minister with notice 24-30 months before the Expiry Date as to whether NBPco intends to extend the Agreement to include the Service Continuity Period  |
| 74.5   | <p>If NBPco notifies the Minister the Contract Term must be extended to include the Service Continuity Period, the Minister must have no obligations during the Service Continuity Period component of the Contract Term. NBPco must:</p> <p>(A) seek to extend the term of the Infrastructure Access Agreements with any Key Subcontractors to cover the duration of the Service Continuity Period;</p> <p>(B) throughout the Service Continuity Period:</p> <p>(1) continue to operate and maintain the entire Network and provide Services and Wholesale Products;</p> <p>(2) adhere to the governance and auditing reporting compliance requirements; and</p> <p>(3) offer all Wholesale Products on a Non-Discriminatory and Equivalence of Inputs basis.</p> <p>(C) throughout the Service Continuity Period accept the jurisdiction of the Regulator to directly supervise and regulate the terms and implementation of service level agreements between NBPco and any Service Providers;</p> <p>For clarity, Performance Credits do not apply during the Service Continuity Period.</p> |
| 76.1   | To notify the Minister of any NBPCo Termination Event   |

# Sections K, L & M

## Clause 72 - Clause 94

|                         |                    |              |              |              |              |              |                    |              |                        |                |
|-------------------------|--------------------|--------------|--------------|--------------|--------------|--------------|--------------------|--------------|------------------------|----------------|
| 1. Overview of Contract | 2. Section A and B | 3. Section C | 4. Section D | 5. Section E | 6. Section F | 7. Section G | 8. Section H and I | 9. Section J | 10. Section K, L and M | 11. Appendices |
|-------------------------|--------------------|--------------|--------------|--------------|--------------|--------------|--------------------|--------------|------------------------|----------------|

| Clause | Detail  |
|--------|---|
| 76.2   | If the Minister wishes to terminate the Agreement, it must serve a notice in writing upon NBPco. The Agreement will terminate between 25 and 80 Working Days after the issuance of the Termination Notice, depending on the Event in question - see Schedule 10. For certain rectifiable events, NBPco may put forward a rectification programme to the Minister within twenty-five Working Days of the date NBPco first receives the Termination Notice; or, if the Minister rejects the initial Rectification Programme, the fifteen Working Day period after that.   |
| 76.3   | The Minister must notify NBPco that it does or does not accept the Rectification Programme within twenty Working Days of receipt of the initial Rectification Programme and must, in the case of rejection, outline the reasons why the Minister rejected the initial Rectification Programme.<br>NBPco must have the opportunity, within the fifteen Working Days following issue of the initial notice of rejection to engage with the Minister and submit a revised Rectification Programme to make it acceptable to the Minister.<br>If the Minister does not, by notice in writing to NBPco, reject the Rectification Programme initially put forward by NBPco within such twenty (20) Working Day period, the Minister must be deemed to have accepted the Rectification Programme.             |
| 76.5   | If there is an NBPco Termination Event where no Rectification Programme acceptable to the Minister has been put forward or NBPco fails to rectify the NBPco Termination Event within the time period specified in the Termination Notice, the Minister may give notice stating that this Agreement will terminate on the Working Day following service of such notice by the Minister.  |
| 76.6   | If NBPco fails to implement any Rectification Programme in accordance with its terms and rectify the NBPco Termination Event, this Agreement will terminate on the day that is ten Working Days after the date of notification by the Minister to NBPco of such failure to implement the Rectification Programme  |
| 77.1   | Within forty five Working Days of becoming aware of a Minister Default, NBPco has the option to serve notice on the Minister of the occurrence of such Minister Default, specifying the type of Minister Default that has occurred. If the relevant matter or circumstance has not been rectified or remedied by the Minister or otherwise within forty five Working Days of the receipt of such notice, NBPco may serve a further notice on the Minister terminating this Agreement in which case this Agreement will terminate twenty Working Days from the date of receipt of the written notice by the Minister.  |
| 78.1   | If a Force Majeure Event means NBPco cannot achieve Network Deployment Complete in one or more Deployment Areas or if during the Operational Period it cannot perform the Services in one or more Deployment Areas for more than twelve months;<br>then, following consultation with the other Party for at least forty-five Working Days to reach a solution and the Parties have not agreed a solution either Party may terminate this Agreement in respect of the one or more affected Deployment Areas concerned (and the Services, Network and Wholesale Products to be provided in those Deployment Areas). This Termination should be by written notice to the other Party and the Agreement will terminate to that extent twenty Working Days from the date of receipt of the written notice. |
| 78.5   | If a Change in Law comes into effect which renders illegal or impossible to comply with all or substantially all of NBPco's obligations under this Agreement:<br>NBPco must notify the Minister in writing as soon as reasonably practicable; and<br>the Parties must then consult with each other for ninety days and propose any lawful amendments to this Agreement to mitigate the Change in Law.<br>If the Parties do not agree on an acceptable outcome, either Party may terminate this Agreement by written notice to the other Party having effect twenty Working Days following service of the notice on the Party concerned.   |

# Sections K, L & M

## Clause 72 - Clause 94

|                         |                    |              |              |              |              |              |                    |              |                        |                |
|-------------------------|--------------------|--------------|--------------|--------------|--------------|--------------|--------------------|--------------|------------------------|----------------|
| 1. Overview of Contract | 2. Section A and B | 3. Section C | 4. Section D | 5. Section E | 6. Section F | 7. Section G | 8. Section H and I | 9. Section J | 10. Section K, L and M | 11. Appendices |
|-------------------------|--------------------|--------------|--------------|--------------|--------------|--------------|--------------------|--------------|------------------------|----------------|

| Clause        | Detail   |
|---------------|--|
| 78.11 – 78.44 | Contains provisions about check points to ensure that the Project remains viable.  |
| 79.2          | If there is a partial termination of some elements of the Agreement, NBPCo must continue to provide the Services, Network and Wholesale Products that have not been terminated in all Deployment Areas that have not been terminated |
| 80.1          | NBPCo to continue performing its obligations notwithstanding the giving of any notice of default or termination  |
| 80.7          | Payment of all sums due and owing to the Minister after termination or expiry  |
| 81.2          | No Assignment or Novation by NBPCo is permitted in respect of the Agreement  |
| 83.5          | There is no State Immunity for either NBPCo or the Minister  |
| 83.7          | NBPCo is an independent contractor and there is no partnership, joint venture, agency or relationship of employer and employee between the Minister and NBPCo or any of NBPCo Personnel  |
| 84.1          | NBPCo must not publicise the contents of this Agreement in any way; or communicate with the media in any way that is disparaging of the Project, Agreement, Regulator, Agency or Minister  |
| 84.3          | NBPCo must not suggest or imply that the price of its Wholesale Products has been set by, endorsed or approved by the Minister.  |
| 84.4          | NBPCo to co-operate with the Minister in relation to publication of information relating to the State Aid Decision   |

