

**AGREEMENT IN RESPECT OF THE NATIONAL BROADBAND INTERVENTION
PROJECT**

**THE MINISTER FOR COMMUNICATIONS, CLIMATE ACTION AND
ENVIRONMENT**

AND

NBI INFRASTRUCTURE DESIGNATED ACTIVITY COMPANY



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This Agreement is dated day of November 2019.

PARTIES

- (1) **THE MINISTER FOR COMMUNICATIONS, CLIMATE ACTION AND ENVIRONMENT** of, 29 to 31 Adelaide Rd, Dublin 2, Ireland (“**Minister**”); and
- (2) **NBI INFRASTRUCTURE DESIGNATED ACTIVITY COMPANY**, a company registered in Ireland with number 629167 whose registered office is at Ten Earlsfort Terrace, Dublin 2, D02T380, Ireland (“**NBPco**”),

(individually called a “**Party**” and collectively called the “**Parties**”).

RECITALS

- A. The *National Broadband Plan* is a policy initiative of the Irish government, being implemented through the Minister, which aims to deliver High Speed Broadband to every citizen and business in Ireland. This is being achieved through a combination of accelerated commercial investment by telecoms operators, and a proposed State intervention to provide High Speed Broadband to those parts of Ireland where the commercial sector has not had concrete plans to invest.
- B. The Minister’s proposed strategy for the *National Broadband Plan* envisages that, in the parts of Ireland where it is not commercially viable for private operators to build backhaul and appropriate next generation access network infrastructure, the Irish government, through the Minister, will invest in the build of such infrastructure to facilitate the provision of wholesale High Speed Broadband services over this infrastructure.
- C. In order to provide the *National Broadband Plan* strategy, the Minister issued a Contract Notice for the National Broadband Plan competitive dialogue procedure inviting prospective suppliers to submit proposals and participate in the competitive dialogue. The Contract Notice was sent to the Official Journal of the European Union on 22 December 2015 and its reference number is 455315-2105.
- D. The competitive dialogue procedure was split into three distinct lots. Two of the lots covered different geographical areas within the intervention area and the third lot was a combined lot

covering the full intervention area. At ITSFT, the Minister invited tenders in respect of a combined lot covering the full Intervention Area only.

- E. A number of tenders were submitted during the competitive dialogue procedure which included that of the NBPco Bidder.
- F. After an evaluation of the Tender of the NBPco Bidder following a detailed diligence process, the Minister has identified the Tender as the successful tender.
- G. The NBPco Bidder has procured the incorporation of NBPco as a special purpose company.
- H. The Minister wishes to appoint NBPco to provide the Services, Wholesale Products and the Network in the Intervention Area subject to a contract being entered into between the Minister and NBPco.
- I. NBPco is willing to provide the Services, Wholesale Products and Network in the Intervention Area subject to, and in accordance with, the provisions set out in this Agreement.
- J. NBPco confirms its expectation that the Subsidy Payments to be provided by the Minister under this Agreement make the implementation of the *National Broadband Plan* viable and deliverable and accordingly it expects to benefit financially and otherwise from the Agreement and specifically from ownership of the Assets and implementation of the *National Broadband Plan* and accepts that the obligations undertaken by it under this Agreement and, in particular, the provisions in Part 5 (Change in Ownership and Asset Transfer) and Part 6 (General) of Schedule 6.9 (Consequences of Termination) regarding transfer of ownership of the Transferable Assets are fair and reasonable having regard to such Subsidy Payments.
- K. The board of directors of NBPco determined that the provisions of this Agreement are fair and reasonable and in the best interests of NBPco and NBPco's Shareholders and resolved that NBPco should execute, deliver and perform the Agreement and Required Documents to which NBPco is a party.
- L. It is of paramount importance for the successful implementation of the *National Broadband Plan* strategy for NBPco to closely and cooperatively work with the Minister, Regulator and Agency.

NOW IT IS AGREED BY EACH PARTY AS FOLLOWS IN CONSIDERATION OF EACH OF THEIR RIGHTS AND OBLIGATIONS:

SECTION A – INTERPRETATION, CONFIRMATIONS AND APPOINTMENT

1 DEFINITIONS AND INTERPRETATION

- 1.1 In this Agreement capitalised expressions have the meanings set out in Schedule 1 (Definitions), unless otherwise stated.
- 1.2 In this Agreement, unless otherwise stated:
 - 1.2.1 The language of this Agreement is English. All correspondence, drawings, test reports, certificates, specifications, notices, and other information and data shall be entirely in English. Except where expressly provided for in this Agreement or otherwise required by Law (in which case the relevant language shall be Irish), all operating and maintenance instructions, identification labels and other written and printed matter required for the Project shall be in English. Instructions and notices to the public and NBPco Personnel and all other signing and information

notices shall be available in English and, to the extent required pursuant to Schedule 2.6 (Communications, Demand Stimulation and Brand Plan), Clause 8.3 (Policy Objectives) or as otherwise may be reasonably requested by the Minister from time to time, Irish.

- 1.2.2 Any phrase introduced by the words “including”, “such as”, “includes”, “other”, “in particular”, “for example” or similar is illustrative and not exhaustive, and does not limit but may extend the generality of the provisions to which it relates.
- 1.2.3 The singular includes the plural and vice versa.
- 1.2.4 Reference to a gender includes the other gender and the neuter.
- 1.2.5 References to any person includes natural persons, partnerships, firms, trusts, bodies corporate, government, governmental body, Ministers, emanation, agency, authority, instrumentality, unincorporated body of persons or association and all other persons of whatever kind and however constituted (including whether or not having separate legal personality).
- 1.2.6 Any reference to a public or statutory organisation or representative is deemed to include a reference to any successor to such public or statutory organisation or representative or any organisation or entity or representative which has taken over the functions or responsibilities of such public or statutory organisation or representative.
- 1.2.7 Neither the Minister, Agency nor the Regulator is imputed with knowledge of any fact, matter or thing merely because that fact, matter or thing is within the knowledge of the State’s servants or agents.
- 1.2.8 References to any Law or Code and Standard or other similar instrument is a reference to the Law or Code and Standard or other similar instrument as amended, replaced, extended, consolidated or re-enacted and includes any statutory instrument, bye-law, directive, decision, regulation, rule, order, notice, codes of practice, code of conduct, rule of court, instrument or delegated or subordinate legislation made under it.
- 1.2.9 Any headings to Clauses, Paragraphs, Schedules, Appendices and Annexes are for convenience only and do not affect the meaning of this Agreement.
- 1.2.10 Unless the contrary is stated, references to:
 - (A) Recitals means the recitals set out at the start of this Agreement;
 - (B) Schedules mean the schedules to this Agreement (including their Appendices and Annexes);
 - (C) Clauses mean the clauses of this Agreement;
 - (D) Paragraphs mean the paragraphs contained in the Schedule, Appendix, or Annex in question or (where the Schedule, Appendix, or

- Annex in question comprises more than one Part) the Part of the Schedule, Appendix, or Annex in which the reference occurs;
- (E) Part means the part contained in the Schedule, Appendix or Annex in question;
 - (F) Appendices mean the appendices to the Schedule in question; and
 - (G) Annexes mean the annexes to the Appendix in question (except in Schedule 6.2 (Change Control Procedure) where the Annexes are annexed direct to the Schedule without an Appendix).
- 1.2.11 All references to time of day are a reference to whatever time of day is in force in Dublin, Ireland.
- 1.2.12 The words “day”, “month” and “year” mean calendar day, calendar month and calendar year unless otherwise stated.
- 1.2.13 The word “liability” includes any and all awards, costs, claims, charges, compensation, demands, damages, expenses, fines, interest, liabilities, losses, penalties, royalties, and proceedings (including reasonable legal and professional fees) whatever and anything similar, together with any irrecoverable VAT.
- 1.2.14 Any reference to “requirements” or “obligations” are to such requirements or obligations as may be subsequently altered or supplemented in accordance with the provisions of this Agreement.
- 1.2.15 “Writing” or any similar expression includes typing, printing, lithography, photography, display on a screen, electronic and facsimile transmission and other modes of representing or reproducing words in a visible form, and expressions referring to “writing” and “written” are construed accordingly.
- 1.2.16 Any obligation in this Agreement on the part of NBPco to do, or to refrain from doing, any act or thing includes an obligation onto NBPco to procure that all NBPco Personnel also do, or refrain from doing, such act or thing.
- 1.2.17 A “material Default” may be a single material Default or a number of Defaults or repeated Defaults (whether of the same or different obligations and regardless of whether such Defaults are remedied) which taken together constitute a material Default.
- 1.2.18 Unless expressly stated otherwise in respect of a particular agreement, document or other instrument, all references to any agreement (including this Agreement), document or other instrument include (subject to all relevant approvals and consents and any other provision of this Agreement expressly concerning such agreement, document or other instrument) a reference to that agreement, document or instrument as amended, supplemented, substituted, novated or assigned.
- 1.2.19 Unless and only to the extent otherwise expressly stated in this Agreement (including pursuant to Clause 16 (Testing and Milestones), where applicable) or

otherwise agreed in writing by the Parties pursuant to the Change Control Procedure:

- (A) the giving of, or failure to give, any approval, authorisation, Achievement, confirmation, opinion, consent, examination, acknowledgement, objection, Milestone Achievement Certificate or Authority to Proceed (ATP) Certificate;
- (B) the knowledge of the terms of any agreement, contract, document, instrument or similar;
- (C) the review, monitoring, audit, inspection, examination or receipt of any information, data, agreement, document, contract, instruments or similar or course of action, Services, Wholesale Product, Wholesale Price or Network;
- (D) the making of any Subsidy Payment (but without limiting or affecting Clause 16.4.2 (Testing and Milestones)); and/or
- (E) any other course of action,

by or on behalf of the Minister, Agency or the Regulator (or any of their agents, representatives, contractors, consultants and advisers) does not diminish, relieve or excuse in any way NBPco of any of its duties, obligations, liability or responsibilities under this Agreement or Law and also does not:

- (1) pass any liability, duty, obligation or responsibility whatever to the Minister, Agency or Regulator;
- (2) suggest or imply that NBPco has complied with the Service Requirements, NBPco's Solution, this Agreement, Laws, Guidance or Codes and Standards in any respect;
- (3) limit or affect the Minister from making any allegation at a later date regarding compliance with this Agreement in any respect;
- (4) limit or affect the Minister's, Agency's or Regulator's discretion, rights and remedies under this Agreement or at Law or in equity; and
- (5) without affecting the provisions of this Agreement, give rise to any legitimate expectation.

1.2.20 Where this Agreement contemplates that the Minister or Agency may elect, grant, determine, approve, consent, agree, nominate, decide, specify or consider any matter or thing, the Minister or Agency may make such election, grant, determination, approval, consent, agreement, nomination, specification, decision or consideration in and at its absolute discretion, unless and only to the extent this Agreement expressly requires otherwise in a specific case.

1.2.21 Any qualifications, conditions, assumptions (but without limiting or affecting the Contract Assumptions), or anything else contained in NBPco's Solution or Schedule 3 (NBPco Solution) (comprising Schedule 3.1 (NBPco Solution – Technical Solution) to Schedule 3.12 (Details of Companies) inclusive that

makes NBPco's Solution or this Agreement equivocal or qualified in any respect or impose obligations on the Minister, Regulator, Agency or any third party is of no effect and is excluded from this Agreement and NBPco's Solution.

- 1.2.22 All monetary amounts are expressed in euro.
- 1.2.23 Any reference to the statutory duties, powers or functions of the Minister, Agency or Regulator is a reference to such duties, powers or functions (including discretions) from time to time and include any common law duties, powers and functions (including discretions).
- 1.2.24 Any reference in this Agreement to "providing" (or "provide" or "provision of" or similar) the Services, Wholesale Products or Network includes, as the context admits or requires, the design, build, carrying out, commissioning, provision, performance, implementation, making available, Connecting and enabling of (as applicable) the Services, Wholesale Products or Network.
- 1.2.25 References in this Agreement to the provision of, and other obligations in respect of, the Network in and throughout the Intervention Area include the provision of, and other obligations in respect of, the Network in such other parts of Ireland outside the Intervention Area (including the Transit Area) as are necessary to provide the Network, Wholesale Products and Services in and throughout the Intervention Area in accordance with this Agreement (including the Service Requirements, NBPco Solution, Wholesale Product Roadmap, Wholesale Product & Coverage Template and Technology Roadmap).
- 1.2.26 Any reference in this Agreement to an "electronic communication service" or "electronic communications network" is to an "electronic communication service" and an "electronic communication network" as defined in the Framework Regulations.
- 1.2.27 Except where and to the extent expressly stated otherwise in this Agreement, any amounts or sums in this Agreement which are expressed to be "subject to Indexation" or "Indexed" (but no other sums or amounts) shall be adjusted as follows to reflect the effects of inflation:
 - (A) the relevant adjustment where an amount or sum is expressed to be "subject to Indexation" or "Indexed" shall be:
 - (1) applied as on the first day of January 2020 and each subsequent first day of January thereafter during the Contract Period (each such date an "**adjustment date**");
 - (2) based on the Index published for the month of November which most recently precedes the relevant adjustment date; and
 - (3) determined by multiplying the relevant amount or sum by the percentage increase in the Index over the twelve (12) month period that ends in the month of November which most recently precedes the relevant adjustment date (provided

that in all cases the change in the Index shall be deemed to never be lower than one (1)); and

- (B) except as set out in this Paragraph 1.2.27 (Definitions and Interpretation) no costs, expenses, fees or other sums shall be adjusted to take account of any inflation, change to exchange rate, change to interest rate or any other factor or element which might otherwise increase the cost to NBPco or Subcontractors of the performance of their obligations.

1.2.28 Any references to the Minister is deemed to include a reference to the Minister's Representative, the Minister's advisers, consultants, servants, contractors and agents and any reference to the Minister's Representative is deemed to include a reference to the Minister. For the avoidance of doubt, any decision, determination, direction or power, right or entitlement or similar of the Minister under this Agreement (including to approve or make a decision on a matter) may be exercised by the Minister's Representative.

1.2.29 For the purposes of this Agreement, and without limiting or affecting any other provision of this Agreement, any reference in this Agreement to Permitted Expenditure being "incurred" or Permitted Expenditure WIP being "incurred", requires:

- (A) in respect of Permitted Expenditure Passed (DA) and Permitted Expenditure DA WIP, that all of the following apply:
 - (1) all of the works, services, equipment and materials to which the expenditure 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;
 - (2) the expenditure is evidenced by NBPco through copies of invoices, receipts, timesheets, payroll records and the other accounting information described, as applicable, in Paragraph 2 (DMPC Supporting Documentation) and Paragraph 5 (Supporting Documentation for Permitted Expenditure WIP) of Appendix 7 (Supporting Documentation) of Schedule 5.1 (Subsidy Payments); and
 - (3) it is evidenced by NBPco, in accordance with Paragraph 5.1.2(C) (DMPC Supporting Documentation) of Schedule 5.1 (Subsidy Payments), that the expenditure either has been or, by the date of the DMPC, will have been incurred (that is to say discharged and paid) by NBPco or a Claw-backable Subcontractor except that, subject to Paragraph 5.3 (DMPC Supporting Documentation) of Schedule 5.1 (Subsidy Payments), in relation to Services performed by subcontractors to NBPco or to a Claw-backable Subcontractor, expenditure is deemed to have been "incurred" for the purposes of Paragraph 5.1.2(C) (DMPC Supporting Documentation) of Schedule 5.1 (Subsidy Payments) in the circumstances and subject to the

conditions set out in Paragraph 5.2 (DMPC Supporting Documentation) of Schedule 5.1 (Subsidy Payments);

- (B) in respect of Permitted Expenditure Passed (Common), Permitted Expenditure Passed (Infra Rental), Permitted Expenditure NBPco, Permitted Expenditure NBPco (Build), Permitted Expenditure New Premises and Permitted Expenditure Stock, that all of the following apply:
 - (1) all of the works, services, equipment and materials to which the expenditure 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;
 - (2) the expenditure is evidenced by NBPco through copies of invoices, receipts, timesheets, payroll records and the other accounting information described, as applicable, in Paragraph 4 (General PE Supporting Documentation) and Paragraph 5 (Supporting Documentation for Permitted Expenditure WIP) of Appendix 7 (Supporting Documentation) of Schedule 5.1 (Subsidy Payments); and
 - (3) it is evidenced by NBPco, in accordance with Paragraph 5B.1(C) (General PE Supporting Documentation) of Schedule 5.1 (Subsidy Payments), that the expenditure either has been or, by the date of the DMPC or OCPC (as applicable), will have been incurred (that is to say discharged and paid) by NBPco or a Claw-backable Subcontractor except that, subject to Paragraph 5.3 (DMPC Supporting Documentation) of Schedule 5.1 (Subsidy Payments), in relation to Services performed by subcontractors to NBPco or to a Claw-backable Subcontractor, expenditure is deemed to have been “incurred” for the purposes of Paragraph 5B.1(C) (General PE Supporting Documentation) of Schedule 5.1 (Subsidy Payments) in the circumstances and subject to the conditions set out in Paragraph 5.2 (DMPC Supporting Documentation) of Schedule 5.1 (Subsidy Payments); and
- (C) in respect of Permitted Expenditure Connect and Permitted Expenditure Connect WIP, that all of the following apply:
 - (1) all of the works, services, equipment and materials to which the expenditure 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;
 - (2) the expenditure is evidenced by NBPco through copies of invoices, receipts, timesheets, payroll records and the other accounting information described, as applicable, in Paragraph 3 (CMPC Supporting Documentation) and Paragraph 5 (Supporting Documentation for Permitted

Expenditure WIP) of Appendix 7 (Supporting Documentation) of Schedule 5.1 (Subsidy Payments) and

- (3) it is evidenced by NBPco, in accordance with Paragraph 7C.1.4 (CMPC Supporting Documentation) of Schedule 5.1 (Subsidy Payments), that the expenditure either has been or, by the date of the CMPC or ACMPC (as applicable), will have been incurred (that is to say discharged and paid) by NBPco or a Claw-backable Subcontractor except that, subject to Paragraph 7C.3 (CMPC Supporting Documentation) of Schedule 5.1 (Subsidy Payments), in relation to Services performed by subcontractors to NBPco or to a Claw-backable Subcontractor, expenditure is deemed to have been "incurred" for the purposes of Paragraph 7C.1.4 (CMPC Supporting Documentation) of Schedule 5.1 (Subsidy Payments) in the circumstances and subject to the conditions set out in Paragraph 7C.2 (CMPC Supporting Documentation) of Schedule 5.1 (Subsidy Payments).

1.2.30 Where this Agreement provides that, for the purpose of identification, a deed, document, instrument or analogous item is to be signed or initialled (whilst, if applicable, still subject to contract) by or on behalf of each Party on the front and back page, it shall be deemed to be so signed or initialled if included in the NBP Completion Bible.

1.3 NBPco acknowledges and agrees that the scope of this Agreement includes all Premises within the Intervention Area from time to time during the Contract Term (including any Premises built after the Commencement Date) and that the build of New Premises in the Intervention Area during the Contract Term do not constitute a change, extension or amendment of the Intervention Area. Accordingly, any reference in this Agreement to:

1.3.1 a number of Premises in, as applicable, a particular Deployment Area or Rollout Area or Intervention Area at a particular point in time is to all of the Premises which at the relevant point in time are in, as applicable, the Deployment Area or Rollout Area concerned or Intervention Area according to the most recent published version of the sources of the End User Information Management Data Sources (being, as at the Commencement Date, GeoDirectory); and

1.3.2 an obligation to Pass Premises or make available, Connect, enable or provide (or any similar obligation) a Wholesale Product or New Wholesale Product to Premises is an obligation to do so to all and any Premises which at the relevant point in time are in the Deployment Area or Rollout Area concerned or Intervention Area according to the most recent published version of the sources of the End User Information Management Data Sources (being, as at the Commencement Date, GeoDirectory).

For the avoidance of doubt, Clauses 1.3.1 (Definitions and Interpretation) and 1.3.2 (Definitions and Interpretation) do not limit or affect Paragraphs 2.2.3 (Milestones), 2.3.3 (Milestones) and 2.4.3 (Milestones) of Appendix 3 (Milestone Achievement Criteria) of Schedule 2.3 (Deployment Requirements) insofar as they relate to the date of completion of Detailed Design Complete for a Deployment Area and Deployment Area Complete for

a Deployment Area and Rollout Area Complete for a Rollout Area for the purposes of that Appendix.

1.4 Any reference in this Agreement to NBPco being in an “**equivalent position**” in respect of any changes to Subsidy Payments arising from a Relevant Event under this Agreement shall be construed by reference to:

1.4.1 the rights, duties and liabilities of NBPco under or pursuant to this Agreement; and

1.4.2 the ability of NBPco to perform its obligations and exercise its rights under this Agreement,

so as to mean that NBPco would, following the Relevant Event, be left in a position that:

1.4.3 in terms of the Post Tax Equity Internal Rate of Return (examined by reference to the version of the Project Financial Model, Project Accounts and Reports pursuant to Schedule 5.3 (The Project Financial Model) applicable immediately prior to the Change or the occurrence of the Relevant Event or such other time stated in the relevant mechanism under this Agreement applicable to the assessment of the Relevant Event); and

1.4.4 in terms of NBPco’s ability to comply with its obligations under this Agreement;

is equivalent to the position it would have been in had the Relevant Event not occurred (or in the case of a Change, not been implemented). In assessing the “*equivalent position*”, regard will be had only to the direct effects of any Relevant Event in respect of NBPco’s position at the relevant time.

Contract Assumptions

1.5 The provisions of Annex 5 (Post Build Contract Assumptions) and Annex 6 (Build Related Contract Assumptions) of Schedule 6.2 (Change Control Procedure) shall apply in respect of the Contract Assumptions.

Relevant Event

1.6 Where a Relevant Event occurs, the financial consequences of that event shall (save where otherwise provided in this Agreement or where the Minister and NBPco otherwise agree in writing) be determined in accordance with the relevant procedure applicable under this Agreement to the calculation of a change in Subsidy Payments or compensation in respect of the Relevant Event and Annex 8 (Increases in Subsidy Payments and Compensation) of Schedule 6.2 (Change Control Procedure).

2 CONDITIONS PRECEDENT

2.1 NBPco shall have provided to the Minister the Initial Required Documents (duly executed by the parties to them) on or before the Commencement Date and shall provide the Final

Required Documents (duly executed by the parties to them) on or before the Effective Date.

2.2 The following provisions of this Agreement are effective on and from the Commencement Date:

- 2.2.1 Clause 1 (Definitions and Interpretation);
- 2.2.2 Clause 2 (Conditions Precedent), Schedule 8 (Conditions Precedent) and Schedule 9 (Required Documents);
- 2.2.3 Clause 3 (Order of Precedence);
- 2.2.4 Clause 4 (Due Diligence);
- 2.2.5 Clause 5 (Disclaimer);
- 2.2.6 Clauses 6.1 (Acknowledgements and Warranties) to Clause 6.7 (Acknowledgements and Warranties) (inclusive);
- 2.2.7 Clause 7.3 (Appointment);
- 2.2.8 Clause 9.4 (Provision of the Services, Wholesale Products and Network);
- 2.2.9 Clause 21 (Consents);
- 2.2.10 Clause 22 (Compliance);
- 2.2.11 Clause 23 (Health, Safety, Security and the Environment);
- 2.2.12 Clause 24 (Network and Service Security);
- 2.2.13 Clause 25 (Changes in Law);
- 2.2.14 Clause 27.5 (Subsidy Payments);
- 2.2.15 Clause 29 (Project Financial Model) and Schedule 5.3 (Project Financial Model);
- 2.2.16 Clause 30 (State Aid) (other than Clauses 30.3 (State Aid), 30.7 (State Aid), 30.8 (State Aid));
- 2.2.17 Clauses 32.4 (Tax) to Clause 32.11 (Tax) (inclusive);
- 2.2.18 Clause 35 (Financial Distress) and Schedule 5.7 (Financial Distress);
- 2.2.19 Clause 36 (Non-Discrimination and Transparency);
- 2.2.20 Clause 37 (NBPco Requirements and Business Restrictions);
- 2.2.21 Clause 38 (Guarantee) and Schedule 7.1 (NBPco Minister Guarantee) and Schedule 7.5 (Limited Recourse Guarantee);
- 2.2.22 Clause 39 (Performance Bond) and Schedule 7.2 (Performance Bond);
- 2.2.23 Clause 40 (Financial Standing of NBPco);

- 2.2.24 Clause 41(Eligibility Requirements for ERDF Funding) and Schedule 5.4 (Eligibility Requirements for ERDF Funding);
- 2.2.25 Clause 42 (Subcontractors), Schedule 2.8 (Key Subcontractor Provisions) and Schedule 6.13 (Ministerial Oversight of Deployment Subcontract Procurement Process);
- 2.2.26 Clause 44 (Project Documents and Funding Documents);
- 2.2.27 Clause 45 (Representatives);
- 2.2.28 Clause 46 (Governance);
- 2.2.29 Clause 50 (Disputes) and Schedule 6.3 (Dispute Resolution Procedure);
- 2.2.30 Clause 51 (NBPco Personnel);
- 2.2.31 Clause 52 (Assets);
- 2.2.32 Clause 54 (Intellectual Property Rights);
- 2.2.33 Clause 58.1 (Data Protection);
- 2.2.34 Clause 59 (Requests for Information);
- 2.2.35 Clause 60 (Confidentiality);
- 2.2.36 Clause 61 (Prohibited Acts and Prevention of Bribery);
- 2.2.37 Clause 62 (Conflicts of Interest);
- 2.2.38 Clause 63 (Change in Ownership and of Control) and Schedule 6.2 (Change Control Procedure);
- 2.2.39 Clause 65 (IPR Warranty and Indemnity);
- 2.2.40 Clause 66 (Indemnity);
- 2.2.41 Clause 67 (Handling of Indemnified Claims);
- 2.2.42 Clause 68 (Limitation of Liability); and.
- 2.2.43 Clause 69 (Required Insurance) and Schedule 5.6 (Required Insurances);
- 2.2.44 Clause 81 (Assignment and Novation) to Clause 94 (Governing Law and Jurisdiction) (inclusive);
- 2.2.45 Schedule 1 (Definitions); a
- 2.2.46 Schedule 5.5 (Accounting Separation);
- 2.2.47 Schedule 2.7 (NBPco Requirements); and
- 2.2.48 Paragraph 12 (Conditions to be Satisfied on or before the Effective Date) of Schedule 2.3 (Deployment Requirements).

- 2.3 With the exception of the provisions identified in Clause 2.2 (Conditions Precedent) and subject to the other provisions of this Clause 2 (Conditions Precedent), this Agreement is conditional upon and has no force or effect unless and until each and every one of the Conditions Precedent is satisfied. The Parties acknowledge that, in accordance with their terms, the Funding Documents, the Required Documents, the Minister Security Documents and the Project Documents are conditional upon and have no force or effect unless and until each and every one of the Conditions Precedent (other than, in the case of the following agreements, the effectiveness of the Shareholders Agreement, Equity Subscription Agreement, Buildco Shareholders Agreement, Buildco Equity Subscription Agreement and Funding Documents) has been satisfied. The date of satisfaction of the last Condition Precedent shall be the Effective Date and this Agreement shall (in addition to the provisions referred to in Clause 2.2 (Conditions Precedent)) come into force and have legal effect on and from the Effective Date.
- 2.4 NBPco shall use its reasonable endeavours to satisfy, or procure the satisfaction, of each and every one of the NBPco Conditions Precedent as soon as possible and, in any event, by no later than the Condition Precedent Deadline. The Minister shall execute Approved Form Required Documents to which the Minister is a party on a timely basis.
- 2.5 If any of the NBPco Conditions Precedent is not fulfilled by its Condition Precedent Deadline, the Parties may, by agreement in writing, before, on or after the Condition Precedent Deadline concerned:
- 2.5.1 extend the Condition Precedent Deadline for the unsatisfied Condition Precedent concerned in which case NBPco shall use its best endeavours to satisfy, or procure the satisfaction of, the relevant Condition Precedent as soon as possible and, in any event, by no later than the revised date for its satisfaction agreed by the Parties in writing (the “**Extended Condition Precedent Deadline**”);
- 2.5.2 waive the satisfaction prior to the Effective Date of the unsatisfied Condition Precedent concerned in which case NBPco shall use its best endeavours to satisfy, or procure the satisfaction of, the relevant Condition Precedent as soon as possible and, in any event, by no later than the revised date (after the Effective Date) for its satisfaction agreed by the Parties in writing; and/or
- 2.5.3 waive the satisfaction of the unsatisfied NBPco Conditions Precedent concerned.
- 2.6 If each and every one of the NBPco Conditions Precedents is not satisfied by, as applicable:
- 2.6.1 the Condition Precedent Deadline; or
- 2.6.2 if the Minister has, by agreement in writing with NBPco, extended the Condition Precedent Deadline for a Condition Precedent in accordance with Clause 2.5.1

(Conditions Precedent), the Extended Condition Precedent Deadline for the Condition Precedent concerned,

then, unless the Minister has either:

- 2.6.3 waived, by agreement in writing with NBPco, the satisfaction of the unsatisfied NBPco Conditions Precedent prior to the Effective Date in accordance with Clause 2.5.2 (Conditions Precedent); or
- 2.6.4 waived, by agreement in writing with NBPco, the unsatisfied NBPco Conditions Precedent in accordance with Clause 2.5.3 (Conditions Precedent),

the Parties agree that:

- 2.6.5 this Agreement shall automatically cease and terminate and shall not come into further effect; and
 - 2.6.6 the Minister has no liabilities to or any obligation to pay any compensation or other sum whatever to NBPco or any other person as a result of such cessation and termination (despite any other provision of this Agreement including Clause 80 (Consequences of Termination or Expiry) and Schedule 6.9 (Consequences of Termination)).
- 2.7 NBPco shall consult the Minister in relation to the steps it takes to satisfy the NBPco Conditions Precedent and shall keep the Minister fully informed and up-to-date of its progress in satisfying the NBPco Conditions Precedent and of any circumstance which is likely to result in any of the NBPco Conditions Precedent not being satisfied by the date required pursuant to the provisions of this Clause 2 (Conditions Precedent) (whether the Conditions Precedent Deadline or the Extended Conditions Precedent Deadline or other extended date).

3 ORDER OF PRECEDENCE

- 3.1 In the event of any conflict, inconsistency or ambiguity arising between:
- 3.1.1 the provisions of this Agreement (excluding, for this purpose, the Schedules) and the provisions of any Schedule, the provisions of this Agreement (excluding, for this purpose, the Schedules) prevails;
 - 3.1.2 the provisions of particular Schedules, the interpretation which provides the safest and most conservative result from the Minister's perspective and/or the highest standard of work, service, products or network, as reasonably determined by the Minister, prevails;
 - 3.1.3 the provisions of any of Schedules 3.1 (NBPco Solution – Technical Solution) to Schedule 3.12 (Details of Companies) (inclusive) and the other provisions of this Agreement (including the other Schedules), the provisions of this Agreement prevail (except to the extent that the application of the provisions of any of Schedule 3.1 (NBPco Solution – Technical Solution) to Schedule 3.12 (Details of Companies) (inclusive) will, in the reasonable opinion of the Minister, 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 this Agreement (including the other Schedules), in which case the provisions of any of Schedule 3.1 (NBPco Solution – Technical Solution) to Schedule 3.12

(Details of Companies) (inclusive) prevail to such extent as determined by the Minister); or

- 3.1.4 the provisions of any of Schedule 3.1 (NBPco Solution – Reference Offer) to Schedule 3.12 (Details of Companies) (inclusive) or any documentation forming part of any of those Schedules, the conflict, inconsistency or ambiguity shall be determined and resolved by the Minister.

4 DUE DILIGENCE

4.1 NBPco acknowledges, confirms and agrees that:

4.1.1 NBPco has gathered all information necessary to assess and perform its obligations under this Agreement (including as to the nature, location and condition of any relevant land, including hydrological, geological, geotechnical and sub-surface conditions) and any other obligations assumed by it;

4.1.2 NBPco is deemed to fully understand and have thoroughly satisfied itself, (whether by inspection, having raised all relevant due diligence questions with the Minister before the Commencement Date or having undertaken other due diligence, inspection, analysis or investigations or otherwise), of all relevant details relating to:

- (A) the Service Requirements, NBPco Solution and this Agreement;
- (B) the availability (subject to the Contract Assumptions) and suitability of all Third Party Infrastructure;
- (C) all applicable Laws, Binding Guidance, Codes and Standards and Consents; and
- (D) the nature and the extent of the risks assumed by it under this Agreement;

4.1.3 NBPco is deemed to have, and has, thoroughly satisfied itself as to the character, quality and quantity of the necessary labour, materials, equipment, infrastructure and facilities for the Services, Wholesale Products and Network, wage levels, health and safety requirements, environmental matters, legal and regulatory requirements and matters and all other matters which may affect the provision of the Services, Wholesale Products and Network and NBPco Solution; and

4.1.4 the Minister has not and does not make any warranty or representation in respect of the Disclosed Information (including with respect to the Intervention Area Map) and NBPco is deemed to have, and has, made its own enquiries and conducted its own analysis to thoroughly satisfy itself as to the accuracy,

adequacy and completeness of the Disclosed Information or any other information it has or does rely upon for the purposes of this Agreement.

4.2 Without limiting or affecting any other provision of this Agreement (including, if applicable, Clause 18 (Relief Events) and the Contract Assumptions), NBPco acknowledges, confirms and agrees that it:

- 4.2.1 is not entitled to any additional or increased payment or to recover any additional costs, expenses or charges or changes to the Subsidy Payments, Project Financial Model, Wholesale Prices or otherwise;
- 4.2.2 is not entitled to be excused or relieved from any liability, risk, duty, responsibility, obligation or timeline under this Agreement; and
- 4.2.3 has no right to make a Claim (whether in damages, for extensions of time or relief or additional or increased payments, costs, expenses or charges or changes to the Subsidy Payments, Project Financial Model, Wholesale Prices or otherwise) against the Minister or under this Agreement,

as a result of or in connection with:

- 4.2.4 the operating processes and procedures and working methods of any provider of Third Party Infrastructure or any delay by any provider of Third Party Infrastructure;
- 4.2.5 any unsuitable aspects or unavailability of any one, more or all of the Third Party Infrastructure (but subject, in respect of availability, to the Contract Assumptions);
- 4.2.6 NBPco having failed to properly inspect or otherwise being satisfied with or accepting the Third Party Infrastructure;
- 4.2.7 NBPco not or not properly assessing the functionality, facilities, capacity, condition, availability or suitability of the Third Party Infrastructure (but subject, in respect of availability, to the Contract Assumptions);
- 4.2.8 NBPco misinterpreting or not properly assessing the Service Requirements or this Agreement or any matter or fact relating to the Service Requirements, NBPco Solution or this Agreement;
- 4.2.9 NBPco having failed to or to properly review, misinterpreted or satisfy itself as to the accuracy, adequacy, completeness or fitness for purpose of the Disclosed Information or any other information it has or does rely upon for the purposes of this Agreement;
- 4.2.10 any inaccuracy, error, omission, unfitness for purpose, defect or inadequacy of any kind whatsoever in the Disclosed Information or any other information it has or does rely upon for the purposes of this Agreement;
- 4.2.11 [not used]; and/or
- 4.2.12 any failure by or on behalf of the Minister to disclose or make available (whether before or after the Commencement Date) to NBPco any information, documents or data, to keep the Disclosed Information up-to-date or to inform NBPco (whether before or after the Commencement Date) of any inaccuracy, error,

omission, unfitness for purpose, defect or inadequacy in the Disclosed Information.

4.3 No express or implied (whether under contract, statute, tort, equity or otherwise) warranty, representation or undertaking is given by the Minister, the Agency and/or Regulator as to the adequacy, completeness, accuracy or fitness for purpose of any Disclosed Information or that such information constitutes all of the information (in their possession or otherwise) relevant or material to the Service Requirements, NBPco Solution, the Services, Wholesale Products, Network and/or this Agreement and such are hereby excluded to the maximum extent permitted by Law.

4.4 All liability on the part of the Minister, the Agency and/or the Regulator (whether under contract, tort, by statute, common law, equity or otherwise) in connection with:

4.4.1 the content of any Disclosed Information, including in connection with any inaccuracy, error, omission, unfitness for purpose, defect or inadequacy of any kind in it;

4.4.2 any failure to disclose or make available (whether before, on or after the Commencement Date) to NBPco any information, documents, data or materials;

4.4.3 any failure to keep the Disclosed Information up-to-date or to inform NBPco (whether before, on or after the Commencement Date) of any inaccuracy, error, omission, unfitness for purpose, defect or inadequacy of the Disclosed Information; and

4.4.4 any representations or statements made in respect of any Disclosed Information or otherwise,

is excluded to the maximum extent permitted by Law.

4.5 The provisions of this Clause 4 (Due Diligence) do not exclude any liability of the Minister for statements made fraudulently by it.

5 DISCLAIMER

5.1 Except to the extent expressly provided otherwise in, or arising from the express provisions of this Agreement, the Minister, the Agency and Regulator are not under any circumstances whatever liable to NBPco (whether in contract, tort, equity, common law or

otherwise) arising out of, in the course of or in connection with the Project, Services, Network, Wholesale Products or this Agreement.

6 ACKNOWLEDGEMENTS AND WARRANTIES

Reliance

- 6.1 NBPco acknowledges that the Minister has entered into this Agreement in reliance on the representations, statements and warranties contained in this Agreement and NBPco's Solution and Tender.