# Sections K, L & M

## Schedule 6.1 and Schedule 6.9

|                         |                    |              |              |              |              |              |                    |              |                        |                |
|-------------------------|--------------------|--------------|--------------|--------------|--------------|--------------|--------------------|--------------|------------------------|----------------|
| 1. Overview of Contract | 2. Section A and B | 3. Section C | 4. Section D | 5. Section E | 6. Section F | 7. Section G | 8. Section H and I | 9. Section J | 10. Section K, L and M | 11. Appendices |
|-------------------------|--------------------|--------------|--------------|--------------|--------------|--------------|--------------------|--------------|------------------------|----------------|



### 6.1 - Contract Liaison Board

- The Schedule outlines the process for establishing a contract management and liaison board, known as the Contract Liaison Board (the CLB).
- Both NBPco and the Minister must be represented on the CLB with four CLB members each.
- The CLB is the highest level of engagement between the Minister and the NBP Economic Group. Its purpose is to review overall performance by exception and to discuss matters pertaining to the overall Agreement including matters of Change and disagreements in order to avoid Disputes. It must:
  - Discuss key risks, issues and agree actions for resolution. These will include the following topics:
    - Schedule
    - Financial performance and overall subsidy position against progress
    - KPIs and persistent defaults
  - Discuss Changes proposed by either Party and issues which without action are likely to result in a Dispute.
  - Discuss matters relating to communications including matters of urgent public interest
  - Review matters of compliance
  - Review the Balanced Scorecard Report
- Further detail is set out in Appendix 1 of the Schedule.



### 6.9 – Consequences of Termination

- The Schedule outlines the consequences of a Termination.
- The specifics of the Termination depend on the particulars of the Termination Event in question.
- The Schedule provides for handover activities and the transfer of assets, along with provisions regarding staffing, knowledge sharing and the TUPE regulations.

# Sections K, L & M

## Schedule 10

|                         |                    |              |              |              |              |              |                    |              |                               |                |
|-------------------------|--------------------|--------------|--------------|--------------|--------------|--------------|--------------------|--------------|-------------------------------|----------------|
| 1. Overview of Contract | 2. Section A and B | 3. Section C | 4. Section D | 5. Section E | 6. Section F | 7. Section G | 8. Section H and I | 9. Section J | <b>10. Section K, L and M</b> | 11. Appendices |
|-------------------------|--------------------|--------------|--------------|--------------|--------------|--------------|--------------------|--------------|-------------------------------|----------------|



### 10 – Termination Events

- The Schedule outlines the Termination Events that may apply.

## Appendix 1 – Examples of Key Reporting Obligations

| Subject matter             | Report title                                      | Frequency / Reporting Period         | Reporting Period for first Report | NBPco | BuildCo | Report Detail  |
|----------------------------|---|--------------------------------------|-----------------------------------|-------|---------|--|
| Products and pricing       | Wholesale Product and Pricing Report              | Annual                               | First Contract Year               | ✓     |         | <p>Information about the Wholesale Products, to include:</p> <ul style="list-style-type: none"> <li>- a list of all Wholesale Products made available and associated Wholesale Prices charged by NBPco per Service Provider with associated volumes and the particulars of any changes made to the Reference Offer during the Reporting Period;</li> <li>- the particulars of any changes made to the following during the Reporting Period: Wholesale Product Roadmap; Wholesale Product Catalogue; Premises Database; and Wholesale Product withdrawals during the Reporting Period;</li> <li>- confirmation of compliance with the Wholesale Product Benchmarking Rules;</li> <li>- confirmation of compliance with the Wholesale Pricing Rules;</li> <li>- confirmation and illustration that no Wholesale Margin Squeeze has occurred;</li> <li>- information about Initial Connection Charges and Other Connection Charges as set out in Paragraph 6, Part 1 of Schedule 5.2; and</li> <li>- a Statement of Compliance to fulfil the requirements set out in Paragraph 2 of Part 4 of Schedule 5.2. The pricing Statement of Compliance must include a RACM (Risk and Control Matrix) and controls signed off at an appropriate level within NBPco.</li> </ul> |
| Products and pricing       | Future Proofing and Continuous Improvement Report | Annual                               | First Contract Year               | ✓     |         | <p>This Report must be submitted in accordance with the requirements of Paragraph 7 (Future Proofing Plan Reporting) of Schedule 6.4 (Service, Network and Wholesale Product Compliance and Future Proofing).</p>  |
| Network build and coverage | Network Deployment Progress Report                | Monthly during the Deployment Period | First month of Contract Year      | ✓     |         | <p>This Report must outline progress against the Implementation Programme including progress against the relevant Programme Level Milestones and progress against Project Plan Milestones during the relevant Reporting Period. This Report must include the information specified in Paragraph 11 of Schedule 2.3 and adhere to any format requirements under that Paragraph in addition to complying with the following overarching format and information requirements:</p> <ul style="list-style-type: none"> <li>- (A) Summary – a summary of overall progress in the month, including red flag, amber flag and green flag issues for each of the subject areas</li> <li>- (B) Network Deployment progress to include progress against each relevant Programme Level Milestone and forecast of completion dates for Programme Level Milestones for the three months following the Reporting Period and risks and impacts (if any) together with mitigation measures in place.</li> <li>- (C) Premises Passed progress categorised for each Deployment Area</li> <li>- (D) Premises Connected progress</li> <li>- (E) Risks and Mitigation update;</li> </ul>  |

# Appendices

|                         |                    |              |              |              |              |              |                    |              |                        |                |
|-------------------------|--------------------|--------------|--------------|--------------|--------------|--------------|--------------------|--------------|------------------------|----------------|
| 1. Overview of Contract | 2. Section A and B | 3. Section C | 4. Section D | 5. Section E | 6. Section F | 7. Section G | 8. Section H and I | 9. Section J | 10. Section K, L and M | 11. Appendices |
|-------------------------|--------------------|--------------|--------------|--------------|--------------|--------------|--------------------|--------------|------------------------|----------------|

## Appendix 1 – Examples of Key Reporting Obligations

| Subject matter             | Report title                  | Frequency / Reporting Period           | Reporting Period for first Report | NBPco | BuildCo | Report Detail  |
|----------------------------|-------------------------------|--|-----------------------------------|-------|---------|--|
| Network build and coverage | Network Build Progress Report | Quarterly during the Deployment Period | First Quarter of Contract Year    | ✓     |         | <p>This Report must include the details specified in Paragraph 11.2.4(B) (Monitoring Deployment – Requirements) of Schedule 2.3 (Deployment Requirements) in addition to the information requirements set out below.</p> <p>This Report must:</p> <p>(A) identify the number of Network Elements as outlined in Schedule 3 and compare to the number of Network Elements completed.</p> <p>(B) provide a summary of design and/or implementation changes (if any) impacting Milestone targets and inventory management during the applicable Reporting Period.</p> <p>(C) highlight any significant issues arising in relation to Network build including where there is insufficient availability of resources critical to key Network build activities and dependencies.</p> <p>(D) identify any new and/or secondary risk(s) to Network build progress arising during the applicable Reporting Period, and summarise the plans and measures to minimise, mitigate and/or eliminate the risk(s).</p> <p>(E) provide any forecast of the number of the Network Elements to be completed in the three months following the relevant reporting period, identify any risks and associated potential impacts to completion of Network Elements and summarise the plans or measures in place to minimise, mitigate and/or eliminate the risk(s).</p> <p>(F) for each Deployment Area in which Construction Activities and Works took place during the reporting period, provide details of (including hyperlinks accessible by the Minister to full copies of) any Consents issued in relation to those Construction Activities and Works.</p> |



## Appendix 1 – Examples of Key Reporting Obligations

| Subject matter | Report title                                   | Frequency / Reporting Period   | Reporting Period for first Report | NBPco | BuildCo | Report Detail   |
|----------------|--|--|-----------------------------------|-------|---------|---|
| Connections    | Connections Report – Strategic Community Point | Quarterly during the first nine (9) Contract Years<br><br>Annually thereafter for the remainder of the Contract Period | Second Quarter                    | ✓     |         | <p>This Report must include:</p> <p>(A) Details of the progress of broadband connection point Connections including the details specified in Paragraphs 11.2.6 of Schedule 2.3 and provide a red flag, amber flag or green flag.</p> <p>The following information for broadband connection point Connections will be captured: The following area information for fibre Connections will be provided: County (Geo-Directory), Postal Area (First 3 characters of Eircode), OLT (Network Inventory), Principal Post Town (Geo-Directory), Electoral District (Geo-Directory)</p> <p>It will be categorised according to Wholesale Product and Service Provider, in respect of the following:</p> <ul style="list-style-type: none"> <li>• the number of active IA End User wholesale Connections;</li> <li>• the number of residential and commercial active IA End User wholesale Connections; and</li> <li>• the number of IA End User wholesale Connections to Strategic Community Points; and</li> <li>• the number of new, cancelled and churned IA End User wholesale Connections during the Reporting Period;</li> <li>• the number of new, cancelled and churned IA End User wholesale Connections to residential Premises; and</li> <li>• the number of new, cancelled and churned IA End User wholesale Connections to Strategic Community Points.</li> </ul> <p>(B) Requested Connections not achieved</p> <p>Details by Deployment Area of any IA End Users or other stakeholder described in Paragraph 2.5 of Schedule 2.6 who requested Connection during that Reporting Period where Connection was not achieved during that Reporting Period and will not be achieved in the next Reporting Period for the IA End User or stakeholder concerned.</p> <p>This must include: reasons why the Connection has not/will not be achieved; and steps taken to Connect the IA End Users and mitigate any delay in such Connection.</p> |
| Connections    | Connections Report - fibre                     | Quarterly during the first nine (9) Contract Years<br><br>Annually thereafter for the remainder of the Contract Period | Second Quarter                    | ✓     |         | <p>This Report must include:</p> <p>(A) Details of the progress of fibre Connections including the details specified in Paragraphs 11.2.6 of Schedule 2.3 and provide a red flag, amber flag or green flag.</p> <p>The following area information for fibre Connections will be provided: County (Geo-Directory), Postal Area (First 3 characters of Eircode), OLT (Network Inventory), Principal Post Town (Geo-Directory), Electoral District (Geo-Directory)</p> <p>It will be further categorised according to Wholesale Product and Service Provider, in respect of the following:</p> <ul style="list-style-type: none"> <li>• the number of active IA End User wholesale Connections;</li> <li>• the number of residential and commercial active IA End User wholesale Connections; and</li> <li>• the number of IA End User wholesale Connections to Strategic Community Points; and</li> <li>• the number of new, cancelled and churned IA End User wholesale Connections during the Reporting Period;</li> <li>• the number of new, cancelled and churned IA End User wholesale Connections to residential Premises; and</li> <li>• the number of new, cancelled and churned IA End User wholesale Connections to Strategic Community Points.</li> </ul> <p>(B) Requested Connections not achieved</p> <p>Details by Deployment Area of any IA End Users or other stakeholder described in Paragraph 2.5 (CDB Strategic Plan) of Schedule 2.6 (Communications, Demand Stimulation and Brand Plan) who requested Connection during that Reporting Period where Connection was not achieved during that Reporting Period and will not be achieved in the next Reporting Period for the IA End User or stakeholder concerned.</p> <p>This must include: reasons why the Connection has not/will not be achieved; and steps taken to Connect the IA End Users and mitigate any delay in such Connection.</p>                            |

# Appendices

|                         |                    |              |              |              |              |              |                    |              |                        |                |
|-------------------------|--------------------|--------------|--------------|--------------|--------------|--------------|--------------------|--------------|------------------------|----------------|
| 1. Overview of Contract | 2. Section A and B | 3. Section C | 4. Section D | 5. Section E | 6. Section F | 7. Section G | 8. Section H and I | 9. Section J | 10. Section K, L and M | 11. Appendices |
|-------------------------|--------------------|--------------|--------------|--------------|--------------|--------------|--------------------|--------------|------------------------|----------------|

## Appendix 1 – Examples of Key Reporting Obligations

| Subject matter | Report title                  | Frequency / Reporting Period                            | Reporting Period for first Report  | NBPco | BuildCo | Report Detail   |
|----------------|-------------------------------|---|------------------------------------|-------|---------|---|
| Connections    | Connections Tracker           | Connection Payment Milestones (Every 1,000 Connections) | First Connection Payment Milestone | ✓     |         | <p>Report / database (or equivalent reporting solution) that presents details by reference to the Wholesale Product &amp; Coverage Template of:</p> <ul style="list-style-type: none"> <li>• Latest 1000 Connections provisioned &amp; claimed</li> <li>• Cumulative connections provisioned &amp; claimed</li> <li>• Actual connection costs as approved on basis of the CMPC Supporting Documentation provided in accordance with Schedule 5.1 (Subsidy Payments) (to track against the Project Cost Model)</li> </ul>  |
| Performance    | Performance Monitoring Report | Quarterly   | Second Quarter                     | ✓     |         | <p>This Report must provide the following:</p> <ul style="list-style-type: none"> <li>• Information in respect of performance monitoring as prescribed in Paragraph 2.2 of Part 2, of Schedule 6.7 (Performance Levels).</li> <li>• Information in respect of performance records as prescribed in Paragraph 3 of Part 2, of Schedule 6.7 (Performance Levels).</li> <li>• Information in respect of a performance verification as prescribed in Paragraph 4 of Part 2 of Schedule 6.7 (Performance Levels).</li> <li>• Industry engagement report – Information in respect of industry engagement as prescribed in Appendix 4 of Schedule 2.4 (Operational Performance).</li> <li>• Information identified in Paragraph 5 of Schedule 2.4 (Operational Performance) and provided in accordance with Appendix 5 of Schedule 2.4 (Operational Performance)</li> </ul>  |
| Financial      | PE Tracker                    | Monthly   | First month after Effective Date   | ✓     |         | <p>Report / database (or equivalent reporting solution) that presents in one report details of all Permitted Expenditure incurred by NBPco / Buildco and agreed by the Minister's Representative as being eligible and valid on the basis of the DMPC Supporting Documentation, General PE Supporting Documentation and CMPC Supporting Documentation submitted in accordance with Schedule 5.1 (Subsidy Payments):</p> <ul style="list-style-type: none"> <li>• Cumulative Permitted Expenditure incurred to month end that has been agreed by the Minister's Representative as being eligible and valid, with a breakdown by type as follows: <ul style="list-style-type: none"> <li>• Permitted Expenditure Passed (DA);</li> <li>• Permitted Expenditure Passed (Common);</li> <li>• Permitted Expenditure Passed (Infra Rental);</li> <li>• Permitted Expenditure Connect;</li> <li>• Permitted Expenditure NBPco; and</li> <li>• Permitted Expenditure New Premises</li> </ul> </li> <li>• Breakdown of cumulative Permitted Expenditure that is eligible for ERDF purposes, by ERDF Region</li> <li>• Details of the relevant subsidy claim in which the Permitted Expenditure has been included, such claims as set out in Schedule 5.1 (Subsidy Payments)</li> </ul> |