General

- 6.2 NBPco warrants to the Minister that as at the Commencement Date and Effective Date:
- 6.2.1 all statements and representations in the NBPco Bidder's pre-qualification response and the Tender, and all written clarifications issued in respect of them to the Minister by or on behalf of the NBPco Bidder or NBPco, are to the best of its knowledge, information and belief, having made all reasonable and due inquiries, complete, true and accurate in all material respects and that, following the Commencement Date, it will advise the Minister of any material fact, matter or circumstance of which it may become aware which would render any such statement or representation to be false or misleading in a material respect;
 - 6.2.2 the forecasts and projections in the Project Financial Model and the Financial Memorandum are, to the best of its knowledge, information and belief, having made all reasonable and due inquiries, fair, reasonable, genuine and made in good faith;
 - 6.2.3 NBPco and Buildco are each a company duly incorporated and validly existing under the laws of Ireland and each has the power and authority to own its assets

and to conduct the business and operation which it conducts or proposes to conduct;

6.2.4 each of NBPco and Buildco has full power and authority:

- (A) to execute and deliver:
 - (1) in the case of NBPco, this Agreement; and
 - (2) in the case of Buildco, the Buildco Key Subcontract and Buildco Key Subcontractor Direct Agreement;
- (B) to comply with the provisions of, and perform all of its obligations and exercise all of its rights under:
 - (1) in the case of NBPco, this Agreement; and
 - (2) in the case of Buildco, the Buildco Key Subcontract and Buildco Key Subcontractor Direct Agreement ;
- (C) to execute and deliver the Required Documents; and
- (D) to comply with the provisions of, and perform all of its obligations and exercise all of its rights under, the Required Documents;

6.2.5 NBPco has taken (and not revoked) all necessary action to authorise the execution and delivery of this Agreement and the transactions contemplated by it and Buildco has taken (and not revoked) all necessary action to authorise the execution and delivery of the Buildco Key Subcontract and Buildco Key Subcontractor Direct Agreement and the transactions contemplated by them;

6.2.6 each of NBPco and Buildco have taken (and not revoked) all necessary action to authorise the execution and delivery of the Required Documents to which it is a party and the transactions contemplated by them;

6.2.7 the entry into, execution, delivery and performance by:

- (A) NBPco of this Agreement and of the Required Documents; and
- (B) Buildco of the Buildco Key Subcontract and Buildco Key Subcontractor Direct Agreement and Required Documents,

does not, and will not, violate, contravene or breach in any respect any of the following:

- (C) any Law or any regulation applicable to it; or
- (D) in the case of NBPco, the constitutional documents of NBPco including the Constitution and, in the case of Buildco, the

constitutional documents of Buildco including the Buildco Constitution; or

- (E) any agreement, contract, lease, licence, wayleave, order, judgment, award, injunction or other undertaking, restriction or obligation of any kind or character to which:
 - (1) NBPco, a Shareholder or any of the Group of which NBPco is a member is a party or which is binding on NBPco, a Shareholder or any of the Group of which NBPco is a member or any of its property or assets; or
 - (2) Buildco, a Buildco Shareholder or any of the Group of which Buildco is a member is a party or which is binding on Buildco, a Buildco Shareholder or any of the Group of which Buildco is a member or any of its property or assets;
- (F) without limiting or affecting the foregoing, to the best of NBPco's knowledge, information and belief having made all reasonable and due enquiries, any agreement, contract or other undertaking to which any of the Critical Key Subcontractors is a party or which is binding on any of the Critical Key Subcontractors or any of their property or assets;

6.2.8 all Consents required to be obtained (provided that this does not impose any obligation on NBPco to make a notification to the European Commission pursuant to State Aid Law) in connection with and/or to authorise the entry into, execution, delivery, performance, validity, and enforceability of this Agreement and the Required Documents have been obtained or will at the relevant time be obtained and are or, as applicable, will be valid, subsisting and in full force and effect and will not be contravened, breached or violated by the entry into, execution, delivery, performance, validity, and enforceability of this Agreement and the Required Documents;

6.2.9 this Agreement and each of the Required Documents to which NBPco and/or Buildco is a party constitutes the legal, valid and binding obligations of, as applicable, NBPco and/or Buildco enforceable in accordance with its terms;

6.2.10 except to the extent previously Disclosed in the Disclosure Letter by specific reference to this Clause, no action, suit, proceeding, arbitration, adjudication, mediation, litigation or dispute against NBPco or Buildco, or, to the best of NBPco's knowledge, information and belief having made all reasonable and due enquiries:

- (A) any of the Shareholders;
- (B) any of the Critical Key Subcontractors; or
- (C) any of the Guarantors;

is currently taking place or pending or, to NBPco's knowledge, threatened nor is there subsisting any judgment or award given against NBPco nor Buildco nor, to

the best of NBPco's knowledge, information and belief having made all reasonable and due enquiries:

- (D) any of the Shareholders;
- (E) any of the Critical Key Subcontractors; or
- (F) any of the Guarantors;

before any court, arbitrator or other body which, in any case, will or might have a material adverse effect on the ability of NBPco, a Shareholder, Buildco, a Buildco Shareholder, a Critical Key Subcontractor or a Guarantor to perform its obligations under this Agreement or any Required Document;

- 6.2.11 except to the extent Disclosed in the Disclosure Letter by specific reference to this Clause, no NBPco Termination Event or other breach of any provision of this Agreement or any of the Required Documents has occurred and is continuing nor will an NBPco Termination Event or other breach of any provision of this Agreement or any of the Required Documents result from the entry by NBPco into this Agreement, Buildco into the Buildco Key Subcontract or Buildco Key Subcontractor Direct Agreement or by NBPco or Buildco into the Required Documents to which it is a party or the exercise by NBPco or Buildco of its rights under, or the performance by NBPco or Buildco of any of its obligations under, this Agreement, the Buildco Key Subcontract or Buildco Key Subcontractor Direct Agreement or the exercise by NBPco or Buildco of its rights under, or the performance by NBPco or Buildco of any of its obligations under, the Required Documents to which it is a party;
- 6.2.12 all necessary returns have been delivered by or on behalf of NBPco and Buildco to the relevant taxation authorities and neither NBPco nor Buildco is in default in the payment of any due and payable taxes, and no Claim is being asserted in respect of NBPco or Buildco with respect to taxes;
- 6.2.13 neither NBPco nor Buildco is in default in the filing, registration or recording of any document under any legal or statutory obligation or requirement which default might have a material adverse effect on its business, assets or financial condition or its ability to observe or perform its obligations under this Agreement,

the Buildco Key Subcontract, Buildco Key Subcontractor Direct Agreement and/or the Required Documents;

6.2.14 the audited consolidated financial statements for the most recent year available and, in any case, no later than the year ended 31 December 2018 of:

- (A) each of the Shareholders;
- (B) the Group of which any Shareholder is a member;
- (C) each of the Buildco Shareholders;
- (D) the Group of which any Buildco Shareholder is a member;
- (E) each of the Critical Key Subcontractors, to the best of NBPco's knowledge and belief having made all reasonable and due enquiries;
- (F) each of the Guarantors, to the best of NBPco's knowledge and belief having made all reasonable and due enquiries; and
- (G) the Groups of which each of the Critical Key Subcontractor and Guarantors are a member, to the best of NBPco's knowledge and belief having made all reasonable and due enquiries;

have been prepared on a basis consistently applied and using accounting principles which are generally accepted in the applicable jurisdiction in which the relevant company or Group is incorporated (for example, international financial reporting standards) and give a true and fair view of the state of affairs of each such company or Group as at the date to which they are made up and of the profit and loss of each such company or Group for the period to which they relate

and the report of the auditor thereon is unqualified for the accounting period in question;

- 6.2.15 there has been no material adverse change in the financial condition of:
- (A) any of the Shareholders, Buildco Shareholders, Critical Key Subcontractors and Guarantors since the date of their most recent audited consolidated accounts, or
 - (B) NBPco or Buildco, since incorporation;
- 6.2.16 the:
- (A) Shareholders are the sole legal and beneficial owners of the shares of NBPco set opposite their names in Schedule 3.12 (Details of Companies); and
 - (B) Buildco Shareholders are the sole legal and beneficial owners of the shares of Buildco set opposite their names in Schedule 3.12 (Details of Companies);
- 6.2.17 the shares of:
- (A) NBPco identified in Schedule 3.12 (Details of Companies) comprise the whole of the allotted and issued share capital of NBPco; and
 - (B) Buildco identified in Schedule 3.12 (Details of Companies) comprise the whole of the allotted and issued share capital of Buildco;
- 6.2.18 the shares of:
- (A) the Shareholders identified in Schedule 3.12 (Details of Companies) comprise the whole of the allotted and issued share capital of the Shareholders; and
 - (B) the Buildco Shareholders identified in Schedule 3.12 (Details of Companies) comprise the whole of the allotted and issued share capital of the Buildco Shareholders;
- 6.2.19 other than:
- (A) the Minister Special Share, there are no shares issued or allotted in NBPco which are not legally and beneficially owned by the Shareholders listed in Schedule 3.12 (Details of Companies); and
 - (B) the Buildco Minister Special Share, there are no shares issued or allotted in Buildco which are not legally and beneficially owned by the Buildco Shareholders listed in Schedule 3.12 (Details of Companies);
- 6.2.20 no person is entitled or obliged to acquire any interest in:
- (A) NBPco or its issued or unissued share capital; and/or
 - (B) Buildco or its issued or unissued share capital,

- 6.2.21 there is no Encumbrance (other than in favour of the Minister), nor is there any agreement, arrangement or obligation to create, grant or give any Encumbrance (other than in favour of the Minister), on, over or affecting any issued or unissued shares of NBPco and/or Buildco, and no Claim has or is being made or threatened by any person to be entitled to any such Encumbrance;
- 6.2.22 no proceedings or other steps have been taken and not discharged nor threatened for the winding-up of NBPco, any Shareholder, Buildco, any Buildco Shareholder, Critical Key Subcontractor or Guarantor or for the appointment of a receiver, administrative receiver, administrator, examiner, liquidator, trustee or similar officer in relation to its assets or revenues;
- 6.2.23 each of NBPco and Buildco has no Subsidiary or subsidiary undertakings;
- 6.2.24 there is no Encumbrance (other than in favour of the Minister), nor is there any agreement, arrangement or obligation to create, grant or give any Encumbrance (other than in favour of the Minister), on, over or affecting any Assets, and no Claim has or is being made or threatened by any person to be entitled to any such Encumbrance;
- 6.2.25 as of the date of the Commencement Date and Effective Date, the copies of the Required Documents which NBPco and/or Buildco has delivered to the Minister by such dates are true and complete copies (and, where applicable, English translations) of such documents, and there are not in existence any other agreements or documents replacing or relating to any of the Required Documents which affect the interpretation, validity, enforceability, application or provisions of any of the Required Documents and no proposals have been made to amend any of the Required Documents;
- 6.2.26 all written information furnished by or on behalf of NBPco in connection with the negotiation of this Agreement or the Required Documents or delivered by or on behalf of NBPco to the Minister pursuant to this Agreement was true and accurate in all material respects when given and continues to be true and accurate in all material respects to the extent not subsequently superseded by further written information furnished to the Minister by or on behalf of NBPco;
- 6.2.27 neither NBPco nor any Shareholder is aware of any material facts or circumstances, excluding facts or circumstances in the public domain, that have not been Disclosed in the Disclosure Letter and which if so disclosed would reasonably be expected to materially adversely affect the decision of a prudent person considering whether or not to enter into this Agreement with NBPco. For the purposes of this Clause, NBPco will be deemed to be aware of such material facts and circumstances as it, the NBPco Bidder, the Shareholders, Buildco, the Buildco Shareholders, the Critical Key Subcontractors and any Associated Company performing any functions in connection with this Agreement or the Project or is a party to any Required Document are aware;
- 6.2.28 each of NBPco and Buildco has not traded since incorporation, other than in respect of the satisfaction of the Conditions Precedent and in express contemplation of this Agreement and the Required Documents;
- 6.2.29 each of NBPco and Buildco has no liabilities other than liabilities that have arisen in connection with satisfaction of the Conditions Precedent and as necessary in preparation for the entry into by NBPco of this Agreement and the Required

Documents and entry into by Buildco of the Buildco Key Subcontract and Buildco Key Subcontractor Direct Agreement and the Required Documents;

6.2.30 the creation of NBPco and Buildco, and the entry into the Required Documents by NBPco, Shareholders, Buildco, Buildco Shareholders and Associated Companies does not give rise to any breach or failure to comply with Irish or European public procurement law by NBPco, Shareholder, Buildco, Buildco Shareholder and Associated Companies;

6.2.31 as of the Commencement Date and Effective Date, the financial terms set out in the:

(A) Shareholders' Agreement, the Equity Subscription Agreement and the Funding Documents are the terms upon which NBPco will finance the Project; and

(B) Buildco Shareholders' Agreement, the Buildco Equity Subscription Agreement and the Funding Documents are the terms upon which Buildco will finance its activities including the performance of its obligations under the Buildco Key Subcontract,

(provided that the Minister acknowledges that such agreements will not come into effect until all of the Conditions Precent (other than the effectiveness of the Shareholders Agreement, Equity Subscription Agreement, Buildco Shareholders Agreement, Buildco Equity Subscription Agreement and Funding Documents) have been satisfied),

6.2.32 NBPco can and shall perform all of its obligations under this Agreement throughout the Contract Term based upon the Subsidy Payments set out in Schedule 5.1 (Subsidy Payments) and its own independent finance and, except to the extent expressly provided otherwise in this Agreement, there will be no requirement for additional financial payments, subsidy or financial or other support from the Minister or the Government in respect of NBPco's obligations pursuant to this Agreement; and

6.2.33 the long term credit ratings issued for each Rated Monitored Entity by the Rating Agencies are as set out in Appendix 2 (Credit Ratings and Credit Rating Thresholds) of Schedule 5.7 (Financial Distress) and the Financial Ratios for each Unrated Monitored Entity are as set out in Appendix 3 (Financial Ratio Thresholds) of Schedule 5.7 (Financial Distress).

NBPco Undertakings

6.3 Without limiting or affecting any other provision of this Agreement, NBPco agrees and undertakes with the Minister that:

6.3.1 NBPco shall finance and carry out its obligations and activities under this Agreement at its own exclusive cost and risk and without recourse (except to the extent expressly provided otherwise in this Agreement, including with respect to the Subsidy Payments payable under this Agreement) to funds or support from

the Minister or the State (including the provision of guarantees by the Minister or the State);

- 6.3.2 save as required by Law, NBPco shall not cease to be incorporated, and tax resident, in Ireland;
- 6.3.3 NBPco shall not transfer in whole or in part its undertaking, business or trade to outside Ireland;
- 6.3.4 NBPco shall not (whether by a single transaction or a series of transactions, whether related or not), without the Minister's prior written consent, sell, transfer, lend or otherwise dispose of the whole or any part of its business or assets which would materially adversely affect the ability of NBPco to perform its obligations under this Agreement;
- 6.3.5 NBPco shall not, without the Minister's prior written consent (such consent not to be unreasonably withheld or delayed), make any loans or grant any credit or give any guarantee or indemnity to or for the benefit of any person or otherwise voluntarily or for consideration assume any liability (whether actual or contingent) in respect of any obligation of any person except in the ordinary course of business and/or as contemplated by this Agreement or the Project Documents; and
- 6.3.6 NBPco shall:
 - (A) as soon as reasonably practicable upon becoming aware of the commencement of; or, if earlier
 - (B) within twenty-five (25) Working Days of becoming aware that the same has been threatened or pending;

give the Minister written notice of any litigation, arbitration, adjudication or mediation proceedings against NBPco, a Shareholder, Buildco, a Buildco Shareholder or a Critical Key Subcontractor which would adversely affect, to an extent that is material in the context of the Project, NBPco's ability to perform its obligations under this Agreement.

Savings

- 6.4 All warranties, representations, undertakings, indemnities and other obligations made, given or undertaken by NBPco in this Agreement and in any other Required Document are cumulative and none shall be given a limited construction by reference to any other.

NBPco Disclosure Letter

- 6.5 Subject always to the Minister's rights pursuant to Clause 76 (Termination by Minister for NBPco Termination Event) to terminate this Agreement where any disclosure relates to a matter which may give rise to a right of termination of the Minister, NBPco shall not be liable in respect of any Claim under the warranties provided under Clause (Acknowledgements and Warranties) to the extent that the facts or circumstances giving rise to any such Claim are fully, fairly and accurately disclosed to the Minister as at the

Commencement Date, by reference to specific numbered warranties under Clause (Acknowledgements and Warranties) (but not otherwise) in the Disclosure Letter.

- 6.6 Without limiting or affecting Clause 6.5 (Acknowledgements and Warranties), NBPco may not invoke the Minister's knowledge (whether actual, constructive or implied) of a fact or circumstance not included in a Disclosure Letter, which might make a warranty of NBPco untrue, inaccurate, incomplete or misleading as a defence to a claim for breach of a warranty of NBPco.
- 6.7 Following the Commencement Date, NBPco shall promptly notify the Minister in the event that:
- 6.7.1 any fact, matter, act or circumstances arising following the Commencement Date would cause any of the warranties in respect of NBPco provided under Clause 6.2 (Acknowledgements and Warranties),
- 6.7.2 any fact, matter, act or circumstances arising following the Commencement Date would cause any of the warranties in respect of any person other than NBPco provided under Clause 6.2 (Acknowledgements and Warranties), to the extent that NBPco is aware of such fact, matter, act or circumstance,

to, if given following the Commencement Date, be incorrect or misleading to an extent that is material in the context of the Project and NBPco's ability to perform its obligations under this Agreement. Any such notification does not and will not limit or affect the other provisions of this Agreement and the Minister's rights pursuant to this Agreement, including pursuant to Clause 76 (Termination by Minister for NBPco Termination Event) to terminate this Agreement where any notification relates to a matter giving rise to a right of termination of the Minister.

Minister warranty

- 6.8 The Minister warrants to NBPco that it has full power and authority to execute and deliver this Agreement and to comply with the provisions of and exercise its rights under this Agreement provided that this warranty shall not amount to or have the effect of warranting compliance by the Minister or this Agreement with Law (including State Aid Law and Laws applicable to public procurement) whether before, as at or after the Commencement Date or Effective Date or of warranting any matter for which a warranty, undertaking or obligation by the Minister is excluded by, or not otherwise provided for in, this Agreement.

7 APPOINTMENT

- 7.1 The Minister, relying on the NBPco Warranties, hereby appoints NBPco to design, construct, finance, provide, perform, operate and maintain the Services, Wholesale Products and Network and perform its other obligations subject to and in accordance with this Agreement throughout the Contract Term (at the sole and exclusive risk, responsibility and liability of NBPco, but without limiting or affecting any express obligations of the Minister under the provisions of this Agreement) and subject to, and in accordance with, this Agreement and NBPco hereby fully and irrevocably accepts this appointment upon the terms and conditions of this Agreement.
- 7.2 Subject to (but without limiting or affecting) Clause 17 (Delay), Clause 18 (Relief Event) and Clause 71 (Force Majeure), NBPco shall prioritise this Agreement in such a manner that ensures that it meets and complies with its obligations under this Agreement and by

the dates required by this Agreement and, in particular, so that the Milestones are Achieved by the Milestone Dates.

7.3 NBPco acknowledges and agrees that:

7.3.1 it is not entitled to any funds, support or assistance whatever, whether financial, technical or otherwise, from the Minister, Regulator, State, Agency or any other Public Service Body (except if, and in that case only, to the extent expressly provided otherwise in this Agreement including in respect of the Subsidy Payments payable under this Agreement);

7.3.2 the Minister makes no, and there is no guarantee, warranty or representation that the Network and Services (and, in particular, the Wholesale Products) will generate any or any particular level of revenue or profit for NBPco or that there will be any or any particular level of uptake or usage of the Network and Services (and, in particular, of the Wholesale Products);

7.3.3 all risk associated with the demand for, take up and use of the Services (and, in particular, the Wholesale Products) and Network rests solely with NBPco; and

7.3.4 without limiting or affecting Paragraph 4 (New Infrastructure in the Intervention Area) of Annex 3 (Changes to the Intervention Area) of Schedule 6.2 (Change Control Procedure), any person may provide services or products within or from outside the Intervention Area that compete with the Network and Services (and, in particular, the Wholesale Products).

7.4 NBPco shall continue to perform all of its obligations under this Agreement and shall not suspend the provision of the Network, Wholesale Products and Services, despite:

7.4.1 any withholding of the Subsidy Payments by the Minister pursuant to the provisions of this Agreement;

7.4.2 the existence of any unresolved Dispute;

7.4.3 any failure by the Minister to pay any Subsidy Payments; or

7.4.4 any other contract or agreement to which NBPco, Shareholders or Associated Company is a party.

This does not limit or affect NBPco's entitlement to terminate this Agreement under Clause 77 (Termination by NBPco for Minister Default).

7.5 NBPco shall, during the Contract Period, act reasonably and in good faith towards, and co-operate (but without being compelled to incur material expenditure), with, the Agency and Regulator and Other NBP Supplier in connection with this Agreement and the Project.

7.6 Each Party agrees to co-operate, at its own expense (but without being compelled to incur material expenditure), with the other Party in the fulfilment of the purposes and intent of this Agreement. Neither Party shall be under any obligation to perform any of the other Party's obligations under this Agreement. This Clause does not require the Minister to

undertake or do (or refrain from undertaking or doing) any particular act, matter or thing for NBPco.

7.7 Similar Projects

- (A) Without limiting or affecting Clause 7.7(B) (Appointment), NBPco acknowledges and agrees that, whilst, as at the Commencement Date, the Minister does not have any current plans to do so, nothing in this 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).
- (B) 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 POLICY OBJECTIVES

8.1 Without limiting or affecting any express obligation of NBPco set out elsewhere in this Agreement, NBPco shall, throughout the Contract Period, support the Irish Government's policy objectives in relation to the Project by ensuring that the NBPco Solution:

- 8.1.1 is capable of providing high quality, reliable and affordable High Speed Broadband for one hundred percent (100%) of Premises in the Intervention Area;
- 8.1.2 is consistent with the provision of value for money in line with Best Industry Practice; and
- 8.1.3 is capable of underpinning Irish Government policy on economic jobs and recovery.

8.2 Whilst NBPco shall support the objectives set out in Clause 8.1 (Policy Objectives) in the manner described above, this Agreement does not require NBPco to provide Services or Network outside of the Intervention Area (but without limiting or affecting Paragraph 1.2.25 (Definitions and Interpretation) or Schedule 6.2 (Change Control Procedure)).

Irish Language Scheme

8.3 NBPco shall comply with the Irish Language Scheme, to the extent it is obliged to do so under Law.

Employment and Training

8.4 NBPco shall use reasonable endeavours to ensure during the implementation, performance and provision of the Services, Wholesale Products and Network that, with the

exception of highly skilled workers and workers located offshore, no less than five percent (5%) of the aggregate number of Person Weeks (to be a whole number, rounded down if necessary) is carried out by individuals employed by NBPco or a Subcontractor who have been registered on a national unemployment register within the European Union or European Economic Area for a period of at least three hundred and sixty-five (365) days in the previous twenty four (24) months immediately prior to their employment in the provision of the Services (the “**Relevant Worker**”).

- 8.5 NBPco shall use reasonable endeavours to ensure that ten percent (10%) of the aggregate number of Person Weeks (to be a whole number, rounded down if necessary) during the Deployment Period is carried out by individuals employed by NBPco or a Subcontractor who are employed, in the provision of the Services, under a registered scheme of apprenticeship or through some other similar national training or educational work placement arrangement accredited within the European Union (the “**Relevant Trainee**”).
- 8.6 NBPco shall not:
- 8.6.1 terminate the employment of any person and then shortly afterwards replace or re-employ the person concerned with a view to inflating the numbers reported pursuant to this Clause; or
 - 8.6.2 count towards its obligations under this Clause any person employed by NBPco or a Subcontractor whose employment was terminated and then shortly afterwards replaced or re-employed with a view to or having the effect of inflating the numbers reported pursuant to this Clause.
- 8.7 NBPco shall keep and maintain proper records in respect of each Relevant Worker and Relevant Trainee to demonstrate compliance with Clauses 8.4 (Policy Objectives) and 8.5 (Policy Objectives) and shall produce these records for inspection and copying by any person authorised by the Minister, upon written request by the Minister for the purposes of monitoring implementation of, and compliance with, the provision of this Clause 8 (Policy Objectives). NBPco shall procure in advance, on engagement of Relevant Workers and Relevant Trainees, that all necessary prior consents of Relevant Workers and Relevant Trainees or other measures as are required by Law (including Data Protection Legislation) are obtained or taken so as to enable NBPco to comply with this requirement.
- 8.8 NBPco shall provide a full and detailed report to the Minister once every Contract Year on its compliance with the requirements of Clauses 8.4 (Policy Objectives) to 8.7 (Policy Objectives) (inclusive). The report shall include:
- 8.8.1 details of the total number of persons employed by NBPco or NBPco’s Subcontractors for the purposes of implementing this Agreement;
 - 8.8.2 details of the total number of new employment positions created and filled by NBPco or NBPco’s Subcontractors that would not have been created but for this Agreement (and excluding, for clarity, any employment positions filled by individuals whose employment transferred under Law or otherwise from an Associated Company to NBPco or a Subcontractor of NBPco); and
 - 8.8.3 a self-certified declaration (in a form to be approved by the Minister acting reasonably) in which a director or other officer of NBPco confirms that each

Relevant Worker and each Relevant Trainee satisfy the requirements of Clauses 8.4 (Policy Objectives) and 8.5 (Policy Objectives) (as applicable).

- 8.9 For the avoidance of doubt, any individuals whose employment by NBPco or any Subcontractor commenced prior to the Commencement Date shall not be considered to be or counted as a Relevant Worker but may, if the relevant conditions are met, be considered to be and counted as a Relevant Trainee.

SECTION B - THE SERVICES AND NETWORK

9 PROVISION OF THE SERVICES, WHOLESALE PRODUCTS AND NETWORK

- 9.1 NBPco shall provide the Services, Wholesale Products and Network in respect of the Intervention Area subject to, and in accordance and compliance with this Agreement.

- 9.2 Without limiting or affecting Clause 9.1 (Provision of the Services, Wholesale Products and Network), NBPco shall, subject to and in accordance with this Agreement and throughout the Contract Period:

- 9.2.1 discharge its obligations under this Agreement with all due skill, care and diligence including in a manner consistent with Best Industry Practice;
- 9.2.2 comply with, and shall ensure that the Services, Wholesale Products and Network comply with, all Laws in carrying out its obligations under this Agreement;
- 9.2.3 carry out and finance its obligations under this Agreement;
- 9.2.4 fully comply with and satisfy all aspects of the Service Requirements, NBPco Solution, Wholesale Product Roadmap, Technology Roadmap and Wholesale Product & Coverage Template;
- 9.2.5 procure, design, build, construct, lay, rollout, install, configure, dimension, Test, commission, make available, Connect, enable, InterConnect and complete the Network (including all Equipment forming part of or comprising the Network), Services and Wholesale Products and Pass Premises;
- 9.2.6 operate, maintain, repair, refurbish, replace, renew, refresh, upgrade and keep in good, safe, secure and proper working order and condition the Network (including all Equipment forming part of or comprising the Network), Wholesale Products and Services;
- 9.2.7 undertake and generate Demand Stimulation and otherwise promote the Services, Wholesale Products and Network on and from the Effective Date onwards;
- 9.2.8 make available and, where requested, Connect and enable Wholesale Products to Service Providers in accordance with the Service Provider Terms, Reference Offer and at the Wholesale Prices;
- 9.2.9 make available and, where required to do so pursuant to an RoLR Authorisation Form issued to it pursuant to Clause 19.6.2 (Wholesale Products) for the Named Unserved End User concerned, Connect and enable an RoLR End User Product

to the Named Unserved End User in accordance with the RoLR End User Terms, RoLR Authorisation Form and at the Wholesale Price; and

9.2.10 monitor and report on the Services, Wholesale Products and Network.

9.3 NBPco shall provide and do everything that is necessary to comply with its obligations under this Agreement and, in particular, for the provision of the Services, Wholesale Products and Network in accordance with, and within the timelines required by this Agreement.

9.4 NBPco acknowledges and agrees that:

9.4.1 all risk, responsibility and liability in connection with the Network and Services, Demand Stimulation, Wholesale Products and all Service Provider Terms, contracts, licences, rights of way, wayleaves, leases or similar is borne exclusively by NBPco; and

9.4.2 NBPco is not relieved of its obligations, duties, timelines, liabilities and/or responsibilities under or in connection with this Agreement as a result of the loss, theft, damage, destruction or degradation of the Network, Wholesale Products, Equipment, Third Party Infrastructure or Services.

This Clause 9.4 (Provision of the Services, Wholesale Products and Network) does not limit or affect Clause 18 (Relief Event), Clause 71 (Force Majeure) and, if and to the extent applicable, the Contract Assumptions.

9.5 NBPco acknowledges and agrees that all provisions of this Agreement apply in full and without qualification to the provision of the Services, Wholesale Products and Network, including where any part of the Services, Wholesale Products and/or Network is (where permitted under this Agreement) provided, managed, owned, maintained and/or operated by any third person or provided using Third Party Infrastructure.

10 SERVICE REQUIREMENTS AND NBPCO SOLUTION

10.1 NBPco shall provide the Services, Wholesale Products and Network throughout the Contract Period and shall ensure that the Services, Wholesale Products and Network throughout the Contract Period and throughout the Intervention Area:

10.1.1 comply in all respects with the Service Requirements and the other relevant provisions of this Agreement; and

10.1.2 are supplied in accordance with, and so that they comply in all respects with, the NBPco Solution, the Wholesale Products & Coverage Template, the Wholesale Product Roadmap, the Service Requirements and the Performance Levels.

- 10.2 The obligations in Clause 10.1.1 (Service Requirements and NBPco Solution) and Clause 10.1.2 (Service Requirements and NBPco Solution) are independent obligations. In particular:
- 10.2.1 the fact that NBPco has complied with the NBPco Solution is not a defence to an allegation that NBPco has not satisfied or complied with the Service Requirements; and
 - 10.2.2 the fact that NBPco has complied with the Service Requirements is not a defence to an allegation that NBPco has not satisfied or complied with the NBPco Solution.
- 10.3 NBPco agrees that the inclusion of the NBPco Solution and Schedule 3 (NBPco Solution) (comprising Schedules 3.1 (NBPco Solution – Technical Solution) to Schedule 3.12 (Details of Companies) (inclusive)) as part of this Agreement does not excuse, relieve or diminish NBPco’s responsibility and obligation to ensure the Services, Wholesale Products and Network comply in all respects with the Service Requirements and this Agreement or impose any obligation or responsibility on the Minister.
- 10.4 If NBPco becomes aware of any conflict, ambiguity or inconsistency between the Service Requirements and the NBPco Solution, NBPco shall promptly (and without undue delay) notify the Minister in writing of such conflict or inconsistency and shall, within no more than ten (10) Working Days of the initial notification (or such other period agreed in writing by the Parties acting reasonably), provide additional and reasonable detail and proposals for resolution of the conflict, ambiguity or inconsistency for consideration by the Minister. The Minister shall make a determination on the matter in accordance with Clause 10.5 (Service Requirements and NBPco Solution) within a reasonable period of the date of receipt from NBPco of the relevant details and proposals for resolution required by this Clause.
- 10.5 If there is any conflict, ambiguity or inconsistency between the Service Requirements and NBPco Solution:
- 10.5.1 the provisions of Clause 3 (Order of Precedence) apply; and
 - 10.5.2 if considered necessary by the Minister, NBPco shall promptly and without undue delay amend the NBPco Solution to address the conflict, ambiguity or inconsistency through the Change Control Procedure, at no cost to the Minister and without any other change including the Service Requirements, Implementation Programme, Performance Levels, Subsidy Payments, Wholesale Prices, Wholesale Product Roadmap, Technology Roadmap, Wholesale Product & Coverage Template, Wholesale Product Roadmap, Technology Roadmap or Project Financial Model.

11 GENERAL PERFORMANCE STANDARDS

- 11.1 Without limiting or affecting the Service Requirements or any other provisions of this Agreement, NBPco shall throughout the Contract Period provide and perform its obligations under this Agreement (including in all respects in relation to the Services, Wholesale Products and the Network):

- 11.1.1 to the standard, in the timeframe and subject to and in accordance with:
- (A) Best Industry Practice;
 - (B) the Implementation Programme;
 - (C) Project Plans;
 - (D) CDB Strategic Plan;
 - (E) Detailed Design;
 - (F) Future Proofing Plan;
 - (G) Wholesale Product Roadmap;
 - (H) Technology Roadmap;
 - (I) Reference Offer;
 - (J) Performance Levels;
 - (K) all applicable Laws, Binding Guidance and Codes and Standards in force from time to time during the Contract Period; and
 - (L) the terms and conditions of any Consents (whether obtained before, on or after the Commencement Date);
- 11.1.2 acting in the best interests of the full and proper performance of this Agreement;
- 11.1.3 by devoting sufficient time, attention and resources as is necessary for the full and proper provision of the Services, Wholesale Products and Network in accordance with this Agreement (including the timelines required by it);
- 11.1.4 in such a manner as not to knowingly, wilfully or negligently detract from or damage the image and reputation of:
- (A) the Government, Minister, his department, the Regulator, Agency and/or Service Providers in connection with the Project; and/or
 - (B) the Services, the Project, the Network, Wholesale Products or NBPco; and
- 11.1.5 so as not to impede the Minister, Agency and Regulator in carrying out their respective functions or exercising their powers or increase the cost to the Minister, Agency or the Regulator of carrying out their respective functions or exercising their respective powers.

11.2 The obligations in:

11.2.1 Clause 11.1.1(A) (General Performance Standards) to Clause 11.1.1(L) (General Performance Standards) (inclusive) are each independent obligations; and

11.2.2 Clause 11.1.1 (General Performance Standards) to Clause 11.1.5 (General Performance Standards) (inclusive) are each independent obligations.

In particular, the fact that NBPco has complied with one of those independent obligations is not a defence to an allegation that NBPco has not satisfied or complied with another of those obligations.

11.3 If NBPco becomes aware of any conflict, ambiguity or inconsistency between the requirements of any of Clause 11.1.1 (General Performance Standards) to Clause 11.1.5 (General Performance Standards) or Clause 11.1.1(A) (General Performance Standards) to Clause 11.1.1(L) (General Performance Standards) (inclusive) or including as a result of any conflict, ambiguity or inconsistency between:

11.3.1 any Guidance and other Guidance;

11.3.2 any Code and Standards and other Codes and Standards;

11.3.3 any Project Plan and other Project Plans;

11.3.4 any Project Plan and the Implementation Programme;

11.3.5 the Wholesale Product Roadmap and the Implementation Plan;

11.3.6 the Technology Roadmap and the Implementation Plan;

11.3.7 the Wholesale Product Roadmap and the Technology Roadmap; or

11.3.8 any of the Guidance, Codes and Standards, Project Plans, Implementation Programme, Wholesale Product Roadmap, Technology Roadmap, CDB Strategic Plan, Detailed Design, Future Proofing Plan and any other obligation under this Agreement,

NBPco shall promptly (and without undue delay) notify the Minister in writing of such ambiguity, conflict or inconsistency and shall, within no more than ten (10) Working Days of the initial notification, (or such other period agreed in writing by the Parties, acting reasonably) provide additional and reasonable detail and proposals for resolution of the conflict, ambiguity or inconsistency for consideration by the Minister. The Minister shall make a reasonable determination as to the interpretation which provides the safest and most conservative result from the Minister's perspective and/or the highest standard of work, service or network, as reasonably determined by the Minister. If considered necessary by the Minister, NBPco shall promptly and without undue delay amend NBPco's Solution to address the conflict, ambiguity or inconsistency through the Change Control Procedure at no cost to the Minister and with no change to any other matter referred to in this Agreement which would have the effect of decreasing NBPco's obligations under this Agreement.

12 IMPLEMENTATION PROGRAMME, PROJECT PLAN, WHOLESALE PRODUCT ROADMAP AND TECHNOLOGY ROADMAP

12.1 NBPco shall procure, design, provide, construct, make available, Connect, InterConnect and enable the Services and Network (including all design and build) and Pass Premises subject to, and in accordance with:

- 12.1.1 the Implementation Programme;
- 12.1.2 the Project Plans;
- 12.1.3 Wholesale Product Roadmap;
- 12.1.4 Wholesale Product & Coverage Template; and
- 12.1.5 Technology Roadmap,

(including in respect of New Wholesale Products or a New Deployment Area introduced pursuant to a Change Authorisation and New Wholesale Products to be made available in accordance with the Wholesale Product Roadmap).

12.2 NBPco shall maintain the Implementation Programme and Project Plan in accordance with the provisions of Schedule 2.3 (Deployment Requirements).

12.3 NBPco shall maintain the Wholesale Product Roadmap and Technology Roadmap in accordance with the provisions of Schedule 2.1 (Technical Solution Specification).

13 MILESTONES AND NETWORK DEPLOYMENT COMPLETE

13.1 Subject to (but without limiting or affecting) Clause 17 (Delay), Clause 18 (Relief Event) and Clause 71 (Force Majeure), NBPco shall do all that is necessary to ensure that:

- 13.1.1 each Milestone is Achieved on or before its Milestone Date;
- 13.1.2 without limiting or affecting Clause 13.1.1 (Milestones and Network Deployment Complete):
 - (A) Network Deployment Complete is Achieved in respect of each Deployment Area (and, in particular, so that all Premises are Passed in the Deployment Area concerned in accordance with Schedule 2.3 (Deployment Requirements)), on or before its corresponding Milestone Date;
 - (B) Network Deployment Complete is Achieved in respect of the entirety of the Intervention Area (and, in particular, so that all Premises are Passed in the Intervention Area in accordance with Schedule 2.3 (Deployment Requirements)) on or before the corresponding Milestone Date; and
 - (C) Network Deployment Complete is Achieved in respect of each New Deployment Area resulting from a Change to the Intervention Area made pursuant to a Change Authorisation (and, in particular, so that all the Premises are Passed in the New Deployment Area concerned), on or before its corresponding Milestone Date (as set out in the relevant Change Authorisation); and

- 13.1.3 with respect to each New Wholesale Product to be introduced and provided by NBPco as a result of a Change made pursuant to a Change Authorisation (and without limiting or affecting Clause 13.1.1 (Milestones and Network Deployment Complete), all Milestones are Achieved for the New Wholesale Product by the relevant Milestone Dates (and, in particular, so that the New Wholesale Product is available for all Premises in the Deployment Area(s) or entire Intervention Area set out in the relevant Change Authorisation (or, if not so set out, the entire Intervention Area) on or before the corresponding Milestone Date (as set out in the relevant Change Authorisation).

13.2

- 13.2.1 In respect of the Deployment Areas and/or Services the subject of the relevant Programme Level Milestones only, in the event that NBPco does not Achieve the relevant Deployment Level Milestone by the relevant 2021 Milestone Dates, then NBPco shall not be considered to be in breach of said obligations under this Agreement, nor shall the Minister be entitled to exercise any rights under this Agreement in respect of the failure by NBPco to Achieve the 2021 Milestone Dates (nor shall it accrue any rights or remedies), for a period commencing on the relevant 2021 Milestone Date and ending on the corresponding Grace Period End Date. This Clause 13.2 shall not otherwise prejudice or limit the rights and obligations of either Party under this Agreement or at law.
- 13.2.2 NBPco shall notify the Minister in writing no later than 10 Working Days prior to the relevant 2021 Milestone Date if (acting reasonably) it does not, at the relevant time, anticipate being able to Achieve that 2021 Milestone Date.

14 NETWORK DEPLOYMENT, OPERATION AND MAINTENANCE

- 14.1 Without limiting or affecting Clause 11 (General Performance Standards), NBPco shall undertake Network Deployment and operate and maintain the Network subject to, and in accordance with, this Agreement, including the Implementation Programme, Project Plan, Service Requirements, NBPco Solution, Wholesale Product Roadmap, Technology Roadmap and Best Industry Practice.
- 14.2 NBPco shall:
- 14.2.1 procure, design, build, install, Test, commission, Connect, InterConnect, complete and provide the Network (including all Equipment forming part of or comprising the Network) and provide the Wholesale Products and Services in and throughout the Intervention Area in compliance with this Agreement including the Service Requirements, NBPco Solution, Wholesale Product Roadmap and Technology Roadmap;
- 14.2.2 operate, maintain, repair, replace, upgrade and keep in good, safe, secure and proper working order and condition the Network (including all Equipment forming part of or comprising the Network), Wholesale Products and Services (and all Equipment used in the provision of the Services, Wholesale Products and Network) in and throughout the Intervention Area in compliance with this Agreement including the Service Requirements, NBPco Solution, Wholesale Product Roadmap and Technology Roadmap;

- 14.2.3 ensure on a continuing basis that throughout the Contract Period its maintenance and operating procedures are sufficient to comply with its obligations under this Agreement;
- 14.2.4 do all that is necessary to ensure (and subject to and without limiting or affecting the provisions of Clause 19 (Wholesale Products)):
- (A) on and from Achievement of Network Deployment Complete for each Deployment Area, all Wholesale Products are, to the extent and from the date provided in the Wholesale Product Roadmap or Wholesale Product & Coverage Template (whichever provides for the earlier date, in the event of an inconsistency between them), available to all Premises throughout the Deployment Area concerned throughout the remainder of the Contract Period;
 - (B) on and from Achievement of Network Deployment Complete for the entire Intervention Area, all Wholesale Products are, to the extent and from the date provided in the Wholesale Product Roadmap or Wholesale Product & Coverage Template (whichever provides for the earlier date, in the event of an inconsistency between them), available to all Premises throughout the remainder of the Intervention Area throughout the Contract Period subject to, and in accordance with, the provisions of Clause 19 (Wholesale Products);
 - (C) on and from Achievement of Network Deployment Complete for each New Deployment Area, all Wholesale Products are, to the extent and from the date provided in the Wholesale Product Roadmap or Wholesale Product & Coverage Template (whichever provides for the earlier date, in the event of an inconsistency between them), available to all Premises throughout the New Deployment Area concerned throughout the remainder of the Contract Period;
 - (D) 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 (whichever is set out in the relevant Change Authorisation or, if not so set out, throughout the Intervention Area) throughout the remainder of the Contract Period;
 - (E) the Assets are maintained to achieve their full Serviceable Life and in a safe and serviceable condition; and
 - (F) any item of Equipment or part of the Network is replaced before it becomes unsafe, unreliable, unsuitable for its intended purpose or unable to properly operate and function;
- 14.2.5 make available New Wholesale Products in the manner and from the dates set out in the Wholesale Product Roadmap or Wholesale Product & Coverage Template (whichever provides for the earlier date, in the event of an inconsistency between them);

- 14.2.6 comply with manufacturers' specifications and instructions in relation to all Equipment, Services and Network consistent with Best Industry Practice;
 - 14.2.7 give all notices, obtain, maintain and comply with all necessary Consents, and do all other things as may be required by the Service Requirements, the NBPco Solution and Best Industry Practice in connection with this Agreement, the Services, Wholesale Products and/or the Network; and
 - 14.2.8 pay all taxes, levies, tariffs, fees, import and export duties in connection with the Services, Equipment and/or the Network as may be required by any Laws or other applicable laws.
- 14.3 Without limiting or affecting the Service Requirements, NBPco shall ensure that the Services and, in particular, Network Deployment (including as a result of any Change) and Network operation and maintenance is throughout the Contract Period provided:
- 14.3.1 so as to minimise interference with:
 - (A) the reasonable convenience of the public; and
 - (B) access to public/private roads or footpaths;
 - 14.3.2 in a manner that:
 - (A) is not knowingly or recklessly injurious to health and safety, security or the environment; and
 - (B) takes all reasonable steps so as not to cause any nuisance or damage to any property, person or the environment (including in each such case arising from pollution, noise, dust or other causes) (unless and, in that case, only to the extent agreed otherwise with the Minister in writing in a Change Authorisation pursuant to the Change Control Procedure); and
 - 14.3.3 if applicable, so that all Construction Activities and Works are pro-actively undertaken by NBPco in consultation, co-operation and co-ordination with the Other NBP Supplier to the extent that this is likely to give rise to:
 - (A) a more efficient provision of the Service or Network (or the Other NBP Supplier's service or network) or ensure or facilitate compliance; and/or
 - (B) ensure or facilitate compliance with Clause 14.3.1 (Network Deployment, Operation and Maintenance);

- 14.4 NBPco, if any Monuments, Antiquities and Archaeological Objects are discovered (or ought to have been discovered) during Network Deployment (or any other time during the Contract Period), shall:
- 14.4.1 not damage them;
 - 14.4.2 not remove them except in accordance with the provisions of this Clause 14.4 (Network Deployment, Operation and Maintenance);
 - 14.4.3 notify the Minister, relevant authorities and Project Archaeologist;
 - 14.4.4 comply with any relevant Laws and Binding Guidance; and
 - 14.4.5 comply with the reasonable instructions of the Project Archaeologist so that they are treated, examined, handled and removed (if so instructed) in a manner consistent with Best Industry Practice.

NBPco is not relieved of any obligation or requirement or entitled to any extension of time under this Agreement as a result of the discovery of any Monuments, Antiquities and Archaeological Objects during Network Deployment or any other time during the Contract Period, except to the extent it is granted relief in such regard pursuant to Clause 18 (Relief Event).

- 14.5 NBPco is not relieved of any obligation or requirement or entitled to any extension of time under this Agreement if it is:
- 14.5.1 unable to access any site, land or premise or any part of the Network or Equipment; or
 - 14.5.2 otherwise delayed or disrupted,

because of the presence on or around, or entry onto or around the relevant areas of, or any other interference with or affecting, any site, land or premise of any protestor or trespasser or any lawful or unlawful activities of any such person at any time prior to or during the Contract Period, except to the extent it is granted relief in such regard pursuant to Clause 18 (Relief Event).

15 DEFECTS

- 15.1 Without limiting or affecting any other provision of this Agreement, NBPco shall:
- 15.1.1 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
 - 15.1.2 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.

- 15.2 If NBPco has not, in accordance with this Clause 15 (Defects), 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.

16 TESTING AND MILESTONES

- 16.1 NBPco shall:

16.1.1 comply with the Implementation Programme and Project Plans; and

16.1.2 subject to (but without limiting or affecting) Clause 17 (Delay), Clause 18 (Relief Event) and Clause 71 (Force Majeure), ensure that each Milestone is Achieved (including the successful Achievement of all Tests) on or before the associated Milestone Date in accordance with the procedure set out in Paragraph 10 (Milestone Achievement and Testing – Requirements) of Schedule 2.3 (Deployment Requirements).

- 16.2 The Parties shall comply with the provisions of Paragraph 10 (Milestone Achievement and Testing – Requirements) of Schedule 2.3 (Deployment Requirements) in relation to the procedures to determine whether a Milestone has been Achieved.

- 16.3 Despite the issuing of any Milestone Achievement Certificate, NBPco remains solely responsible for ensuring that:

16.3.1 the Services, Wholesale Products and Network as designed and developed are suitable for the provision of the Services, Wholesale Products and Network in accordance with this Agreement and comply with all aspects of the Service Requirement and NBPco Solution;

16.3.2 the Service Requirements, NBPco Solution and Performance Levels are complied with throughout the provision of the Services, Wholesale Products and Network and throughout the Contract Period and Intervention Area;

16.3.3 the Services, Wholesale Products and Network are provided in accordance and compliance with the provisions of this Agreement; and

16.3.4 the Performance Levels are achieved during the provision of the Services, Wholesale Products and Network.

No rights of estoppel or waiver arise as a result of the issue of a Milestone Achievement Certificate.

- 16.4 The issue of a Milestone Achievement Certificate does not:

16.4.1 operate to transfer any risk that the relevant Milestone is complete or will meet and/or satisfy the Minister's or NBPco's requirements for that Milestone; or

16.4.2 where a Milestone Achievement Certificate for a particular Milestone is issued based upon materially misleading or materially incorrect information provided to the Independent Certifier (and/or the Minister, if applicable) by or on behalf of NBPco, limit or affect the Minister's right to subsequently deem the Milestone to

which the Milestone Achievement Certificate relates as having not been Achieved, provided that in such case:

- (A) the Minister shall invoke the Remedial Plan Process in order to give NBPco an opportunity to remedy the situation by Achieving the Milestone within the timeframe specified by the Minister (provided that such timeframe shall not be less than ninety (90) days or such other period agreed in writing by the Parties) before deeming the Milestone to which the relevant Milestone Achievement Certificate relates as not being Achieved and, without limiting or affecting any other consequence under this Agreement of such Milestone not being Achieved, being subject to a requirement that the Deficient Portion of any Subsidy Payments which have been paid in respect of that Milestone be, at the Minister's election, repaid to Minister or set-off against future Subsidy Payments;
- (B) NBPco shall not be required to repay the Deficient Portion under Clause 16.4.2(A) (Testing and Milestones) unless and until the Milestone is not properly Achieved within the period of time specified by the Minister pursuant to Clause 16.4.2(A) (Testing and Milestones); and
- (C) full and proper Achievement of the Milestone following implementation of the Remedial Plan Process pursuant to Clause 16.4.2(A) (Testing and Milestones) shall be assessed in accordance with the procedures set out in Clause 16.2 (Testing and Milestones)

In this Clause 16.4 (Testing and Milestones), "**Deficient Portion**" means the proportion of Subsidy Payments related to the proportion of Premises covered by the relevant Milestone the subject of this provision which did not meet the Milestone Achievement Criteria.

16.5 If and to the extent only that, having followed an express written direction of the Minister in respect of a matter relating to the Achievement of a Milestone and such direction requires NBPco to do something not otherwise expressly provided for or contemplated by this Agreement, it subsequently transpires that this direction was incorrect or should be changed, the provisions of the Change Control Procedure shall apply as between the Parties in respect of any such subsequent required change.

17 DELAY

17.1 If, at any time, NBPco or NBPco Personnel becomes aware that there is or is reasonably likely to be a Delay of fifteen (15) days or more:

17.1.1 NBPco shall:

- (A) notify the Minister in writing as soon as reasonably practicable prior to the Milestone Date and in any event in accordance with, and within the timeline required by, Paragraph 1 (Notification) of Part 2

(Remedial Plan Process) of Schedule 6.8 (Persistent Defaults and Remedial Plan Process);

- (B) comply with the Remedial Plan Process in order to address the impact of the Delay or anticipated Delay; and
- (C) take all steps reasonably necessary to mitigate the consequences of the Delay or anticipated Delay,

(even if NBPco disputes that it is the cause of the Delay or anticipated Delay or the Delay or anticipated Delay was caused by a Relief Event or Force Majeure Event);

17.1.2 if NBPco is incapable of meeting a Milestone Date as a direct consequence of a Relief Event, the provisions of Clause 18 (Relief Event) also apply; and

17.1.3 if NBPco is incapable of meeting a Milestone Date as a direct consequence of a Force Majeure Event, the provisions of Clause 71 (Force Majeure) also apply.

17.2 If a Milestone is not Achieved within fifteen (15) days following the associated Milestone Date:

17.2.1 NBPco shall continue with the performance of any work required to Achieve any subsequent Milestone;

17.2.2 as part of the Remedial Plan Process under Clause 17.1.1(B) (Delay) and in implementing the Remedial Plan, NBPco shall use all reasonable endeavours to ensure that priority is given to the completion of the related Programme Level Milestone over other Programme Level Milestones;

17.2.3 the Minister may escalate the matter in accordance with the Escalation Process; and

17.2.4 subject to the provisions of Paragraph 8.2.4 (Network Deployment – Requirements) of Schedule 2.3 (Deployment Requirements), any Subsidy Payment (if applicable) for the Milestone concerned will not be payable unless and until the relevant Milestone is Achieved.

Any election by the Minister under this Clause 17.2 (Delay) does not waive or limit or affect any rights or remedies of the Minister under or in relation to this Agreement.

17.3 Any act by NBPco under the Remedial Plan Process in connection with a Delay or anticipated Delay (including its elimination or mitigation) of fifteen (15) days or more does not:

- 17.3.1 limit or affect the Minister's rights and remedies under this Agreement; or
 - 17.3.2 operate to revise any Milestones or Milestone Dates (except and only if expressly agreed otherwise in writing by the Minister pursuant to the Remedial Plan Process).
- 17.4 If a Milestone is not Achieved within twenty eight (28) days following the associated Milestone Date, the provisions of Paragraph 8.6 (Ongoing Capital Payments) of Schedule 5.1 (Subsidy Payments) shall apply.
- 17.5 Any Disputes about or arising out of Delays or anticipated Delays (including whether or to what extent it was directly caused by a Relief Event or Force Majeure Event) shall be resolved through the Dispute Resolution Procedure. Pending the resolution of the Dispute, NBPco shall continue to work to resolve the causes of, and mitigate the effects of the Delay or anticipated Delay and to comply with its obligations under this Agreement.

18 RELIEF EVENT

- 18.1 If, as a direct result of the occurrence of a Relief Event, NBPco is prevented from carrying out its obligations under this Agreement (including by being prevented from meeting a Milestone Date), then NBPco is entitled to apply for relief in accordance with the provisions of this Clause 18 (Relief Event).
- 18.2 Subject to Clauses 18.5 (Relief Event), 18.9 (Relief Event) and 18.10 (Relief Event), as a condition to obtaining relief under the provisions of this Clause 18 (Relief Event), NBPco is required to:
- 18.2.1 issue a notice to the Minister as soon as practicable (but in any event within ten (10) Working Days of NBPco or NBPco Personnel (whichever is earliest) first becoming aware that NBPco is prevented from carrying out its obligations as a direct result of the occurrence of a Relief Event), containing the following information:
 - (A) a clear statement that NBPco is making a claim for relief in accordance with Clause 18 (Relief Event) as a direct result of a Relief Event;
 - (B) a clear statement of which of the Relief Events has directly caused the Delay or anticipated Delay or directly resulted in NBPco being prevented from carrying out its obligations;
 - (C) a clear statement of the date of occurrence and likely duration of the Relief Event;
 - (D) if applicable, a statement of the length of the Delay in Achieving a Milestone Date, or likely length of the anticipated Delay, directly caused by the Relief Event;
 - (E) a statement of the specific extension to any Milestone Dates and/or Longstop Date (if applicable) and relief from its obligations under the Agreement being requested as a direct result of the occurrence of the Relief Event; and

- (F) any other relevant details relating to the Relief Event and its consequences; and

18.2.2 demonstrate to the reasonable satisfaction of the Minister that:

- (A) NBPco is prevented from carrying out its obligations under this Agreement as a direct result of the occurrence of the Relief Event and, if applicable, any Delay in Achieving a Milestone is a direct consequence of NBPco being prevented from carrying out its obligations under this Agreement as a direct result of the occurrence of the Relief Event;
- (B) NBPco and the NBPco Personnel could not have avoided such occurrence or consequences by steps which they might reasonably be expected to have taken consistent with Best Industry Practice, without incurring material expenditure;
- (C) the time lost and/or relief from the obligations under this Agreement claimed could not reasonably be expected to be mitigated or recovered by NBPco acting in a manner consistent with Best Industry Practice, without incurring material expenditure; and
- (D) NBPco is using reasonable endeavours to perform its obligations under this Agreement notwithstanding the Relief Event.

18.3 NBPco shall promptly notify the Minister if at any time it receives or becomes aware of any further information relating to the Relief Event, giving details of that information to the extent that such information is new or renders information previously submitted materially inaccurate or misleading.

18.4 If, subject to compliance by NBPco with the provisions of Clause 18.2 (Relief Event) and subject to Clause 18.5 (Relief Event), Clause 18.9 (Relief Event) and Clause 18.10 (Relief Event), the Minister is satisfied (acting reasonably) that NBPco is prevented from carrying out its obligations under this Agreement as a direct result of the occurrence of a Relief Event:

18.4.1 the Minister shall, as applicable:

- (A) issue a notice in writing to NBPco (or, if applicable, approve a Remedial Plan) extending (prospectively or retrospectively) the relevant Milestone Dates and/or, as applicable, Longstop Dates which is incapable of being met as a direct consequence of NBPco being prevented from carrying out its obligations under this Agreement due to the Relief Event, by a reasonable period; and
- (B) if the Relief Event occurred during the Deployment Period, issue notice in writing to NBPco adjusting the relevant Deployment Milestone Payment (or, as applicable, Deployment Milestone Payments) so that it becomes equal to the sum of:
 - (1) the applicable Deployment Milestone Payment; and
 - (2) the Ongoing Capital Payments that, but for the occurrence of the Relief Event, would have been payable during the period by which the relevant Milestone Date or, as

applicable, Milestone Dates are extended pursuant to Clause 18.4.1(A) (Relief Event),

provided that the total Subsidy Payments payable shall not be increased as a result; and

(C) give NBPco such other temporary relief from its obligations as is reasonably necessary as a direct consequence of such a Relief Event,

18.4.2 the Minister shall issue notice in writing to NBPco giving NBPco a reasonable period within which to fully resume and restore performance of any of the Services, Network and/or Wholesale Products to the extent it was incapable of providing them in accordance with this Agreement as a direct result of the occurrence of the Relief Event;

18.4.3 Performance Points and Performance Credits shall not apply during the period specified pursuant to Clause 18.4.2 (Relief Event) in respect of any failure by NBPco to carry out its obligations under this Agreement as a direct consequence of NBPco having been prevented from doing so by the Relief Event concerned in the manner and only to the extent set out in Paragraph 7 (Performance Points in respect of a Relief Event) of Part 1 (Performance Indicators and Performance Credits) of Schedule 6.7 (Performance Levels); and

18.4.4 the Minister shall not be entitled to exercise its right to terminate this Agreement under Clause 76 (Termination by Minister for NBPco Termination Event) as a result of any failure by NBPco to perform its obligations under this Agreement as a direct result of the occurrence of the Relief Event.

18.5 NBPco is not entitled to relief in accordance with the provision of this Clause 18 (Relief Event) to the relevant extent that:

18.5.1 the Delay on the affected Milestone Dates and/or Longstop Dates has been or likely can be mitigated by NBPco complying with its obligations under Clause 17.1.1(C) (Delay) or 18.11 (Relief Event);

18.5.2 the consequences of the Relief Event can be addressed by a change to the Project Plans without impacting upon the Implementation Programme, provided such change does not result in NBPco incurring material expenditure; and/or

18.5.3 the effects of the Relief Event have occurred or been materially exacerbated by NBPco failing to comply with its obligations under this Agreement.

18.6 The occurrence of a Relief Event does not relieve the Minister from its obligation to pay any Ongoing Capital Payments subject to, and in accordance with, the provisions of Clause 27 (Subsidy Payments) and Schedule 5.1 (Subsidy Payments).

18.7 Subject to the provisions of Clause 71 (Force Majeure) and any Change Authorisation made in accordance with the Change Control Procedure (which shall reflect the outcome applicable pursuant to Clause 18.4 (Relief Event)), no extension of time in respect of a Delay or anticipated Delay or otherwise shall be given under this Agreement except subject

to, and in accordance with, Clause 18.4 (Relief Event), unless the Minister agrees otherwise in writing in a given case.

18.8 Despite any relief granted to NBPco, or to which NBPco is entitled, pursuant to the provisions of this Clause 18 (Relief Event), where any Relief Event has arisen (for which relief has or will be given under this Clause), the Minister may request NBPco to accelerate the execution of the Services (particularly the deployment of the Network) so that the effects of the Relief Event are alleviated or mitigated. NBPco shall comply with any such request and act reasonably and promptly in complying with such request, provided that

18.8.1 if NBPco demonstrates in advance to the Minister (and to the Minister's satisfaction, acting reasonably) that it will incur material additional expenditure, that was not provided for in the Project Financial Model prevailing immediately prior to the date on which the Relief Event commenced, as a direct consequence of complying with the request (which could not be avoided by taking reasonable steps consistent with Best Industry Practice), NBPco shall not be required to comply with the request to such extent without a proportionate increase in the Deployment Milestone Payment that corresponds to the Milestone which has been delayed (the "**relevant Deployment Milestone Payment**") (provided, in particular, that any such payment shall provide only for NBPco to be in an equivalent position as a result of the acceleration request (by reference to the version of the Project Financial Model applicable immediately prior to the date on which the Relief Event commenced) as had the acceleration request not been implemented); or

18.8.2 if NBPco, acting reasonably, demonstrates to the Minister in writing that such acceleration would prejudice NBPco's ability to comply with its other obligations under the Agreement, this Clause 18.8 (Relief Event) shall not apply.

In respect of Clause 18.8.1 (Relief Event), NBPco acknowledges and agrees that any increase in the relevant Deployment Milestone Payment shall only be made by prior written agreement in advance in a Change Authorisation in accordance with the Change Control Procedure (which shall reflect the outcome agreed pursuant to Paragraph 18.8.1 (Relief Event)), and that NBPco has no entitlement to an increase in the relevant Deployment Milestone Payment if a Change Authorisation is not executed by the Minister in respect of the increase in the relevant Deployment Milestone Payment prior to NBPco incurring the relevant additional expenditure. NBPco acknowledges and agrees that no increase in the relevant Deployment Milestone Payment is permitted insofar as such increase would breach or infringe the terms of the State Aid Decision and/or State Aid Law and in such circumstances and to such extent NBPco shall not be required under this Clause to take any acceleration measures.

18.9 If a Relief Event affects a part only of an obligation of NBPco, only that part of the obligation affected by the Relief Event shall be subject to any relief granted pursuant to the provisions of this Clause 18 (Relief Event) and any relief provided shall be temporary and applicable

only in respect of the period that NBPco is prevented from carrying out its obligations under this Agreement as a direct result of the occurrence of the Relief Event.

- 18.10 If the notice or information required by Clause 18.2 (Relief Event) is provided after the dates referred to in that Clause, then NBPco shall not be entitled to any relief during the period for which the notice or information is delayed.
- 18.11 NBPco shall take all steps consistent with Best Industry Practice to mitigate the consequences of any Relief Event.
- 18.12 If the Parties cannot agree the extent of the relief required, or the Minister disagrees that a Relief Event has occurred or that NBPco is entitled to any extension to a Milestone Date and/or Longstop Date, the Parties shall resolve the matter in accordance with the Expedited Dispute Resolution Procedure.
- 18.13 The Minister shall use reasonable endeavours to give his decision pursuant to Clause 18.4 (Relief Event) within fifteen (15) Working Days of NBPco's request pursuant to Clause 18.2 (Relief Event). If and to the extent that the Minister has not communicated his decision to accept or reject the relevant request for relief pursuant to Clause 18.4 (Relief Event) to NBPco within fifteen (15) Working Days, NBPco shall, from the date which is sixteen (16) Working Days of NBPco's request pursuant to Clause 18.2 (Relief Event) until the Relief Decision Date be entitled, on a temporary basis, to assume and act on the basis that the Minister has provided the relief requested by NBPco pursuant to Clause 18.2 (Relief Event) and the provisions of Clauses 18.4.3 (Relief Event) and 18.4.4 (Relief Event) shall apply until the Relief Decision Date. From the Relief Decision Date, all of the provisions of this Clause 18 (Relief Event) shall apply on a prospective basis from that date in the manner provided by this Clause. For the purposes of this Clause 18.13 (Relief Event), "**Relief Decision Date**" means the date on which the Minister communicates his decision pursuant to Clause 18.4 (Relief Event) to NBPco.

19 WHOLESALE PRODUCTS

Deployment Area Complete

- 19.1 NBPco, provided and on condition that NBPco has first Achieved all of Programme Level Milestones P1A, P2 and P5A (except if, and to the extent, agreed otherwise by the Minister in writing), may Connect Premises and make available Wholesale Products at a Premises prior to achieving Network Deployment Complete, subject to the appropriate Network being in place to deliver the Wholesale Product and NBPco otherwise complying with its obligations under this Agreement in doing so.

Wholesale Products

- 19.2 Subject to Clause 19.1 (Wholesale Products), NBPco shall, on a Non-Discriminatory Basis throughout the Intervention Area and during the Contract Period and at the Wholesale Price:
- 19.2.1 make available to Service Providers; and
- 19.2.2 within the timelines set out in Paragraph 5 (Operational Performance) of Schedule 2.2 (Reference Offer Requirements), upon request by a Service Provider, fully Connect, enable and provide in the Intervention Area,

the Wholesale Products in respect of any and all Premises subject to, and in accordance with, the Service Requirements, NBPco's Solution, Wholesale Products & Coverage

Template, Wholesale Product Roadmap, this Agreement, the Service Provider Terms, the Reference Offer and Best Industry Practice.

- 19.3 NBPco shall during the Contract Period acting on a Non-Discriminatory Basis, ensure throughout the Contract Period:
- 19.3.1 that all Connection Requests by Service Providers relating to any Wholesale Products are enabled, so that the Wholesale Products become fully operational and live, without any undue delay; and
 - 19.3.2 that if any backlogs in Connections occur they are dealt with urgently and expeditiously, consistent with Best Industry Practice.
- 19.4 The Parties shall comply with the provisions of Schedule 5.2 (Wholesale Prices, Price Benchmarking Rules and Wholesale Product Benchmarking Rules), including the Wholesale Product Benchmarking Rules, in relation to the setting, benchmarking and, as appropriate, adjustment of the Wholesale Products and Benchmark Reference Performance Specification and in all other respects.
- 19.5 NBPco shall:
- 19.5.1 not lease or licence the Wholesale Products to any person except subject to, and in accordance with, the Service Provider Terms and Reference Offer and at the Wholesale Price; and
 - 19.5.2 ensure that Service Provider Terms include a condition which permits their amendment where required to do so in order to comply with this Agreement.

Retailer of Last Resort

- 19.6 Subject to Clause 19.1 (Wholesale Products), where the Minister issues a RoLR Authorisation Form to NBPco in respect of a Named Unserved End User and Wholesale Product in accordance with Clause 19.8 (Wholesale Products), NBPco shall:
- 19.6.1 procure, in accordance with Clause 19.13.4 (Wholesale Products), the provision by an RSP on the RoLR List as retailer of last resort of the specific individual RoLR End User Product to the specific Named Unserved End User identified in the RoLR Authorisation Form within twenty (20) Working Days of the issue of the RoLR Authorisation Form; and
 - 19.6.2 if, in a given case, all RSPs on the RoLR List refuse to provide the specific individual RoLR End User Product to the specific Named Unserved End User identified in the RoLR Authorisation Form within twenty (20) Working Days of the issue of the RoLR Authorisation Form despite its reasonable endeavours, NBPco shall notify the Minister within five (5) Working Days of this first becoming apparent and, if the Minister (at its absolute discretion) issues an NBPco RoLR Authorisation Form, NBPco shall provide as final retailer of last resort the specific individual RoLR End User Product to the specific Named Unserved End User identified in the RoLR Authorisation Form within twenty (20) Working Days of the issue of the NBPco RoLR Authorisation Form. Subject to Clause 19.14.1(B) (Wholesale Products), NBPco shall not be required to provide the RoLR End User Product to Named Unserved End Users with a credit status below that

which, consistent with Best Industry Practice, is required by NBPco in respect of all IA End Users.

- 19.7 NBPco acknowledges and agrees that, except where required to do so pursuant to Clause 19.6.2 (Wholesale Products), it will not provide any Wholesale Products or other products to End Users in the Intervention Area or Excluded Area notwithstanding any other provision in this Clause 19 (Wholesale Products) or this Agreement. For clarity, this does not limit or affect the exercise by an Associated RSP of its entitlement pursuant to the Electronic Communications Framework to provide electronic communications services or networks to End Users in the Intervention Area or Excluded Area.
- 19.8 The Minister may (but is not obliged to) issue a RoLR Authorisation Form to NBPco in respect of an End User and a particular RoLR End User Product if the Minister is satisfied that:
- 19.8.1 the End User's Premises is in the Intervention Area;
 - 19.8.2 the End User has been denied service in respect of the RoLR End User Product concerned by three (3) RSPs and provided valid reasons for this; and
 - 19.8.3 the RoLR End User Product concerned is the retail equivalent to the Anchor Retail Product.
- 19.9 The Minister may (at its absolute discretion) revoke an NBPco RoLR Authorisation Form or RoLR Authorisation Form in respect of any Named Unserved End User in which case NBPco shall cease or, as applicable, use reasonable endeavours to procure that any RSP ceases, within five (5) Working Days of its revocation, to provide the RoLR End User Product to the End User concerned.
- 19.10 Subject to Clause 19.1 (Wholesale Products), NBPco shall, on a Non-Discriminatory Basis throughout the Intervention Area and the Contract Period and at the Wholesale Price:
- 19.10.1 be ready to Connect a Premises so that either it or an RSP on the RoLR List can actually commence provision, within twenty (20) Working Days of the issue of a RoLR Authorisation Form, to any IA End Users upon request; and
 - 19.10.2 procure that:
 - (A) an RSP on the RoLR List; or
 - (B) if Clause 19.6.2 (Wholesale Products) applies, NBPco, within twenty (20) Working Days of the issue of a RoLR Authorisation Form in respect of a specific Named Unserved IA End User, fully Connects, enables, provides and performs, a RoLR End User Product (as named in the RoLR Authorisation Form) in the Intervention Area to the specific Named Unserved End User named in the RoLR Authorisation Form subject to, and in accordance with:
 - 19.10.3 the Service Requirements, NBPco's Solution, Wholesale Products & Coverage Template, Wholesale Product Roadmap, this Agreement, Legal Requirements, Guidance, Codes and Standards, Consents and the Law; and

- 19.10.4 a reference offer (including price, terms and conditions, performance levels and performance credits and performance specifications) comparable (except to the extent such is in breach of Regulation, provided that NBPco first notifies the Minister in writing of any proposed deviation on the basis that it is required to comply with Regulation) in all material respects to those available to IA End Users for the Most Comparable Retail Product available in the Intervention Area from Authorised Undertakings.
- 19.11 NBPco shall, acting on a Non-Discriminatory Basis, procure throughout the Contract Period:
 - 19.11.1 that all Named Unserved End Users requesting any RoLR End User Products are Connected and enabled, so that the RoLR End User Products become fully operational and live, without any undue delay; and
 - 19.11.2 that if any backlogs in Connections occur they are dealt with urgently and expeditiously, consistent with Best Industry Practice.
- 19.12 NBPco acknowledges and agrees that:
 - 19.12.1 it is possible that it (and any RSP) may not be required to provide any RoLR End User Products pursuant to this Agreement at all;
 - 19.12.2 there is no minimum or maximum number of Named Unserved End Users in respect of whom it (or any RSP) may be required to provide any RoLR End User Products pursuant to this Agreement; and
 - 19.12.3 there is no minimum or maximum number of different RoLR End User Products that it (or any RSP) may be required to provide to Named Unserved End Users pursuant to this Agreement.
- 19.13 NBPco shall:
 - 19.13.1 promote the RoLR List to RSPs;
 - 19.13.2 clearly inform all RSPs through the Public Portal and Secure Portal:
 - (A) how to be included on the RoLR List;
 - (B) of the pre-defined (non-discriminatory), proportionate and published criteria used by NBPco for entry onto the RoLR List and for selecting an RSP from the RoLR List to implement a RoLR Authorisation Form; and
 - (C) of the benefits of being included on the RoLR List;

- 19.13.3 permit an RSP to be included on the RoLR List upon request at any time provided:
 - (A) the RSP has successfully completed the Service Provider Onboarding Process (including signing up to the RSP Terms); and
 - (B) if applicable, the RSP satisfies any minimum, non-discriminatory and proportionate pre-defined and published criteria for inclusion on the RoLR List;
 - 19.13.4 select RSPs from the RoLR List to implement a particular RoLR Authorisation Form in accordance with the pre-defined, non-discriminatory, proportionate and published criteria;
 - 19.13.5 remove any RSP from the RoLR List that is in breach of the applicable Wholesale Pricing Rules or Retail Pricing Rules (and shall notify the Minister in writing of having done so); and
 - 19.13.6 remove an identified RSP that is in breach of the applicable Wholesale Pricing Rules or Retail Pricing Rules, from the RoLR List upon written request by the Minister from time to time (and shall notify the Minister in writing of having done so).
- 19.14 NBPco:
- 19.14.1 where it directly provides RoLR End User Products to Named Unserved End Users, shall provide the RoLR End User Product on:
 - (A) (except to the extent such is in breach of Regulation, provided that NBPco first notifies the Minister in writing of any proposed deviation on the basis that it is required to comply with Regulation) at least comparable terms and conditions, and comparable performance levels and performance credit regime and comparable prices as RSPs offer to IA End Users for the Most Comparable Retail Product, to the RoLR End User Product concerned, that is available in the Intervention Area from Authorised Undertakings; and
 - (B) the same terms and conditions and at the same performance levels and performance credit regime and at the same price as it does for all IA End Users. NBPco shall, however, be entitled to apply additional financial and performance security requirements consistent with Best Industry Practice to those IA End Users who do not have the necessary credit profile (proportionate to the nature and size of the task) when compared to other potential IA End Users; and
 - 19.14.2 where an RSP on the RoLR List directly provides RoLR End User Products to Named Unserved End Users, shall procure that the RSP provides the RoLR End User Product on the same terms and conditions and at the same performance levels and performance credit regime and at the same price as it does for all IA End Users.

The Service Provider Terms and RoLR End User Terms

- 19.15 NBPco shall ensure that all Service Provider Terms, and terms and conditions entered into with End Users pursuant to an NBPco RoLR Authorisation Form, comply with the provisions of this Agreement (including Schedule 2.4 (Operational Performance)).
- 19.16 The Minister may instigate the Remedial Plan Process in respect of any non-compliance by NBPco with Clause 19.15 (Wholesale Products) which NBPco acknowledges and agrees shall result in NBPco changing the relevant Service Provider Terms where necessary to bring them into compliance with the requirements of this Agreement.

Wholesale Products & Coverage Template and Wholesale Product Roadmap

- 19.17 NBPco shall fully satisfy and comply with:
- 19.17.1 the Wholesale Products & Coverage Template; and
- 19.17.2 Wholesale Product Roadmap and Technology Roadmap,
- in all respects throughout the Contract Period and Intervention Area.

Restriction on Sales to or by Associated WSPs in the Intervention Area

- 19.18 Subject to Clause 19.19 (Wholesale Products), NBPco acknowledges and agrees that, during the Contract Period:
- 19.18.1 within the NBPco Economic Group, NBPco is the only person entitled to sell, lease, license or otherwise provide, directly or indirectly, the Wholesale Products to Service Providers in the Intervention Area, subject to any (unrevoked) prior written approval of the Minister provided from time to time under Clause 19.18.2 (Wholesale Products); and
- 19.18.2 it shall not (and shall not suffer or permit any Service Provider to), at any time during the Contract Period, sell, lease, license or otherwise provide the Wholesale Products, directly or indirectly, to any:
- (A) Associated WSP; or
- (B) other entity providing wholesale services in the NBPco Economic Group,
- for resale, or other direct or indirect provision, of those Wholesale Products (or analogous wholesale products or services provided by means of the Network) to Service Providers in the Intervention Area, without the prior written approval of the Minister (which may be refused by the Minister, acting reasonably).

- 19.19 Clause 19.18 (Wholesale Products) does not limit or affect:
- 19.19.1 NBPco and the NBPco Economic Group providing products or services in the Excluded Area;
- 19.19.2 any member of the NBPco Economic Group providing products or services in the Intervention Area (including those products or services provided by a

member of the NBPco Economic Group in the Intervention Area as at the Commencement Date) by means other than the Network and the NBPco Assets;

19.19.3 the provision by NBPco or any other WSP to any person within the NBPco Economic Group of a Wholesale Product that is used only for, and limited to only, transit of electronic communications or signals through the Intervention Area (and not to any part of the Intervention Area), provided that such Wholesale Product is not used, directly or indirectly, by any Associated WSP or any person within the NBPco Economic Group:

(A) for sale, lease, license or provision otherwise to Service Providers in the Intervention Area; or

(B) to transmit or convey electronic communications or signals to a person within the Intervention Area; and

19.19.4 any arrangement whereby NBPco jointly sells the Wholesale Products with the wholesale products of any other person within the NBPco Economic Group, provided that in such circumstances NBPco shall be represented in any such selling arrangement in respect of all matters regarding the Wholesale Products and NBPco's participation in the arrangement shall otherwise comply with the terms and conditions of this Agreement, including in respect of the terms and conditions of contracting, publicity and branding and revenue recognition arrangements.

19.20 NBPco acknowledges and agrees that no warranty, representation, legitimate expectation or otherwise is given or exists or will be given or exist under any circumstances whatever to the effect that the Minister:

19.20.1 will give, or will give in any particular circumstances; or

19.20.2 will not revoke, or will not revoke in any particular circumstances,

approval under Clause 19.18.2 (Wholesale Products).

Changes to Wholesale Products

19.21 NBPco acknowledges and agrees that it is not permitted to and shall not:

19.21.1 provide or introduce New Wholesale Products (including where in principle it is capable of being an Other Permitted Wholesale Product) (and whether a Wholesale Product is a new one is determined as against the Wholesale Products set out in Schedule 3.2 (NBPco Solution – Reference Offer) as at the Commencement Date and any Change Authorisations issued after the Commencement Date); and/or

19.21.2 change or remove (including by ceasing to offer or make available) an existing Wholesale Product (and whether it is a change or removal of an existing Wholesale Product is determined as against the Wholesale Products set out in Schedule 3.2 (NBPco Solution – Reference Offer) as at the Commencement Date and any Change Authorisations issued after the Commencement Date),

except pursuant to the Wholesale Product Control Procedure and subject to the grant of a Change Authorisation. This applies irrespective of whether the Wholesale Product

Roadmap or Wholesale Product & Coverage Template contemplates the introduction of a New Wholesale Product or an enhanced Wholesale Product at a point in time.

20 PERFORMANCE LEVELS

20.1 NBPco shall throughout the Contract Period:

20.1.1 provide the Services, Wholesale Products and Network in such a manner as to meet or exceed the Target Performance Levels for each Performance Indicator in each Measurement Period in respect of all of the Deployment Areas for which the Network Deployment Complete Milestone has been Achieved; and

20.1.2 comply with the provisions of Schedule 2.4 (Operational Performance) and Schedule 6.7 (Performance Levels) in relation to the monitoring and reporting on its performance against the Performance Indicators.

20.2 If NBPco fails to comply with its obligations in accordance with this Agreement the Minister may, without limiting or affecting its other rights and remedies under this Clause or otherwise and notwithstanding that Performance Credits have applied, require NBPco to comply with its obligations (including by requiring NBPco to re-provide and/or re-perform the Network, Wholesale Products or Services), with the costs of all such compliance borne by NBPco.

Performance Failures

20.3 If in any Measurement Period:

20.3.1 **[REDACTED]**

(A) **[REDACTED]**

(B) **[REDACTED]**

20.3.2 **[REDACTED]**

20.3.3 **[REDACTED]**

20.3.4 **[REDACTED]**

20.4 **[REDACTED]**

20.4.1 **[REDACTED]**

20.4.2 **[REDACTED]**

20.4.3 **[REDACTED]**

[REDACTED]

20.5 **[REDACTED]**

21 CONSENTS

21.1 NBPco shall throughout the Contract Period be solely responsible for, in its name (or, where necessary, in the name of a relevant Subcontractor or such other third party as is

necessary), identifying, applying for, obtaining, maintaining in full force and effect, renewing and adhering to the applicable conditions of all Consents it may require or which are necessary for the provision of the Services (including particularly Network Deployment), Wholesale Products and Network in a diligent, timely and expeditious manner. Without limiting or affecting Clause 30 (State Aid), Clause 80.10.1 (Consequences of Termination or Expiry) and Clause 80.10.2 (Consequences of Termination or Expiry), this Clause 21.1 (Consents) does not impose any obligation on NBPco to make a notification to the European Commission pursuant to State Aid Law.

- 21.2 NBPco shall use all reasonable endeavours to consult with all relevant local planning and related organisations (including existing broadcast and electronic communications services, the Irish Heritage Council, air traffic control operators, Transport Infrastructure Ireland, the Road Safety Minister and road, local planning and transport authorities) in respect of any development, construction, deployment, operations or maintenance proposed pursuant to this Agreement and the obtaining of the requisite Consents.
- 21.3 NBPco is not relieved of any obligation or requirement or entitled to any extension of time under this Agreement as a result of any delay or failure in securing any Consent (except to the extent it is granted relief in such regard pursuant to Clause 18 (Relief Event)).

22 COMPLIANCE

- 22.1 NBPco shall ensure that it performs its obligations, and exercises its rights, under this Agreement throughout the Contract Period in compliance with all Laws in connection with this Agreement, the Services, Network, Wholesale Products and/or the Project.
- 22.2 NBPco shall maintain throughout the Contract Period such records as are necessary pursuant to Law and shall, on request, make them available for inspection by any Competent Authority that is entitled to inspect them and by the Minister (or its nominee).
- 22.3 Without limiting or affecting Clause 22.1 (Compliance), NBPco shall, and shall procure that NBPco Personnel shall, comply with all Laws in connection with Demand Stimulation and all promotions, advertisement, offers, correspondence and information undertaken or sent by or on its behalf in connection with the Services, Wholesale Products and Network, including any Guidance issued from time to time by the Advertising Standards Authority of Ireland, the Broadcasting Authority of Ireland, the Regulator and/or the Competition and Consumer Protection Commission.

23 HEALTH, SAFETY, SECURITY AND THE ENVIRONMENT

- 23.1 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. In particular, NBPco shall, throughout the Contract Period:
- 23.1.1 take all reasonable steps to protect the environment in the provision of the Services, Wholesale Products and Network and in connection with the Project;
- 23.1.2 have full regard for, and take all reasonable steps to protect, the health and safety and security of all persons affected by the provision of the Services, Wholesale Products and Network and in connection with the Project; and
- 23.1.3 keep all areas in which it is providing the Services, Wholesale Products or Network (including any works) in an orderly state appropriate to the avoidance

of danger, hazards and pollution (including any resulting from noise, dust or other causes) to such persons or the environment.

- 23.2 In the performance of its obligations under this Agreement and with respect to all of the Network and Equipment, NBPco shall fully undertake the environmentally sound management of all waste electrical and electronic equipment and materials and comply with its obligations under the WEEE Regulations.
- 23.3 NBPco shall procure that all hazardous material, equipment and substances used or stored in connection with the provision of the Services, Network, Wholesale Products and/or Project is kept and properly and securely labelled and stored, under appropriate supervision and used only by appropriately trained and competent staff, in accordance with all relevant Laws and Best Industry Practice.
- 23.4 NBPco shall comply (and procure compliance by its NBPco Personnel) with the provisions of Schedule 2.5 (Environmental).

Construction Regulations

- 23.5 NBPco acknowledges and agrees that, as between NBPco and the Minister, NBPco, and not the Minister, is the “client” for the purposes of the Construction Regulations in respect of all aspects of the Project, Services and Network. NBPco and Buildco have agreed that, as between NBPco and Buildco, Buildco shall be the “client” for the purposes of the Construction Regulations for that part of the Project, Services and Network being carried out by Buildco and any Subcontractors and personnel employed or engaged by Buildco in accordance with the Buildco Key Subcontract. It is acknowledged that the requirements of Clause 23.7 (Health, Safety, Security and the Environment) may be satisfied by the appointment by Buildco of such competent persons or organisations pursuant to the Buildco Key Subcontract.
- 23.6 Without limiting or affecting the generality of the provisions of Clause 21 (Consents) and this Clause 23 (Health, Safety, Security and the Environment), NBPco shall:
- 23.6.1 observe, perform and discharge, and shall procure the observance, performance and discharge, of all the obligations, requirements and duties arising under the Construction Regulations in connection with the Services, Network, Wholesale Products and Project including those of the “client” (where applicable); and
- 23.6.2 allocate adequate resources to facilitate and ensure such compliance.

Project Supervisors

- 23.7 NBPco shall appoint or, where appropriate, shall procure that Buildco shall appoint competent persons or organisations:
- 23.7.1 to act as Project Supervisor for the Design Process;
- 23.7.2 to act as Project Supervisor for the Construction Stage; and
- 23.7.3 to act as competent person pursuant to Section 17(1) of the Safety, Health and Welfare at Work Act, 2005.

24 NETWORK AND SERVICE SECURITY

- 24.1 NBPco shall comply, and shall procure that NBPco Personnel shall comply, throughout the Contract Period with:
- 24.1.1 all aspects of the Service Requirements and NBPco Solution in respect of security of the Services, Wholesale Products and Network; and
 - 24.1.2 Best Industry Practice and Law in respect of security of the Services, Wholesale Products and Network.
- 24.2 NBPco shall design, develop, provide, test, manage and maintain the Services, Wholesale Products and Network so that they comply with the security requirements in the Service Requirements, NBPco Solution, Best Industry Practice and Law and this Agreement throughout the Intervention Area throughout the Contract Period.
- 24.3 NBPco shall, throughout the Contract Period, ensure that:
- 24.3.1 the Services, Wholesale Products and Network are designed and, throughout the Contract Period, maintained and upgraded consistent with Best Industry Practice and in accordance with the security requirements set out in this Agreement so as to minimise the risk of attack by unauthorised (internal or external) persons or malicious code;
 - 24.3.2 appropriate security systems, measures, protocols, processes and procedures are maintained and enforced to prevent unauthorised access to the Services, Wholesale Products and Network consistent with Best Industry Practice;
 - 24.3.3 the Services, Wholesale Products and Network are monitored in a manner consistent with Best Industry Practice and the security requirements set out in this Agreement to facilitate the detection of anomalous behaviour that would be indicative of a compromise of the Services, Wholesale Products or Network;
 - 24.3.4 it is knowledgeable, consistent with Best Industry Practice, about the most recent trends in threat, vulnerability and exploitation that are relevant to the Services, Wholesale Products and Network by actively monitoring the threat landscape; and
 - 24.3.5 it pro-actively scans the Services, Wholesale Products and Network for vulnerable components and quickly address discovered vulnerabilities in a manner consistent with Best Industry Practice and in accordance with the security requirements set out in this Agreement.
- 24.4 NBPco shall, throughout the Contract Period, regularly (and not less than once every Contract Year) review, consistent with Best Industry Practice, its security systems, measures, protocols, processes and procedures (including with respect to the identification of any threats or risks to the provision of the Services, Wholesale Products and Network, how such threats and risks may be mitigated and how the provision of the Services, Wholesale Products and Network and its other obligations under this Agreement may be maintained in the event of any such identified threats or risks materialising) and

shall provide the results of, and any recommendations in relation to, those reviews to the Minister promptly in writing following each review.

24.5 NBPco shall as soon as reasonably practicable implement any remedial actions or recommendations identified following the risk assessments and review undertaken pursuant to Clause 24.4 (Network and Service Security).