# Appendices

|                         |                    |              |              |              |              |              |                    |              |                        |                |
|-------------------------|--------------------|--------------|--------------|--------------|--------------|--------------|--------------------|--------------|------------------------|----------------|
| 1. Overview of Contract | 2. Section A and B | 3. Section C | 4. Section D | 5. Section E | 6. Section F | 7. Section G | 8. Section H and I | 9. Section J | 10. Section K, L and M | 11. Appendices |
|-------------------------|--------------------|--------------|--------------|--------------|--------------|--------------|--------------------|--------------|------------------------|----------------|

## Appendix 1 – Examples of Key Reporting Obligations

| Subject matter | Report title                     | Frequency / Reporting Period                                    | Reporting Period for first Report  | NBPco | BuildCo | Report Detail   |
|----------------|----------------------------------|---|--|-------|---------|---|
| Financial      | Management Accounts              | Monthly / each quarter of the Financial Year/Financial Year end | First month of the first Financial Year / first quarter of the first Financial Year / first Financial Year end | ✓     | ✓       | NBPco and its Critical Key Subcontractors must provide the Management Accounts as prescribed in Paragraph 2 (Management Accounts) of Appendix 5 (Reports) of Schedule 5.1 (Subsidy Payments).   |
| Financial      | Project Accounts                 | Annual  | Effective Date to the first Financial Year end   | ✓     | ✓       | NBPco and its Critical Key Subcontractors must provide the Project Accounts as prescribed in Paragraph 3 (Project Accounts) of Appendix 5 (Reports) of Schedule 5.1 (Subsidy Payments).   |
|                | Statutory Financial Statements   | Annual  | Effective Date to the first Financial Year end   | ✓     |         | NBPco must provide a copy of its Statutory Financial Statements.  |
| Financial      | Additional Financial Statements  | Annual  | Sixth Financial Year after the Effective Date  | ✓     |         | NBPco must provide the Additional Financial Statements as prescribed in Paragraph 4 (Reporting and Transparency) of Schedule 5.5 (Accounting Separation).   |
| Financial      | Separated Accounts               | Annual  | Sixth Financial Year after the Effective Date  | ✓     |         | NBPco must provide the Separated Accounts as prescribed in Paragraph 4 (Reporting and Transparency) of Schedule 5.5 (Accounting Separation).<br><br>NBPco must use all reasonable endeavours to procure that its Material Subcontractors must provide the Separated Accounts as prescribed in Paragraph 4 (Reporting and Transparency) of Schedule 5.5 (Accounting Separation). |
| Financial      | Additional Financial Information | Annual  | Sixth Financial Year after the Effective Date  | ✓     |         | NBPco must provide the Additional Financial Information as prescribed in Paragraph 4 (Reporting and Transparency) of Schedule 5.5 (Accounting Separation).  |

## Appendix 1 – Examples of Key Reporting Obligations

| Subject matter                               | Report title  | Frequency / Reporting Period   | Reporting Period for first Report              | NBPco | BuildCo | Report Detail  |
|--|---|--|--|-------|---------|--|
| Financial                                    | Accounting Documentation  | Annual   | Sixth Financial Year after the Effective Date  | ✓     |         | NBPco must provide the Accounting Documentation as prescribed in Paragraph 6 (Accounting Documentation) of Schedule 5.5 (Accounting Separation).   |
| DCCAE Vote Funding Estimates Forecast Report | Forecast of Subsidy Payments for following calendar year.       | Annual<br>For the purpose of Appendix 5 of Schedule 6.7 the "Reporting Period" must end on 1 July each year. | The calendar year following the Effective Date | ✓     |         | <p>NBPco must provide updated forecasts to the Minister on or before 31 July every year from the Effective Date. These forecasts to include:</p> <ul style="list-style-type: none"> <li>- latest monthly profile of Subsidy Payments likely to be claimed by NBPco for the following calendar year (the budgetary year for the Irish Government) categorised by expected: <ul style="list-style-type: none"> <li>• Deployment Milestone Payment</li> <li>• Ongoing Capital Payment</li> <li>• Connections Milestone Payment</li> <li>• Additional Connection Milestone Payment</li> <li>• Increases or decreases in Deployment Milestone Payments and Ongoing Capital Payments as a result of the application of Annex 5 and Annex 6 of Schedule 6.2 (Change Control Procedure).</li> </ul> </li> <li>- Commentary from NBPco regarding any significant variance of 2% from the expected profile of Subsidy Payments at the Effective Date.</li> <li>- Commentary from NBPco regarding any risks or issues which might give cause for uncertainty in these forecasts.</li> </ul> |
| Communications                               | Communications, Demand Stimulation and Brand Plan Annual Report | Annual during the Take Up Target Period  | First Contract Year                            | ✓     |         | This Report must be submitted in accordance with the reporting obligations prescribed under Paragraph 7 (Reporting) of Schedule 2.6 (Communications, Demand Stimulation and Brand Plan)  |

# Appendices

## Appendix 1 – Key Reporting Obligations

|                         |                    |              |              |              |              |              |                    |              |                        |                |
|-------------------------|--------------------|--------------|--------------|--------------|--------------|--------------|--------------------|--------------|------------------------|----------------|
| 1. Overview of Contract | 2. Section A and B | 3. Section C | 4. Section D | 5. Section E | 6. Section F | 7. Section G | 8. Section H and I | 9. Section J | 10. Section K, L and M | 11. Appendices |
|-------------------------|--------------------|--------------|--------------|--------------|--------------|--------------|--------------------|--------------|------------------------|----------------|

| Subject matter | Report title                     | Frequency / Reporting Period | Reporting Period for first Report | NBPco | BuildCo | Report Detail  |
|----------------|----------------------------------|------------------------------|-----------------------------------|-------|---------|--|
| ERDF           | ERDF Funding Report              | Annual                       | First Contract Year               | ✓     |         | <p>This Report must include the details specified in Paragraph 2.5 of Schedule 5.4 (Eligibility Requirements for ERDF Funding) and the following:</p> <ul style="list-style-type: none"> <li>- details of the actual Eligible ERDF Expenditure against forecast Eligible ERDF Expenditure during the Reporting Period, and the reason for any variance;</li> <li>- an update to the forecasted Eligible ERDF Expenditure where NBPco expects that Eligible ERDF Expenditure will change from the forecasted Eligible ERDF Expenditure provided in the Project Financial Model;</li> <li>- the identification, transparency, validation and allocation of the various types of expenditure which qualify for Eligible ERDF Expenditure;</li> <li>- details of qualifying Eligible ERDF Expenditure including: actual Eligible ERDF Expenditure v budgeted Eligible ERDF Expenditure v forecasted Eligible ERDF Expenditure on the following basis; per Quarter; year to date; and cumulative Project.</li> </ul> <p>The form for this Report must be similar and comparable to the Project Accounts as detailed in Appendix 5 of Schedule 5.1 (Subsidy Payments) and must incorporate details of Eligible ERDF Expenditure under the following headings:</p> <ul style="list-style-type: none"> <li>• Project Capital Expenditure;</li> <li>• Fixed Assets;</li> <li>• Project Operational Expenditure; and</li> <li>• a comparison of expenditure with the Project Financial Model.</li> </ul> <ul style="list-style-type: none"> <li>- ERDF reporting requirements relating to the monitoring of the Network roll-out are as detailed in Part C of the reporting requirements for the Network Deployment Progress Report in this Schedule 6.5 (Reports and Records).</li> <li>- ERDF reporting requirements will be required to be broken out by each ERDF region.</li> </ul> |
| ERDF           | ERDF Publicity Compliance Report | Annual                       | First Contract Year               | ✓     |         | <p>The ERDF Publicity Compliance Report must include, for each ERDF Region:</p> <ul style="list-style-type: none"> <li>- details of any new Publicity Material (both physical and electronic) issued during the Reporting Period (copies/ screenshots should be attached to the Report);</li> <li>- details of all billboards/plaques in place (attach photographs) relating to the Project;</li> <li>- screenshots from the Public Portal and Secure Portal showing compliance with publicity requirements set out in Paragraph 4 of Schedule 5.4 (Eligibility Requirements for ERDF Funding); and</li> <li>- confirmation that NBPco complies with the publicity requirements under Articles 4 and 5 of Commission Implementation Regulation 721/2014 and the Information and Communication Guidelines for European and Structural and Investment Funds 2014-2020.</li> </ul> <p>ERDF reporting requirements relating to the monitoring of the Network roll-out are as detailed in Part D of the reporting requirements for the Network Deployment Progress Report in this Schedule 6.5 (Reports and Records).</p>   |

# Appendices

|                         |                    |              |              |              |              |              |                    |              |                        |                |
|-------------------------|--------------------|--------------|--------------|--------------|--------------|--------------|--------------------|--------------|------------------------|----------------|
| 1. Overview of Contract | 2. Section A and B | 3. Section C | 4. Section D | 5. Section E | 6. Section F | 7. Section G | 8. Section H and I | 9. Section J | 10. Section K, L and M | 11. Appendices |
|-------------------------|--------------------|--------------|--------------|--------------|--------------|--------------|--------------------|--------------|------------------------|----------------|

## Appendix 1 – Examples of Key Reporting Obligations

| Subject matter | Report title                                      | Frequency / Reporting Period | Reporting Period for first Report | NBPco | BuildCo | Report Detail   |
|----------------|---|------------------------------|-----------------------------------|-------|---------|---|
| State Aid      | State Aid Evaluation Report                       | Annual                       | First Contract Year               | ✓     |         | <p>NBPco is required to provide a Report setting out the following:</p> <ol style="list-style-type: none"> <li>1. Number of Premises Passed (cumulatively and categorised for residential Premises, business Premises and residential and business (mixed use) Premises): from the Effective Date to the end of the relevant Reporting Period; and during the Reporting Period.</li> <li>2. Number of Strategic Community Points Passed: from the Effective Date to the end of the relevant Reporting Period; and during the Reporting Period.</li> <li>3. Number of Premises Connected (cumulatively and categorised for residential Premises, business Premises and residential and business (mixed use) Premises): from the Effective Date to the end of the relevant Reporting Period; and during the Reporting Period.</li> <li>4. Number of Strategic Community Points Connected: from the Effective Date to the end of the relevant Reporting Period; and during the Reporting Period.</li> <li>5. Data usage: total data usage (across the Network) during the Reporting Period; and average monthly data usage per Premises (and further categorised for residential Premises, business Premises and residential and business (mixed use) Premises) during the Reporting Period.</li> <li>6. Mean download and upload speeds available to End Users in the Intervention Area during the Reporting Period.</li> <li>7. Mean End User Fault Repair Times (measured in days) in the Intervention Area during the Reporting Period.</li> <li>8. Total Subsidy Payments received by NBPco since the Effective Date.</li> <li>9. Total number of existing poles being used by NBPco (in the Intervention Area and Excluded Area, as at the end of the Reporting Period).</li> <li>10. Total distances (in metres) of existing duct used by NBPco in the Intervention Area and Excluded Area, as at the end of the Reporting Period.</li> <li>11. For each Deployment Area, number of Retail Service Providers during the Reporting Period.</li> <li>12. Financial indicators/metrics of NBPco</li> </ol> |
| Miscellaneous  | Employment, Training and SME Opportunities Report | Annual                       | First Contract Year               | ✓     |         | <p>This Report must be in compliance with Clause 8.8 (Policy Objectives).</p> <p>This Report must be in compliance with Clause 43 (Small and Medium Sized Enterprises).</p>   |
| Miscellaneous  | Environmental Annual Report                       | Annual                       | First Contract Year               | ✓     |         | <p>This Report must provide a statement of compliance in relation to NBPco's obligations under Schedule 2.5 (Environmental).</p>  |

## Appendix 1 – Examples of Key Reporting Obligations

| Subject matter | Report title                     | Frequency / Reporting Period  | Reporting Period for first Report              | NBPco | BuildCo | Report Detail         |
|----------------|----------------------------------|---|--|-------|---------|-----------------------|
| Financial      | Additional Financial Statements  | Annual - When requested by the Minister<br><br>Only applicable for first five Financial Years after the Effective Date            | Effective Date to the first Financial Year end | ✓     |         | As set out for Tier 1 |
| Financial      | Separated Accounts               | Annual - When requested by the Minister<br><br>For NBPco, only applicable for first five Financial Years after the Effective Date | Effective Date to the first Financial Year end | ✓     | ✓       | As set out for Tier 1 |
| Financial      | Additional Financial Information | Annual - When requested by the Minister<br><br>Only applicable for first five Financial Years after the Effective Date            | Effective Date to the first Financial Year end | ✓     |         | As set out for Tier 1 |