25 CHANGES IN LAW

25.1 NBPco is not entitled to:

25.1.1 relief from the performance of any of its obligations under this Agreement as the result of:

(A) a General Change in Law, though this does not limit or affect Paragraph 4.2 (Minister's Evaluation and Right of Approval) of Part 2 (Change Procedure) of Schedule 6.2 (Change Control Procedure) or any relief as may be available in accordance with Clause 18 (Relief Events);

(B) a Regulatory Decision or USO Decision, though this does not limit or affect Paragraph 4.2 (Minister's Evaluation and Right of Approval) of Part 2 (Change Procedure) of Schedule 6.2 (Change Control Procedure); or

(C) except as expressly provided in the provisions of this Clause 25 (Changes in Law), a Qualifying Change in Law;

25.1.2 except as expressly provided in Paragraph 4.2 (Minister's Evaluation and Right of Approval) of Part 2 (Change Procedure) of Schedule 6.2 (Change Control Procedure), change the Wholesale Prices or change or remove any Wholesale Products as the result of a General Change in Law, Regulatory Decision, USO Decision or, subject to Clause 25.3 (Changes in Law), a Qualifying Change in Law; or

25.1.3 any increase in any Subsidy Payment as the result of a General Change in Law, Regulatory Decision or USO Decision or, except as expressly provided pursuant to Clause 25.3 (Changes in Law), a Qualifying Change in Law.

25.2 If, during the Contract Period (as distinct from during the Service Continuity Period), NBPco becomes aware (including pursuant to any impact assessment published by any Government department, Regulatory Body or Public Service Body) of any legislative or other proposal which could, if implemented, constitute a Qualifying Change Law, it shall promptly notify the Minister and the Parties shall meet as soon as reasonably practicable with a view to discussing the effects of any such proposal and any mitigating steps in respect of the Project and this Agreement which may be appropriate in respect of such proposal.

25.3 Without limiting or affecting Clause 25.2 (Changes in Law) if a Qualifying Change in Law occurs or will occur during the Contract Period (as distinct from during the Service Continuity Period), the provisions of Annex 4 (Qualifying Change in Law) of Schedule 6.2 (Change Control procedure) shall apply.

26 SERVICE AND NETWORK FUTURE PROOFING AND CONTINUOUS IMPROVEMENT

- 26.1 The Parties shall comply with Schedule 6.4 (Service, Network and Wholesale Product Compliance and Future Proofing).
- 26.2 Without limiting or affecting any other provision of this Agreement (including the restrictions on Changes), NBPco has an ongoing obligation (and without being entitled to any increase in the Subsidy Payments throughout the Contract Period) to comply with the Service Requirements, Wholesale Product Roadmap, Technology Roadmap, Wholesale Product & Coverage Template and NBPco Solution and Best Industry Practice in respect of the future proofing and continuous improvement of the Services, Wholesale Products, Operational Environment and Network.

SECTION C - FINANCIAL MATTERS, NON-DISCRIMINATION, TRANSPARENCY AND BUSINESS RESTRICTIONS

27 SUBSIDY PAYMENTS

- 27.1 In consideration of NBPco providing the Network and its other obligations under this Agreement, the Minister shall pay the Subsidy Payments to NBPco subject to, and in accordance with, the provisions of Schedule 5.1 (Subsidy Payments) and the other provisions of this Agreement.
- 27.2 The Subsidy Payments are the only payments of any kind the Minister will make in respect of NBPco's performance of its obligations under this Agreement. This does not limit or affect the provisions of Schedule 6.9 (Consequences of Termination) or Clause **Error! Reference source not found.** (Subsidy Payments).
- 27.3 Subject to the provisions of this Agreement and during the Contract Period, NBPco shall, and shall procure that the NBPco Personnel, throughout the Contract Period provide the Services, Wholesale Products and Network and its other obligations under this Agreement:
- 27.3.1 in a cost efficient and economic manner which keeps the cost of the Services and Network to NBPco and the Minister as low as reasonably possible without compromising, in particular, quality, performance, resilience, security, health and safety or durability and having regard, as appropriate, to a full life cycle cost analysis;
 - 27.3.2 in an objective manner so that, in particular, any discretion with regard to the procurement of any supplies, technology, Equipment, services, works or anything else is exercised without any particular bias for NBPco or any Associated Service Provider or Associated Company of NBPco or any other person and is undertaken on an Arm's-Length basis;
 - 27.3.3 in a way which does not risk voiding or breaching the terms of any third party warranty, collateral warranty, guarantee or indemnities in respect of the Equipment, Network, Wholesale Products or Services; and
 - 27.3.4 so that the full benefit of any relevant third party warranties, collateral warranties, guarantees and indemnities is obtained and passed through to NBPco to the fullest extent possible.
- 27.4 NBPco shall promptly and without delay inform the Minister of any irregularities, fraud or theft or of any other circumstance which has caused or is likely to cause a loss, theft or

misuse or misapplication of the Subsidy Payments and shall, upon request, promptly provide a full and detailed report in this regard to the Minister.

- 27.5 Except to the extent expressly provided otherwise in this Agreement, the Parties will each bear their own costs and expenses incurred in respect of the preparation, execution and implementation of the Agreement and compliance with their obligations set out in this Agreement, including all costs, expenses, legal payments and liabilities.
- 27.6 If the original due date for any Subsidy Payment pursuant to this Agreement is not a Working Day, then the due date shall be the next Working Day following the original due date.
- 27.7 **[REDACTED]**
- 27.8 If NBPco fails to pay any sum due to the Minister under this Agreement by its due date, as determined in accordance the relevant provision of this Agreement, the Minister is entitled to charge interest to NBPco (and NBPco shall pay such interest when making the relevant payment due) at an annual rate equivalent to three percent (3%) above the base rate of the European Central Bank (as adjusted from time to time by the European Central Bank) on the unpaid amount due for the period of delay, accruing on a daily basis from (and including) the due date up to (but excluding) the date of actual payment, whether before or after judgment.
- 27.9 Unless required under Law (in which case NBPco shall notify the Minister in writing accordingly, including the reasons why such is required otherwise by Law), NBPco shall maintain all bank accounts in which Subsidy Payments and/or Project Revenue are received and/or from which Project Costs are paid and which are held by or in the name of or for the benefit of NBPco in Ireland during the Contract Period, unless otherwise approved in writing by the Minister. For the avoidance of doubt, all Subsidy Payments and all Project Revenues shall be paid into such bank accounts of NBPco and all Project Costs directly borne by NBPco shall be paid out of such bank accounts.
- 27.10 Unless required otherwise under Law, all Subsidy Payments under this Agreement shall be made in euro for value on the due date to the bank account of NBPco (details of which shall be notified in writing to the Minister as at the Commencement Date), quoting the payment reference number against which payment is made.
- 27.11 Without limiting or affecting any other rights and remedies of the Minister, if:
- 27.11.1 NBPco abandons or deliberately breaches:
- (A) any of the provisions in Clause 36 (Non-Discrimination and Transparency), Clause 37 (NBPco Requirements and Business Restrictions), Schedule 2.7 (NBPco Requirements), Schedule 2.6 (Communications, Demand Stimulation and Brand Plan), Schedule 5.1 (Subsidy Payments), Schedule 5.2 (Wholesale Prices, Price Benchmarking Rules and Wholesale Product Benchmarking Rules) and/or Schedule 5.5 (Accounting Separation);
 - (B) any of the provisions in Clause 19.18 (Wholesale Products), Clause 26 (Service and Network Future Proofing and Continuous Improvement), Schedule 2.2 (Reference Offer Requirements), Schedule 6.4 (Service, Network and Wholesale Product Compliance and Future Proofing) and/or, in respect any audits related to whether

a claw-back is payable under this Agreement, Schedule 6.11(Audits); and

- (C) any provisions of this Agreement which prevent, restrict or hinder the Minister from or in performing its role or exercising its rights under this Agreement under the provisions set out in Clauses 27.11.1(A) (Subsidy Payments) and/or 27.11.1(B) (Subsidy Payments),

(collectively and individually the “**Abandoned Obligations**”); and

27.11.2 the Minister serves notice on NBPco pursuant to this Clause requiring NBPco to comply, and do all that is necessary to bring itself into compliance with, its Abandoned Obligations (an “**Abandoned Obligations Notice**”); and

27.11.3 NBPco:

- (A) does not, within fifteen (15) days (or other timescale as agreed by the Minister acting reasonably but taking into account and having regard to the nature of the Abandoned Obligations, the actions required by NBPco to bring itself into compliance and, most importantly, whether or to what extent NBPco was aware, or ought reasonably to have been aware, of its non-compliance with its obligations under this Agreement), fully comply with, and do all that is necessary to bring itself into compliance with, the Abandoned Obligations Notice and remedy any consequences of its deliberate breach or deliberate abandonment of its Abandoned Obligations; or
- (B) deliberately breaches or deliberately abandons any of its obligations under this Agreement which have been the subject of an Abandoned Obligations Notice within the previous six (6) months,

then, without limiting or affecting the Minister’s other rights and remedies, NBPco is liable to and shall pay the Minister an amount equal to any savings made by NBPco in its capital costs and operating costs and any additional revenues earned by NBPco as a consequence of and to the extent that it has abandoned or deliberately breached its Abandoned Obligations (the “**Deliberate Breach Deductions**”). In calculating the Deliberate Breach Deductions for the purpose of this Clause 27.11 (Subsidy Payments), the Minister shall take account of any Performance Credits which have already been or are liable to be deducted under this Agreement in respect of the matters giving rise to the Deliberate Breach Deductions and the said amounts shall be deducted from any Deliberate Breach Deductions to be made under this Clause 27.11 (Subsidy Payments). The Minister shall be entitled to notify NBPco in writing within twenty (20) Working Days of the events referred to in Clause 27.11.3 (A) or (B) (Subsidy Payments) and, having served such notice, the Minister shall be entitled to deduct the Deliberate Breach Deductions in accordance with Clause 33 (Set-off and Withholding). To the extent that any Dispute arises in respect of the calculation of savings or additional revenues under this Clause 27.11 (Subsidy Payments), either Party may refer the matter to the Dispute Resolution Procedure.

For the avoidance of doubt, the provisions of Clause 68.6 (Limitation of Liability) shall apply in respect of the Deliberate Breach Deductions such that, if the Minister terminates this Agreement pursuant to Paragraph 1.1.3 (NBPco Termination Event) of Schedule 10 (NBPco Termination Events) in respect of any Abandonment the subject of a Deliberate Breach Deduction, any NBPco Default Termination Liability payable by NBPco in respect

of that termination shall take into account any Deliberate Breach Deductions already paid pursuant to this Clause.

28 PRODUCT PRICES

- 28.1 NBPco shall, subject to the provisions of Clause 13 (Milestones and Network Deployment Complete) and Clause 19 (Wholesale Products), offer, make available, Connect, enable and provide the Wholesale Products to the Service Providers in the Intervention Area at the Wholesale Prices and subject to and in accordance with the Wholesale Pricing Rules and Retail Pricing Rules and the provisions of Schedule 5.2 (Wholesale Prices, Price Benchmarking Rules and Wholesale Product Benchmarking Rules).
- 28.2 The Parties shall comply with the provisions of Schedule 5.2 (Wholesale Prices, Price Benchmarking Rules and Wholesale Product Benchmarking Rules) in relation to the setting, benchmarking and, as appropriate, adjustment of the Wholesale Prices and Benchmark Reference Price and in all other respects.
- 28.3 NBPco shall, subject to the provisions of Clause 13 (Milestones and Network Deployment Complete) and Clause 19 (Wholesale Products), offer, make available, Connect, enable and provide the RoLR End User Products to the Named Unserved End Users subject to and in accordance with the Retail Pricing Rules and the provisions of Schedule 5.2 (Wholesale Prices, Price Benchmarking Rules and Wholesale Product Benchmarking Rules).

29 PROJECT FINANCIAL MODEL

- 29.1 NBPco shall comply with the provisions of Schedule 5.3 (The Project Financial Model).

30 STATE AID

- 30.1 NBPco acknowledges that it is the Minister's intention to comply with the State Aid Decision and State Aid Law and that the Subsidy Payments made by the Minister to NBPco pursuant to this Agreement are made pursuant to an authorised State aid scheme.
- 30.2 NBPco shall promptly and without delay provide such assistance, information and/or support as the Minister may reasonably require from time to time in connection with:
- 30.2.1 the Minister's responsibilities under the State Aid Decision and/or State Aid Law in respect of the Project;
 - 30.2.2 any action, examination and/or investigation by the European Commission, pursuant to the State Aid Decision and/or State Aid Law in respect of the Project;
 - 30.2.3 proceedings before any court or tribunal of competent jurisdiction or Competent Authority relating to the State Aid Decision and/or State Aid Law in respect of the Project; and/or
 - 30.2.4 any action for damages against the State for a breach of State Aid Law in respect of the Project,

as may, in the Minister's view, be reasonably necessary, relevant or helpful, but NBPco shall not be required to provide legal advice subject to legal privilege to the Minister.

- 30.3 If and to the extent that the European Commission initiates any examination or investigation of this Agreement pursuant to the State Aid Decision, the Minister shall use

reasonable endeavours, subject to obtaining the prior consent of the European Commission and to any requirements as may be specified by them, to provide NBPco with a reasonable opportunity (i) to attend meetings between the Minister and the European Commission in respect of the examination or investigation which are relevant to NBPco and (ii) to comment on drafts of any notifications, submissions and responses to the European Commission which are relevant to NBPco and have regard to reasonable comments by NBPco in respect of them.

Implementation Discretion

30.4 If:

30.4.1 this Agreement or any part of it is held by any court or tribunal of competent jurisdiction or any Competent Authority to infringe the State Aid Decision and/or State Aid Law as a result of the manner of NBPco's exercise and/or implementation of any Implementation Discretion (whether with respect to any activities of NBPco inside or outside the Intervention Area) or any breach by NBPco of this Agreement; and/or

30.4.2 any court or tribunal of competent jurisdiction or any Competent Authority finds that the manner of NBPco's exercise and/or implementation of any Implementation Discretion (whether with respect to any activities of NBPco inside or outside the Intervention Area) or NBPco's breach of this Agreement infringes the State Aid Decision and/or any State Aid Law,

the Minister shall have no liability to NBPco (save to the extent only arising pursuant to Clause 30.6 (State Aid) and Schedule 6.9 (Consequences of Termination)) and the provisions of Clauses 30.5 (State Aid) and 30.6 (State Aid) shall apply.

30.5 If this Agreement must be or is modified as a result of any finding referred to in Clause 30.4 (State Aid):

30.5.1 NBPco shall promptly do all that is necessary to comply with State Aid Decision and State Aid Law;

30.5.2 the Parties shall meet and use all reasonable endeavours, acting in good faith, to promptly and without delay agree how this Agreement may be amended (i) to bring it and NBPco into compliance with the State Aid Decision and/or State Aid Law and (ii) so that the Agreement continues, insofar as is possible, to meet the objectives of the Project (as more particularly described in the Recitals to this Agreement and as otherwise expressly identified in this Agreement) to the fullest extent and the provisions of the Change Control Procedure shall apply; and

30.5.3 NBPco shall pay the Minister its costs and expenses in respect of the Change Request, Change Impact Assessment, implementation of and participation in the Change Control Procedure and all discussions in connection with the Change Request and leading up to the Change Request pursuant to this Clause (regardless of which Party issues the Change Request).

30.6 If this Agreement must be terminated as a result of any finding referred to in Clause 30.4 (State Aid), the Minister may terminate this Agreement pursuant to Clause 76 (Termination by Minister for NBPco Termination Event). If this Agreement must be or is terminated as a result of any finding referred to in Clause 30.4 (State Aid), the provisions of Clause 76 (Termination by Minister for NBPco Termination Event) and Part 1 (Termination by Minister

for NBPco Termination Event, Prohibited Acts or Prevention of Bribery) of Schedule 6.9 (Consequences of Termination) shall apply.

Minister State Aid Action

30.7 Subject always to complying with State Aid Law, if and to the extent that this Agreement or any part of it is held by any court or tribunal of competent jurisdiction or any Competent Authority to infringe the State Aid Decision and/or State Aid Law as a result of a Minister State Aid Action such that this Agreement must be or is modified:

30.7.1 the Parties shall meet and use all reasonable endeavours, acting in good faith, to promptly and without delay agree how this Agreement may be amended (i) to bring it and NBPco into compliance with the State Aid Decision and/or State Aid Law and (ii) so that the Agreement continues, insofar as is possible, to meet the objectives of the Project (as more particularly described in the Recitals to this Agreement and as otherwise expressly identified in this Agreement) to the fullest extent and the provisions of the Change Control Procedure shall apply; and

30.7.2 the provisions of Clause 31 (Compensation Events) shall apply.

30.8 If and to the extent that this Agreement or any part of it is held by any court or tribunal of competent jurisdiction or any Competent Authority to infringe the State Aid Decision and/or State Aid Law as a result of a Minister State Aid Action such that the Agreement must be terminated, NBPco may terminate this Agreement pursuant to Clause 77 (Termination by NBPco for Minister Default). If the Agreement must be or is terminated pursuant to this Clause 30.8 (State Aid), the provisions of Clause 77 (Termination by NBPco for Minister Default) shall apply and the Minister's sole liability, if any, to NBPco shall be as set out in (Part 2 (Termination for Minister Default or Minister Voluntary Termination) of Schedule 6.9 (Consequences of Termination)).

State Aid Law and the State Aid Decision

30.9 NBPco agrees that:

30.9.1 in developing the NBPco Solution and Tender (including the Wholesale Products provided for in them) (in each case whether with respect to any activities of NBPco inside or outside the Intervention Area), it exercised and implemented its Implementation Discretion in a manner consistent and in compliance with the State Aid Decision and State Aid Law;

30.9.2 when exercising or implementing any Implementation Discretion (whether with respect to any activities of NBPco inside or outside the Intervention Area), it shall perform and provide the Services and act and exercise its Implementation Discretion in a manner consistent and in compliance with the State Aid Decision and State Aid Law;

30.9.3 in making any Change Request (whether with respect to any activities of NBPco inside or outside the Intervention Area), it shall make a Change Request in a manner so that the resulting Change is consistent and in compliance with the State Aid Decision and State Aid Law;

30.9.4 it shall not in any way knowingly or wilfully infringe or do or authorise any act to be done which knowingly or wilfully infringes the State Aid Decision and/or any State Aid Law; and

30.9.5 it shall not and shall procure that no Associated Company shall in any way impugn or bring into question (or arrange for anything to be done so as to so impugn or bring into question) the compliance by the Project and/or this Agreement with the State Aid Decision and/or State Aid Law including by means of any correspondence with or complaint to any Competent Authority or otherwise.

30.10 NBPco acknowledges and agrees that where the Minister agrees to a Change Request pursuant to the provisions of this Clause 30 (State Aid) and the Change Control Procedure, the provisions of Paragraph 5 (Changes to the Subsidy) of Part 1 (General) of Schedule 6.2 (Change Control Procedure) shall apply to any possible change to Subsidy Payments, provided that where the Change Request does not arise in respect of a Minister State Aid Action, the Subsidy Payments shall not in any way be increased and Paragraph 5 (Changes to Subsidy Payments) of Part 1 (General) shall be construed accordingly.

Actions in the event of a State aid recovery order / decision

30.11 If a court or tribunal of competent jurisdiction makes a recovery order or the European Commission issues a recovery order or decision (as defined in Article 16(1) of Council Regulation EU 2015/1589) in connection with this Agreement (including after the termination or expiration of this Agreement) naming NBPco or Buildco as beneficiary, then NBPco shall, within the earlier of:

30.11.1 four (4) months of a written notice (with such notice including a copy of the relevant recovery order or decision) from the Minister; and

30.11.2 if applicable, any earlier date specified by the European Commission or the court or tribunal,

at any time (including after the termination or expiration of this Agreement):

30.11.3 where the order names NBPco as beneficiary, pay; or

30.11.4 where the order names Buildco as beneficiary, procure and ensure Buildco pays,

an amount equivalent to the unlawful aid of which, as applicable, NBPco or Buildco is beneficiary (plus interest, as applicable) which the European Commission or court or tribunal requires to be paid or repaid pursuant to its recovery order or decision into a blocked account to which neither Party nor Buildco has unilateral access pending either:

30.11.5 the expiry of the deadlines for the Minister or, as applicable, Buildco or NBPco to bring proceedings in respect of the repayment without the Minister or, as applicable, Buildco or NBPco having brought any proceedings before such expiry; or

30.11.6 where the Minister and/or, as applicable, Buildco or NBPco has brought proceedings before such expiry, the final outcome of those proceedings including any appeals,

provided that where the recovery order or decision does not specify the precise amount of unlawful aid to be recovered, the Parties shall (acting reasonably and in accordance with

any calculation methods set out in the recovery order or decision) promptly, in good faith and using all reasonable endeavours and without delay calculate the precise amount to be repaid and paid into the above mentioned blocked account.

30.12 If a court or tribunal of competent jurisdiction makes a recovery order or the European Commission issues a recovery decision (as defined in Article 16(1) of Council Regulation EU 2015/1589) in connection with this Agreement naming NBPco or Buildco as beneficiary (including after the termination or expiration of this Agreement), NBPco acknowledges that Clause 30.11 (State Aid) and Clause 30.13 (State Aid) apply regardless of whether:

30.12.1 NBPco is in Default or Buildco is in breach of its Subcontract and irrespective of NBPco's or Buildco's financial circumstances, except that the Minister shall apply paragraphs 127 to 135 of the European Commission's recovery notice (Communication from the Commission - Commission Notice on the recovery of unlawful and incompatible State aid, C/2019/5396 of 23 July 2019) in respect of, as applicable, NBPco or Buildco; and

30.12.2 in the Minister's view, as previously indicated to NBPco and/or Buildco (whether before, on or after the Commencement Date or Effective Date), the State aid granted in connection with this Agreement complies with State Aid Law and/or the State Aid Decision.

30.13 If both the Minister and, as applicable, NBPco or Buildco fail to bring proceedings challenging the repayment obligation before the expiry of the deadlines for those proceedings or, one or both having brought proceedings, are ultimately unsuccessful in any such proceedings, NBPco shall:

30.13.1 as applicable, give its consent or procure that Buildco gives its consent for the unlawful aid (plus interest, as applicable) to be released from the blocked account referred to in Clause 30.11 (State Aid) to the Minister and/or such other Government body as the Minister may direct; and

30.13.2 if the amount in Clause 30.13.1 (State Aid) is not sufficient to repay in full the unlawful aid (plus interest, as applicable), forthwith:

(A) where the order names NBPco as beneficiary, pay; or

(B) where the order names Buildco as beneficiary, procure that Buildco pays,

such further sums as is necessary to repay the unlawful aid (plus interest, as applicable) to the Minister and/or to such other Government body as the Minister may direct and, if NBPco and/or Buildco does not pay such sums to the Minister or other Government body, Clause 33 (Set-off and Withholding) shall apply in respect of such sums.

- 30.14 The Minister shall not under any circumstances make a payment to NBPco to indemnify or compensate NBPco or Buildco for the recovery of unlawful State aid (plus interest, as applicable) to the extent such payment would infringe State Aid Law.
- 30.15 Nothing in Schedule 6.9 (Consequences of Termination) limits or affects Clauses 30.11 (State Aid) to Clause 30.14 (State Aid) (inclusive).
- 30.16 The provisions of this Clause 30 (State Aid) survive the termination or expiration of this Agreement.

31 COMPENSATION EVENTS

- 31.1 If, and in any case only to the extent that, as a direct result of the occurrence of a Compensation Event:
 - 31.1.1 NBPco is prevented from Achieving a Milestone on or before the required Milestone Date; and/or
 - 31.1.2 NBPco is prevented from complying with its obligations under this Agreement; and/or
 - 31.1.3 NBPco believes that it should be compensated for any Estimated Change in Project Costs,then NBPco shall be entitled to apply for:
 - 31.1.4 an extension of the relevant Milestone Date and, if applicable, the relevant Longstop Date; and/or
 - 31.1.5 relief from the relevant obligations affected by the Compensation Event; and/or
 - 31.1.6 compensation under the provisions of this Clause 31 (Compensation Events).
- 31.2 Subject to Clauses 31.5 (Compensation Events), 31.6 (Compensation Events), 31.7 (Compensation Events) and 31.8 (Compensation Events), as a condition to obtaining relief under the provisions of Clause 31 (Compensation Events), NBPco is required to:
 - 31.2.1 issue a notice to the Minister as soon as practicable, and in any event within twenty-five (25) days of NBPco, the Shareholders, the Critical Key Subcontractors and/or the Key Subcontractors first becoming aware that NBPco is prevented from carrying out its obligations as a direct result of the occurrence of a Compensation Event containing the following information:
 - (A) a clear statement that NBPco is making a claim for relief in accordance with Clause 31 (Compensation Events) as a direct result of a Compensation Event;
 - (B) a clear statement of which of the Compensation Events has directly caused the Delay or anticipated Delay or directly resulted in NBPco being prevented from carrying out its obligations;

- (C) a clear statement of the date of occurrence and the likely duration of the Compensation Event;
- (D) if applicable, a statement of the length of the Delay in Achieving a Milestone Date, or likely length of the anticipated Delay, directly caused by the Compensation Event;
- (E) a statement of the specific extension to any Milestone Dates or Longstop Dates (if applicable) and relief from its obligations under the Agreement being requested as a direct result of the Compensation Event;
- (F) a statement of any proposed increase in Subsidy Payments (comprising NBPco's reasonable assessment of the Estimated Change in Project Costs) NBPco is seeking as a direct result of the Compensation Event together with relevant supporting evidence of the amount and calculation of the Estimated Change in Project Costs together with a proposed payment profile for the payment of the Estimated Change in Project Costs reflecting the periods in which it is projected that Project Costs and Project Revenues will be directly affected and NBPco's proposed adjustment to Deployment Milestone Payments (if applicable) and Ongoing Capital Payments over that period to cover the payment of the Estimated Change in Project Costs; and
- (G) any other relevant details relating to the Compensation Event and its consequences (including, if applicable, details of any Performance Points and Performance Credits which NBPco reasonably considers are the direct result of the Compensation Event and which should not be taken into account in the calculation of any Critical Performance Failure for the purposes of this Agreement); and

31.2.2 demonstrate to the reasonable satisfaction of the Minister that:

- (A) NBPco is prevented from carrying out its obligations under this Agreement as a direct result of the occurrence of the Compensation Event and, if applicable, any Delay in Achieving a Milestone is a direct result of NBPco being prevented from carrying out its obligations under this Agreement as a direct result of the occurrence of the Compensation Event;
- (B) if applicable, the Compensation Event was the direct cause of the Estimated Change in Project Costs;
- (C) NBPco and the NBPco Personnel could not have avoided such occurrence or consequences under Clauses 31.2.2(A) (Compensation Events) and/or 31.2.2(B) (Compensation Events) by steps which they might reasonably be expected to have taken consistent with Best Industry Practice, without incurring material expenditure;
- (D) the time lost and/or relief from the obligations under this Agreement claimed could not reasonably be expected to be mitigated or

recovered by NBPco acting in a manner consistent with Best Industry Practice, without incurring material expenditure; and

- (E) NBPco is using reasonable endeavours to perform its obligations under this Agreement notwithstanding the Compensation Event.

31.3 NBPco shall promptly notify the Minister if at any time it receives or becomes aware of any further information relating to the Compensation Event, giving details of that information to the extent that such information is new or renders information previously submitted materially inaccurate or misleading.

31.4 If, subject to NBPco's compliance with Clause 31.2 (Compensation Events), 31.5 (Compensation Events), 31.6 (Compensation Events), 31.7 (Compensation Events) and 31.8 (Compensation Events), the Minister is satisfied (acting reasonably) that NBPco is prevented from carrying out its obligations under this Agreement as a direct result of the occurrence of a Compensation Event:

31.4.1 the Minister shall as soon as reasonably practicable:

- (A) issue a notice in writing to NBPco (or, if applicable, approve a Remedial Plan) extending (prospectively or retrospectively) the relevant Milestone Date or, as applicable, Longstop Date which is incapable of being met as a direct consequence of NBPco being prevented from carrying out its obligations under this Agreement due to the Compensation Event, by a reasonable period;
- (B) give NBPco such relief from its obligations under this Agreement as is reasonable for such a Compensation Event; and
- (C) notify NBPco that the Estimated Change in Project Costs shall be payable by means of an adjustment to the Deployment Milestone Payments (if applicable) and Ongoing Capital Payments in the manner and having regard to the payment profile agreed by the Parties (or as otherwise determined pursuant to the Dispute Resolution Procedure) and reflected in the Minister's notice. In the event that no Deployment Milestone Payments (if applicable) and outstanding Ongoing Capital Payments are payable, the Parties shall, acting reasonably, agree the manner in which any payment in respect of the agreed Estimated Change in Project Costs shall be paid to NBPco (provided that, where the relevant Compensation Event comprises a Minister State Aid Action, any such payment shall be subject to Clause 30.14 (State Aid)); and

31.4.2 the Minister shall not be entitled to exercise its rights to terminate this Agreement under Clause 76 (Termination by Minister for NBPco Termination Event) as a result of any failure by NBPco to perform its obligations under this Agreement as a direct result of the occurrence of the Compensation Event (including, if applicable, having regard to any Performance Points and Performance Credits which arose as a direct result of the occurrence of the Compensation Event and should not be taken into account in the calculation of any Critical Performance Failure for the purposes of this Agreement).

- 31.5 NBPco is not entitled to relief, compensation or an increase in Subsidy Payments in accordance with the provisions of this Clause to the relevant extent that:
- 31.5.1 the Delay on the affected Milestone Dates and/or Longstop Date has been or likely can be mitigated by NBPco complying with its obligations under Clause 17.1.1(C) (Delay) or 31.8 (Compensation Events);
 - 31.5.2 the consequences of the Compensation Event can be addressed by a change to the Project Plans without impacting upon the Implementation Programme, provided such change does not result in NBPco incurring material expenditure and provided that NBPco shall be entitled, acting reasonably, to demonstrate to the Minister why such change to the Project Plans would prejudice NBPco's ability to comply with its other obligations under the Agreement (in which event, where such demonstration is reasonably made, this Clause 31.5.2 (Compensation Events) shall not apply); and/or
 - 31.5.3 the effects of the Compensation Event have occurred or been materially exacerbated by NBPco failing to comply with its obligations under this Agreement.
- 31.6 If a Compensation Event affects a part only of an obligation of NBPco, only that part of the obligation affected by the Compensation Event shall be subject to any relief granted pursuant to the provisions of this Clause and any relief provided shall be temporary and applicable only in respect of the period that NBPco is prevented from carrying out its obligations under this Agreement as a direct result of the occurrence of the Compensation Event.
- 31.7 If the notice or information required by this Clause is provided after the dates referred to in this Clause, then NBPco shall not be entitled to any relief during the period for which the notice or information is delayed.
- 31.8 NBPco shall take all steps consistent with Best Industry Practice to mitigate the consequences of any Compensation Event.
- 31.9 Subject to the provisions of any Change Authorisation made in accordance with the Change Control Procedure (which shall reflect the outcome and, as applicable, agreement of the Parties pursuant to Clause 31.4 (Compensation Events)), no extension of time in respect of a Delay or anticipated Delay or otherwise arising as a result of a Compensation Event shall be given under this Agreement except subject to, and in accordance with, Clause 31.4 (Compensation Events), unless the Minister agrees otherwise in writing in a given case.
- 31.10 If the Parties cannot agree the Estimated Change in Project Costs, an appropriate extension of the Milestone Date or Longstop Date or the extent of the relief required under this Clause, or the Minister does not agree that a Compensation Event has occurred (or its consequences), the Parties will resolve the matter in accordance with the Expedited Dispute Resolution Procedure.
- 31.11 If and to the extent that NBPco obtains relief or any payment in respect of a Compensation Event pursuant to this Clause, the said relief and/or payment shall be NBPco's sole remedy in respect of the particular circumstances giving rise to the Compensation Event and NBPco shall not be entitled to make any other claim against the Minister or to any other compensation under or pursuant to this Agreement (including in respect of any rights to terminate this Agreement) in respect of those particular circumstances. For the avoidance

of doubt, this does not preclude any NBPco future entitlement to relief under this Agreement where the same circumstances arise on a different future occasion and were not addressed or compensated for in any previous compensation or relief.

- 31.12 For the avoidance of doubt, the provisions of Clause 68.6 (Limitation of Liability) shall apply to this Clause such that NBPco shall not, in respect of the same circumstances giving rise to the Compensation Event, be entitled to receive relief or compensation under or pursuant to this Clause and another provision of this Agreement.

32 TAX

VAT

- 32.1 The Subsidy Payments and any other payments made under the terms of this Agreement are exclusive of VAT.

- 32.2 VAT, if due on the Subsidy Payments (and any other payments made under the terms of this Agreement), will be payable in addition to the Subsidy Payments (and other payments, if any) due under this Agreement within thirty (30) days of receipt of a duly issued request for payment at which time such amounts shall be regarded as being due and payable together with appropriate VAT. A VAT invoice shall be issued following the receipt of the payment in accordance with the provisions of the VAT Consolidation Act 2010 (as amended) and associated applicable regulations in Ireland. If the original due date for any payment pursuant to this Agreement is not a Working Day, then the due date shall be the next Working Day following the original due date. For the avoidance of doubt, no VAT will be payable in respect of the Subsidy Payments or any other payments under this Agreement where the recipient is liable to self-account for reverse charge VAT in accordance with the provisions of the VAT Consolidation Act 2010.

Deductions and Withholdings from Payments

- 32.3 All Subsidy Payments to be made by the Minister under this Agreement are stated on a gross basis but the Minister may make any deduction or withholding on account of Tax as is required by Law or as the Minister is entitled under this Agreement unless, in either case, within at least five (5) Working Days prior to the making by the Minister of a Subsidy Payment, NBPco produces to the Minister a valid certificate of authorisation or other appropriate document from a relevant competent authority (including the Irish Revenue Commissioners) which, by Law, enables the Minister to make any Subsidy Payment without a deduction or withholding. For clarity, but subject to the foregoing sentence, the Minister may make any deduction or withholding on account of Tax which does not arise under the requirements of any Law at the Commencement Date but which arises at any future date under any circumstances, including any Change in Law (save where NBPco has produced to the Minister a valid certificate of authorisation or other appropriate document as specified in the first sentence of this Clause 32.3 (Tax)). NBPco shall accept the net amount paid after deduction or withholding in discharge of the Minister's liability to the same extent as if the deduction or withholding had not been made.
- 32.4 NBPco shall comply with all relevant obligations referred to in section 1095 of the Taxes Consolidation Act 1997 (Tax clearance certificates general scheme). If NBPco does not comply with section 1095 of the Taxes Consolidation Act 1997, the Minister may withhold or deduct from the payments under this Agreement as may be required by Law until such date as NBPco produces to the Minister such valid Tax Clearance Certificate or other certificate as may be required by Law.

- 32.5 NBPco shall comply with any provision of the Taxes Consolidation Act 1997 and any regulations made under it which require the obtaining and/or production of a Tax Clearance Certificate or other relevant certificate.
- 32.6 NBPco shall comply with its obligations under Chapter 2 of Part 18 of the Taxes Consolidation Act 1997 and any regulations under it and shall use reasonable endeavours to procure that all Key Subcontractors to whom payments are made in relation to activities contemplated by this Agreement shall also so comply.

Compliance by NBPco

- 32.7 NBPco shall comply with all Tax Laws.
- 32.8 NBPco shall withhold or deduct from the payments to any Subcontractor such amounts as is required by Law until such date as the Subcontractor produces to NBPco such valid Tax Clearance Certificate and/or other certificate as may be required by Law.
- 32.9 NBPco shall:
- 32.9.1 obtain and maintain in force throughout the Contract Period; and
 - 32.9.2 use reasonable endeavours to procure that its Subcontractors obtain and maintain in force throughout the Contract Period of the relevant Subcontract;
- an appropriate Tax Clearance Certificate.
- 32.10 NBPco shall procure that:
- 32.10.1 all necessary returns are delivered by or on behalf of NBPco to the relevant tax authorities;
 - 32.10.2 NBPco shall comply with its obligations in relation to Taxes in connection with the payment of all Subcontractors;
 - 32.10.3 NBPco is not in default in the payment of any Taxes; and
 - 32.10.4 no Claim will be asserted with respects to Taxes which have not been disclosed to the Minister.
- 32.11 NBPco shall be responsible for, and on demand release and indemnify the Minister on a continuing basis against, any liabilities, including any interest, costs and penalties, that is levied, demanded or assessed on the Minister at any time in respect of NBPco's failure to account for or to pay any VAT or other Tax relating to payments made to NBPco under this Agreement. Any amounts due under this Clause 32.11 (Tax) shall be paid in cleared funds by NBPco to the Minister not less than five (5) Working Days before the date upon which the Tax or other liability is payable by the Minister. This indemnity survives the termination or expiration of this Agreement for a period of six (6) years, unless NBPco's failure is deemed to be on account of or arise from a fraudulent or negligent act, in which case this six (6) year limitation shall not apply.

33 SET-OFF AND WITHHOLDING

- 33.1 The Minister may set off any amount owed by NBPco to the Minister against any amount due to NBPco under this Agreement. Unless otherwise expressly provided in this Agreement, an amount shall be considered owed by NBPco to the Minister for the

purposes of this Clause where no Dispute exists in respect of that amount (other than any frivolous or vexatious Dispute) or where any relevant Dispute in respect of an amount has been resolved in the Minister's favour under this Agreement. For the avoidance of doubt, where any Dispute exists in respect of an amount owed by NBPco, the Minister's right of set-off shall apply to any part of that amount which is not the subject of a Dispute.

33.2 NBPco is not entitled to withhold, deduct, retain, abate or set-off any amount due to the Minister by it.

34 DELIBERATELY BLANK

35 FINANCIAL DISTRESS

35.1 NBPco shall comply with the provisions of Schedule 5.7 (Financial Distress) in respect of the Monitored Entities.

36 NON-DISCRIMINATION AND TRANSPARENCY

36.1 NBPco shall (and shall procure that all Critical Key Subcontractors that are Infrastructure Access Providers and/or Buildco shall in connection with this Agreement, Services, Wholesale Products and Network):

36.1.1 throughout the Intervention Area; and

36.1.2 to the extent the NBPco Assets are utilised in or for the provision of an electronic communications network, service or product in the Excluded Area, throughout the Excluded Area,

throughout the Contract Period:

36.1.3 treat all Service Providers on a non-discriminatory basis in connection with this Agreement, Services, Wholesale Products and Network;

36.1.4 apply equivalent conditions to all Service Providers in equivalent circumstances;

36.1.5 provide equivalent Wholesale Products to all Service Providers in equivalent circumstances;

36.1.6 charge all Service Providers the same price for a particular Wholesale Product in all circumstances (and, in particular, so that no one or more (including any group of) Service Providers are granted, directly or indirectly (including through an Associated Company or Associated Service Provider), permanent, temporary or one-off direct or indirect decreases, discounts, rebates, waiver, compromise or similar unless these have been approved in writing in advance in accordance with Paragraph 7.1 (Transparency and Non-Discrimination) of Part 1 (Wholesale Pricing Rules) and Appendix 3 (Wholesale Price Control Procedure and Wholesale Product Control Procedure) of Schedule 5.2 (Wholesale Prices, Price Benchmarking Rules and Wholesale Product Benchmarking Rules);

36.1.7 provide all Wholesale Products (including all related services and facilities) and information to all Service Providers under the same conditions and prices and of the same quality as NBPco provides to Associated Service Providers and, where

NBPco acts as the final retailer of last resort in accordance with the provisions of Clause 19 (Wholesale Products), to NBPco itself; and

36.1.8 ensure that a Service Provider is not treated in a manner inconsistent with the treatment of any other Service Provider, which could give rise to an advantage or disadvantage in the delivery of products or services.

36.2 Without limiting or affecting any other provision of this Agreement, NBPco at a minimum:

36.2.1 shall comply with the neutral branding requirements in accordance with Paragraph 5 (NBPco Brand Development Plan) of Schedule 2.6 (Communications, Demand Stimulation and Brand Plan);

36.2.2 shall comply with the requirements in respect of management incentives set out in Paragraph 5 (Top Tier Key Personnel) and Paragraph 7 (Non-Discrimination) of Schedule 2.7 (NBPco Requirements);

36.2.3 shall comply with the Accounting Separation requirements set out in Schedule 5.5 (Accounting Separation);

36.2.4 shall comply and procure compliance with the Wholesale Pricing Rules and Retail Pricing Rules in Schedule 5.2 (Wholesale Prices, Price Benchmarking Rules And Wholesale Product Benchmarking Rules);

36.2.5 shall, and shall procure that all Critical Key Subcontractors that are Infrastructure Access Providers and/or Buildco shall in connection with this Agreement, Services, Wholesale Products and Network, comply with the Equivalence of Input measures in relation to Network access as detailed in Schedule 2.1 (Technical Solution Specification) and Operational Environment as detailed in Schedule 2.3 (Deployment Requirements);

36.2.6 shall, and shall procure that all Critical Key Subcontractors that are Infrastructure Access Providers and/or Buildco shall in connection with this Agreement, Services, Wholesale Products and Network, provide ordering, provisioning, fault reporting and repairs to Wholesale Products to all Service Providers on an Equivalence of Input basis; and

36.2.7 shall, and shall procure that all Critical Key Subcontractors that are Infrastructure Access Providers and/or Buildco shall in connection with this Agreement, Services, Wholesale Products and Network, ensure that all Service Providers are sent, at the same time, all necessary information that would be required to create a Service Order in relation to Wholesale Products including operational performance metrics and availability, and any updates to such information as detailed in Schedule 2.2 (Reference Offer Requirements) and Schedule 2.4 (Operational Performance).

36.3 NBPco shall, and shall use all reasonable endeavours to procure that all Critical Key Subcontractors that are Infrastructure Access Providers and/or Buildco shall, in connection with this Agreement, Services, Wholesale Products and Network, throughout the Contract Period act in a transparent manner in connection with the pricing of, and the provision of

information to Service Providers in connection with, the Services, Network and Wholesale Products.