# Appendices

|                         |                    |              |              |              |              |              |                    |              |                        |                |
|-------------------------|--------------------|--------------|--------------|--------------|--------------|--------------|--------------------|--------------|------------------------|----------------|
| 1. Overview of Contract | 2. Section A and B | 3. Section C | 4. Section D | 5. Section E | 6. Section F | 7. Section G | 8. Section H and I | 9. Section J | 10. Section K, L and M | 11. Appendices |
|-------------------------|--------------------|--------------|--------------|--------------|--------------|--------------|--------------------|--------------|------------------------|----------------|

## Appendix 1 – Examples of Key Reporting Obligations

| Subject matter | Report title  | Frequency / Reporting Period   | Reporting Period for first Report              | NBPco | BuildCo | Report Detail  |
|----------------|---|--|--|-------|---------|--|
| Financial      | Accounting Documentation  | Annual - When requested by the Minister<br><br>Only applicable for first five Financial Years after the Effective Date | Effective Date to the first Financial Year end | ✓     |         | As set out for Tier 1  |
| Miscellaneous  | Business Continuity and Disaster Plan Recovery Test and Review Report | Annual - When requested by the Minister  | First Contract Year                            | ✓     |         | This Report must include the following:<br>- A summary of the reviews undertaken pursuant to Clause 70.2 (Business Continuity and Disaster Recovery); and<br>Details of the results of, and any recommendations in relation to, these tests and reviews carried out pursuant to Clause 70.2 (Business Continuity and Disaster Recovery). |
| Miscellaneous  | Security Systems Review Report  | Annual - When requested by the Minister  | First Contract Year                            | ✓     |         | This Report must include a summary of the reviews undertaken pursuant to Clause 24.4 (Network and Service Security);   |



|                         |                    |              |              |              |              |              |                    |              |                        |                |
|-------------------------|--------------------|--------------|--------------|--------------|--------------|--------------|--------------------|--------------|------------------------|----------------|
| 1. Overview of Contract | 2. Section A and B | 3. Section C | 4. Section D | 5. Section E | 6. Section F | 7. Section G | 8. Section H and I | 9. Section J | 10. Section K, L and M | 11. Appendices |
|-------------------------|--------------------|--------------|--------------|--------------|--------------|--------------|--------------------|--------------|------------------------|----------------|

## Appendix 2 – Independent Certification Process

At least 10 Working Days prior to the Milestone Date for each Milestone, NBPco will provide the Independent Certifier and the Minister with an initial Milestone Achievement Report and on the Milestone Date, provide the Independent Certifier and the Minister with the final Milestone Achievement Report (these Reports are sent to the Minister for information only, Ministerial approval is not required). The Independent Certifier will not commence the process of verifying whether a Milestone has been Achieved unless and until NBPco has submitted the final Milestone Achievement Report containing:

1. the Milestone Achievement Certificate Unique Reference Number for each relevant Milestone Pre-requisite;
2. all required Supporting Evidence for the relevant Milestone (See Appendix 3 of Schedule 2.3); and
3. confirmation in writing that NBPco has met all Milestone Achievement Criteria for the Milestone; and notwithstanding any Supporting Evidence it has already provided, will provide any further or additional material requested by the Independent Certifier or the Minister for the purpose of verifying whether the Milestone has been Achieved.

When NBPco has completed a Milestone, it must make available the Milestone and any related Test Items relating to that Milestone for Testing. At least 10 Working Days prior to the Milestone Date for each Milestone, it will provide the Independent Certifier and, for information purposes, the Minister with an initial Milestone Achievement Report (the “Initial Milestone Achievement Report”); and on the Milestone Date, provide the Independent Certifier and, for information purposes, the Minister with the final Milestone Achievement Report

Upon receiving an Initial Milestone Achievement Report, the Independent Certifier must confirm receipt of the Initial Milestone Achievement Report in writing to NBPco and the Minister and upon receiving a final Milestone Achievement Report, the Independent Certifier must:

1. Confirm receipt of the final Milestone Achievement Report in writing to NBPco and the Minister; and
2. assess whether the final Milestone Achievement Report adequately demonstrates that the Milestone has been Achieved. As part of the assessment the Independent Certifier may carry out any reasonable assessment or verification measure required, including but not limited to requesting further information from NBPco; and/or conducting any spot check audit, or inspection of NBPco data, information systems or Network equipment.

The Independent Certifier must take at least 10 Working Days from submission of the final MAR to reach a decision, and this can be extended where a request is made for further information, however the process cannot be extended beyond 20 Working Days from receipt of the final MAR.

The above timelines only apply where six or less MARs have been submitted to the Independent Certifier at any one time. Where the number of MARs submitted for assessment and which are awaiting determination at any time is greater than 6, the Independent Certifier must use reasonable endeavours to process at least six 6 Milestone Achievement Reports in each consecutive period of ten Working Days

|                         |                    |              |              |              |              |              |                    |              |                        |                |
|-------------------------|--------------------|--------------|--------------|--------------|--------------|--------------|--------------------|--------------|------------------------|----------------|
| 1. Overview of Contract | 2. Section A and B | 3. Section C | 4. Section D | 5. Section E | 6. Section F | 7. Section G | 8. Section H and I | 9. Section J | 10. Section K, L and M | 11. Appendices |
|-------------------------|--------------------|--------------|--------------|--------------|--------------|--------------|--------------------|--------------|------------------------|----------------|

## Subsidy Payments Supporting Documentation: Deployment Milestone Payments

The following Supporting Documentation must accompany every DMPC:

- evidence (through copies of invoices, receipts, timesheets, payroll records and the other accounting documentation detailing separately:
  - for an M1 Milestone, the total Permitted Expenditure Passed (DA) actually incurred directly in relation to the Achievement of that M1 Milestone;
  - for an M2 Milestone, the Permitted Expenditure Passed (DA) actually incurred by NBPco, any other Capital Expenditure actually incurred by NBPco, the Permitted Expenditure Passed (DA) actually incurred in respect of Deferred Premises or Expensive Premises that have been included in the Milestone Achievement Report; and
  - for an M1 Milestone or an M2 Milestone, the Permitted Expenditure WIP at the time that the M1 Milestone or M2 Milestone concerned was Achieved that does not relate to the Achievement of that M1 Milestone or M2 Milestone;
- evidence through copies of invoices, receipts, timesheets, payroll records and the other accounting information that the Permitted Expenditure and Permitted Expenditure WIP is in relation to the scope of this Agreement only;
- evidence that the applicable Permitted Expenditure and Permitted Expenditure WIP has actually been incurred (through payment or bank records and statements, BACS lists, receipts or other confirmation) or will be incurred (through an invoice from a subcontractor), at the date of the DMPC
- signed confirmation from the chief financial officer or director of finance (or other suitably qualified finance representative approved in writing by the Minister’s Representative in advance) of NBPco and each relevant Claw-backable Subcontractor that:
  - the applicable Permitted Expenditure and Permitted Expenditure WIP is not covered by any other form of public subsidy;
  - part apportionment or allocation of Permitted Expenditure and Permitted Expenditure WIP between this Agreement and other permitted contracts or services provided by NBPco, is accurate and fair;
  - the Permitted Expenditure and Permitted Expenditure WIP has been actually incurred (as distinct from contracted for) and that none of the claimed Permitted Expenditure and Permitted Expenditure WIP relates, directly or indirectly, to cost categories that fall outside the definition of Permitted Expenditure and Permitted Expenditure WIP (as applicable);
  - the Permitted Expenditure and Permitted Expenditure WIP has been incurred and is in accordance with the financial control, financial management and internal risk processes of NBPco or the Claw-backable Subcontractor (as the case may be);
  - the Permitted Expenditure and Permitted Expenditure WIP has been incurred and is in accordance and consistent with accepted accounting practice and the Accounting Policies that NBPco, and the Claw-backable Subcontractor (as the case may be), applies under its corporate financial reporting and audit standards; and
  - all of the works, services, equipment and materials to which the Permitted Expenditure WIP relates have been, in the case of works and services, undertaken and, in the case of equipment and materials, delivered and available for use by or on behalf of NBPco. NBPco must, on receipt of a written request from the Minister, provide to the Minister within 5 Working Days information and/or documentation evidencing that the works, services, equipment and materials to which the Permitted Expenditure WIP relates have been, in the case of works and services, undertaken and, in the case of equipment and materials, delivered and available for use by or on behalf of NBPco for review by the Minister to enable the Minister to determine the eligibility of the applicable Permitted Expenditure WIP;
- where the DMPC is in respect of a Deployment Area for which ERDF Funding will be claimed by the Minister, the ERDF Supporting Documentation;
- the total Deployment Milestone Payment amount as well as a breakdown of this amount between:
  - the amount due as set out in Appendix 1 of this Schedule prior to any adjustment pursuant to an executed Change Authorisation as a result of the application of Build Related Contract Assumptions;
  - the adjustment in the Deployment Milestone Payment set out in an executed Change Authorisation (whether positive or negative) in respect of the M2 Deployment Milestone Payment as a result of the application of the Build Related Contract;
  - if applicable, any in accordance with Paragraphs 11 -13 of Annex 6 of Schedule 6.2 (Change Control Procedures);
  - if applicable, the amount agreed and set out in any other Change Authorisation in respect of the Deployment Milestone Payment, together with the applicable reference numbers for such Change Authorisation(s);
- in respect of a DMPC relating to an M2 Milestone only:
  - if applicable, the reference numbers for the relevant Change Authorisation(s) in respect of any change in the Deployment Milestone Payment;
  - if applicable, the calculation of any further adjustment to the Deployment Milestone Payment, evidencing that the DMPC is prepared in accordance with Paragraphs 11 -13 of Annex 6 of Schedule 6.2 (Change Control Procedures);
  - a copy of the latest CA Tracker which must include calculations detailing the unused amount of Conditional Build Related Subsidy, Equipment and Materials Cap and Conditional Exceptional Subsidy prior to the submission of the DMPC; and assuming the DMPC is accepted as valid and paid by the Minister;
- a copy of the latest approved PE Tracker;
- an updated calculation of the PE Test assuming the DMPC is accepted as valid and paid by the Minister;
- such other information and documentation as the Minister’s Representative may reasonably specify.

|                         |                    |              |              |              |              |              |                    |              |                        |                |
|-------------------------|--------------------|--------------|--------------|--------------|--------------|--------------|--------------------|--------------|------------------------|----------------|
| 1. Overview of Contract | 2. Section A and B | 3. Section C | 4. Section D | 5. Section E | 6. Section F | 7. Section G | 8. Section H and I | 9. Section J | 10. Section K, L and M | 11. Appendices |
|-------------------------|--------------------|--------------|--------------|--------------|--------------|--------------|--------------------|--------------|------------------------|----------------|

## Subsidy Payments Supporting Documentation: General PE

Each month NBPco must submit on an Open Book basis the following supporting documentation in respect of NBPco and each of the relevant Claw-Backable Subcontractors in respect of Permitted Expenditure Passed (Common), Permitted Expenditure Passed (Infra Rental), Permitted Expenditure NBPco and Permitted Expenditure New Premises that is actually incurred and evidenced by NBPco in the preceding month and which does not relate to Permitted Expenditure (DA) or Permitted Expenditure (Connect) (i.e. it is not included in DMPC Supporting Documentation or CMPC Supporting Documentation):

- evidence (through copies of invoices, receipts, timesheets, payroll records and the other accounting information) detailing separately the Permitted Expenditure Passed (Common), Permitted Expenditure Passed (Infra Rental), Permitted Expenditure NBPco and Permitted Expenditure New Premises actually incurred (as distinct from contracted for) since the submission of the preceding General PE Supporting Documentation (or, for the first submission of the General PE Supporting Documentation, since the Effective Date), which for the avoidance of doubt, must exclude Permitted Expenditure that has been included in any DMPC Supporting Documentation or CMPC Supporting Documentation;
- evidence (through copies of invoices, receipts, timesheets, payroll records and the other accounting information) is in relation to the scope of this Agreement only;
- evidence that the Permitted Expenditure referenced in Paragraph 5B.1(A) (General PE Supporting Documentation) has actually been incurred (through payment or bank records and statements, BACS lists, receipts or other confirmation) or will be incurred (through an invoice from a subcontractor in accordance with Paragraph 5.2 (DMPC Supporting Documentation)), at the date of the DMPC, provided that in relation to Services performed by subcontractors, Permitted Expenditure must, subject to Paragraph 5.3 (DMPC Supporting Documentation), for the purposes of this Paragraph 5B.1 (General PE Supporting Documentation) be deemed "incurred" if the circumstances in Paragraph 5.2 (DMPC Supporting Documentation) are satisfied (this qualification of how the word "incurred" is construed for the purposes of this Paragraph 5B.1 (General PE Supporting Documentation) does not limit or affect any other requirement or provision in this Schedule);
- signed confirmation from the chief financial officer or director of finance (or other suitably qualified finance representative approved in writing by the Minister's Representative in advance) of NBPco and each relevant Claw-backable Subcontractor that the Permitted Expenditure referenced in Paragraph 5B.1(A) (General PE Supporting Documentation) is not covered by:
  - any other form of public subsidy; or
  - more than one form of public subsidy;
- signed confirmation from the chief financial officer or director of finance (or other suitably qualified finance representative approved in writing by the Minister's Representative in advance) of NBPco and each relevant Claw-backable Subcontractor that part apportionment or allocation of Permitted Expenditure between this Agreement and, subject to the provisions of this Agreement, other permitted contracts or services provided by NBPco, is accurate and a fair reflection of the work carried out;
- signed confirmation from the chief financial officer or director of finance (or other suitably qualified finance representative approved in writing by the Minister's Representative in advance) of NBPco and each relevant Claw-backable Subcontractor that:
  - the Permitted Expenditure has been actually incurred (as distinct from contracted for) and that none of the claimed Permitted Expenditure relates, directly or indirectly, to cost categories that fall outside the definition of Permitted Expenditure;
  - the Permitted Expenditure has been incurred and is in accordance with the financial control, financial management and internal risk processes of NBPco or the Claw-backable Subcontractor (as the case may be); and
  - the Permitted Expenditure has been incurred and is in accordance and is consistent with accepted accounting practice and the Accounting Policies that NBPco, and the accounting policies that the Claw-backable Subcontractor (as the case may be), applies under its corporate financial reporting and audit standards; and
- where and to the extent that the General PE Supporting Documentation is in respect of Permitted Expenditure for which ERDF Funding will be claimed by the Minister, the ERDF Supporting Documentation (to the extent that this is different to the information set out in the other provisions above of this Paragraph 5B.1 (General PE Supporting Documentation));
- such other information and documentation as the Minister's Representative may reasonably specify from time to time to enable the Minister (acting reasonably) to assess the Permitted Expenditure actually incurred.