36.4 NBPco shall ensure that the list of Wholesale Products, and all associated invoices and bundles, are sufficiently unbundled to ensure that 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 shall throughout the Contract Period publish and keep up-to-date on the Public Portal and Secure Portal:

36.5.1 all the components of its Reference Offer for each Wholesale Product in accordance with the provisions of Paragraph 3 (Governance) of Schedule 2.2 (Reference Offer Requirements); and

36.5.2 a report setting out its performance achieved in each Measurement Period against each of the Key Performance Indicators in a clear, transparent and easily accessible manner, setting out its performance for each Measurement Period chronologically from the Effective Date until the then current date.

36.6 In this Clause 36 (Non-Discrimination and Transparency), where NBPco is required to procure that:

36.6.1 a Critical Key Subcontractor that is an Infrastructure Access Provider and/or Buildco complies with a particular provision, NBPco's obligation is limited to procuring that the Critical Key Subcontractor and/or Buildco complies with the particular provision in connection with the Critical Key Subcontractor's and/or Buildco's performance of its Subcontract with NBPco and any operations or other activities undertaken by the Critical Key Subcontractor, and/or Buildco on behalf of NBPco; or

36.6.2 Buildco complies with any of the provisions in Clauses 36.1.1 (Non-Discrimination and Transparency) to Clause 36.1.8 (Non-Discrimination and Transparency) (inclusive), Clause 36.2.6 (Non-Discrimination and Transparency) or Clause 36.2.7 (Non-Discrimination and Transparency), this obligation does not apply to the extent that Buildco is only undertaking deployment of the Network without engaging with Service Providers (but, for clarity, that obligation does apply if Buildco is involved in the provision of ordering, provisioning, fault reporting and/or repairs to Wholesale Products or the provision of other services or information to Service Providers or otherwise engaging with Service Providers).

36.7 In this Clause 36 (Non-Discrimination and Transparency), to the extent the NBPco Assets are utilised in or for the provision of an electronic communication service, network or product in the Excluded Area, any reference to:

36.7.1 Wholesale Products includes any electronic communications services, network or products provided to a person in the Excluded Area;

36.7.2 a Service Provider includes a provider of an electronic communication service, product or network in the Excluded Area; and

36.7.3 the Network includes the NBPco Assets.

37 NBPCO REQUIREMENTS AND BUSINESS RESTRICTIONS

37.1 NBPco shall comply and procure compliance with Schedule 2.7 (NBPco Requirements).

Use of the Subsidy Payments

37.2 NBPco:

37.2.1 acknowledges and agrees that the Subsidy Payments are provided for the purpose of subsidising only the Network for the provision of the Minimum Required Wholesale Products and Additional Required Wholesale Products (but not the Other Permitted Wholesale Products) to Premises in the Intervention Area in accordance with this Agreement and nothing else;

37.2.2 acknowledges and agrees that the provision of electronic communications services and networks to the Excluded Areas is not within the permitted application of the Subsidy Payments; and

37.2.3 agrees that it shall not use or apply the Subsidy Payments except in accordance with the provisions of this Agreement for the purposes of subsidising the Network for the provision of the Minimum Required Wholesale Products and Additional Required Wholesale Products to Premises in the Intervention Area by NBPco subject to, and in accordance with, this Agreement.

Restrictions regarding the Retail Market in the Intervention Area and Excluded Area

37.3 NBPco agrees that, notwithstanding any other provision in this Agreement, it shall not at any time during the Contract Period provide any retail electronic communication services or networks to any End Users whatever, whether in the Intervention Area or Excluded Area (except, as the final retail supplier of last resort, the provision of RoLR End User Products to the Premises of Named Unserved End Users in the Intervention Area where, and only to the extent, required to do so pursuant to, and subject to and in accordance with, the provisions of Clause 19 (Wholesale Products) and an NBPco RoLR Authorisation Form). For clarity, the simple exercise by an Associated RSP of its entitlement pursuant to the Electronic Communications Framework to provide electronic communications services or networks to End Users in the Intervention Area or Excluded Areas does not, in and of itself, give rise to a breach of this Clause by NBPco.

No Circumvention of the Agreement

37.4 NBPco agrees that, notwithstanding any other provision in this Agreement, it shall not at any time during the Contract Period provide any electronic communication services or networks whatever to any Service Providers in, or in respect of Premises in, the Intervention Area except the provision, in accordance with the Service Provider Terms, of the Wholesale Products expressly set out in its Reference Offer (as amended from time to time pursuant to Change Authorisations) to Service Providers in the Intervention Area pursuant to the provisions of Clause 19 (Wholesale Products).

37.5 A breach of any of the provisions in this Clause 37 (NBPco Requirements and Business Restrictions) is a material Default of this Agreement and, if NBPco does not fully remedy such Default and the consequences of it within twenty (20) Working Days of written notice from the Minister (or such other period as the Parties agree in writing from time to time)

requiring the Default to be remedied, the Minister has the right to invoke the Remedial Plan Process in respect of any such Default and its consequences.

38 GUARANTEE

38.1 NBPco warrants that as at the Commencement Date and Effective Date the Guarantor under each Guarantee, as applicable:

38.1.1 if the relevant Guarantor is a Rated Monitored Entity, the Guarantor concerned has a minimum long term rating at or above the Level 1 Financial Distress Credit Rating Threshold for the type of Guarantee concerned (or equivalent rating from a replacement agency if Moody's, Fitch's and/or Standard & Poor's ceases to exist); or

38.1.2 if the relevant Guarantor is an Unrated Monitored Entity, the Financial Ratios for the Guarantor concerned are the same as or better than the Level 1 Financial Distress Financial Ratio Threshold for the type of Guarantee concerned.

38.2 If, at any time:

38.2.1 as applicable:

(A) the credit rating of a Guarantor which is a Rated Monitored Entity at the relevant point in time falls below the Level 1 Financial Distress Credit Rating Threshold by a Rating Agency during the term of the Guarantee concerned; or

(B) the Financial Ratios for a Guarantor which is an Unrated Monitored Entity at the relevant point in time are at or below the Level 1 Financial Distress Financial Ratio Threshold for the type of Guarantee concerned,

NBPco shall comply with Schedule 5.7 (Financial Distress) and, unless agreed otherwise with the Minister in writing, use all reasonable endeavours to procure the execution and delivery of a replacement Guarantee (in the Approved Form) to the Minister from a Guarantor acceptable to the Minister and that satisfies the requirements of Clause 38.1 (Guarantee) as soon as reasonably possible following, as applicable, the drop in the credit rating or positioning below the ratio threshold first occurring and, if applicable, at least within any timeline for that set out in a Financial Distress Service Continuity Plan; or

38.2.2 a Guarantee ceases to be valid or enforceable for any reason, NBPco shall procure the execution and delivery of a replacement Guarantee (in the Approved Form) to the Minister from a Guarantor acceptable to the Minister and that satisfies the requirements of Clause 38.1 (Guarantee) as soon as reasonably possible (and, in any event, within twenty (20) Working Days) following the Guarantee first ceasing to be valid or enforceable.

38.3 Nothing in the Guarantees in any way limits, affects or diminishes the obligations of NBPco under this Agreement and which NBPco is required to comply with in full.

39 PERFORMANCE BOND

39.1 Subject to Clause 39.1A (Performance Bond), NBPco shall procure the execution and delivery by the Surety, that at the time concerned satisfies the requirements of Clause 39.2 (Performance Bond), to the Minister of:

39.1.1 subject to Clause 39.1A (Performance Bond), the Deployment Performance Bond (in the Approved Form) in the amount of twenty million euro (€20,000,000) on or before the Effective Date (and which bond shall cover and remain in place until the earlier of:

(A) the date immediately after the expiry of twenty four (24) calendar months from the Effective Date; and

(B) **[REDACTED]**

39.1.2 **[REDACTED]**

39.1A In satisfaction of its obligation pursuant to Clause 39.1.1 (Performance Bond), NBPco shall be entitled to provide a secured account in lieu of the Deployment Performance Bond provided and for so long as the following conditions are satisfied:

39.1A.1 **[REDACTED]**

39.1A.2 **[REDACTED]**

39.1A.3 **[REDACTED]**

39.1A.4 **[REDACTED]**

39.1A.5 **[REDACTED]**

[REDACTED]

39.2 NBPco warrants that as at the date of issue of the Performance Bond and, in the case of the Deployment Performance Bond (except where and for so long as no Deployment Performance Bond is put in place in accordance with Clause 39.1A (Performance Bond)), as at the Effective Date (or, where applicable, as at the date on which the Deployment Performance Bond is put in place under Clause 39.4A (Performance Bond)):

39.2.1 the Surety under each Performance Bond is an entity authorised to issue bonds in Ireland; and

39.2.2 the Surety under each Performance Bond has a minimum long term rating "BBB+ from at least two (2) of Moody's, Standard & Poor's and Fitch (or equivalent rating from a replacement agency if Moody's, Standard & Poor's or Fitch ceases to exist).

39.3 If, at any time:

- 39.3.1 the Surety in respect of a Performance Bond ceases to be an entity authorised to issue bonds in Ireland;
- 39.3.2 the credit rating of a Surety falls below the level specified in Clause 39.2.2 (Performance Bond) during the term of the Performance Bond concerned;
- 39.3.3 a Performance Bond ceases to be valid or enforceable for any reason; or
- 39.3.4 the amount held in the DPB Project Account falls below twenty million euro (€20,000,000) (other than as a result of the application of Clause 39.4 (Performance Bond) or Clause 39.1A.3 (Performance Bond)) and this is not remedied in full within five (5) Working Days of such occurring (either by paying in cleared funds such sums into the DPB Project Account as are necessary for the credit balance to be twenty million euro (€20,000,000) or by putting in place a Deployment Performance Bond in accordance with Clauses 39.1 (Performance Bond)),

NBPco shall either:

- 39.3.5 procure the execution and delivery of a replacement Performance Bond (in the Approved Form and to the full value of the Performance Bond concerned, as determined in accordance with Clauses 39.1 (Performance Bond)) to the Minister from a Surety acceptable to the Minister and that satisfies the requirements of Clauses 39.1 (Performance Bond) and 39.2 (Performance Bond); or
- 39.3.6 if acceptable to the Minister (at the Minister's discretion so that it can instead insist upon a replacement Performance Bond being executed and delivered), pay to the Minister in cleared funds and in euro the full and maximum intended value (as determined in accordance with Clauses 39.1 (Performance Bond)) of the Performance Bond concerned in full (and without deduction, set-off, withholding, abatement, counter-claim or otherwise) as security in place of the Performance Bond concerned (in which case, unless otherwise agreed by the Parties in writing, the Minister has no obligation to invest such sums and is entitled to any interest earned on such sums),

within thirty (30) Working Days of, as applicable, the drop in the credit rating or cessation of authorisation first occurring, the Performance Bond ceasing to be valid or enforceable or the amount held in the DPB Project Account falling below twenty million euro (€20,000,000).

39.4 On the occurrence of a Performance Bond Trigger Event, the Minister may (without limiting or affecting any other right or remedy of the Minister):

- 39.4.1 if the Minister considers that the Performance Bond Trigger Event is remediable:
 - (A) serve ten (10) days' notice on NBPco of his intention to:
 - (1) require NBPco to pay to the Minister from the DPB Project Account an amount equal to the Deployment Claw-Back Amount and/or any payments under Clause 42.8 (Subcontractors) and/or Schedule 6.9 (Consequences of Termination) and/or any other sums payable by NBPco to

the Minister in accordance with this Agreement, but subject always up to a maximum of twenty million euro (€20,000,000)); or

- (2) call in the Performance Bond concerned (or, if applicable, apply any sum paid to the Minister pursuant to Clause 39.3.6 (Performance Bond)),

to discharge any sums payable by NBPco under this Agreement if the Performance Bond Trigger Event is not remedied within that period; and

- (B) if by the end of the ten (10) day notice period NBPco has not remedied the Performance Bond Trigger Event to the satisfaction of the Minister, the Minister may:

- (1) issue written notice to NBPco requiring NBPco to pay to the Minister from the DPB Project Account an amount equal to the Deployment Claw-Back Amount and/or any payments under Clause 42.8 (Subcontractors) and/or Schedule 6.9 (Consequences of Termination) and/or any other sums payable by NBPco to the Minister in accordance with this Agreement, but subject always up to a maximum of twenty million euro (€20,000,000)); or

- (2) call on the Performance Bond (or, if applicable, apply any sum paid to the Minister pursuant to Clause 39.3.6 (Performance Bond)),

to discharge any sums payable by NBPco under this Agreement) without further notice to NBPco (but shall, where applicable, subsequently notify NBPco promptly in writing of the fact that a call has been made on the Performance Bond or cash paid by NBPco to the Minister under this Clause);

or

- 39.4.2 if the Minister considers that the Performance Bond Trigger Event is not remediable, the Minister may:

- (A) issue written notice to NBPco requiring NBPco to pay to the Minister from the DPB Project Account an amount equal to the Deployment Claw-Back Amount and/or any payments under Clause 42.8 (Subcontractors) and/or Schedule 6.9 (Consequences of Termination) or any other sums payable by NBPco to the Minister in accordance with this Agreement, but subject always up to a maximum of twenty million euro (€20,000,000)); or

(B) call on the Performance Bond (or, if applicable, apply any sum paid to the Minister pursuant to Clause 39.3.6 (Performance Bond)),

to discharge any sums payable by NBPco under this Agreement without, if the Minister exercises its rights under Clause 39.4.2(B) (Performance Bond), notice to NBPco.

If no Deployment Performance Bond is put in place in accordance with Clause 39.1A (Performance Bond):

39.4.3 a reference to a “Performance Bond Trigger Event” is construed as if a Deployment Performance Bond was put in place in the form set out in Schedule 7.2 (Performance Bond); and

39.4.4 NBPco shall pay to the Minister any sums payable to the Minister under this Clause within five (5) Working Days in euro, in full and in cleared funds (without any set-off, withholding, abatement, counterclaim, deduction or similar) of the date of issue by the Minister of written notice requiring such payment.

39.4A Where NBPco puts in place a DPB Project Account in accordance with Clause 39.1A (Performance Bond), NBPco shall be entitled, subject to compliance with Clauses 39.1 (Performance Bond), at any time within the twenty four (24) month period commencing on the Effective Date to put in place a Deployment Performance Bond pursuant to Clause 39.1 (Performance Bond) as a replacement for the DPB Project Account in which case the provisions of Clauses 39.1 (Performance Bond) to 39.4 (Performance Bond), (inclusive) shall apply in respect of such Deployment Performance Bond.

39.5 Without limiting or affecting NBPco’s obligations under Clause **Error! Reference source not found.** (Performance Bond) and/or under Clause 39.3 (Performance Bond), if NBPco:

39.5.1 does not, by the date that is three (3) years prior to the scheduled Expiry Date, procure the execution and delivery by a Surety (that at the time concerned satisfies the requirements of Clause 39.2 (Performance Bond)) to the Minister of the Expiration Performance Bond (in the Approved Form); or

39.5.2 fails to comply with its obligations under Clause 39.3 (Performance Bond) within the timeline required by that Clause in respect of the Expiration Performance Bond,

the Minister is entitled to withhold and retain Subsidy Payments up to the full and maximum intended value of the Expiration Performance Bond value (as determined in accordance with Clauses 39.1 (Performance Bond)) (“**Withheld Subsidy Payments for Expiration Performance Bond**”) as security in place of the Expiration Performance Bond (and, for the avoidance of doubt, any Withheld Subsidy Payments for Expiration Performance Bond in this regard shall not be considered or deemed to be a payment of a Performance Credit or applied towards the Performance Credit Cap or Liability Cap). After:

39.5.3 all Terminal Value Claw-Back Amounts and IRR Claw-Back Amounts have been paid in full and in cleared funds to the Minister pursuant to Paragraph 17 (Over-Subsidy Claw-Back: Terminal Value) and Paragraph 16 (Over-Subsidy Claw-Back: IRR) of Schedule 5.1 (Subsidy Payments); and/or

39.5.4 the Minister has, pursuant to Clause 33 (Set-off and Withholding), set-off the Withheld Subsidy Payments for Expiration Performance Bond against any and

all Terminal Value Claw-Back Amount and IRR Claw-Back Amounts payable to the Minister pursuant to Paragraph 17 (Over-Subsidy Claw-Back: Terminal Value) and Paragraph 16 (Over-Subsidy Claw-Back: IRR) of Schedule 5.1 (Subsidy Payments),

the Minister shall pay to NBPco any balance (if any) of the Withheld Subsidy Payments for Expiration Performance Bond remaining after such set-off.

39.6 Without limiting or affecting NBPco's obligations under Clause 39.3 (Performance Bond), if NBPco fails to comply with its obligations under that Clause within the timeline required by that Clause in respect of the Deployment Performance Bond or DPB Project Account, the Minister is entitled to withhold and retain any Subsidy Payments up to the full and maximum intended value of the Deployment Performance Bond value (as determined in accordance with Clauses 39.1 (Performance Bond)) ("**Withheld Subsidy Payments for Deployment Performance Bond**") as security in place of the Deployment Performance Bond (and, for the avoidance of doubt, any Withheld Subsidy Payments for Deployment Performance Bond in this regard shall not be considered or deemed to be a payment of a Performance Credit or applied towards the Performance Credit Cap or Liability Cap) unless and until NBPco complies with its obligations under Clause 39.3 (Performance Bond).
After:

39.6.1 all Deployment Claw-Back Amounts have been paid in full and in cleared funds to the Minister pursuant to Paragraph 15 (Over-Subsidy Claw-Back: Deployment) of Schedule 5.1 (Subsidy Payments); and/or

39.6.2 the Minister has, pursuant to Clause 33 (Set-off and Withholding), set-off the Withheld Subsidy Payments for Deployment Performance Bond against any and all Deployment Claw-Back Amounts payable to the Minister pursuant to Paragraph 15 (Over-Subsidy Claw-Back: Deployment) of Schedule 5.1 (Subsidy Payments);

the Minister shall pay to NBPco any balance (if any) of the Withheld Subsidy Payments for Deployment Performance Bond remaining after such set-off.

39.7 Nothing in the Performance Bonds and no amounts paid into the DPB Project Account in any way limit, affect or diminish the obligations of NBPco under this Agreement and which NBPco is required to comply with in full.

39.8 Any funds standing to the credit of the DPB Project Account up until the DPB Project Account Charge Release Date shall, for so long as the DPB Project Account is subject to the DPB Project Account Charge in favour of the Minister, be disregarded for the purposes of Paragraph 19 (Cash Balances) of Schedule 5.1 (Subsidy Payments).

40 FINANCIAL STANDING OF NBPCO

- 40.1 NBPCo shall ensure that on or before the Effective Date:
- 40.1.1 the contribution of the Shareholders is paid in accordance with Schedule 3.12 (Details of Companies);
 - 40.1.2 all obligations set out in the Required Documents for the establishment and capitalisation of NBPCo have been satisfied; and
 - 40.1.3 the NBPCo Funding is committed and available for NBPCo to utilise for the Network Deployment, Wholesale Products and the Services.
- 40.2 NBPCo shall keep the Minister reasonably apprised of its progress towards putting in place any additional (to those in place at the Effective Date) financing arrangements that are required to support its obligations and activities under this Agreement. This does not limit or affect the provisions of Clause 44 (Project Documents and Funding Documents).
- 40.3 NBPCo shall ensure that, throughout the Contract Period:
- 40.3.1 NBPCo has the necessary financial standing, funding and working capital to satisfy all of its obligations under this Agreement including the payment of any Performance Credits, IRR Claw-Back Amounts and Terminal Value Claw-Back Amounts to the Minister in accordance with the provisions of Schedule 5.1 (Subsidy Payments);
 - 40.3.2 NBPCo complies with, and procures compliance with, the terms of any Financial Distress Service Continuity Plan and remedies any adverse impact of a Financial Distress Event on the continued performance of this Agreement and the security of public subsidy already granted (and to be granted) or any Guarantee or Performance Bond in accordance with the provisions of Schedule 5.7 (Financial Distress);
 - 40.3.3 NBPCo complies with the financial transparency and reporting obligations set out in this Agreement including the provisions of Schedule 5.1 (Subsidy Payments), Schedule 5.4 (Eligibility Requirements for ERDF Funding) and Schedule 5.5 (Accounting Separation); and
 - 40.3.4 Claw-backable Subcontractors fully comply with the financial transparency and reporting obligations set out in this Agreement including the provisions of Schedule 5.1 (Subsidy Payments).

41 ELIGIBILITY REQUIREMENTS FOR ERDF FUNDING

- 41.1 Each of the Parties agrees to comply with the provisions relating to ERDF Funding set out in Schedule 5.4 (Eligibility Requirements for ERDF Funding).
- 41.2 If the Minister wishes to utilise any alternative sources of funding (other than ERDF Funding, the provisions relating to which are governed by Clause 41.1 (Eligibility Requirements for ERDF Funding) and Schedule 5.4 (Eligibility Requirements for ERDF Funding)) to fund the Subsidy Payments, then to the extent that the use of such alternative sources of funding places additional obligations on NBPCo, such additional obligations

shall be dealt with as a Change in accordance with the provisions of the Change Control Procedure.

SECTION D – SUBCONTRACTING, SUPPLY CHAIN AND PROJECT DOCUMENTS

42 SUBCONTRACTORS

Key Subcontractors

42.1 [REDACTED]

42.1.1 [REDACTED]

42.1.2 [REDACTED]

42.1.3 [REDACTED]

[REDACTED]

42.1A [REDACTED]

42.1B [REDACTED]

42.1B.1 [REDACTED]

42.1B.2 [REDACTED]

[REDACTED]

42.2 [REDACTED]

42.2.1 [REDACTED]

42.2.2 [REDACTED]

[REDACTED]

42.3 [REDACTED]

42.3.1 [REDACTED]

42.3.2 [REDACTED]

[REDACTED]

42.4 [REDACTED]

42.4.1 [REDACTED]

42.4.2 [REDACTED]

42.4.3 [REDACTED]

42.4.4 [REDACTED]

42.4.5 [REDACTED]

42.4.6 [REDACTED]

42.5 [REDACTED]

42.5.1 [REDACTED]

42.5.2 [REDACTED]

42.5.3 [REDACTED]

42.5.4 [REDACTED]

42.5.5 [REDACTED]

42.5.6 [REDACTED]

(A) [REDACTED]

(B) [REDACTED]

42.5.7 [REDACTED]

[REDACTED]

Key Subcontract Provisions

42.6 Except to the extent that the Minister has agreed otherwise in writing in advance by specific reference to this Clause in respect of a specific Key Subcontract (which shall not be unreasonably withheld), NBPco shall ensure that each Key Subcontract (including each Key Subcontract in the Approved Form and including any Infrastructure Access Agreements) includes the Key Subcontract Provisions and complies with the provisions of Schedule 2.8 (Key Subcontractor Provisions) and, in the case of an Infrastructure Access Agreement, does not include any Infrastructure Access Restricted Provisions. The Minister shall give (or withhold) its consent under this Clause 42.6 (Subcontractors) with respect to a request in relation to specific identified Key Subcontract Provision within twenty-one (21) days of the receipt of the request.

42.7 NBPco shall:

42.7.1 enter into, and procure that each Critical Key Subcontractor upon its appointment shall; and

42.7.2 enter into, and procure that each Key Subcontractor upon its appointment shall (unless agreed otherwise in writing by the Minister),

enter into, a Key Subcontractor Direct Agreement with NBPco and/or Buildco, as applicable and with and in favour of the Minister in the Approved Form set out in Schedule 7.3 (Form of Key Subcontractor Direct Agreement) or on terms satisfactory to the Minister.

42.8 NBPco shall, on request by the Minister, use all reasonable endeavours to procure that a Claw-backable Subcontractor pays all sums due to NBPco under paragraph 10.3 (Claw-Back: Deployment) of schedule 5.1 (Payments) of the Buildco Key Subcontract. This does not limit or affect clause 17 (Financial Transparency and Clawback) of the Buildco Key

Subcontractor Direct Agreement or NBPco's obligations under Paragraphs 15.4 (Over-Subsidy Claw-Back: Deployment) and Paragraph 15.6 (Over-Subsidy Claw-Back: Deployment) of Schedule 5.1 (Subsidy Payments) of this Agreement.

42.9 NBPco shall:

42.9.1 initially appoint or, as applicable, procure that any 1st Tier Key Subcontractor appointing a 2nd Tier Key Subcontractor initially appoints:

(A) all Key Subcontractors, that enter into a Key Subcontract (whether in the form of a framework agreement, a Call-Off Key Subcontract, master agreement, contract or other agreement) with NBPco or a 1st Tier Key Subcontractor on or before the Effective Date, on the terms of the Key Subcontract approved by the Minister with respect to the Key Subcontractor concerned, provided that the entry into any Call-Off Key Subcontract pursuant to any such Key Subcontract which is in the form of framework agreement, master agreement or similar is subject to 42.1A (Subcontractors) and Clause 42.1B (Subcontractors); and

(B) **[REDACTED]**

42.9.2 not increase the unit rates, fees or charges payable under a Key Subcontract or other Subcontract within the scope of Paragraph 6 (Limited Maximum Rates Review) of Schedule 6.13 (Ministerial Oversight of Deployment Subcontract Procurement Process) except in accordance with that Paragraph; and

42.9.3 deliver to the Minister a certified copy of any Key Subcontract and Key Subcontractor Direct Agreement (and any collateral warranty in favour of NBPco from any Key Subcontractor) (or any variation or amendment made to any such agreement in accordance with the provisions of this Agreement) within ten (10) Working Days of it having been signed or otherwise executed by the relevant parties to it.

42.10 **[REDACTED]**

42.10.1 **[REDACTED]**

42.10.2 **[REDACTED]**

42.10.3 **[REDACTED]**

42.10.4 **[REDACTED]**

Renewal of Key Subcontracts

42.11 NBPco shall not without the prior written consent of the Minister (such consent not to be unreasonably withheld) terminate by agreement or fail to extend or renew (by act or omission) the term of a Key Subcontract (including any related licence with respect to any Key Subcontract for Infrastructure) unless, with the Minister's prior written consent pursuant to the provisions of this Clause 42 (Subcontractors), NBPco has appointed a replacement Key Subcontractor in respect of the Key Subcontract concerned. The Minister shall give (or withhold) its consent under this Clause 42.11 (Subcontractors) with respect

to any non-extension or non-renewal within twenty-one (21) days of the receipt of the request.

Management by NBPco of Subcontracts

42.12 NBPco shall:

42.12.1 not appoint, and shall ensure that its Critical Key Subcontractors do not appoint in connection with the Project, an Unsuitable Third Party (other than limb (a) of the definition of Unsuitable Third Party) as a Subcontractor; and

42.12.2 supervise and manage Key Subcontractors in a manner consistent with Best Industry Practice.

Cessation

42.13 The Minister may require NBPco to cease to use and/or replace any Subcontractor in connection with this Agreement, the Services, Wholesale Products, Network and/or Project (in any or all respects) where:

42.13.1 the Key Subcontractor is an Unsuitable Third Party (other than limb (a) of the definition of Unsuitable Third Party) and is engaged by NBPco or a Critical Key Subcontractor;

42.13.2 the Subcontractor is a Subcontractor to which limb (f) of the definition of Unsuitable Third Party applies;

42.13.3 the Subcontractor is a Key Subcontractor and its failure, acts or omissions has given rise to a Persistent Default or material Default of any of the provisions in:

(A) Clause 36 (Non-Discrimination and Transparency), Clause 37 (NBPco Requirements and Business Restrictions), Schedule 2.7 (NBPco Requirements), Schedule 2.6 (Communications, Demand Stimulation and Brand Plan), Schedule 5.1 (Subsidy Payments), Schedule 5.2 (Wholesale Prices, Price Benchmarking Rules and Wholesale Product Benchmarking Rules) and/or Schedule 5.5 (Accounting Separation); and/or

(B) Clause 19.18 (Wholesale Products), Clause 26 (Service and Network Future Proofing and Continuous Improvement) and/or Schedule 6.4 (Service, Network and Wholesale Product Compliance and Future Proofing);

42.13.4 [Deliberately blank]; and/or

42.13.5 the Subcontractor is Buildco and it has failed to comply, or bring itself into compliance with:

(A) the Buildco Key Subcontract in accordance with clause 20.2 (Performance Levels) of the Buildco Key Subcontract (and NBPco shall implement its rights under such clause upon written request by the Minister) and a subsequent written request by the Minister pursuant to clause 10.2 (Minister's Remedies) of the Buildco Key Subcontractor Direct Agreement within the timeline specified by the

Minister pursuant to clause 10.2 (Minister's Remedies) of the Buildco Key Subcontractor Direct Agreement; or

- (B) in respect of any provision in the Buildco Key Subcontractor Direct Agreement which is not reflected in an equivalent obligation of Buildco in the Buildco Key Subcontract, pursuant to clause 10.2 (Minister's Remedies) of the Buildco Key Subcontractor Direct Agreement within the timeline specified by the Minister pursuant to clause 10.2 (Minister's Remedies) of the Buildco Key Subcontractor Direct Agreement.

- 42.14 Without limiting or affecting any other provision of this Agreement (including any express requirement for NBPco to procure that its Subcontractors do or refrain from doing any act or thing), an obligation on NBPco to do, or to refrain from doing, any act or thing (where applicable) includes an obligation upon NBPco to procure, where relevant to the subject matter of the Subcontract concerned, that each Subcontractor and NBPco Personnel also do, or refrain from doing, such act or thing.

Supply Chain Protection

- 42.15 NBPco shall ensure that all Subcontracts to which it is a party contain a provision requiring NBPco to pay any undisputed sums which are due from NBPco to the Subcontractor within a specified period not exceeding thirty (30) days from the receipt of a valid invoice.

Retention of Responsibility

- 42.16 NBPco remains responsible for all acts and omissions of each Subcontractor and NBPco Personnel as if they were its own.

Benchmarking

- 42.17 NBPco shall ensure that all Key Subcontracts, including that with Buildco and all of Buildco's Key Subcontracts, contain provisions acknowledging and accepting the provisions of and the Minister's rights under Schedule 6.12 (Benchmarking and Market testing) in accordance with Paragraph 1.9 (Key Subcontractor Provisions) of Schedule 2.8 (Key Subcontractor Provisions), to the extent, in the case of each Key Subcontract, the provisions of Schedule 6.12 (Benchmarking and Market testing) are relevant to the Key Subcontract, the Key Subcontractor or its Subcontractors.

Buildco

- 42.18 NBPco shall procure and ensure that Buildco complies with the provisions of the Buildco Key Subcontract and the Buildco Key Subcontractor Direct Agreement.

43 SMALL AND MEDIUM SIZED ENTERPRISES

- 43.1 Subject to Clause 43.3 (Small and Medium Sized Enterprises), NBPco shall provide such processes and measures as may be appropriate so as to ensure that, where NBPco is proposing to subcontract any of the Services prior to or at any time during the Contract

Period, SMEs (when compared with other potential Subcontractors) are given fair access to the subcontracting opportunity. At a minimum, NBPco shall:

- 43.1.1 to the extent practicable, advertise its subcontracting opportunities in a form which is reasonably accessible by all potential Subcontractors including SMEs; and
- 43.1.2 propose to potential Subcontractors that are SMEs, such commercial, financial and technical terms and conditions that are no more onerous than the relevant terms and conditions proposed by NBPco to other potential Subcontractors. NBPco shall, however, be entitled to apply additional financial and performance security requirements consistent with Best Industry Practice to those SMEs who do not have the necessary credit profile (proportionate to nature and size of the task) when compared to other potential Subcontractors.

43.2 NBPco shall report on its engagement with, and the opportunities made available to, SMEs pursuant to Clauses 43.1 (Small and Medium Sized Enterprises) and 43.3 (Small and Medium Sized Enterprises) in accordance with Schedule 6.5 (Reports and Records). NBPco shall be entitled to withhold specific details about the relevant SMEs to the extent this would place NBPco in breach of confidentiality obligations owed by NBPco to such SMEs.

43.3 Nothing in this Clause 43 (Small and Medium Sized Enterprises) requires NBPco:

- 43.3.1 to disrupt or not utilise contracted arrangements under the Key Subcontracts with the Key Subcontractors identified in Schedule 3.9 (Key Subcontractors) as at the Commencement Date;
- 43.3.2 to disrupt or not utilise contracted supply chain arrangements which are in place for the purposes of NBPco Group's wider business and which are in effect prior to, or which come into effect after, the Commencement Date; or
- 43.3.3 to do anything which would reasonably be considered to raise health and safety risks.

44 PROJECT DOCUMENTS AND FUNDING DOCUMENTS

44.1 NBPco shall, and shall use all reasonable endeavours to procure that each Contracting Associate shall, perform its obligations under and observe all of the terms of the Project Documents to which it is a party.

44.2 NBPco shall promptly notify the Minister in writing if:

- 44.2.1 either party to a Project Document is in material default of the Project Document;
- 44.2.2 there is a material dispute between the parties to a Project Document in respect of the Project Document; or
- 44.2.3 there is a material deterioration in the commercial relationship between the parties to the Project Document,

which would have a material adverse effect on the Services, Network, Wholesale Products, Project or this Agreement or the rights and/or entitlement of the Minister under this Agreement or any Project Document. NBPco, subject to the relevant confidentiality provisions in the Project Document (and having reasonably mitigated the impact of the

confidentiality provisions on its disclosure obligations under this Clause), shall include in the notice a brief description of the issue, an assessment of any potential impact of the issue on the Services, Network, Wholesale Products, Project or this Agreement or the rights and/or entitlement of the Minister under this Agreement or any Project Document and details of the steps being taken to resolve the issue.

44.3 NBPco shall not (and shall use all reasonable endeavours to procure that no Contracting Associate shall):

44.3.1 once a Project Document to which it or a Contracting Associate is a party has come into full force and effect:

(A) terminate it or permit, during the term of such Project Document, its termination (provided that in the event of an occurrence of an event of default by a Key Subcontractor (other than Buildco) under its Key Subcontract, the Minister shall not object to NBPco terminating such Key Subcontract in accordance with its terms, but without limiting or affecting Clause **Error! Reference source not found.** (Subcontractors) or Clause **Error! Reference source not found.** (Subcontractors) or Schedule 6.13 (Ministerial Oversight of Deployment Subcontract Procurement Process) with respect to any replacement Key Subcontractor); or

(B) in any material respect waive, or fail to enforce, any rights it or a Contracting Associate may have under such Project Document (including the form of any Project Document in Approved Form) which action would have a material adverse effect on NBPco, the Project, Services, Network, Wholesale Products and/or the Minister's rights and/or entitlement under this Agreement or any Project Document;

44.3.2 make or agree to any material amendment to, or material variation of, the terms and conditions of any Project Document (including the form of any Project Document in the Approved Form), unless NBPco informs the Minister of a proposal to make such an amendment or variation and the Minister confirms in writing that such an amendment or variation is immaterial and does not require formal written approval from the Minister; or

44.3.3 enter into any agreement which would affect the interpretation or application of any Project Document,

unless the proposed course of action or relevant material amendment or material variation has been approved in writing by the Minister in advance by specific reference to this Clause in respect of the Project Document concerned. Without limiting or affecting any other provision of this Agreement (including Clause **Error! Reference source not found.** (Project Documents and Funding Documents)), the Minister is only entitled to raise comments or make objections with respect to any matter mentioned in Clause 44.3.2 (Project Documents and Funding Documents) or Clause 44.3.3 (Project Documents and Funding Documents) on a Ground of Objection or pursuant to Clause **Error! Reference source not found.** (Project Documents and Funding Documents).

44.4 **[REDACTED]**

44.4.1 **[REDACTED]**

44.4.2 [REDACTED]

44.4.3 [REDACTED]

[REDACTED]

44.5 If entering into, amending or varying any Funding Document, Project Document or other agreement or a waiver or exercise of a right under it will have the effect of:

44.5.1 increasing the Minister's liabilities on early termination of this Agreement; or

44.5.2 increasing NBPco's liabilities on termination of a Key Subcontract,

NBPco will obtain the prior written approval of the Minister, in accordance with the procedure set out in Clause **Error! Reference source not found.** (Project Documents and Funding Documents), in advance by specific reference to this Clause 44.5 (Project Documents and Funding Documents) in respect of the Funding Document, Project Document or other agreement concerned.

44.6 No:

44.6.1 amendment to, or variation of, or exercise of a right under the terms and conditions of any Project Document or Funding Document or other agreement or waiver or failure to enforce any rights under a Project Document or Funding Document or other agreement; or

44.6.2 failure by NBPco to comply, or procure compliance, with Paragraph 1 (Key Subcontractor Provisions) of Schedule 2.8 (Key Subcontractor Provisions),

shall have the effect of increasing the Minister's liabilities on early termination of this Agreement, unless NBPco has obtained the prior written consent of the Minister, in accordance with the procedure set out in Clause **Error! Reference source not found.** (Project Documents and Funding Documents), to such increased liability for the express purposes of this Clause 44.6 (Project Documents and Funding Documents). In the event of any conflict between the provisions of this Clause 44.6 (Project Documents and Funding Documents) and any other provision of this Agreement, the provisions of this Clause 44.6 (Project Documents and Funding Documents) shall prevail.

44.7 NBPco shall 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 Where a breach of Clause 44.5 (Project Documents and Funding Documents) arises directly as a result of an administrative or clerical error by NBPco, which error is rectified within five (5) Working Days from the date of occurrence of such error, such breach shall not be considered an NBPco Termination Event for the purposes of Paragraph 1.1.12 (NBPco Termination Event) of Schedule 10 (NBPco Termination Events). NBPco will notify the Minister of the occurrence of the administrative / clerical error as soon as is reasonably practicable.

44.9 If at any time:

44.9.1 any Project Document is terminated;

44.9.2 an amendment or variation is made to any Project Document;

44.9.3 NBPco or any Contracting Associate is granted a non-administrative waiver or release of any of the obligations under any Project Document; and/or

44.9.4 any agreement is entered into which would affect the interpretation or application of any of the Project Documents,

then NBPco shall deliver to the Minister a certified copy of each such document or (so far as it is not in writing) a true and complete record of such in writing within ten (10) Working Days of the date of its execution or creation, certified as a true copy by an officer of NBPco.

44.10 The provisions of this Clause 44 (Project Documents and Funding Documents) do not limit or affect any of the provisions of Clause 42 (Subcontractors).

44.11 [REDACTED]

44.11.1 [REDACTED]

44.11.2 [REDACTED]

44.12A.1 [REDACTED]

44.12A.2 [REDACTED]

44.12A.3 [REDACTED]

44.12A.4 [REDACTED]

44.12A.4.1 [REDACTED]

44.12A.4.2 [REDACTED]

44.12A.4.3 [REDACTED]

[REDACTED]

44.12A.5 [REDACTED]

44.12 [REDACTED]

44.12B.1 [REDACTED]

44.13 [REDACTED]

44.13.1 [REDACTED]

44.13.2 [REDACTED]

44.13.3 [REDACTED]

44.13.4 [REDACTED]

44.13.5 [REDACTED]

[REDACTED]

44.14 [REDACTED]

44.14.1 [REDACTED]

44.14.2 [REDACTED]

44.15 [REDACTED]

[REDACTED]

44.16 [REDACTED]

44.17 [REDACTED]

44.17.1 [REDACTED]

44.17.2 [REDACTED]

44.17.3 [REDACTED]

44.18 [REDACTED]

44.19 [REDACTED]

44.19.1 [REDACTED]

44.19.2 [REDACTED]

44.19.3 [REDACTED]

(A) [REDACTED]

(B) [REDACTED]

[REDACTED]

SECTION E - GOVERNANCE AND KEY PROCEDURES

45 REPRESENTATIVES

45.1 The Parties agree that:

45.1.1 the Minister shall throughout the Contract Term appoint a Minister's Representative; and

45.1.2 NBPco shall throughout the Contract Term appoint an NBPco Representative, who shall have authority to act on behalf of the respective Party on the matters set out in, or in connection with, this Agreement (including, in each case, the execution of a Change Authorisation).

45.2 The Minister is entitled to treat any act of NBPco's Representative in connection with this Agreement as being expressly authorised by NBPco without any requirement to determine whether any express authority has in fact been given. Any notice by NBPco to the Minister that NBPco's Representative is to be replaced or ceases to have authority for the purposes of this Agreement shall not be effective until the date which is two (2) Working Days from the date of NBPco's notice in writing to that effect or, if earlier, from the time of receipt by NBPco of written confirmation by the Minister that NBPco's notice under this Clause 45.2 (Representatives) has been received and is effective.

45.3 The Minister is entitled from time to time to appoint any person or persons to act on behalf of the Minister's Representative either generally in respect of this Agreement or specifically in respect of any particular Clauses or Paragraphs and any act of such person within the scope of their authority constitutes, for the purposes of this Agreement, an act of the Minister's Representative. The Minister shall give prior written notice of any such authorisation to NBPco. Such authorisation shall continue in force until such time as the Minister notifies NBPco in writing that the authorisation is determined.

45.4 NBPco is entitled to treat any act of the Minister's Representative in connection with this Agreement as being expressly authorised by the Minister without any requirement to determine whether any express authority has in fact been given. The Minister may, by written notice to NBPco, revoke or amend the authority of the Minister's Representative or appoint a new Minister's Representative. Any notice by the Minister to NBPco that the Minister's Representative is to be replaced or ceases to have the same or any authority for the purposes of this Agreement shall not be effective until the date which is two (2) Working Days from the date of the Minister's notice in writing to that effect or, if earlier, from the time of receipt by the Minister of written confirmation by NBPco that the Minister's notice under this Clause 45.4 (Representatives) has been received and is effective. The replacement or removal or amendment of the authority of the Minister's Representative shall not invalidate any actions or decisions of the Minister's Representative in such capacity prior to the effective date of its replacement or removal or amended authority under this Clause 45.4 (Representatives).

45.5 NBPco shall ensure that NBPco's Representative is competent to perform the duties and responsibilities of the NBPco Representative under this Agreement, and granted sufficient authority by NBPco (subject to Clause 45.2 (Representatives)), to ensure full cooperation in relation to the operation and the management of this Agreement.

45.6 The initial NBPco Representative as at the Commencement Date is the person named as such in Schedule 3.8 (Key Personnel). The replacement or removal of the NBPco

Representative shall not invalidate any actions or decisions of the NBPco Representative in such capacity prior to the effective date of its replacement or removal under Clause 45.2 (Representatives).

- 45.7 Any decision by the Minister's Representative is specific to the circumstances to which it relates, and does not bind or limit the Minister or Minister's Representative in respect of any other decision to be made by the Minister or Minister's Representative in the same or similar circumstances or otherwise.
- 45.8 Without limiting or affecting Clause 60 (Confidentiality), the Minister's Representative is entitled to consult anyone it considers appropriate in connection with the discharge of his duties in relation to this Agreement.
- 45.9 NBPco shall ensure that NBPco's Representative is available on reasonable prior written notice being given for consultation and engagement with the Minister and/or Minister's Representative on Working Days throughout the Contract Term.
- 45.10 The Minister shall ensure that the Minister's Representative is available on reasonable prior written notice being given for consultation and engagement with NBPco and/or NBPco's Representative on Working Days throughout the Contract Term.

46 GOVERNANCE

- 46.1 The Parties agree to manage their relationship and this Agreement in accordance with Schedule 6 (Governance and Key Procedures) (comprising Schedule 6.1 (Contract Liaison Board) to Schedule 6.13 (Ministerial Oversight of Deployment Subcontract Procurement Process) (inclusive).
- 46.2 NBPco acknowledges and agrees that the terms of this Agreement shall be subject to the terms of Schedule 6.12 (Benchmarking and Market Testing) and NBPco undertakes to participate in any Benchmark Review as requested by the Minister in accordance with Schedule 6.12 (Benchmarking and Market Testing).

47 AUDIT

Audit and Review by Minister

- 47.1 NBPco shall comply and procure compliance with Schedule 6.11 (Audits) in relation to the exercise of the Audit Rights by the Minister and, as applicable, any Audit Agents.
- 47.2 NBPco acknowledges and agrees that the Minister may engage or ask the Agency to undertake audits, monitoring or spot checks of NBPco as if it were the Minister or to assist the Minister in such respect.

Audit by Regulatory Body

- 47.3 NBPco acknowledges that the relevant powers of a Regulatory Body from time to time in respect of any audit are in no way fettered by this Agreement and that the Regulatory Body

may undertake the audit in such manner as it considers appropriate in accordance with Law.

47.4 [Not used]

Independent Assurance

47.5 NBPco shall comply and procure compliance with Schedule 6.10 (Independent Assurance).

Other Provisions

47.6 The provision by NBPco of false or materially misleading information, data or documents to a Regulatory Body, the Minister, an Audit Agent or an Independent Assurance Reviewer pursuant to any provision of this Agreement, with the result that such information is incorrect or misleading in a material respect, or the refusal or failure by NBPco (or NBPco Personnel) to comply with the provisions of this Clause 47 (Audit), is a material Default of this Agreement.

47.7 NBPco shall bear its own costs and expenses incurred in respect of compliance with this Clause 47 (Audit), unless and to the extent that:

47.7.1 such costs and expenses are recoverable as Permitted Expenditure pursuant to Schedule 5.1 (Subsidy Payments); or

47.7.2 Schedule 6.11 (Audits) expressly provides otherwise.

47.8 The provisions of this Clause 47 (Audit) do not limit or affect the provisions of Schedule 6.10 (Independent Assurance), Schedule 6.11 (Audits) and Schedule 6.7 (Performance Levels).

48 RECORDS AND REPORTS

48.1 NBPco shall comply with the provisions of Schedule 6.5 (Reports and Records) and Schedule 6.7 (Performance Levels).

48.2 Without limiting or affecting Clause 48.1 (Records and Reports) and the Schedules referred to in it, NBPco shall, consistent with Best Industry Practice, 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 (including the applicable Performance Levels) and NBPco's Solution at a level of detail sufficient to verify compliance with the same.

48.3 Subject to the provisions of Clause 60 (Confidentiality), NBPco acknowledges and agrees that the Minister may share the Reports, Open Book Data and records provided or made available to it pursuant to the provisions of this Clause 48 (Records and Reports) and Schedules identified in it with any Audit Agent, Regulatory Body (including the Agency and Regulator) or any other Public Service Body.

- 48.4 Without limiting or affecting any other provision of this Agreement setting out express response times for specified obligations, NBPco shall provide all information requested pursuant to this Agreement within:
- 48.4.1 ten (10) Working Days of receipt by NBPco of the relevant request in writing from or on behalf of the Minister; or
 - 48.4.2 such longer period as the Minister may, with respect to any particular request from time to time, specify in writing; or
 - 48.4.3 as applicable, such period as may otherwise be agreed in writing by the Parties from time to time with respect to a specific request.

49 CHANGE CONTROL PROCEDURE

- 49.1 The Parties will comply with their respective obligations in relation to Changes and Operational Changes as set out in Schedule 6.2 (Change Control Procedure).

50 DISPUTES

- 50.1 The Parties will resolve all Disputes (whether contractual or non-contractual) subject to, and in accordance with, the Dispute Resolution Procedure set out in Schedule 6.3 (Dispute Resolution Procedure).
- 50.2 Subject to Clause 50.3 (Disputes), the Parties shall continue to perform their respective obligations under this Agreement, including, in respect of NBPco, the provision of the Services, Wholesale Products and Network and, in respect of the Minister, the making of any undisputed payments payable to NBPco under this Agreement, subject to and in accordance with this Agreement throughout any Dispute and until it has been resolved as if there was no Dispute in such respect.
- 50.3 Save to the extent otherwise provided expressly in this Agreement, to the extent and for so long only that a Dispute as to whether any payment is due or payable under this Agreement (the “**relevant payment Dispute**”), neither Party shall be entitled to enforce or impose on the other Party any claim, liability or penalty under this Agreement in respect of the payment obligation under this Agreement that is the subject of the relevant payment Dispute. This Clause 50.3 (Disputes) shall not prevent either Party from enforcing its rights in respect of the relevant payment obligations following the resolution of the relevant payment Dispute to the extent that the Dispute was found in favour of the Party that would, but for this Clause, be entitled to enforce the relevant payment obligation (or part of it).

SECTION F – PERSONNEL AND ASSETS

51 NBPCO PERSONNEL

General

- 51.1 NBPco shall:
- 51.1.1 comply with all employment, discrimination and equality Laws in connection with NBPco Personnel and shall use all reasonable endeavours to procure that all Key Subcontractors comply with such Laws in respect of their own employees,

agents, consultants and contractors employed or engaged by them in respect of this Agreement;

51.1.2 provide and use sufficient appropriately qualified, skilled, trained and experienced NBPco Personnel to provide the Services in a manner consistent with Best Industry Practice (including by providing appropriate cover for sick, maternity, paternity and annual leave, work to be done out-of hours and any other circumstances requiring cover for absences);

51.1.3 use all reasonable endeavours to ensure that all NBPco Personnel:

(A) have all required work visas; and

(B) are provided with all appropriate information, training and knowledge transfer (particularly in the case of any permitted replacement of any of the Key Personnel) in advance of commencement to the extent required for fulfilment of their role;

51.1.4 put in place appropriate procedures to ensure that it retains overall control of NBPco Personnel when performing duties or obligations on behalf of NBPco so that NBPco Personnel shall not be deemed to be employees, agents, temporary agents or contractors of the Minister;

51.1.5 be liable for all acts or omissions of NBPco Personnel in connection with NBPco's Personnel's performance or non-performance of obligations under or pursuant to this Agreement, so that any such act or omission of any NBPco Personnel which results in a Default under this Agreement is a Default by NBPco; and

51.1.6 subject to the provisions of Clause 42 (Subcontractors) and the other provisions of this Clause 51 (NBPco Personnel) regarding replacement of NBPco Personnel, replace (temporarily or permanently, as appropriate) any NBPco Personnel as soon as practicable if any NBPco Personnel have been removed or are unavailable for any reason whatsoever where such replacement is required in order for NBPco to comply with its obligations under this Agreement.

51.2 NBPco, subject to the provisions of Clause 42 (Subcontractors), shall in accordance with Law and Best Industry Practice terminate the appointment of any NBPco Personnel (including Key Personnel) in respect of their involvement with this Agreement where it reasonably believes that such person represents a security risk and/or does not have the required levels of qualifications, skills, training and/or technical expertise and/or is unsatisfactory for any other reason.

51.3 The Minister is not liable for the cost of, and NBPco is not entitled to any increase in the Subsidy Payments in connection with, the replacement of any NBPco Personnel (including Key Personnel).

Convictions

- 51.4 NBPco shall, and shall use reasonable endeavours to procure that Key Subcontractors shall:
- 51.4.1 where a role to be performed by any of the NBPco Personnel is or would be subject to vetting consistent with Best Industry Practice, carry out appropriate checks and vetting for:
- (A) NBPco Personnel employed or engaged, or proposed to be employed or engaged, in the role; or
 - (B) prospective NBPco Personnel proposed to be employed or engaged in the role,
- in a manner consistent with Best Industry Practice in relation to Convictions; and
- 51.4.2 conduct such questioning and investigation as is reasonable, appropriate and necessary in the circumstances regarding any Convictions, where the above required checks reveal a Conviction.
- 51.5 NBPco shall not (and shall use reasonable endeavours to ensure that a Key Subcontractor does not) engage or continue to utilise in the provision of any part of the Services any person who discloses that he has a Relevant Conviction, or who is found by NBPco to have any Relevant Convictions (whether as a result of a Garda Síochána vetting check or otherwise).

Key Personnel

- 51.6 Schedule 3.8 (Key Personnel) lists the Key Roles and names of the persons who NBPco shall appoint to fill those Key Roles at the Commencement Date.
- 51.7 NBPco acknowledges that the Key Personnel are essential to the proper provision of the Services and Network. NBPco shall ensure that any person appointed to a Key Role is fully competent to carry out the tasks assigned to the relevant Key Personnel and has a level of qualifications, training, skills, experience and technical experience appropriate to the relevant Key Role.
- 51.8 Subject to Clause 51.9 (NBPco Personnel), NBPco shall 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 in the provision of the Services that is commensurate with and sufficient to perform the obligations of that person's role (which shall be at least for the expected duration of the role set out in Schedule 3.8 (Key Personnel)).
- 51.9 NBPco shall:
- 51.9.1 not remove or replace any Key Personnel unless the relevant Key Personnel is promptly replaced with someone with the appropriate qualifications, skills, training and expertise necessary to perform the relevant Key Role. Any changes to the Key Personnel from time to time shall be recorded by the Parties on the list of Key Personnel in Schedule 3.8 (Key Personnel); and
- 51.9.2 use all reasonable endeavours with a view to ensuring that arrangements for planned changes in Key Personnel provide adequate periods during which

incoming and outgoing personnel work together to transfer responsibilities and ensure that such change does not have an adverse impact on the provision of the Services, Wholesale Products or Network.

Industrial Action

- 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 shall 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.
- 51.11 The occurrence of any industrial action by NBPco Personnel or others does not entitle NBPco to an extension of time and/or relief from its obligations under this Agreement save to the extent (if at all) that such constitutes a Relief Event in which case the provisions of Clause 18 (Relief Event) will apply to such extent.

Employment Indemnity

- 51.12 NBPco shall, 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 or in connection with:
- 51.12.1 any act or omission of NBPco or any NBPco Personnel during the Contract Term; and/or
- 51.12.2 any claims, decision, ruling or finding that any NBPco Personnel are an employee or temporary agency worker of the Minister.

The three (3) year limitation period does not apply in the event of any fraud by NBPco.

- 51.13 Where NBPco or any NBPco Personnel are liable to be taxed in Ireland or to pay social insurance contributions or any levies or universal social charges in respect of consideration received under or in connection with this Agreement, NBPco shall:
- 51.13.1 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 and the provisions of the Social Welfare Consolidation Act 2005 and all other applicable statutes and regulations relating to social insurance contributions, in respect of that consideration; and
- 51.13.2 during and for a period of six (6) years after the Contract Term (unless NBPco's failure is deemed to be on account of or arise from a fraudulent or negligent act, in which case this six (6) year limitation shall not apply), be responsible for, and on demand release and indemnify the Minister on a continuing basis from and against, any income tax, social insurance contributions and universal social charges and any levies and any other liability, deduction, contribution, assessment or claim arising from or made in connection with the provision of the Services by NBPco or any NBPco Personnel, including any interest or penalties.

- 51.14 NBPco is not responsible or obliged to indemnify the Minister under this Clause 51 (NBPco Personnel) to the extent that the liability arises as a result of:
- 51.14.1 the negligence or wilful misconduct of the Minister or its employees, agents or contractors, other than NBPco and the NBPco Personnel, but excluding to the extent that such negligence would not have occurred but for a breach by NBPco of its obligations under this Agreement (or of any NBPco Personnel in respect of a Subcontract);
 - 51.14.2 a breach by the Minister of its obligations under this Agreement (but excluding to the extent that such breach would not have occurred but for a breach by NBPco of its obligations under this Agreement); or
 - 51.14.3 NBPco acting on the express written instruction of the Minister to NBPco but excluding to the extent that:
 - (A) the relevant state of affairs or occurrence concerned would still have occurred if the Minister had not given the express written instruction concerned;
 - (B) the instruction could have been implemented by or on behalf of NBPco (including by a Subcontractor) without giving rise to the relevant state of affairs or occurrence; and/or
 - (C) NBPco grossly negligently failed to advise the Minister of the consequence of implementing such instruction.

52 ASSETS

- 52.1 Without limiting or affecting the provisions of the Minister Security Documents, NBPco shall (except to the extent approved in advance by the Minister in writing in a specific case):
- 52.1.1 procure and maintain:
 - (A) absolute ownership of all NBPco Assets throughout the Contract Term; and
 - (B) without limiting or affecting Clause 52.1.1(A) (Assets), by way of absolute ownership, lease, licence or other legally enforceable contractual entitlement, sufficient rights (including of access, use, operation, maintenance, interconnection (where applicable) and otherwise) of all Assets throughout the Contract Term in order that it can comply with its obligations under the provisions of this Agreement;
 - 52.1.2 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
 - 52.1.3 not exercise its Implementation Discretion in such a way that its, direct or indirect, operation, use and/or exploitation (including by leasing or licensing the Assets to third parties or granting rights of operation or use of the Assets to third

parties) of the Assets gives rise to a breach of the State Aid Decision and/or State Aid Law.

52.2 NBPco shall, consistent with Best Industry Practice, procure for NBPco, and use reasonable endeavours to ensure that Key Subcontractors procure for NBPco, the benefit of all warranties, guarantees and indemnities available from any manufacturers or suppliers of the Assets.

53 ASSET REGISTER

53.1 NBPco shall, consistent with Best Industry Practice, throughout the Contract Term:

53.1.1 develop and maintain; and

53.1.2 update as reasonably necessary and appropriate,

an accurate written inventory of the location, specific type and, where applicable, specification and configuration of all Assets (which is kept reasonably up to date) (the “**Asset Register**”) in a form and manner so that it is accessible and auditable by NBPco and the Minister in real time.

53.2 NBPco shall ensure that, further to Clause 53.1 (Asset Register), the Asset Register shall contain details of:

53.2.1 Asset number / unique identifier;

53.2.2 the make and model of the Asset (if applicable);

53.2.3 physical location of the Asset (if applicable) and to the extent reasonably practicable, the condition of the Asset;

53.2.4 technical specification of the Asset and As-Built Drawings;

53.2.5 the owner and, where applicable, lessor of each Asset;

53.2.6 Land Rights (provided that if a Land Right granted by a third party to, or used by or on behalf of, NBPco or Buildco is not documented in a written instrument, NBPco shall, insofar as it is aware (having made such inquiries as a prudent and reasonable operator, operating the same or substantially similar business in Ireland or elsewhere in the European Union to that operated by NBPco, would in accordance with Best Industry Practice in similar circumstances) include in the Asset Register the fact that the Land Right is not documented in a written instrument and reasonable details identifying the type, nature and scope of the Land Right, the identity of any relevant third parties and any other information which is of material relevance to the understanding, exercise, use, reliance upon or enforcement of the Land Right); and

53.2.7 Subcontracts and other relevant agreements (including relevant software licences, maintenance and support agreements and equipment rental and lease agreements) and licences which are relevant to or required for the provision of the Services, Network and/or Wholesale Products in accordance with this Agreement or required for the use, support and/or maintenance of the Assets. For the avoidance of doubt, this shall include details of all agreements and arrangements between NBPco and any Infrastructure Access Provider (including Infrastructure Access Agreements) and all Land Rights required by

NBPco to facilitate or enable access to Infrastructure required for the purposes of this Agreement together with details of the specific underlying Access Network Assets (including, for example, duct and pole infrastructure), whether inside or outside the Intervention Area, to which such licences relate.

- 53.3 NBPco shall 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 G - IPR, DATA AND CONFIDENTIALITY

54 INTELLECTUAL PROPERTY RIGHTS

- 54.1 Except as expressly set out in Clause 55 (Licence Granted by NBPco) and Clause 56 (Licence Granted by the Minister), a Party does not by virtue of this Agreement acquire any right, title or interest in or to the IPR of the other Party, or that other Party's licensors.

- 54.2 Where NBPco, Contracting Associates or NBPco Personnel acquires, by operation of Law, title to IPR that is inconsistent with Clause 54.1 (Intellectual Property Rights), NBPco will, as soon as reasonably practicable (to the extent not prevented by the relevant Law):

54.2.1 assign, convey and set over unto (or, as applicable, procure that this is done by the NBPco Personnel or Contracting Associates) in writing absolutely such IPR (free from Encumbrances and together with the right to sue for past infringements) as that person has acquired to the Minister (or, at the direction of the Minister, to such other person as the Minister may nominate from time to time); and

54.2.2 execute and deliver all such other documents as may be necessary to perfect such title and enable the Minister (or its nominee) to enjoy the full benefits of ownership of the relevant IPR.

- 54.3 Where the Minister or any of its agents, officers or employees for the purposes of this Agreement acquires, by operation of Law, title to IPR that is inconsistent with Clause 54.1 (Intellectual Property Rights), the Minister will as soon as reasonably practicable following a written request by NBPco (to the extent not prevented or restricted by the relevant Law):

54.3.1 assign, convey and set over unto (or, as applicable, use all reasonable endeavours to procure that this is done by the Minister's agents, officers or employees for the purposes of this Agreement) in writing absolutely such IPR (free from Encumbrances and together with the right to sue for past infringements) as that person has acquired to NBPco; and

54.3.2 execute and deliver all such other documents as may be necessary to perfect such title and enable NBPco to enjoy the full benefits of ownership of the relevant IPR.

- 54.4 NBPco has no right to use the Minister's names, logos or trade marks on any of its products or services or otherwise without the Minister's prior and specific written consent, such consent not to be unreasonably withheld or delayed where specifically required in order to comply with an obligation of NBPco under this Agreement.

- 54.5 The Minister is entitled to refer to NBPco (and use its names, logos and trade marks when doing so) in connection with the Project, but is not (except to the extent permitted by Law

or pursuant to Clause 55 (Licence Granted by NBPco)) entitled otherwise to use NBPco's names, logos or trade marks.

54.6 NBPco shall, throughout the Contract Term, provide and perform its obligations under this Agreement so that it does not infringe the Intellectual Property Rights of any third party.

55 LICENCE GRANTED BY NBPCO

55.1 Subject to Clause 60 (Confidentiality) and Clause 55.2 (Licence Granted by NBPco), NBPco grants to the Minister a royalty free, fully paid-up, non-exclusive, sub-licensable, irrevocable and non-terminable licence to:

55.1.1 copy and use;

55.1.2 distribute to and/or permit its agents, consultants, professional advisers, the Regulator and Agency to copy and use (and for that purpose to sub-licence the NBPco IPR to them); and

55.1.3 distribute to and/or permit any person engaged by the Minister for the purposes of undertaking or assisting in connection with the taking of any Required Action to copy and otherwise use (and for that purpose to sub-licence the NBPco IPR to them),

NBPco IPR (including any contained in any information, database, software, document, specification, design, map, system, model, drawing, report, plan or other material whatever) solely to the extent necessary for:

55.1.4 managing, overseeing and administrating the Project and Agreement;

55.1.5 surveying, monitoring, inspecting, auditing, analysing, testing and reporting on the provision of the Services, Wholesale Products, Network, Project and NBPco's obligations under this Agreement;

55.1.6 performing the Minister's obligations under this Agreement and, to the extent relevant to this Project and Agreement, under Law;

55.1.7 receiving and benefiting from, and exercising, the Minister's rights and remedies under this Agreement and, to the extent relevant to this Project and Agreement, under Law;

55.1.8 in the case of the Regulator or Agency, receiving and benefiting from, and exercising, the Regulator's and Agency's rights, powers and remedies under this Agreement and, to the extent relevant to this Project and Agreement, under Law; and

55.1.9 taking any Required Action in accordance with the provisions of Clause 73 (Step-In Rights), but only to the extent reasonably necessary to take such Required Action.

The Minister shall not, and shall use all reasonable endeavours to procure that the other parties referred to in this Clause 55.1 (Licence Granted by NBPco) (other than NBPco and

the NBPco Personnel) shall not, copy, distribute or otherwise use the NBPco IPR for any purpose other than as set out above.

- 55.2 References in this Clause to a copying right shall not, to the extent that third party software is involved, include a right to take a copy of third party software comprised in NBPco IPR where NBPco does not have the legal or contractual right pursuant to its relevant software licences to provide such a copy of the third party software to the Minister. In such event, the Minister shall be entitled to take a copy of relevant data (as opposed to a copy of underlying software). If and to the extent that taking a copy of relevant data only is not sufficient to achieve the purposes required by the Minister to exercise his rights under this Clause, NBPco shall use reasonable endeavours in good faith to procure the relevant copying rights required by the Minister and the sharing or other allocation of the third party cost of such copying rights shall be agreed in writing by the Parties at the relevant time.
- 55.3 The Minister shall only permit a third party (other than NBPco or NBPco Personnel) under Clauses 55.1.2 (Licence Granted by NBPco) and 55.1.3 (Licence Granted by NBPco) to copy, distribute or use NBPco IPR pursuant to Clause 55.1 (Licence Granted by NBPco) if the relevant third party has entered into a written and legally binding confidentiality undertaking with the Minister on terms at least as protective as Clause 60 (Confidentiality).
- 55.4 The Minister shall not cover, obscure, delete or remove any proprietary notices contained within or on the NBPco IPR.
- 55.5 The licence granted to the Minister pursuant to Clause 55.1 (Licence Granted by NBPco) shall terminate when the Minister ceases to require the licence for the purposes set out in Clause 55.1 (Licence Granted by NBPco). For the avoidance of doubt, this means that the licence shall survive expiry or termination of this Agreement to the extent and for the period necessary for the purposes set out in Clause 55.1 (Licence Granted by NBPco). As soon as practicable after such date, the Minister shall, as applicable (at the request and direction of NBPco), destroy or deliver to NBPco all NBPco IPR then in its possession in accordance with Clause 80 (Consequences of Termination or Expiry).
- 55.6 The Minister has no lien, and shall not attempt to exercise any lien over, NBPco's IPR to the extent that to do so would infringe NBPco's or its licensors rights under intellectual property Law (including with respect to copyright, patents, sui generis database rights, design rights and trade marks).

56 LICENCE GRANTED BY THE MINISTER

- 56.1 Subject to Clause 60 (Confidentiality), the Minister grants to NBPco a royalty-free, fully paid-up, non-exclusive, non-transferable, sub-licensable licence to copy, distribute or use and, subject to Clause 56.2 (Licence Granted by the Minister) for NBPco to permit its Subcontractors, agents, consultants and professional advisors to copy, distribute or use:

56.1.1 the Minister IPR contained in any information, document, specification, drawing, plan or other material supplied or made available by the Minister to NBPco; and

56.1.2 the Minister Data,

solely to the extent necessary for the performance of NBPco's obligations under this Agreement. NBPco shall not, and shall use all reasonable endeavours to procure that the

NBPco Personnel shall not, copy, distribute or otherwise use the Minister IPR and Minister Data for any other purpose.

- 56.2 NBPco shall only permit its Subcontractors, agents, consultants and professional advisors to copy, distribute or use the Minister IPR or Minister Data pursuant to Clause 56 (Licence Granted by the Minister) if the relevant Subcontractor, agent, consultant and professional advisor has entered into a written and legally binding confidentiality undertaking with NBPco on terms at least as protective as Clause 60 (Confidentiality).
- 56.3 NBPco shall not cover, obscure, delete or remove any proprietary notices contained within or relating to the Minister IPR.
- 56.4 The licence granted to NBPco pursuant to Clause 56.1 (Licence Granted by the Minister) shall apply for the duration of the Contract Period or, if NBPco demonstrates to the Minister's satisfaction that a longer period is necessary having regard to the nature of NBPco's rights and obligations in respect of the Network, for such longer period as is necessary and as agreed in writing by the Parties. As soon as practicable after such date, NBPco shall, as applicable (at the direction of the Minister), destroy or deliver to the Minister all Minister IPR and Minister Data (as applicable) then in its possession and NBPco shall use all reasonable endeavours to procure that any Subcontractor, agent, consultant or professional advisor to whom NBPco disclosed any Minister IPR and/or Minister Data in accordance with this Clause 56 (Licence Granted by the Minister) destroys or returns to the Minister all such Minister IPR and/or Minister Data in accordance with the Minister's direction.
- 56.5 NBPco and its NBPco Personnel have no lien, and NBPco shall not (and shall procure that its Subcontractors, agents, consultants and professional advisors shall not) purport or attempt to exercise, any lien over any of the Minister's IPR and Minister Data.
- 56.6 For clarity:
- 56.6.1 the Minister has no obligation to provide or licence to NBPco any Minister IPR or Minister Data;
 - 56.6.2 the Minister shall not in any case licence or be interpreted as having licensed to NBPco any Excluded Third Party IPR (and NBPco shall be exclusively responsible for procuring a licence to Excluded Third Party IPR); and
 - 56.6.3 the Minister may at any time revoke any licence and/or require the return of and/or any cessation of use of Minister IPR and/or Minister Data immediately by notice in writing where NBPco (or any of its Subcontractors, agents, consultants and professional advisors) is in breach of its obligations under this Clause 56 (Licence Granted by the Minister).

57 MINISTER DATA

- 57.1 NBPco shall not cover, obscure, delete or remove any proprietary notices contained within or relating to the Minister Data.
- 57.2 NBPco shall not store, copy, disclose, process or use the Minister Data except as necessary for the performance by NBPco of its obligations under this Agreement.
- 57.3 To the extent that Minister Data is held and/or processed by NBPco, NBPco shall, at its cost, supply that Minister Data to the Minister (or its nominee) when requested by the Minister in the format originally provided by the Minister or in such other format as the

Parties may agree in writing at the relevant time (subject to the cost of provision of any alternative format being agreed by the Parties).

57.4 NBPco is, with respect to any Minister Data held and/or processed by NBPco, responsible for preserving the security, integrity and availability of Minister Data and preventing the corruption, degradation, theft, loss of, or damage or unauthorised access to, Minister Data in a manner consistent with Best Industry Practice and taking into account the sensitivity of any such Minister Data.

57.5 If at any time NBPco suspects or has reason to believe that Minister Data has or may become unavailable, insecure, corrupted, lost, stolen, damaged, degraded, accessed without authority or its integrity compromised in any way for any reason, then NBPco shall notify the Minister forthwith.

58 DATA PROTECTION

58.1 NBPco:

58.1.1 is an independent controller (and, in particular, is not a joint controller with the Minister) in relation to; and

58.1.2 shall comply with its applicable obligations under the Data Protection Legislation in relation to,

all personal data processed by or on behalf of NBPco and shall not perform its obligations or exercise its rights under this Agreement in such a way as to cause the Minister, Regulator or Agency to breach any of the Minister's, Regulator's or Agency's applicable obligations under the Data Protection Legislation.

58.2 To the extent that the Minister receives any personal data within the meaning of the Data Protection Legislation from NBPco pursuant to this Agreement, the Minister shall comply with obligations applicable to the Minister under the Data Protection Legislation in respect of such personal data provided that the Minister shall not be liable under or pursuant to this Clause to the extent that any non-compliance is due to NBPco's or any NBPco Personnel's failure to comply with the Data Protection Legislation.

59 REQUESTS FOR INFORMATION

59.1 NBPco acknowledges and agrees that the Minister and Regulator are, and the Agency may be, subject to the requirements of the FOI Act and Environmental Information Regulations and that, accordingly, information (including, without limitation, the Subsidy Payments) may be released by any of them pursuant to Law.

59.2 NBPco shall, and shall procure that Buildco shall:

59.2.1 assist and cooperate with the Minister, Agency and Regulator to the extent reasonably necessary to enable the Minister or, to the extent connected to the Regulator's or Agency's role in respect of this Agreement, the Regulator or

Agency to comply with their respective disclosure obligations under the FOI Act, Environmental Information Regulations or Law; and

- 59.2.2 provide any information and data and support within the possession or power of NBPco or Buildco or either of their directors or Associated Company which is reasonably requested by the Minister:
- (A) in relation to its statements to or responses to questions or issues raised by or on behalf of the Oireachtas or Oireachtas Committee or any member of either of them or an Audit Agent;
 - (B) for the purpose of the Minister's internal and statutory audits and/or the preparation, examination and/or certification of the Minister's annual and interim reports and accounts by the Minister or an Audit Agent;
 - (C) for the purposes of any examination or report by the Office of the Comptroller & Auditor General or Public Accounts Committee or other Oireachtas Committee relating to the efficiency, economy, and effectiveness with which the Minister has used its resources; and/or
 - (D) to obtain such information as is necessary to fulfil the Minister's obligations to supply information for parliamentary, ministerial, judicial or administrative purposes including the supply of information to the Comptroller and Auditor General.

To the extent that NBPco would, but for this Clause 59.2.2 (Requests for Information), be entitled as a matter of law to legitimately withhold any information requested for the purposes of complying with this Clause 59.2.2 (Requests for Information), the Minister shall not make available any such information without informing NBPco first provided that, at the time of disclosing the information to the Minister, NBPco identifies the information concerned as being "subject to the Clause 59.2.2 (Requests for Information) proviso". The Parties shall, on request by NBPco in writing, discuss in good faith any reasonable concerns of NBPco and reasonable ways to potentially mitigate them on an urgent basis provided that, ultimately the Minister is entitled to disclose information at its discretion.

59.3 None of the Minister, Agency nor the Regulator is liable in any way to NBPco (or any other person) in respect of any information disclosed by the Minister, Agency or Regulator pursuant to Law and/or any liabilities suffered or incurred by NBPco (or any other person) in connection with such disclosure.

59.4 NBPco shall, upon written request by the Minister:

- 59.4.1 provide the Minister with a copy of all records (as defined in the relevant legislation) in its possession, or power, in the form that the Minister requires within seven (7) Working Days (or, if applicable, such other period as the Minister may specify to enable compliance with Law) of the Minister's request; and

59.4.2 provide all necessary assistance as reasonably requested by the Minister or, to the extent connected to the Agency's or Regulator's role in respect of this Agreement, the Regulator and Agency,

to enable the Minister, Agency or Regulator to consider and respond to the Request for Information within the time for compliance required by Law.

59.5 Following notification of a Request for Information and up until such time as NBPCo has provided the Minister, Agency or Regulator with all the information specified in Clause 59.4.1 (Requests for Information), NBPCo may make representations to the Minister, Agency or Regulator as to whether or not or on what basis information requested should be disclosed, and whether further information should reasonably be provided in order to identify and locate the information requested. The Minister, Agency or Regulator (as applicable) shall determine in their respective discretion whether any information and records are exempt from disclosure in accordance with the provisions of the FOI Act or Environmental Information Regulations or otherwise under Law.

59.6 In no event shall 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 CONFIDENTIALITY

60.1 Except to the extent set out in the provisions of this Clause 60 (Confidentiality) or to the extent disclosure is expressly permitted elsewhere in this Agreement, a Party shall:

60.1.1 treat the other Party's Confidential Information as confidential and keep it secure and safeguarded accordingly; and

60.1.2 not disclose the other Party's Confidential Information to any other person without the other Party's prior written consent.

60.2 This Clause 60 (Confidentiality) shall, subject to Clause 60.3 (Confidentiality), not apply to the extent that:

60.2.1 subject to Clause 60.7 (Confidentiality), such disclosure is a requirement of Law placed upon the Party making the disclosure, including any requirements for disclosure under the FOI Act or Environmental Information Regulations;

60.2.2 such information was in the possession of the Party making the disclosure without obligation of confidentiality prior to its disclosure by the information owner;

60.2.3 such information was obtained from a third party without obligation of confidentiality;

60.2.4 such information was already in the public domain at the time of disclosure otherwise than by a breach of this Agreement or other duty of confidentiality;

60.2.5 it is independently developed without access to the other Party's Confidential Information;

60.2.6 disclosure is required by any recognised international stock exchange (being for this purpose, the Irish Stock Exchange Limited, London Stock Exchange plc., or such other international stock exchange as may be agreed from time to time by

the Parties) or regulatory or government body to which the disclosing Party is subject, wherever situated provided that this Clause shall only apply where any such requirement has the force of law (failing which, where another exemption under this Clause 60 (Confidentiality) does not apply, the disclosing Party shall obtain the prior written consent of the other Party pursuant to Clause 60.1.2 (Confidentiality));

60.2.7 if and to the extent necessary or desirable to enable a determination to be made under the Dispute Resolution Procedure (but then subject to any third parties to whom disclosure is made being subject to confidentiality obligation at least as protective as the obligations under this Clause 60 (Confidentiality)); or

60.2.8 disclosure is necessary in respect of the registration or recording of any Consent or property registration required under or pursuant to this Agreement.

60.3 If either Party is required by Law or any law pursuant to Clause 60.2.6 (Confidentiality) to make a disclosure of the other Party's Confidential Information, the disclosing Party shall:

60.3.1 take reasonable steps to limit the extent of the Confidential Information being disclosed;

60.3.2 as soon as reasonably practicable and to the extent permitted by Law notify the other Party of the full circumstances of the required disclosure including, as applicable, the relevant Law and/or Regulatory Body requiring such disclosure and the Confidential Information to which such disclosure would apply; and

60.3.3 assist the other Party in taking steps to prevent or reduce the extent of the Confidential Information to be disclosed.

60.4 The Parties shall:

60.4.1 ensure that the other Party's Confidential Information is used by it or the parties whom it makes disclosure in accordance with this Agreement only for the purposes of or as permitted by this Agreement; and

60.4.2 immediately notify the other Party in writing if it suspects or becomes aware of any unauthorised access, copying, compromise, use or disclosure in any form of any of the other Party's Confidential Information in breach of that Party's obligations under this Agreement.

60.5 NBPco may only disclose the Minister Confidential Information to:

60.5.1 the Subcontractors and NBPco Personnel who are directly involved in the performance of this Agreement and who need to know the Confidential Information to enable performance of NBPco's obligations under this Agreement;

60.5.2 its auditors; and

60.5.3 its agents, consultants, professional advisers and bankers and Funders for the purposes of obtaining advice in relation to or discharging its obligations under this Agreement,

provided that such are subject to written legally binding confidentiality obligations at least as protective of the Confidential Information as the provisions of this Clause 60

(Confidentiality). Where NBPco discloses Minister Confidential Information pursuant to this Clause 60.5 (Confidentiality) it remains responsible for compliance with the confidentiality obligations set out in this Agreement by the persons to whom such disclosure has been made.

60.6 Nothing in this Agreement prevents the Minister from disclosing NBPco Confidential Information:

- 60.6.1 in the case of the Minister, Agency or Regulator, to any of the Minister, Agency or Regulator or the Minister's Audit Agents;
- 60.6.2 in the case of the Minister, Agency or Regulator, to the European Commission in connection with State aid or any related investigation;
- 60.6.3 on a confidential basis to any Public Service Body for any proper purpose of the Minister or the Public Service Body;
- 60.6.4 to the Oireachtas and Oireachtas Committees or if required by any Oireachtas reporting requirement;
- 60.6.5 on a confidential basis to any consultant, professional adviser, supplier or other person engaged by the Minister, Agency or Regulator for any purpose in relation to this Agreement (including any benchmarking organisation), in connection with the exercise of its rights under Part 5 (Change in Ownership and Asset Transfer) of Schedule 6.9 (Consequences of Termination) or the performance of its functions and duties under Law;
- 60.6.6 to a Regulatory Body (and its agents and representatives) pursuant to Clause 47 (Audit);
- 60.6.7 for the purpose of the examination and certification of the Minister's accounts;
- 60.6.8 for any examination or report by the Office of the Comptroller & Auditor General or Public Accounts Committee relating to the efficiency, economy, and effectiveness with which the Minister has used its resources;
- 60.6.9 on a confidential basis in connection with any assignment, novation or disposal of any of its rights, obligations or liabilities under this Agreement (but then subject to reasonable prior consultation with NBPco);
- 60.6.10 on a confidential basis for the purpose of the exercise of its rights under this Agreement, including its audit rights under Schedule 6.11 (Audits) and its step-in rights under Clause 73 (Step-In Rights);
- 60.6.11 on a confidential basis to any proposed Nominated Asset Owner or proposed shareholders in connection with the exercise of its rights under Part 5 (Change in Ownership and Asset Transfer) of Schedule 6.9 (Consequences of Termination);
- 60.6.12 as is necessary to fulfil the Minister's obligations to supply information for parliamentary, ministerial, judicial or administrative purposes including the supply of information to the Comptroller and Auditor General; or
- 60.6.13 for the purpose of publishing information (including payment structure) about the Project (other than financial and/or economic information relating to NBPco

which NBPco, acting reasonably, indicates is commercially sensitive information) as the Minister may deem appropriate from time to time.

Reference to disclosure on a confidential basis for the purposes of this Clause 60.6 (Confidentiality) means disclosure subject to a confidentiality agreement or arrangement containing terms no less stringent than those placed on the Minister under this Clause 60 (Confidentiality).

- 60.7 Despite any other provision of this Agreement, NBPco consents to the Minister publishing to the general public this Agreement in its entirety but with any 'exempt records' (as that term is defined in the FOI Act) and Subsidy Payments redacted. The Minister shall determine whether any of the content of this Agreement is exempt from disclosure in accordance with the FOI Act. The Minister shall consult with NBPco to inform its decision regarding any redactions in respect of documents or provisions designated by NBPco as commercially sensitive information but shall have the final decision in its discretion. NBPco shall assist and cooperate with the Minister to enable the Minister to publish this Agreement.
- 60.8 The Parties acknowledge and agree that a Default of this Clause 60 (Confidentiality) may cause irreparable harm to the other Party, for which monetary damages would be inadequate, and that the affected Party shall be entitled to the remedies of injunction, specific performance and/or other equitable relief for any threatened or actual Default of this Clause 60 (Confidentiality).
- 60.9 The obligations of the Parties under this Clause 60 (Confidentiality) are perpetual and survive the expiration or termination of this Agreement.

SECTION H – RESTRICTED ACTS AND OCCURRENCES

61 PROHIBITED ACTS AND PREVENTION OF BRIBERY

- 61.1 NBPco warrants that in entering this Agreement and the Required Documents and at the Effective Date it has not committed any Prohibited Act.
- 61.2 If NBPco or any NBPco Personnel (or anyone employed by or acting on behalf of any of them) or any of its or their agents or Shareholders or Buildco Shareholders commits any Prohibited Act, then the Minister will be entitled to act in accordance with Clauses 61.2.1 (Prohibited Acts and Prevention of Bribery) to 61.2.5 (Prohibited Acts and Prevention of Bribery) (inclusive) below:
- 61.2.1 if a Prohibited Act is committed by NBPco or Buildco or by an employee not acting independently of NBPco and Buildco, then the Minister may, in accordance with Clause 76 (Termination by Minister for NBPco Termination Event), terminate this Agreement by serving a Termination Notice on NBPco giving thirty (30) Working Days' notice to NBPco;
- 61.2.2 if the Prohibited Act is committed by an employee of NBPco or Buildco acting independently of NBPco and Buildco, then the Minister may, in accordance with Clause 76 (Termination by Minister for NBPco Termination Event), serve a Termination Notice on NBPco Clause 76 (Termination by Minister for NBPco Termination Event) giving thirty (30) Working Days' notice to NBPco of termination and this Agreement will terminate, unless within ten (10) Working Days of receipt of such Termination Notice, NBPco or, as applicable, Buildco terminates the employee's employment and (if necessary) procures the

performance of such part of the Services or other relevant obligations under this Agreement by another person;

61.2.3 if the Prohibited Act is committed by a Subcontractor or by an employee of that Subcontractor not acting independently of that Subcontractor, then the Minister may, in accordance with Clause 76 (Termination by Minister for NBPco Termination Event), serve a Termination Notice on NBPco which provides that the Agreement will terminate, unless within thirty (30) Working Days of receipt of such notice NBPco terminates the relevant Subcontract and procures the performance of such part of the Services or other relevant obligations under this Agreement by another person;

61.2.4 if the Prohibited Act is committed by an employee of a Subcontractor acting independently of that Subcontractor, then the Minister may, in accordance with Clause 76 (Termination by Minister for NBPco Termination Event), serve a Termination Notice on NBPco which provides that the Agreement will terminate, unless within thirty (30) Working Days of receipt of such notice the Subcontractor terminates the employee's employment and (if necessary) procures the performance of such part of the Services or other relevant obligations under this Agreement by another person; and

61.2.5 if the Prohibited Act is committed by any other person not specified in Clause 61.2.1 to 61.2.4 (Prohibited Acts and Prevention of Bribery) above, then the Minister may, in accordance with Clause 76 (Termination by Minister for NBPco Termination Event), serve a Termination Notice on NBPco which provides that the Agreement will terminate unless within thirty (30) Working Days of receipt of such notice, NBPco procures the termination of such person's employment and of the appointment of their employer (where not employed by NBPco or a Subcontractor) and (if necessary) procures the performance of such part of the Services or other relevant obligations under this Agreement.