|                         |                    |              |              |              |              |              |                    |              |                        |                |
|-------------------------|--------------------|--------------|--------------|--------------|--------------|--------------|--------------------|--------------|------------------------|----------------|
| 1. Overview of Contract | 2. Section A and B | 3. Section C | 4. Section D | 5. Section E | 6. Section F | 7. Section G | 8. Section H and I | 9. Section J | 10. Section K, L and M | 11. Appendices |
|-------------------------|--------------------|--------------|--------------|--------------|--------------|--------------|--------------------|--------------|------------------------|----------------|

## Subsidy Payments Supporting Documentation: Connection Milestone Payment Claims

NBPco must submit the following CMPC Supporting Documentation in respect of each of the relevant Claw-backable Subcontractors on an Open Book basis either with or in advance of the CMPC and ACMPC in respect of a Connection Payment Milestone:

- evidence (through copies of invoices, receipts, timesheets, payroll records and the other accounting information) detailing the Permitted Expenditure Connect incurred in respect of the completed Connections;
- evidence (through copies of invoices, receipts, timesheets, payroll records and the other accounting information) detailing the Permitted Expenditure Connect incurred in respect of the completed Eligible Connections;
- evidence (through copies of invoices, receipts, timesheets, payroll records and the other accounting information) that the applicable Permitted Expenditure Connect referenced in Paragraphs 7C.1.1 and 7C.1.2;
- evidence that the applicable Permitted Expenditure Connect referenced in Paragraphs 7C.1.1 (CMPC Supporting Documentation) and 7C.1.2 (CMPC Supporting Documentation) has actually been incurred (through payment or bank records and statements, BACS lists, receipts or other confirmation) or will be incurred, at the date of the CMPC or ACMPC (as applicable), provided that in relation to Services performed by subcontractors, Permitted Expenditure Connect must, for the purposes of this Paragraph 7C.1.4 (CMPC Supporting Documentation) be deemed "incurred" if the circumstances in Paragraph 7C.2 (CMPC Supporting Documentation) are satisfied;
- calculations detailing the unused amount of the ACMP Cap and Maximum Connection Subsidy:
  - prior to the submission of the CMPC and ACMPC; and
  - assuming the CMPC and ACMPC is accepted by the Minister;
- a copy of the latest approved PE Tracker, together with details of the Permitted Expenditure WIP at that time;
- an updated calculation of the PE Test assuming the CMPC is accepted as valid and paid by the Minister and the ACMPC is accepted as valid and paid by the Minister or by NBPco (as applicable);
- signed confirmation from the chief financial officer or director of finance of NBPco and each relevant Claw-backable Subcontractor that the Permitted Expenditure Connect is not covered by:
  - any other form of public subsidy; or
  - more than one form of public subsidy;
- signed confirmation from the chief financial officer or director of finance (or other suitably qualified finance representative approved in writing by the Minister's Representative in advance) of NBPco and each relevant Claw-backable Subcontractor that part apportionment or allocation of Permitted Expenditure Connect (if applicable) between this Agreement and, subject to the provisions of this Agreement, other permitted contracts or services provided by NBPco, is accurate and a fair reflection of the work carried out;
- signed confirmation from the chief financial officer or director of finance (or other suitably qualified finance representative approved in writing by the Minister's Representative in advance) of NBPco and each relevant Claw-backable Subcontractor that:
  - the Permitted Expenditure Connect has been actually incurred (as distinct from contracted for) and that none of the claimed Permitted Expenditure Connect relates, directly or indirectly, to cost categories that fall outside the definition of Permitted Expenditure Connect;
  - the Permitted Expenditure Connect has been incurred and is in accordance with the financial control, financial management and internal risk processes of NBPco or the Claw-backable Subcontractor; and
  - the Permitted Expenditure Connect has been incurred and is in accordance and is consistent with accepted accounting practice and the Accounting Policies that NBPco, and the accounting policies that the Claw-backable Subcontractor (as the case may be), applies under its corporate financial reporting and audit standards;
- such other information and documentation as the Minister's Representative may reasonably specify from time to time to enable the Minister to assess the Permitted Expenditure Connect actually incurred and whether the Subsidy Payments due from the Minister are properly payable, provided that the Minister must not use its right of request under this Paragraph 7C.1.11 (CMPC Supporting Documentation) to delay the payment of a Subsidy Payment.
- Permitted Expenditure Connect in respect of the services performed by a subcontractor to NBPco or to a Claw-backable Subcontractor is deemed incurred for the purposes of Paragraph 7C.1.4 when the subcontractor has invoiced NBPco or the Claw-backable Subcontractor for the amount to be claimed by NBPco or the Claw-backable Subcontractor as Permitted Expenditure Connect, provided that NBPco or the Claw-backable Subcontractor includes in the CMPC Supporting Documentation signed confirmation from their chief financial officer or director of finance that the invoice(s) in question are correct, due and payable.
- NBPco agrees that, once a minimum of sixty days has elapsed since payment of the relevant CMPC or ACMPC, the Minister may request that NBPco or the Claw-backable Subcontractor (as the case may be) provides evidence to demonstrate that NBPco or the Claw-backable Subcontractor has in fact paid the subcontractor the applicable amount(s) due to it. NBPco must procure that its Claw-backable Subcontractor provides such evidence. If no evidence or unsatisfactory evidence is provided to the Minister, then NBPco, upon request by the Minister, must issue a refund in full of any amounts claimed as being incurred Permitted Expenditure Connect in respect of the subcontractor concerned in the form of an electronic re-payment to be completed in cleared funds within fifteen days of the request by the Minister. If subsequently NBPco or the Claw-backable Subcontractor provides evidence to demonstrate that the applicable amounts were actually paid to the subcontractors, such amounts will then be re-paid by the Minister to NBPco (without any interest being due or payable).
- NBPco must ensure that in all cases the CMPC Supporting Documentation is Open Book and of sufficient detail and quality to allow the Minister's Representative to determine (acting reasonably) the eligibility of the applicable Permitted Expenditure Connect and the validity of the CMPC and ACMPC to the Minister's satisfaction. NBPco must include the Permitted Expenditure Connect referenced in Paragraph 7C.1.1 (CMPC Supporting Documentation) that is accepted by the Minister's Representative as being eligible and valid in the PE Tracker report.