61.3 NBPco shall not, and shall use reasonable endeavours to procure that its NBPco Personnel and Subcontractors do not, during the Contract Term:

61.3.1 commit a Prohibited Act; and/or

61.3.2 do or suffer anything to be done which would cause the Minister or any of the Minister's employees, consultants, contractors, subcontractors or agents to contravene any of the Relevant Requirements or otherwise incur any liability in relation to the Relevant Requirements.

61.4 NBPco shall during the Contract Term establish, maintain and enforce, and require that its Subcontractors establish, maintain and enforce, policies and procedures which are adequate with a view to ensuring compliance with the Relevant Requirements.

61.5 NBPco shall promptly notify the Minister in writing if it becomes aware of any breach of Clause 61.1 and/or Clause 61.3 (Prohibited Acts and Prevention of Bribery).

61.6 If NBPco makes a notification to the Minister pursuant to Clause 61.5 (Prohibited Acts and Prevention of Bribery), NBPco shall 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 in accordance with Clause 48 (Records and Reports), Schedule 6.5 (Reports and Records), Clause 47 (Audit) and Schedule 6.11 (Audits) (in each case to the extent not otherwise prohibited by Law and the Minister's audit rights

shall not apply so as to require the disclosure of any information properly subject to legal professional privilege).

61.7 Any notice of termination served by the Minister pursuant to Clause 76 (Termination by Minister for NBPco Termination Event) as a result of an NBPco Termination Event described in this Clause 61 (Prohibited Acts and Prevention of Bribery):

61.7.1 shall specify the nature of the Prohibited Act, the identity of the person who the Minister believes has committed the Prohibited Act and the action that the Minister has elected to take (including, where relevant, the date on which this Agreement shall terminate); and

61.7.2 is subject to Paragraph 2 (The Termination Date and Scheduled Ownership Transfer Date) of Part 5 (Change in Ownership and Asset Transfer) of Schedule 6.9 (Consequences of Termination).

62 CONFLICTS OF INTEREST

62.1 NBPco shall, as soon as is reasonably practicable, disclose to the Minister any actual or potential conflict of interest between:

62.1.1 the interest of NBPco, a Critical Key Subcontractor and/or any employee, contractor (as distinct from subcontractor) or secondee of NBPco or a Critical Key Subcontractor; and

62.1.2 the duties and obligations owed to the Minister under this Agreement, of which NBPco becomes or ought, reasonably, to be aware.

62.2 Without limiting or affecting Clause 62.1 (Conflicts of Interest), NBPco shall ensure and shall use reasonable endeavours to procure that appropriate and effective measures are put in place, maintained and implemented to address any actual or potential conflict of interest between:

62.2.1 the interest of NBPco, a Critical Key Subcontractor and/or any employee, contractor (as distinct from subcontractor) or secondee of NBPco or a Critical Key Subcontractor; and

62.2.2 the duties and obligations owed to the Minister under this Agreement.

63 CHANGE IN OWNERSHIP AND OF CONTROL

63.1 NBPco warrants and represents to the Minister that the Ownership Letter is true and accurate at the Commencement Date and at the Effective Date and that no agreements, arrangements or obligations are in place that have or may have or result in any allotment, issue, sale, transfer or disposal of any legal, beneficial, equitable or other interest in any or all of the shares in or loan capital of (including any option or right of pre-emption or conversion) NBPco or Buildco.

NBPco

63.2 NBPco is obliged to seek the written consent of the Minister prior to the occurrence of a Change in Ownership in respect of NBPco or Holdco that occurs at any time from the Commencement Date up until the date that is twelve (12) months after the Deployment Completion Date. The Minister shall not unreasonably withhold its consent under this

Clause 63.2 (Change in Ownership and of Control) to a Change in Ownership. This Clause (or any consent given under it) does not limit or affect any other provisions in this Clause 63 (Change in Ownership and of Control).

63.3 NBPco is obliged to seek the written consent of the Minister prior to an NBPco Deferred Equity Contributor ceasing to Control NBPco, at any time until the date on which none of the NBPco Deferred Equity Contributors have any NBPco Deferred Equity Commitments. The Minister shall only withhold its consent under this Clause 63.3 (Change in Ownership and of Control) to an NBPco Deferred Equity Contributor ceasing to Control NBPco if either (1) there is no proposed replacement NBPco Deferred Equity Commitment or (2) the proposed replacement NBPco Deferred Equity Contributor:

63.3.1 will not enter into an equivalent NBPco Deferred Equity Commitment to that being replaced on terms acceptable to the Minister or is an Unsuitable Third Party or will not have Control of NBPco; or

63.3.2 will not or likely will not (on the balance of probabilities):

(A) if a current credit rating has been generated and published by a Rating Agency in respect of the proposed replacement NBPco Deferred Equity Contributor, satisfy the Level 1 Financial Distress Credit Rating Threshold (in respect of the Shareholder being replaced) for one of the Rating Agencies that have published a credit rating in respect of the proposed replacement NBPco Deferred Equity Contributor; or

(B) if a current credit rating has not been generated and published by a Rating Agency in respect of the proposed replacement NBPco Deferred Equity Contributor, satisfy one of the Level 1 Financial Distress Financial Ratio Thresholds (in respect of the Shareholder being replaced),

unless there is security on terms, and from a financial institution, acceptable to the Minister in respect of the proposed replacement NBPco Deferred Equity Contributor's obligations and liabilities (whether deferred, contingent or otherwise) under the NBPco Deferred Equity Commitment. This Clause (or any consent given under it) does not limit or affect any other provisions in this Clause 63 (Change in Ownership and of Control).

Buildco

63.4 NBPco is obliged to seek the written consent of the Minister prior to the occurrence of a Change in Ownership in respect of Buildco or Holdco that occurs at any time from the Commencement Date up until the date that is twelve (12) months after the Deployment Completion Date. The Minister shall not unreasonably withhold its consent under this Clause 63.4 (Change in Ownership and of Control) to a Change in Ownership. This Clause (or any consent given under it) does not limit or affect any other provisions in this Clause 63 (Change in Ownership and of Control).

63.5 NBPco is obliged to seek the written consent of the Minister prior to a Buildco Deferred Equity Contributor ceasing to Control Buildco at any time until the date on which none of the Buildco Deferred Equity Contributors have any Buildco Deferred Equity Commitments. The Minister shall only withhold its consent under this Clause 63.5 (Change in Ownership and of Control) to a Buildco Deferred Equity Contributor ceasing to Control Buildco if either (1) there is no proposed replacement Buildco Deferred Equity Commitment or (2) the proposed replacement Buildco Deferred Equity Contributor:

63.5.1 will not enter into an equivalent Buildco Deferred Equity Commitment to that being replaced on terms acceptable to the Minister or is an Unsuitable Third Party or will not have Control of Buildco; or

63.5.2 will not or likely will not (on the balance of probabilities):

(A) if a current credit rating has been generated and published by a Rating Agency in respect of the proposed replacement Buildco Deferred Equity Contributor, satisfy the Level 1 Financial Distress Credit Rating Threshold (in respect of the Shareholder being replaced) for one of the Rating Agencies that have published a credit rating in respect of the proposed replacement Buildco Deferred Equity Contributor; or

(B) if a current credit rating has not been generated and published by a Rating Agency in respect of the proposed replacement Buildco Deferred Equity Contributor, satisfy one of the Level 1 Financial Distress Financial Ratio Thresholds (in respect of the Buildco Shareholder being replaced),

unless there is security on terms, and from a financial institution, acceptable to the Minister in respect of the proposed replacement Buildco Deferred Equity Contributor's obligations and liabilities (whether deferred, contingent or otherwise) under the Buildco Deferred Equity Commitment.

This Clause (or any consent given under it) does not limit or affect any other provisions in this Clause 63 (Change in Ownership and of Control).

Shareholder and Buildco Shareholder

63.6 NBPco is obliged to seek the written consent of the Minister prior to the occurrence of a Change of Control in respect of:

63.6.1 a Shareholder; or

63.6.2 a Buildco Shareholder,

that occurs at any time from the Commencement Date up until the date that is twelve (12) months after the Deployment Completion Date. The Minister shall not unreasonably withhold its consent under this Clause 63.6 (Change in Ownership and of Control) to a Change of Control. This Clause (or any consent given under it) does not limit or affect any other provisions in this Clause 63 (Change in Ownership and of Control).

[REDACTED]

63.7 **[REDACTED]**

63.7.1 **[REDACTED]**

63.7.2 **[REDACTED]**

(A) **[REDACTED]**

(B) **[REDACTED]**

[REDACTED]

63.8 **[REDACTED]**

Unsuitable Third Party

63.9 A:

63.9.1 Change in Ownership in respect of NBPco, Buildco or Holdco; or

63.9.2 Change of Control in respect of a Relevant Person,

may not occur to an Unsuitable Third Party at any time during the Contract Term (provided always that this Clause 63.9 (Change in Ownership and of Control) shall not apply to any management incentive plan in Holdco which does not Control NBPco). **[REDACTED]**

63.9.3 **[REDACTED]**

63.9.4 **[REDACTED]**

[REDACTED]

63.9.5 **[REDACTED]**

63.9.6 **[REDACTED]**

[REDACTED]

[REDACTED]

63.9.7 **[REDACTED]**

63.9.8 **[REDACTED]**

(A) **[REDACTED]**

(B) **[REDACTED]**

[REDACTED]

63.9.9 **[REDACTED]**

(A) **[REDACTED]**

(B) **[REDACTED]**

63.9.10 **[REDACTED]**

[REDACTED]

[REDACTED]

63.10 **[REDACTED]**

63.10.1 **[REDACTED]**

(A) [REDACTED]

(B) [REDACTED]

[REDACTED]

63.10.2 [REDACTED]

(A) [REDACTED]

(B) [REDACTED]

[REDACTED]

[REDACTED]

63.10.3 [REDACTED]

63.10.4 [REDACTED]

63.11 [REDACTED]

63.11.1 [REDACTED]

63.11.2 [REDACTED]

63.11.3 [REDACTED]

[REDACTED]

63.11.4 [REDACTED]

63.11.5 [REDACTED]

[REDACTED]

63.12 [REDACTED]

63.12.1 [REDACTED]

63.12.2 [REDACTED]

63.13 [REDACTED]

[REDACTED]

63.14 [REDACTED]

63.14.1 [REDACTED]

(A) [REDACTED]

(B) [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

63.14.2 [REDACTED]

63.14.3 [REDACTED]

[REDACTED]

63.15 [REDACTED]

[REDACTED]

63.16 [REDACTED]

[REDACTED]

63.17 [REDACTED]

63.17.1 [REDACTED]

63.17.2 [REDACTED]

(A) [REDACTED]

(B) [REDACTED]

(1) [REDACTED]

(2) [REDACTED]

(3) [REDACTED]

David McCourt

63.18 NBPco is obliged to seek the written consent of the Minister prior to the transfer of any interest, direct or indirect, held by David McCourt in respect of NBPco or Buildco that occurs at any time from the Commencement Date up until the date that is twelve (12) months after the Deployment Completion Date. The Minister shall not unreasonably withhold its consent under this Clause 63.18 (Change in Ownership and of Control) (unless

it is to an Unsuitable Third Party). The consent of the Minister shall not be required in the event that David McCourt's interest, direct or indirect, in respect of NBPco or Buildco is transferred after or by reason of the death or incapacity (as certified by a recognised medical practitioner) of David McCourt unless it is to an Unsuitable Third Party.

SECTION I – UNDERTAKINGS AND INDEMNITIES

64 UNDERTAKINGS

64.1 NBPco undertakes and agrees that throughout the Contract Period and the Intervention Area:

64.1.1 the Services, Wholesale Products, Network and Equipment shall comply with the Service Requirements and NBPco Solution and be free from material defects in design, materials, workmanship and functionality (as applicable);

64.1.2 all of the Network and Equipment shall be located within the Republic of Ireland (except to the extent expressly agreed otherwise by the Minister by specific reference to this Clause);

64.1.3 it shall have and maintain and utilise the necessary resources, including fully trained, skilled and competent staff with the necessary technical expertise to comply with its obligations under this Agreement;

64.1.4 it has or, as applicable, will hold all necessary Consents to perform NBPco's obligations under this Agreement;

64.1.5 it has or, as applicable, will own or have licenses to all IPR (excluding Minister IPR) necessary to perform NBPco's obligations under this Agreement;

64.1.6 it has or, as applicable, will own or have all necessary rights or licences in and to the Network (including with respect to any Third Party Active Infrastructure and Third Party Passive Infrastructure of any Infrastructure Access Provider) necessary to perform and comply with its obligations under this Agreement and to provide the Wholesale Products, Services and Network subject to, and in accordance with, the provisions of this Agreement;

64.1.7 it has not and will not specify for use in the Services, Wholesale Products or Network any goods, Equipment, consumables or materials which, consistent with Best Industry Practice, are known to be or reasonably suspected to be:

(A) deleterious, either by themselves or when used in conjunction with other goods, Equipment, consumables or materials;

(B) deleterious with the passage of time;

- (C) likely to cause damage to, or interference to the operation of, the Network, Wholesale Products or Services;
 - (D) a potential hazard to health, safety or the environment;
 - (E) capable of posing a threat to the stability, integrity or performance of the Services, Wholesale Products or Network or any part of any of them; or
 - (F) capable of reducing the normal life expectancy of the Services, Wholesale Products or Network or any part of any of them;
- 64.1.8 the Network and Equipment, and all goods, equipment, consumables and materials which are to be used in the provision of the Services and Network shall be maintained in a safe and serviceable condition in accordance with relevant Laws and consistent with Best Industry Practice and so as to achieve their Serviceable Life; and
- 64.1.9 ensure that sufficient stocks of goods, consumables, Equipment and materials shall be held by NBPco and its Subcontractors in order to comply with its obligations under this Agreement.

65 IPR WARRANTY AND INDEMNITY

- 65.1 NBPco warrants that the NBPco IPR, Networks, Services, Wholesale Products and performance of its responsibilities under this Agreement and its provision of any information, document, specification, drawing, plan, software, database or other material to the other Party shall not infringe or cause the infringement of any IPR of any third party.
- 65.2 NBPco shall, during and after the Contract Term (but then subject to Clause 80.4 (Consequences of Termination or Expiry)), be responsible for, and on demand release and indemnify the Minister on a continuing basis from and against, all liabilities (including in the defence, settlement and/or compromise of any Claim) arising from or suffered, incurred or agreed to be paid out by the Minister, Agency or the Regulator or any other person arising out of or in connection with any infringement or alleged infringement (including the defence of such alleged infringement) of the Intellectual Property Rights of any third party or obligation of confidentiality arising out of or in connection with the use or possession of NBPco IPR in accordance with the provisions of this Agreement or by the NBPco IPR, Network, Services and/or Wholesale Products. This indemnity survives the termination or expiration of this Agreement.
- 65.3 NBPco is not responsible or obliged to indemnify the Minister under Clause 65.2 (IPR Warranty and Indemnity) to the extent that the liability arises as a result of:
- 65.3.1 the negligence or wilful misconduct of the Minister or its employees, agents or contractors, other than NBPco and the NBPco Personnel, but excluding to the extent that any such negligence would not have occurred but for a breach by NBPco of its obligations under this Agreement (or any breach by NBPco Personnel of a Subcontract);

- 65.3.2 a breach by the Minister of its obligations under this Agreement (but excluding to the extent that breach would not have occurred but for a breach by NBPco of its obligations under this Agreement); or
- 65.3.3 NBPco acting on the express written instruction of the Minister to NBPco but excluding to the extent that:
 - (A) the relevant state of affairs or occurrence concerned would still have occurred if the Minister had not given the express written instruction concerned;
 - (B) the instruction could have been implemented by or on behalf of NBPco (including by a Subcontractor) without giving rise to the relevant state of affairs or occurrence; and/or
 - (C) NBPco grossly negligently failed to advise the Minister of the consequence of implementing such instruction.

66 INDEMNITY

- 66.1 NBPco shall, during and after the Contract Term (but then subject to Clause 80.4 (Consequences of Termination or Expiry)), be responsible for, and on demand release and indemnify the Minister on a continuing basis against, all liabilities (including in the defence, settlement and/or compromise of any Claim) arising from or suffered, incurred or agreed to be paid out by the Minister arising out of or in connection with:
 - 66.1.1 damage or loss to any property (whether tangible or not) of any person (including the Minister) by NBPco or NBPco Personnel (but excluding, without limiting or affecting the provisions of Clause 69 (Required Insurance) and Schedule 5.6 (Required Insurance), the land, buildings, plant, equipment, infrastructure and other assets which are the responsibility of NBPco to provide under this Agreement and which forms part of the Network);
 - 66.1.2 death or personal injury;
 - 66.1.3 breach of statutory duty; and/or
 - 66.1.4 any third party Claims suffered or incurred by the Minister, Agency or Regulator or Public Service Body;
- which may arise out of, or in consequence of:
- 66.1.5 the performance or non-performance of this Agreement or breach of this Agreement by NBPco or NBPco Personnel or any act, error or omission of NBPco or NBPco Personnel; and/or
 - 66.1.6 the design, provision, performance, maintenance and/or operation of the Services, Wholesale Products and/or Network (or failure to provide, perform, operate and/or maintain the Services, Wholesale Products and/or Network) by NBPco or NBPco Personnel.

For the purposes of this Clause 66.1 (Indemnity) only, references to “*NBPco Personnel*” do not apply to the actions, errors, omissions, design, provision, performance, maintenance and/or operation activities (the “**Activities**”) referred to in Clause 66.1.5 (Indemnity) and Clause 66.1.6 (Indemnity) of an Infrastructure Access Provider which, at

the relevant point in time, is both a Key Subcontractor (in its capacity as an Infrastructure Access Provider) and a Regulated Entity (a “**Regulated Key IAP**”) only to the extent that the following (i) and (ii) apply: (i) the Infrastructure Access Agreement between NBPco and/or its Associated Company and the Regulated Key IAP does not, in respect of the relevant time, include an indemnity to NBPco in respect of the Activities for which NBPco indemnifies the Minister under this Clause; and (ii) NBPco is not otherwise able, having used reasonable endeavours in accordance with Best Industry Practice, to recover from the Regulated Key IAP (or any associated entity) in respect of the Activities in contract or negligence pursuant to the relevant Infrastructure Access Agreement. NBPco agrees to procure that any indemnity or similar provision provided by a Regulated Key IAP to NBPco or its Associated Company in an Infrastructure Access Agreement shall also be provided for the benefit of, and so as to be enforceable by, the Minister and that indemnity shall, as between NBPco and the Minister, have the same effect as if repeated in its entirety in this Clause 66.1 (Indemnity), but given by NBPco in favour of the Minister.

This indemnity survives the expiration or termination of this Agreement.

66.2 NBPco shall, during and after the Contract Term (but then subject to Clause 80.4 (Consequences of Termination or Expiry)), be responsible for, and on demand release and indemnify the Minister on a continuing basis against, all liabilities (including in the defence, settlement and/or compromise of any Claim) arising from or suffered, incurred or agreed to be paid out by the Minister or the State arising out of or in connection with any third party Claims suffered or incurred by the State and/or Minister arising out of or in connection with any breach of, or non-compliance with, State Aid Law but only to the extent such arises out of or in connection with:

66.2.1 the exercise or implementation by NBPco of an Implementation Discretion (including with respect to any operations or activities in the Excluded Areas) that results in a breach of State Aid Law and/or State Aid Decision; and/or

66.2.2 a breach of this Agreement by NBPco.

This indemnity survives the expiration or termination of this Agreement.

66.3 NBPco is not responsible or obliged to indemnify the Minister under this Clause 66 (Indemnity) to the extent that the liability arises as a result of:

66.3.1 the negligence or wilful misconduct of the Minister or its employees, agents or contractors, other than NBPco and the NBPco Personnel, but excluding to the extent that such negligence would not have occurred but for a breach by NBPco of its obligations under this Agreement (or any breach by NBPco Personnel of a Subcontract);

66.3.2 a breach by the Minister of its obligations under this Agreement (but excluding to the extent that breach would not have occurred but for a breach by NBPco of its obligations under this Agreement); or

- 66.3.3 NBPco acting on the express written instruction of the Minister to NBPco but excluding to the extent that:
- (A) the relevant state of affairs or occurrence concerned would still have occurred if the Minister had not given the express written instruction concerned;
 - (B) the instruction could have been implemented by or on behalf of NBPco (including by a Subcontractor) without giving rise to the relevant state of affairs or occurrence; and/or
 - (C) NBPco grossly negligently failed to advise the Minister of the consequence of implementing such instruction.

66.4 NBPco's liability to the Minister arising under any indemnity in this Agreement does not limit or affect any other right, remedy or indemnity available to the Minister under any other provision of this Agreement.

67 HANDLING OF INDEMNIFIED CLAIMS

67.1 If the Minister receives any notice, demand, letter or other document from which it becomes aware that the Minister is or may become subject to an Indemnified Claim, the Minister shall notify NBPco in writing as soon as reasonably practicable.

67.2 In respect of each Indemnified Claim, subject to Clause 60 (Confidentiality), NBPco shall be entitled to defend the Indemnified Claim provided that:

- 67.2.1 NBPco clearly has sufficient financial standing to meet any liability to the Minister under this Agreement in respect of the Indemnified Claim or, if NBPco does not clearly have such sufficient financial standing at any point during which the liability remains outstanding, NBPco provides the Minister with financial security in respect of the Minister's reasonable estimate of its potential exposure under the Indemnified Claim, unless the Minister waives this requirement in a given case;
- 67.2.2 NBPco acts, takes over, and runs and implements the defence of the Indemnified Claim promptly and diligently, using competent counsel and in such a way as not to bring the reputation of the Minister into disrepute;
- 67.2.3 NBPco properly consults with the Minister and keeps the Minister fully informed with respect to the Indemnified Claim (and any matters associated with and progress concerning the Indemnified Claim) on an ongoing basis;
- 67.2.4 NBPco does not settle, admit fault or compromise the Indemnified Claim without the Minister's prior written consent (such consent not to be unreasonably withheld or delayed) provided that such consent will not be required for the settlement of any action, without admission of liability, if the amount of the claim at issue does not exceed **[REDACTED]** and

67.2.5 NBPco does not do or omit to do anything which does or may increase the amount of payment to be made by the Minister in respect of any part of a Claim which is not covered by an indemnity from NBPco.

67.3 The Minister (at NBPco's cost), unless and until it takes over the defence of the Indemnified Claim pursuant to Clause 67.4 (Handling of Indemnified Claims), shall:

67.3.1 provide such reasonable assistance as required by NBPco in respect of the defence of the Indemnified Claim; and

67.3.2 not settle, admit fault or compromise any Indemnified Claim without NBPco's prior written consent (such consent not to be unreasonably withheld or delayed).

67.4 Despite Clause 67.2 (Handling of Indemnified Claims) and subject to complying with the provisions of the relevant Required Insurances, the Minister may elect by notice in writing to NBPco to take over the defence, dispute, compromise or appeal of the Indemnified Claim (or of any incidental negotiations) itself, with NBPco (at NBPco's own cost) providing such reasonable assistance, information and cooperation as required by the Minister, if:

67.4.1 NBPco has not notified the Minister of its intention to dispute or take over the defence of the Indemnified Claim within fifteen (15) Working Days of the issue date of the notice from the Minister under Clause 67.1 (Handling of Indemnified Claims);

67.4.2 NBPco fails to comply in any material respect with the provisions of Clause 67.2 (Handling of Indemnified Claims);

67.4.3 the Minister considers that sole control of the Indemnified Claim by NBPco may place at risk or adversely affect:

(A) the public interest;

(B) national security or the threat of criminal activity; and/or

(C) the operations, reputation or good standing of the Minister; and/or

67.4.4 for any other reason, provided that in this case NBPco will be released from its indemnity except where such notice was given as a consequence of the failure of NBPco, in the opinion of the Minister (acting reasonably), to deal properly with any such Claim.

Upon receipt of such written notice, NBPco will promptly take all steps necessary to transfer the conduct of such Claim to the Minister.

67.5 If an Indemnified Claim is made or NBPco anticipates that an Indemnified Claim might be made, NBPco may, at its own expense and reasonable discretion, procure the necessary rights or otherwise replace or modify the items or activities concerned to enable the Minister, Regulator, Agency, NBPco or other person (as applicable) the right to continue using the relevant item or to otherwise properly permit the continuance of the activity which is the subject of the Indemnified Claim, provided that in each instance:

- 67.5.1 the performance and/or quality of the replacement item or activity concerned is at least equivalent to the performance and/or quality of the original item or activity;
- 67.5.2 any such action by NBPco does not have a material adverse effect on the performance of this Agreement or the Minister, Services, Wholesale Products, Network and/or Project;
- 67.5.3 there is no additional cost to the Minister and no increase in the Subsidy Payments; and
- 67.5.4 the provisions of this Agreement continue to apply to and be complied with in respect of the items and activities concerned.

67.6 Without limiting or affecting Clause 67.4 (Handling of Indemnified Claims) and to the extent within the Minister's direct control and provided not contrary to public policy, the Minister will take reasonable steps to mitigate those Losses suffered or incurred by the Minister that are the subject of any Claim under Clause 66 (Indemnity) pursuant to Clause 68.9 (Limitation of Liability).

68 LIMITATION OF LIABILITY

- 68.1 Nothing in this Agreement limits or excludes the liability of NBPco:
 - 68.1.1 arising out of or in connection with any fraud or fraudulent misrepresentation or wilful misconduct by or on behalf of the NBPco Bidder, NBPco or the NBPco Personnel;
 - 68.1.2 arising out of or in connection with the death or personal injury of any person;
 - 68.1.3 arising out of or in connection with any deliberate breach or abandonment of any provision of this Agreement or deliberate Default;
 - 68.1.4 under, or arising out of or in connection with any breach of, any of the following provisions:
 - (A) [REDACTED]
 - (B) [REDACTED]
 - (C) [REDACTED]
 - (D) [REDACTED]
 - (E) [REDACTED]
 - (F) [REDACTED]
 - (G) [REDACTED]
 - (H) [REDACTED]
 - (I) [REDACTED]

(J) [REDACTED]

(K) [REDACTED]

(L) [REDACTED]

(M) [REDACTED]

(N) [REDACTED]

(O) [REDACTED]

68.1.5 in respect of any matter for which it would be unlawful to exclude or limit the liability of NBPco under Law.

[REDACTED]

68.2 [REDACTED]

68.2.1 [REDACTED]

68.2.2 [REDACTED]

(A) [REDACTED]

(1) [REDACTED]

(2) [REDACTED]

(B) [REDACTED]

[REDACTED]

68.3 [REDACTED]

[REDACTED]

68.4 [REDACTED]

68.5 [REDACTED]

No Double Recovery

68.6 Notwithstanding any other provisions of this Agreement, neither Party shall be entitled to recover compensation or make a claim under this Agreement in respect of any loss that it has incurred to the extent that it has already been compensated in respect of that loss pursuant to this Agreement or otherwise.

[REDACTED]

68.7 [REDACTED]

68.7.1 [REDACTED]

68.7.2 [REDACTED]

68.7.3 [REDACTED]

[REDACTED]

68.8 [REDACTED]

Mitigation

68.9 Nothing in this Clause 68 (Limitation of Liability) or elsewhere in this Agreement acts to reduce or affect a Party's general duty under Law to mitigate its loss.

[REDACTED]

68.10 [REDACTED]

68.11 [REDACTED]

68.11.1 [REDACTED]

68.11.2 [REDACTED]

68.11.3 [REDACTED]

68.11.4 [REDACTED]

[REDACTED]

[REDACTED]

68.12 [REDACTED]

[REDACTED]

68.13 [REDACTED]

69 REQUIRED INSURANCE

General

69.1 NBPco shall, with effect on and from the Effective Date, take out and maintain or procure the maintenance of the insurances described in Part 1 (Policies to be Taken Out by NBPco and Maintained During the Deployment Period) of Schedule 5.6 (Required Insurance) and any other insurances as may be required by Law. NBPco shall ensure all such insurances are effective in each case not later than the date on which the relevant Risk commences and are maintained for the period required under the provisions of Schedule 5.6 (Required Insurance).

69.2 NBPco shall, with effect on and from the start of the Operational Period, take out and maintain or procure the maintenance of the insurances described in Part 2 (Policies to be Taken Out by NBPco and Maintained During the Operational Period) of Schedule 5.6 (Required Insurance) and any other insurances as may be required by Law. NBPco shall ensure all such insurances are effective in each case not later than the date on which the

relevant Risk commences and is maintained for the period required under the provisions of Schedule 5.6 (Required Insurance).

69.3 No Party to this Agreement shall:

69.3.1 take any action;

69.3.2 fail to take any reasonable action; or

69.3.3 (insofar as it is reasonably within its power) permit anything to occur in relation to it,

which would entitle any insurer to refuse to pay any claim under any insurance policy in which that Party is an insured, a co-insured or additional insured person.

69.4 With the exception of any insurances required by Law and employer's liability insurance, NBPco shall ensure that the Required Insurances throughout the Contract Period:

69.4.1 name NBPco as co-insured with any other party maintaining the relevant Required Insurance;

69.4.2 provide for non-vitiating protection in respect of any claim made by the Minister as co-insured in accordance with the provisions of Endorsement 2 (Multiple Insured/Non-Vitiating Clause) of Part 3 (Endorsements) of Schedule 5.6 (Required Insurance);

69.4.3 contain a clause waiving the insurers' subrogation rights against the Minister, its employees and agents in accordance with the provisions of Endorsement 2 (Multiple Insured/Non-Vitiating Clause) of Part 3 (Endorsements) of Schedule 5.6 (Required Insurance);

69.4.4 provide for thirty (30) days' prior written notice of the Required Insurance's cancellation, non-renewal or adverse amendment (subject to there being no amendments which result in the reduction in limits or coverage or increases in deductibles, exclusions or exceptions without the prior written consent of the Minister) to be given to the Minister in accordance with the provisions of Endorsement 1 (Cancellation) of Part 3 (Endorsements) of Schedule 5.6 (Required Insurance) to the extent that the Minister has an insurable interest;

69.4.5 in respect of the physical damage policies, provide for payment of any proceeds to be made by insurers in accordance with Clause 69.12 (Required Insurance) to Clause 69.14 (Required Insurance) (inclusive); and

69.4.6 not include any term or condition to the effect that NBPco or the Minister must discharge any liability before being entitled to recover from the insurers.

69.5 NBPco shall ensure that wherever possible and where stipulated in Schedule 5.6 (Required Insurance), the Required Insurances shall name the Minister as a co-insured for its separate interest.

69.6 NBPco shall provide to the Minister:

69.6.1 copies on request of all insurance policies referred to in the provisions of this Clause 69 (Required Insurance) or Schedule 5.6 (Required Insurance) (together with any other information reasonably requested by the Minister relating to such

insurance policies) and the Minister is entitled to inspect them during ordinary business hours; and

69.6.2 evidence that the premiums payable under all insurance policies referred to in the provisions of this Clause 69 (Required Insurance) or Schedule 5.6 (Required Insurance) have been paid and the policies are in full force and effect in accordance with the requirement of the provisions of this Clause 69 (Required Insurance) and Schedule 5.6 (Required Insurance); and

69.6.3 the broking slips that it has provided to the markets in order to obtain quotes for all insurance policies referred to in the provisions of this Clause 69 (Required Insurance) or Schedule 5.6 (Required Insurance) so that the Minister has oversight of the representation of risk that NBPco has provided to insurers.

69.7 NBPco shall send the Minister evidence of renewal of policies referred to in this Clause 69 (Required Insurance) or Schedule 5.6 (Required Insurance), which is satisfactory to the Minister (for example, insurance certificate), as soon as possible but in any event on or before the renewal date. The Minister is entitled to require NBPco, at any time during the Contract Period, to provide evidence that the Required Insurances are in place in accordance with the provisions of this Agreement.

69.8 If NBPco is in breach of a provision of this Clause 69 (Required Insurance) or Schedule 5.6 (Required Insurance), the Minister may (but is not obliged to) pay any premiums required to keep such Required Insurance in force or itself procure such Required Insurance and may in either case recover any premiums and other reasonable costs from NBPco on written demand.

69.9 NBPco shall give the Minister written notification within thirty (30) days after any claim in excess of [REDACTED] is made on any of the insurance policies referred to in the provision of this Clause 69 (Required Insurance) or Schedule 5.6 (Required Insurance) accompanied by full details of the incident giving rise to the claim.

69.10 The insurance premiums and the payment of deductibles in respect of the Required Insurances are the responsibility of NBPco.

69.11 The Parties agree that the minimum insurance requirements set out in this Agreement do not limit or waive any obligations which NBPco may have to the Minister or to third parties.

Reinstatement

69.12 All insurance proceeds received under any of the physical damage policies shall be applied by NBPco to repair, reinstate and replace each part or parts of the assets in respect of which the proceeds were received.

69.13 Where insurance proceeds are received or are receivable under any of the physical damage policies or pursuant to any analogous payments by the Minister or NBPco pursuant to Clause 69.18 (Required Insurance) in respect of a single event (or a series of related events) (the ("**Relevant Incident**")):

- 69.13.1 NBPco will deliver as soon as practicable and in any event within twenty eight (28) days after the making of the claim, a plan prepared by NBPco for the carrying out of the works necessary ("**Reinstatement Works**") to repair, reinstate or replace (the "**Reinstatement Plan**") the assets which are the subject of the relevant claim or claims in accordance with Clause 69.14 (Required Insurance) below. The Reinstatement Plan will set out:
- (A) the identity of the person proposed to effect the Reinstatement Works, which, if not an existing Key Subcontractor at the relevant time, will be subject to the prior written approval of the Minister (such consent not to be unreasonably withheld or delayed); and
 - (B) the proposed terms and timetable upon which the Reinstatement Works are to be effected (including the date that the affected asset will become fully operational), the final terms of which will be subject to the prior written approval of the Minister (such approval not be unreasonably withheld or delayed).
- 69.13.2 provided that the Minister is satisfied that the Reinstatement Plan will enable NBPco to comply with Clause 69.14 (Required Insurance) below within a reasonable timescale:
- (A) the Reinstatement Plan will be adopted;
 - (B) if applicable, in respect only of amounts payable into the Joint Insurance Account pursuant to Clause 69.18 (Required Insurance) in respect of a Relevant Incident which is Uninsurable in accordance with those provisions, relevant amounts standing to the credit of the Joint Insurance Account (the "**Relevant Proceeds**") (together with any interest accrued) may be withdrawn by NBPco from the Joint Insurance Account as required to enable it to meet any reasonable costs and expenses of NBPco associated with funding the Reinstatement Works and the Parties will operate the signatory requirements of the Joint Insurance Account in order to give effect to such payments;
 - (C) where the Minister has exercised its right to take action under Clause 73 (Step-In Rights), the Minister may withdraw amounts standing to the credit of the Joint Insurance Account (together with any interest accrued) for the purposes of funding any Reinstatement Works in respect only of a Relevant Incident which is Uninsurable in accordance with Clause 69.18 (Required Insurance) and any associated reasonable costs and expenses and the Parties will operate the signatory requirements of the Joint Insurance Account in order to give effect to such payments;
 - (D) without limiting or affecting Clause 69.18.2 (Required Insurance) in respect of a Relevant Incident which is Uninsurable, the Minister agrees that, subject to compliance by NBPco with its obligations under Clauses 69.12 (Required Insurance) to 69.14 (Required Insurance), it will not exercise any right which it might otherwise have to terminate this Agreement by virtue only of the Relevant Incident save to the extent that the Relevant Incident arose as a result of any negligence, deliberate breach or abandonment by NBPco or any

Subcontractor of any obligations in respect of this Agreement and, for the avoidance of doubt, this does not affect the exercise by the Minister of its other rights and remedies under this Agreement (other than termination) including in respect of the accumulation of Performance Credits and delayed payments where Milestones are not Achieved in accordance with this Agreement;

- (E) after the Reinstatement Plan has been implemented to the reasonable satisfaction of the Minister and in accordance with Clause 69.14 (Required Insurance), any monies (together with any interest thereon) which then remain standing to the credit of the Joint Insurance Account and which are not attributable to any amounts required to be paid in respect of the Relevant Incident shall be repaid to the Minister without set off or deduction; and
- (F) NBPco will be solely responsible for the payment of all monies in respect of the Reinstatement Works and the Minister shall have no obligation to make any payments in respect of same.

69.14 Where insurance proceeds or analogous payments by the Minister or NBPco pursuant to Clause 69.18 (Required Insurance) are to be used, in accordance with this Agreement, to repair, reinstate or replace, NBPco shall carry out such work so that provisions of this Agreement are complied with.

Compliance

69.15 Neither failure to comply nor full compliance with the insurance provisions of this Agreement limits or relieves NBPco of its liabilities and obligations under this Agreement and, in particular, NBPco's obligation to hold the Minister harmless through compliance with any indemnity provisions contained in this Agreement.

Professional Indemnity Insurance

69.16 NBPco undertakes (and agrees to procure that the Key Subcontractors with responsibility for Network Deployment shall), with effect on and from the date Network Deployment Complete is first Achieved in respect of any Deployment Area, to:

69.16.1 provide evidence satisfactory to the Minister (as and when reasonably required) of professional indemnity insurance ("**PI Insurance**") being in full force and effect on and from the Effective Date throughout the Contract Period and, on a Deployment Area by Deployment Area basis, until, in respect of a particular Deployment Area, the date that is twelve (12) years after the date the M2 Milestone is Achieved for that Deployment Area (such evidence to include details of the cover) including confirmation of territorial limits and indemnity limit (which shall be a minimum limit of **[REDACTED]** for each and every occurrence or series of occurrences arising out of each and every event in respect of the Key Subcontractors with responsibility for Network Deployment and a minimum limit of **[REDACTED]** each and every occurrence or series of occurrences arising out of each and every event in the aggregate in respect of each Key Subcontractor;

- 69.16.2 provide the Minister with copies of all notices under the PI Insurance relevant to the Network;
- 69.16.3 provide the Minister with notice of:
- (A) any cancellation of the PI Insurance not less than twenty (20) Working Days prior to the relevant cancellation date;
 - (B) any material changes to or suspension of cover relevant to the Services, Wholesale Products or Network not less than twenty (20) Working Days prior to the relevant change or suspension;
 - (C) any event of which it becomes aware, or of which it could reasonably be expected to become aware, which may vitiate the PI Insurance; and
 - (D) any act, omission or event which may adversely affect the terms and scope of the PI Insurance relevant to the Network or invalidate or render it unenforceable;
- 69.16.4 provide such information to the Minister as it may reasonably require in relation to any claim or circumstance notified to it under the PI Insurance in respect of the Services, Wholesale Products or Network and any potential breach of the aggregate limit of the policy; and
- 69.16.5 include the interests of the Minister in any claim or circumstances notified under the PI Insurance relevant to the Services, Wholesale Products, or Network and provide a copy of such notification to the Minister at the same time as the claim or circumstances are notified.

Broker's Letter of Undertaking

- 69.17 Prior to or on the Effective Date, NBPco shall procure and furnish to the Minister a letter of undertaking, substantially in the form of the letter of undertaking contained in Part 4 (Brokers Letter Of Undertaking) of Schedule 5.6 (Required Insurance), addressed to the Minister and signed by a reputable broker appointed by NBPco in connection with the procurement of the Required Insurances. NBPco shall similarly procure and furnish to the Minister such a letter of undertaking from any reputable replacement broker appointed by NBPco during the Contract Period.

Risk that becomes uninsurable

- 69.18 Nothing in this Clause 69.18 (Required Insurance) will oblige NBPco to take out insurance in respect of a Risk which is Uninsurable save where the predominant cause of the Risk being Uninsurable is an act or omission of NBPco or any Subcontractor.
- 69.18.1 If a Risk usually covered by any of the Required Insurances (including PI Insurance) becomes Uninsurable then:
- (A) NBPco will notify the Minister on becoming aware of such Uninsurability but in any event, at least thirty (30) Working Days before the expiry or cancellation of any existing insurance in respect of that Risk (except that if a Risk becomes Uninsurable within thirty (30) Working Days of the policy renewal or expiry date, NBPco will

notify the Minister as soon as possible prior to the Risk becoming Uninsurable); and

- (B) if both Parties agree, or it is determined in accordance with the Dispute Resolution Procedure, that the Risk is Uninsurable and that:
 - (1) the Risk being Uninsurable is not caused by the actions or omissions of NBPco or any Subcontractors; and
 - (2) NBPco has demonstrated to the Minister that NBPco and a prudent board of directors of a company operating the same or substantially similar businesses in Ireland and elsewhere in the European Union to that operated by NBPco would in similar circumstances (in the absence of the type of relief envisaged by this clause) be acting reasonably and in the best interests of the company if they resolved to cease to operate such businesses as a result of that Risk becoming Uninsurable, taking into account *inter alia* (and without limitation) the likelihood of the Risk occurring (if it has not already occurred), the financial consequences for such company if such Risk did occur (or has occurred) and other mitigants against such consequences which may be available to such company,

the Parties will meet to discuss the means by which the Risk should be managed (including considering the issue of self-insurance).

69.18.2 If the requirements of Clause 69.18.1 (Required Insurance) are satisfied, but the Parties cannot agree as to how to manage the Risk, then:

- (A) in respect of third party liability insurance only becoming Uninsurable the Minister will (at the Minister's option) either:
 - (1) terminate the Agreement in accordance with Clause **Error! Reference source not found.** (Non-Default Termination); or
 - (2) elect to allow the Agreement to continue and Clause 69.18.2(B) (Required Insurance) below will thereafter apply in respect of such Risk; and
- (B) in respect of the Required Insurances (including PI Insurance) other than set out in Clause 69.18.2(A) (Required Insurance) above or if the Minister elects to allow the Agreement to continue in accordance with Clause 69.18.2(A) (Required Insurance), the Agreement will continue and on the occurrence of the Risk ordinarily covered by any of the Required Insurances (including PI Insurance) which is Uninsurable (but only for as long as such Risk remains Uninsurable) the Minister will (at the Minister's option) either:
 - (1) subject to Clause 69.18.2(C)(1) (Required Insurance), pay to NBPco an amount equal to insurance proceeds that would have been payable (subject to the amount payable not exceeding the limit of indemnity associated with the Risk

ordinarily covered by the relevant insurance policy) had the relevant insurance policy continued to be available (subject to NBPco demonstrating to the Minister's satisfaction that NBPco does not have sufficient resources to absorb the financial consequences arising from the occurrence of the Risk ordinarily covered by any of the Required Insurances, including PI Insurance) and the Agreement will continue; or

- (2) terminate the Agreement in accordance with Clause **Error! Reference source not found.** (Non-Default Termination) and, in addition to the Schedule 6.9 Payment payable in accordance with Part 3 (Force Majeure, Insurance and Change in Law) of Schedule 6.9 (Consequences of Termination), pay NBPco (in relation to third party liability insurance only) the amount of insurance proceeds that would have been payable to NBPco had the relevant insurance policy continued to be available.

(C) in respect of Clause 69.18.2(B)(1) (Required Insurance) above:

- (1) in circumstances where the Minister considers that NBPco does have sufficient resources to absorb the financial consequences arising from the occurrence of the relevant Risk, it shall notify NBPco in writing and no payment under Clause 69.18.2(B)(1) (Required Insurance) shall be made; and
- (2) in such circumstances, any amounts pursuant to Clause 69.18.3 (Required Insurance) which were actually reduced from relevant Ongoing Capital Payments in respect of the specific insurance and Risk which was Uninsurable prior to the relevant Risk occurring (the "**Reduced Insurance OCP Amount**") shall be paid by the Minister to NBPco within thirty (30) days of receipt of a claim by NBPco that the provisions of this Clause 69.18.2(C) apply, provided however that the Minister shall not be required to pay any amount other than the lower of (i) an amount equal to insurance proceeds that would have been payable (subject to the amount payable not exceeding the limit of indemnity associated with the Risk ordinarily covered by the relevant insurance policy) had the relevant insurance policy continued to be available and (ii) the Reduced Insurance OCP Amount.

69.18.3 Where pursuant to Clauses 69.18.2(A) and/or Clause 69.18.2(B) (Required Insurance) this Agreement continues, then the Ongoing Capital Payments will be reduced in each year for which the relevant insurance which has become Uninsurable is not maintained by an amount equal to the premium paid (or which would have been paid) by NBPco in respect of the relevant Risk in the year prior to it becoming Uninsurable (Indexed from the date that the Risk becomes Uninsurable). Where the Risk is Uninsurable for part of a year only the reduction in the Ongoing Capital Payments will be pro-rated to the number of months for which the Risk is Uninsurable.

69.18.4 Where pursuant to Clauses 69.18.2(A) and/or Clause 69.18.2(B) (Required Insurance) this Agreement continues, NBPco will approach the insurance

market at least every four (4) months to establish whether the Risk remains Uninsurable. As soon as NBPco is aware the Risk is no longer Uninsurable, NBPco will take out and maintain or procure the taking out and maintenance of insurance (to be incepted as soon as is reasonably practicable) for such Risk in accordance with this Agreement and the provisions of this Clause 69.18 (Required Insurance) shall cease to apply in respect of such Risk.

- 69.18.5 If, pursuant to Clause 69.18.2(B) (Required Insurance) the Minister elects to seek to terminate the Agreement and as a result of which election would become liable to pay to NBPco an amount calculated in accordance with Part 3 (Force Majeure, Insurance and Change in Law) of Schedule 6.9 (Consequences of Termination) (the “**Relevant Payment**”), NBPco will have the option (exercisable in writing within (20) days of the date of such written election by the Minister (the “**Option Period**”) to pay into the Joint Insurance Account on or before the end of the Option Period, an amount equal to the insurance proceeds that would have been payable had the relevant Risk not become Uninsurable, in which case the Agreement will continue (and the Relevant Payment will not be made by the Minister), and NBPco’s payment will be applied for the same purpose and in the same manner as insurance proceeds would have been applied had the relevant risk not become Uninsurable.
- 69.18.6 In respect of any period between the Minister receiving notification in accordance with Clause 69.18.1(A) (Required Insurance) that a third party liability Risk has become Uninsurable and the Minister’s notification to NBPco in accordance with Clause 69.18.2(B) (Required Insurance) in respect of such Risk, then provided it is ultimately agreed or determined that the requirements of Clause 69.18.1(B) (Required Insurance) are satisfied in respect of the Uninsurable Risk and subject to Clause 69.18.5 (Required Insurance) above, Clause 69.18.2(B) (Required Insurance) shall apply in respect of occurrences of the Uninsurable third party liability Risk during such period unless the parties otherwise agree how to manage the Risk during this period.
- 69.18.7 Clause 69.18.6 (Required Insurance) shall only apply provided NBPco does not unreasonably or materially delay:
- (A) agreement and/or determination in accordance with the Dispute Resolution Procedure as to whether the requirements of Clause 69.18.1(B) (Required Insurance) are satisfied in respect of the Uninsurable Risk; and/or
 - (B) meeting with the Minister to discuss the means by which the Risk should be managed.
- 69.18.8 All monies paid by the Parties pursuant to Clause 69.18 (Required Insurance) in respect of a single event (or a series of related events) shall be paid into the Joint Insurance Account and the provisions of Clause 69.13 (Required Insurance) regarding the Joint Insurance Account shall apply.

SECTION J – BUSINESS CONTINUITY, DISASTER RECOVERY AND FORCE MAJEURE

70 BUSINESS CONTINUITY AND DISASTER RECOVERY

70.1 NBPco shall, throughout the Contract Period:

70.1.1 develop, maintain and implement the BCDR Plan; and

70.1.2 comply, and shall procure that NBPco Personnel shall comply, with:

- (A) the BCDR Plan;
- (B) all relevant aspects of the Service Requirements and NBPco Solution in respect of business continuity, disaster recovery and contingency systems, processes, protocols, arrangements and measures; and
- (C) Best Industry Practice in respect of business continuity, disaster recovery and contingency systems, processes, protocols, arrangements and measures.

70.2 NBPco shall regularly test and review the BCDR Plan (and not less than once every twelve (12) months with effect from the Effective Date) and report the outcome of such test and review to the Minister as part of the Report to be provided to the Minister pursuant to and in accordance with Schedule 6.5 (Reports and Records). If and to the extent that the tests reveal any defect, deficiency or vulnerability in or with respect to the BCDR Plan, NBPco shall take all appropriate actions to remedy the defect, deficiency or vulnerability.

71 FORCE MAJEURE

71.1 If a Force Majeure Event occurs, the Affected Party shall as soon as is practicable after becoming aware of a Force Majeure Event give the other Party written notice of the Force Majeure Event and (if applicable) of its intent to claim relief under the provisions of this Clause 71 (Force Majeure). Such notice shall contain a detailed account of the circumstances surrounding the Force Majeure Event and of the obligations of the Affected Party that it is prevented from carrying out as a direct consequence of that Force Majeure Event (including the actions being taken to remedy any failure to perform and an estimate of the period of time required to remedy such failure). NBPco shall, to the extent reasonably practicable in the circumstances, keep the Minister informed at regular intervals of not less than eight (8) hours concerning the status of any Force Majeure Event and the actions being taken to overcome it.

71.2 As soon as practicable following a notification under Clause 71.1 (Force Majeure), the Parties will consult with each other in good faith and use all reasonable endeavours to mitigate the effects of the Force Majeure Event on the performance of this Agreement and to facilitate the continued performance of this Agreement to the fullest extent possible.

Relief from Liability

71.3 Subject to the provisions of this Clause 71 (Force Majeure), neither Party is entitled to bring a claim for a breach of obligations under this Agreement by the other Party or will incur any liability to the other Party for any losses or damages incurred by that other Party to the extent that an Affected Party is prevented from carrying out its obligations as a direct consequence of a Force Majeure Event and the provisions of this Clause 71 (Force Majeure) apply. An extension of a Milestone Date as a direct consequence of a Force Majeure Event shall only be made in accordance with Clause 71.6 (Force Majeure). The

Minister is not entitled to terminate this Agreement for an NBPco Termination Event if such NBPco Termination Event arises from a Force Majeure Event (but without limiting or affecting Clause 78 (Non-Default Termination)).

Mitigation of Force Majeure Event

- 71.4 Following the occurrence of a Force Majeure Event, NBPco shall as soon as practicable:
- 71.4.1 take all steps reasonably necessary and consistent with Best Industry Practice to prevent, mitigate, overcome and minimise the effects of the Force Majeure Event, including the effects of any Delay resulting from the Force Majeure Event; and
 - 71.4.2 take all reasonable steps to resume full performance of its obligations under this Agreement and resume full and proper operation of the Services, Wholesale Products and Network as soon as practicable.

Relief in respect of Deployment

- 71.5 Subject to the provisions of this Clause 71 (Force Majeure), if, and in that case only to the extent that, the Affected Party is prevented from meeting a Milestone Date as a direct consequence of a Force Majeure Event, then NBPco is entitled to an extension of a Milestone Date in accordance with the provisions of this Clause 71 (Force Majeure) provided and on condition that NBPco:
- 71.5.1 issues a notice to the Minister as soon as practicable (but in any event within three (3) Working Days of NBPco or NBPco Personnel (whichever is earliest) first becoming aware (or ought to have first become aware) that a Force Majeure Event has or is reasonably likely to cause a Delay), containing the following information:
 - (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;
 - (B) a clear statement of which of the Force Majeure Events has directly caused the Delay or anticipated Delay;
 - (C) a statement of the date of occurrence and likely duration of the Force Majeure Event;
 - (D) a properly reasoned and reasonably detailed explanation of precisely how, and to what extent, the Affected Party is prevented from carrying out its obligations as a direct consequence of the Force Majeure Event;
 - (E) a statement of the length of the Delay, or likely length of the anticipated Delay, directly caused by the Force Majeure Event, taking into account the explanation given under Clause 71.5.1(D) (Force Majeure) and 71.5.1(C) (Force Majeure); and
 - (F) a statement of the specific extension to any Milestone Dates being requested as a direct result of the Force Majeure Event, taking into account the explanation given under Clause 71.5.1(D) (Force Majeure) and Clause 71.5.1(E) (Force Majeure) and NBPco's

obligations under Clauses 17.1.1(C) (Delay) and Clause 71 (Force Majeure).

- 71.6 If, subject to compliance by NBPco with Clause 71.5 (Force Majeure) and subject to Clause 71.9 (Force Majeure), the Minister is satisfied (acting reasonably) that a Milestone Date is not capable of being met as a direct consequence of NBPco's obligations being incapable of being (as distinct, in particular, from it being more expensive for them to be) performed as a direct consequence of a Force Majeure Event, the Minister shall issue notice in writing to NBPco extending (prospectively or retrospectively) the Milestone Date or, as applicable, Milestone Dates by such reasonable period as the Parties have agreed in writing (failing which agreement within five (5) Working Days of commencement of discussions regarding the timeframe, the Minister shall be entitled to determine the relevant extension, acting reasonably). Consideration of the appropriate timeline for the extension shall take into account the extent to which the effect of the Delay or anticipated Delay on each of the affected Milestone Dates has been or can be mitigated by NBPco complying with its obligations under Clauses 17.1.1(C) (Delay) and Clause 71.4 (Force Majeure).

Relief in respect of Operations

- 71.7 Subject to the provisions of this Clause 71 (Force Majeure), if, and in that case only to the extent that, the Affected Party is prevented during the Operational Period from performing some or all of the Services in some or all of the Intervention Area in the manner and at the times set out in the NBPco Solution and in a manner that meets the Target Performance Levels as a direct consequence of a Force Majeure Event, then NBPco shall issue a notice to the Minister as soon as reasonably practicable (but in any event within three (3) Working Days of NBPco or NBPco Personnel (whichever is earliest) first becoming aware (or ought to have first become aware) that a Force Majeure Event has or is reasonably likely to prevent NBPco from performing some or all of the Services in some or all of the Intervention Area in a manner that meets the Target Performance Level), containing the following information:
- 71.7.1 a clear statement that NBPco is making a claim for relief in accordance with Clause 71 (Force Majeure) due to a Force Majeure Event;
 - 71.7.2 a clear statement of which of the Force Majeure Events has prevented the Affected Party from carrying out its obligations;
 - 71.7.3 a statement of the date of occurrence and likely duration of the Force Majeure Event;
 - 71.7.4 a properly reasoned and reasonably detailed explanation of precisely how, and to what extent, the Affected Party is prevented from carrying out its obligations as a direct consequence of the Force Majeure Event and why that has directly resulted in NBPco being incapable of performing the relevant Services in some or all of the Intervention Area in a manner that satisfies the Target Performance Levels;
 - 71.7.5 a statement of what it reasonably considers to be the Force Majeure Affected Services and Force Majeure Affected Area, together with reasonable supporting evidence demonstrating why that is the case, taking into account NBPco's obligations under the provisions of this Clause 71 (Force Majeure); and

71.7.6 a statement of its initial reasonable estimate of the anticipated Force Majeure Impact Period, together with reasonable supporting evidence demonstrating why that is the case, taking into account NBPco's obligations under the provisions of this Clause 71 (Force Majeure).

71.8 If, subject to compliance by NBPco with Clause 71.7 (Force Majeure) and subject to Clause 71.9 (Force Majeure), the Minister is satisfied (acting reasonably) that NBPco is incapable during the Contract Period of performing some or all of the Services in some or all of the Intervention Area in the manner set out in the NBPco Solution and in a manner that meets the Target Performance Levels as a direct consequence of a Force Majeure Event (and that NBPco, given time, will be able to remedy the consequences of the Force Majeure Event and resume performance in a manner that meets the Target Performance Levels):

71.8.1 the Minister shall issue notice in writing to NBPco:

- (A) stating that this Clause 71.8 (Force Majeure) applies in respect of the Force Majeure Event; and
- (B) setting out what are the particular Force Majeure Affected Services, the specific Force Majeure Affected Area and the Force Majeure Impact Period for such purpose;

71.8.2 NBPco shall be relieved from its obligation to perform the Force Majeure Affected Services in the Force Majeure Affected Area for the Force Majeure Impact Period specified by the Minister in the notice issued pursuant to Clause 71.8.1 (Force Majeure);

71.8.3 NBPco may elect to continue to provide Force Majeure Affected Services in the Force Majeure Affected Area during the Force Majeure Impact Period (provided that it is safe and lawful to do so), but in such a case this shall not limit or affect the other provisions of this Clause 71.8 (Force Majeure) and of the Agreement, in respect of any Force Majeure Affected Services so provided;

71.8.4 the Minister shall, in respect of the Force Majeure Affected Area and Force Majeure Affected Services, pay during the Force Majeure Impact Period 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 despite any election made by NBPco under Clause 71.8.3 (Force Majeure):

- (A) the Expiry Date and, consequently, the Contract Period shall, with respect to the Force Majeure Affected Area, automatically be extended by the Force Majeure Contract Period Extension;
- (B) NBPco shall perform the Services in the Force Majeure Affected Area during the Force Majeure Contract Period Extension in accordance with the provisions of this Agreement, but without any entitlement to be paid any Subsidy Payments (or any other sums or any increase in or to the Subsidy Payments) in respect of the Services provided during the Force Majeure Contract Period Extension; and

- (C) the provisions of this Agreement shall apply (including, in particular, the provisions of Clause 20 (Performance Levels) and Schedule 6.7 (Performance Levels) with the result that Performance Credits shall be payable by NBPco in respect of any KPI Failure that occurs) in respect of the Services provided in the Force Majeure Affected Area during the Force Majeure Contract Period Extension in the same way as they apply during the normal Contract Period, except that:
- (1) NBPco shall not be paid any Subsidy Payments (or any other sums or any increase in or to the Subsidy Payments) in respect of the Force Majeure Contract Period Extension; and
 - (2) during the Force Majeure Contract Period Extension, the Performance Credits calculated in accordance with Schedule 6.7 (Performance Levels) and Schedule 5.1 (Subsidy Payments) shall be multiplied by a percentage, that percentage being calculated as: the number of Premises in the Force Majeure Affected Area (at the time the Force Majeure Event first occurred) expressed as a percentage of the number of Premises in the Intervention Area (at the time the Force Majeure Event first occurred); and

71.8.6 during the Force Majeure Impact Period, the Performance Credits calculated in accordance with Schedule 6.7 (Performance Levels) and Schedule 5.1 (Subsidy Payments) shall be multiplied by a percentage, that percentage being calculated as: the number of Premises in the Intervention Area (at the time the Force Majeure Event first occurred) less the number of Premises in the Force Majeure Affected Area (at the time the Force Majeure Event first occurred), expressed as a percentage of the number of Premises in the Intervention Area (at the time the Force Majeure Event first occurred); and

71.8.7 except to the extent expressly provided otherwise in this Clause 71.8 (Force Majeure) or agreed otherwise by the Parties in a Change Authorisation, NBPco shall continue to comply with the provisions of this Agreement in all other respects.

This Clause does not limit or affect Clause 71.4 (Force Majeure).

No Relief to the extent that Consequences of Force Majeure can be Mitigated

71.9 NBPco is not entitled to an extension to a Milestone Date or relief in accordance with the provision of this Clause 71 (Force Majeure) to the relevant extent that:

71.9.1 the Delay to the affected Milestone Dates or failure by NBPco to comply with its obligations under this Agreement has been or likely can be eliminated, overcome, mitigated or minimised by NBPco complying with its obligations under, as applicable, Clauses 17.1.1(C) (Delay) and/or 71.4 (Force Majeure); and/or

71.9.2 the consequences of the Force Majeure Event can be addressed by a change to the Project Plans without impacting upon the Implementation Programme.

71.10 **Acceleration**

71.10.1 Without limiting or affecting Clause 71.4 (Force Majeure) and despite any relief granted to NBPco, or to which NBPco is entitled, pursuant to the provisions of this Clause 71 (Force Majeure), where any Force Majeure Event has arisen (for which relief has or will be given under this Clause), the Minister may request NBPco to accelerate the execution of the Services (particularly the deployment of the Network) when NBPco's obligations become capable of being performed so that the effects of the Force Majeure Event are alleviated or mitigated. NBPco shall comply with any such request and act reasonably and promptly in complying with such request, provided that if NBPco demonstrates in advance to the Minister (and to the Minister's satisfaction, acting reasonably) that it will incur material additional expenditure, that was not provided for in the version of the Project Financial Model applicable immediately prior to the date on which the Force Majeure Event commenced, as a direct consequence of complying with the request (which could not be avoided by taking reasonable steps consistent with Best Industry Practice), NBPco shall not be required to comply with the request to such extent without a proportionate increase in the Subsidy Payment (provided, in particular, that any such increase shall provide only for NBPco to be in an equivalent position as a result of the acceleration request (by reference to the version of the Project Financial Model applicable immediately prior to the date on which the Force Majeure Event commenced) as had the acceleration request not be implemented).

71.10.2 For the purposes of this Clause 71.10 (Force Majeure), NBPco acknowledges and agrees that any increase in the Deployment Milestone Payment that corresponds to the Milestone that has been delayed shall only be made by prior written agreement in advance in accordance with the Change Control Procedure (which shall reflect the outcome agreed pursuant to Paragraph 71.10.1 (Force Majeure)) and that NBPco has no entitlement to an increase in the Deployment Milestone Payment that corresponds to the Milestone that has been delayed if a Change Authorisation is not executed by the Minister in respect of the increase prior to NBPco incurring the relevant additional expenditure. NBPco acknowledges and agrees that no increase in the Deployment Milestone Payment that corresponds to the Milestone that has been delayed is permitted insofar as such increase would breach or infringe the terms of the State Aid Decision and/or State Aid Law, and in such circumstances and to such extent, NBPco shall not be required to take any acceleration measures under this Clause 71.10 (Force Majeure).

End of Relief

71.11 When the Force Majeure Event ceases or no longer directly causes the obligations of the Affected Party under this Agreement to be incapable of being performed (or, where Clause 71.8 (Force Majeure) applies, to be incapable of being performed in a manner that meets the Target Performance Levels), this Agreement shall continue to be performed on the terms existing immediately before the occurrence of the Force Majeure Event unless agreed otherwise by the Parties in a Change Authorisation.

71.12 Without limiting or affecting Clause 71.11 (Force Majeure), NBPco shall notify the Minister as soon as practicable (and without delay) after the Force Majeure Event ceases or no

longer directly causes the obligations of NBPco under this Agreement to be incapable of being performed or, where Clause 71.8 (Force Majeure) applies, to be incapable of being performed in the manner and at the times set out in the NBPco Solution and in a manner that meets the Target Performance Levels.

Performance of Unaffected Obligations

71.13 Nothing in this Clause 71 (Force Majeure) prevents or relieves either Party from performing any of its obligations set out in this Agreement that are not affected by the relevant Force Majeure Event.

No Relief

71.14 Where the Affected Party is NBPco, NBPco shall not be entitled to relief from its liability or obligations or entitled to an extension of time to any Milestone under the provisions of this Clause 71 (Force Majeure) to the relevant extent that:

71.14.1 NBPco fails to fully comply with Clause 71.4 (Force Majeure) (for the period only of any such non-compliance); or

71.14.2 NBPco is required to comply with the BCDR Plan but it or its NBPco Personnel have failed to do so (unless and only to the extent that this failure is also a direct consequence of a Force Majeure Event causing the relevant obligations of NBPco in the BCDR Plan to be incapable of being (as distinct, in particular, from it being more expensive for them to be) performed).

Impact on Implementation Programme

71.15 To the extent that the consequences of a Force Majeure Event can be addressed by a change to the Project Plan without impacting upon the Implementation Programme, then the Parties shall use their respective reasonable endeavours to agree a change to the Project Plan in accordance with the Change Control Procedure.

71.16 To the extent that:

71.16.1 as a direct consequence of NBPco being prevented from carrying out its obligations as a direct consequence of a Force Majeure Event, the Services, Network and/or Project are materially adversely affected (or are likely to be materially adversely affected) for a sustained and indeterminate period exceeding at least ten (10) Working Days;

71.16.2 the consequences of the Force Majeure Event have been prevented, overcome, mitigated and minimised by NBPco in accordance and pursuant to Clause 71.5 (Force Majeure) to the extent possible; and

71.16.3 the direct consequences of the Force Majeure Event on the obligations of NBPco which it is prevented from carrying out cannot be addressed solely by a change to the Project Plan without recourse to the Change Control Procedure,

then the Parties may elect to use their respective reasonable endeavours to address the consequences of the Force Majeure Event for the Implementation Programme and on the obligations of NBPco which are incapable of being performed in accordance with the Change Control Procedure (which shall reflect the outcome agreed pursuant to this Paragraph 71 (Force Majeure)), provided that (unless the Parties agree otherwise in writing) the Parties shall in respect of the agreement of any such change adhere to the

principle that each Party bears its own costs incurred in dealing with a Force Majeure Event.

Minister has no liability to NBPco

- 71.17 The Minister has no liability to NBPco in connection with any liability or Claim which NBPco suffers or incurs or agrees to pay out as a result of or in connection with any Force Majeure Event and, accordingly, as between the Parties, any such liability or Claim shall be borne by NBPco (but and only to the extent applicable, without limiting or affecting any sums payable by the Minister pursuant to Clause 78 (Non-Default Termination) and Schedule 6.9 (Consequences of Termination)).

SECTION K – RIGHTS, REMEDIES AND RELIEF

72 PERSISTENT DEFAULTS AND REMEDIAL PLAN PROCESS

- 72.1 The Parties shall comply with Schedule 6.8 (Persistent Defaults and Remedial Plan Process).
- 72.2 Unless otherwise provided expressly in this Agreement, the provisions of, and processes set out in, Schedule 6.8 (Persistent Defaults and Remedial Plan Process) do not limit or affect the Minister's right or remedies under this Agreement (including rights of termination in accordance with the provisions of this Agreement).

73 STEP-IN RIGHTS

- 73.1 If the Minister reasonably believes that it needs to take action (either itself or, subject to Clause 73.17 (Step-In Rights), by engaging a third party to take or assist with such action) in connection with the Services, Wholesale Products and/or Network:

73.1.1 because an Emergency has arisen; or

73.1.2 because, provided the Minister has:

- (A) implemented the Remedial Plan Process in respect of the Default concerned or first issued a Final Persistent Default Notice in respect of the Default concerned; and
- (B) issued notice to NBPco notifying it that if it does not remedy the Default and its consequences within a period of not less than three (3) months the Minister may exercise its rights under this Clause 73 (Step-In Rights),

a Default by NBPco is materially preventing or delaying the provision of the Minimum Required Wholesale Products or Additional Required Wholesale Products,

then the Minister is entitled (but not obliged) to give notice at any time requiring NBPco forthwith to take such steps as the Minister, acting reasonably, considers necessary or

expedient to mitigate or preclude such state of affairs and the Minister shall state in any such notice the time period within which such steps must be properly completed.

73.2 If:

73.2.1 following the issue by the Minister of a notice pursuant to Clause 73.1 (Step-In Rights), either:

- (A) NBPco fails to forthwith take the steps specified by the Minister in the notice at all or with sufficient expedition and diligence to comply with the time period specified by the Minister in the notice or to complete such steps within the time period specified by the Minister in the notice;
- (B) NBPco notifies the Minister that it will not take the steps specified by the Minister in the notice at all or with sufficient expedition and diligence to comply with the time period specified by the Minister in the notice or complete such steps within the time period specified by the Minister in the notice; or
- (C) the Minister (acting reasonably) considers that NBPco cannot or is not capable of, or appropriately positioned to, complete the steps specified by the Minister in the notice or to complete such steps within the time period specified by the Minister in the notice;

or

73.2.2 the Minister has notified NBPco in writing in accordance with Paragraph 5 (Election as to Transfer of Assets or Shares) of Part 5 (Change in Ownership and Asset Transfer) of Schedule 6.9 (Consequences of Termination) that it has elected to:

- (A) exercise the Share Option; or
- (B) exercise the Asset Option,

and notifies NBPco that the Minister wishes to take to in accordance with the provisions of Clauses 73 (Step-In Rights);

then the Minister is entitled (but not obliged) to take action in accordance with the provisions of Clauses 73.3 (Step-In Rights) to 73.17 (Step-In Rights) inclusive. 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).

Notice to NBPco

- 73.3 If Clause 73.2 (Step-In Rights) applies and the Minister wishes to take action, the Minister shall notify NBPco in writing of the following:
- 73.3.1 the action it wishes to take (including temporarily stepping-in and/or temporarily assuming total or partial management and control of NBPco in connection with the Network, Wholesale Products and/or the Services);
 - 73.3.2 the reason for such action;
 - 73.3.3 the date it wishes to commence such action;
 - 73.3.4 the time period which it believes will be necessary for such action; and
 - 73.3.5 to the extent practicable, the effect on NBPco and its obligation to provide the Services, Wholesale Products and Network during the period such action is being taken.

Action by the Minister

- 73.4 Following service of notice pursuant to Clause 73.3 (Step-In Rights), the Minister is entitled to and shall take such action as notified under Clause 73.3 (Step-In Rights), and any consequential additional action as it reasonably believes is necessary (together, the “**Required Action**”) and NBPco shall:
- 73.4.1 give all rights of entry onto, and access to and use of, the Network, Wholesale Products, Services, Assets and Equipment (and in each case any related property) as the Minister (and, subject to Clause 73.17 (Step-In Rights), any third party engaged by the Minister for such purpose, provided it is under equivalent obligations of confidentiality as those set out in Clause 60 (Confidentiality)) may reasonably require to undertake the Required Action (including rights to undertake operations, maintenance, construction, works and any other acts);
 - 73.4.2 give all rights of access to and use of information, data and documents relating to the Networks, Services, Wholesale Products, Assets and Equipment as the Minister (and any third party engaged by the Minister for such purpose, provided it is under equivalent obligations of confidentiality as those set out in Clause 60 (Confidentiality)) may reasonably require to undertake the Required Action;
 - 73.4.3 comply with Clause 55 (Licence Granted by NBPco); and
 - 73.4.4 give reasonable assistance to the Minister (and, subject to Clause 73.17 (Step-In Rights), any third party engaged by the Minister for such purpose, provided it is under equivalent obligations of confidentiality as those set out in Clause 60 (Confidentiality)) while it is taking the Required Action.

73.5 NBPco agrees that:

73.5.1 to the extent reasonably necessary to implement the Required Action, the Minister is entitled:

- (A) to temporarily assume total or partial management and control of NBPco in connection with the Network, Wholesale Products and/or the Services;
- (B) to issue instructions to NBPco in which case NBPco shall comply with such instructions;
- (C) to issue instructions (to the exclusion of NBPco) to Key Subcontractors, on behalf of and as if it was NBPco, in respect of such of the Key Subcontractors' duties and obligations under the Key Subcontracts (upon the terms and conditions of the Key Subcontracts) as the Minister may elect;

73.5.2 subject to Clause 73.5.3 (Step-In Rights), NBPco:

- (A) is not entitled to relief from;
- (B) continues to be responsible for compliance with and required to comply with; and
- (C) is deemed, including for the purposes of Clauses 73.9 (Step-In Rights) and 73.10 (Step-In Rights), to not be prevented from providing any part of the Services, Wholesale Products or Network or performing,

its obligations under this Agreement and Key Subcontracts and liable for the acts and omissions of its Key Subcontractors in respect of any matter in relation to which NBPco or a Key Subcontractor is instructed by the Minister pursuant to Clause 73.5.1 (Step-In Rights), despite the issue of any instructions to NBPco or a Key Subcontractor by the Minister pursuant to this Clause;

73.5.3 NBPco, as applicable:

- (A) is deemed not to be in breach of this Agreement to the extent it breaches this Agreement;
- (B) shall not incur any Performance Points and/or Performance Credits to the extent they are incurred;
- (C) is entitled to an extension of time to a Milestone Date equal to the duration of a Delay in Achieving a Milestone Date that is caused; and/or
- (D) is entitled to an extension of time to a relevant Longstop Date equal to the duration of a Delay in Achieving the Longstop Date concerned that is caused,

as a result of NBPco or a Key Subcontractor acting on an instruction from the Minister to either NBPco or a Key Subcontractor pursuant to Clause 73.5.1

(Step-In Rights), provided that this Clause does not give NBPco any such relief or extension of time to the extent that the Minister reasonably demonstrates that:

- (E) as applicable, NBPco would still have been in breach of this Agreement, Performance Credits and/or Performance Credits would still have been incurred and/or a Delay would still have occurred regardless of whether or not the Minister had given the instruction concerned;
- (F) the instruction could reasonably have been implemented by NBPco or the Key Subcontractor concerned, as applicable, without breaching this Agreement, incurring Performance Points and/or Performance Credits and/or a Delay occurring; and/or
- (G) NBPco or a Key Subcontractor grossly negligently failed to advise the Minister of the consequence of implementing such instruction;

73.5.4 the Minister will not be under any obligation or duty to the Key Subcontractor and nor will the Key Subcontractor have any claim or cause of action against the Minister (whether under contract, tort, equity, common law, statute or otherwise) in connection with any instruction from the Minister to either NBPco or a Key Subcontractor pursuant to Clause 73.5.1 (Step-In Rights); and

73.5.5 the Minister will not be under any obligation or duty to NBPco and nor will NBPco have any claim or cause of action against the Minister (whether under contract, tort, equity, common law, statute or otherwise) in connection with any instruction from the Minister to either NBPco or a Key Subcontractor pursuant to Clause 73.5.1 (Step-In Rights), except to the extent set out in Clause 73.7 (Step-In Rights).

73.6 The Minister shall provide NBPco with notice of completion of the Required Action and shall use reasonable endeavours to provide such advance notice, as is reasonably practicable, of its anticipated completion.

Minister Duty of Care

73.7 Subject to Clause 73.8 (Step-In Rights), the Minister acknowledges that in the event of it stepping-in under this Clause 73 (Step-In Rights), the Minister owes NBPco a duty of care in such respect with respect to any Direct Losses and, to the extent NBPco suffers Direct Losses and such Direct Losses arise out of or in connection with any breach of such duty of care, such breach shall be treated as a Compensation Event with respect to those Direct Losses for the purposes of this Agreement provided that NBPco, consistent with Best Industry Practice, takes all reasonable steps open to it to mitigate its loss.

73.8 NBPco acknowledges and agrees that the Minister has no liability to NBPco under Clause 73.7 (Step-In Rights) or in tort (including negligence) or otherwise to the extent that NBPco's loss, damage or other liabilities are covered, or ought to be covered in accordance with Clause 69 (Required Insurance), by insurance held by NBPco and/or its Subcontractors. The Parties shall comply with the following process in the event that this Clause applies or is potentially applicable:

73.8.1 If NBPco makes a claim against the Minister of the type outlined in Clause 73.7 (Step-In Rights), it shall state at the time (or as soon as reasonably practicable after that) whether or not, in NBPco's reasonable view, NBPco's loss, damage

or other liabilities are covered, or ought to be covered in accordance with Clause 69 (Required Insurance), by insurance held by NBPco and/or its Subcontractors and, if covered (or ought to be so covered), the amount of cover in such respect.

73.8.2 If the Minister agrees with NBPco's reasonable view, the Parties shall proceed in the manner agreed.

73.8.3 If the Minister disagrees with NBPco's reasonable review, the matter shall be referred to the Dispute Resolution Procedure.

Step-In without NBPco Default

73.9 If NBPco is not in breach of its obligations under this Agreement, then for so long as and to the extent that the Required Action is taken, and this prevents NBPco from providing any part of the Services, Wholesale Products and/or Network:

73.9.1 NBPco, as applicable:

(A) shall be relieved from its obligations to provide such part of the Services, Wholesale Products and Network as it prevented from providing as a result of the Required Action; and

(B) is entitled to an extension of time to, as applicable:

(1) a Milestone Date equal to the duration of a Delay in Achieving the Milestone Date concerned; and/or

(2) a Longstop Date equal to the duration of a Delay in Achieving the Longstop Date concerned,

that is caused by it being prevented from providing any part of the Services, Wholesale Products and/or Network as a result of the Required Action (except to the extent that such Delay would have occurred regardless of whether or not the Minister undertook the Required Action); and

73.9.2 in respect of the period in which the Minister is taking the Required Action and provided that NBPco complies with Clause 73.4 (Step-In Rights) (such assistance to be at the expense of the Minister to the extent that incremental costs are incurred):

(A) that part of the Subsidy Payments due from the Minister to NBPco in respect of the obligations, Services, Wholesale Products and Network affected by the Required Action shall equal the amount NBPco would receive if it were satisfying all its obligations and providing the Services, Wholesale Products and Network affected by the Required Action in full over that period (provided that no Deployment Milestone Payments or Connection Milestone Payments will be payable unless and until the relevant Milestone is Achieved and, in such a case, will be payable in the manner provided by the provisions of this Agreement); and

(B) the provisions of Clause 20 (Performance Levels) and Schedule 6.7 (Performance Levels) shall apply only to the Services, Network,

Wholesale Products and obligations that NBPco is not prevented from providing as a result of the Required Action.

Step-In on NBPco Breach

73.10 If the Required Action is taken as a result of a breach of the obligations of NBPco under this Agreement, then for so long as and to the extent that the Required Action is taken, and this prevents NBPco from providing any part of the Services, Wholesale Products and/or Network:

73.10.1 NBPco, as applicable:

- (A) shall be relieved from its obligations to provide such part of the Services, Wholesale Products and Network as it prevented from providing as a result of the Required Action; and
- (B) is entitled to an extension of time to, as applicable:
 - (1) a Milestone Date equal to the duration of a Delay in Achieving the Milestone Date concerned; and/or
 - (2) a Longstop Date equal to the duration of a Delay in Achieving the Longstop Date concerned,

that is caused by it being prevented from providing any part of the Services, Wholesale Products and/or Network as a result of the Required Action (except to the extent that such Delay would have occurred regardless of whether or not the Minister undertook the Required Action); and

73.10.2 in respect of the period in which the Minister is taking the Required Action and provided NBPco complies with Clause 73.4 (Step-In Rights):

- (A) that part of the Subsidy Payments due from the Minister to NBPco in respect of the obligations, Services, Wholesale Products and Network affected by the Required Action shall equal the amount NBPco would receive if it were satisfying all its obligations and providing the Services, Wholesale Products and Network affected by the Required Action in full over that period (provided that no Deployment Milestone Payments or Connection Milestone Payments will be payable unless and until the relevant Milestone is Achieved and, in such a case, will be payable in the manner provided by the provisions of this Agreement), less, without limiting or affecting Clause 73.11 (Step-In Rights), an amount equal to all the Minister's reasonable and proper costs in taking the Required Action; and
- (B) the provisions of Clause 20 (Performance Levels) and Schedule 6.7 (Performance Levels) shall apply only to the Services, Network, Wholesale Products and obligations that NBPco is not prevented from providing as a result of the Required Action.

73.11 If the Required Action is taken as a result of a breach of the obligations of NBPco under this Agreement and the Minister's reasonable costs in taking the Required Action exceed the Subsidy Payments that NBPco would have received if it was satisfying all its obligations and had provided the Services, Wholesale Products and Network affected by the Required

Action in full over that period, NBPco shall pay the Minister any excess, and in respect of which the Minister may exercise its rights under Clause 33 (Set-off and Withholding) in respect of any future Subsidy Payments, so that all the Minister's reasonable costs in taking the Required Action are fully paid pursuant to the combination of Clause 73.10.2(A) (Step-In Rights) and this Clause 73.11 (Step-In Rights).

Step-Out

- 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.
- 73.13 Before ceasing to exercise its step in rights under this Clause 73 (Step-In Rights), the Minister shall deliver a written notice to NBPco ("**Step-Out Notice**"), specifying:
- 73.13.1 the Required Action it has actually taken; and
 - 73.13.2 the date on which the Minister plans to end the Required Action ("**Step-Out Date**") subject to the Minister being satisfied with:
 - (A) NBPco's ability to resume the provision of the Services, Wholesale Products and Network; and
 - (B) NBPco's plan developed in accordance with Clause 73.14 (Step-In Rights).
- 73.14 NBPco shall, within twenty (20) Working Days of receipt of a Step-Out Notice, develop and submit to the Minister for the Minister's approval a draft plan ("**Step-Out Plan**") relating to the resumption by NBPco of the provision of the Services, Wholesale Products and Network, including any action NBPco proposes to take to ensure that the affected Services, Wholesale Products and Network satisfy the requirements of this Agreement. Without limiting or affecting the foregoing, NBPco shall include and address in the draft Step-Out Plan such matters as are reasonably requested by the Minister.
- 73.15 The Minister shall notify NBPco that it approves or does not approve of the Step-Out Plan within thirty (30) Working Days of receipt of the Step-Out Plan. If the Minister, acting reasonably, does not approve the draft Step-Out Plan submitted to the Minister pursuant to Clause 73.14 (Step-In Rights), the Minister shall inform NBPco of its reasons for not approving it in such notice. NBPco shall then revise the draft Step-Out Plan taking those reasons into account and shall re-submit the revised plan to the Minister for the Minister's approval. The Minister shall not unreasonably withhold or delay its approval of the draft Step-Out Plan. Any Disputes in respect of the Step-Out Plan shall be resolved through the Dispute Resolution Procedure.
- 73.16 NBPco, upon approval of the Step-Out Plan, shall resume performance of its affected obligations in accordance with, and with effect from the timelines set out in, the Step-Out Plan.

Competent Person

73.17 The Minister shall not engage a third party to take or assist with any Required Action in any material respect whom:

73.17.1 does not have appropriate expertise to perform the relevant role; or

73.17.2 is a competitor of NBPco, unless, having made due inquiries and consulted with NBPco and had regard to any alternative proposals of NBPco, the Minister, acting reasonably, considers that there is no reasonable alternative with appropriate expertise to perform the relevant role.

SECTION L – CONTRACT TERM, TERMINATION AND EXIT

74 TERM OF THIS AGREEMENT AND SERVICE CONTINUITY

Contract Term

74.1 Subject to the provisions of Clause 2 (Conditions Precedent), this Agreement commences, and takes legal effect, on and from the Effective Date and, unless terminated at an earlier date or extended in accordance with the express provisions of this Agreement (including pursuant to the provisions of this Clause 74 (Term of this Agreement and Service Continuity)), continues until and, subject to Paragraph 2 (The Termination Date and Scheduled Ownership Transfer Date) of Part 5 (Change in Ownership and Asset Transfer) of Schedule 6.9 (Consequences of Termination), terminates automatically on the Contract Term Expiry Date.

74.2 The Parties may extend the Expiry Date by agreement in writing for any period or periods of up to five (5) years from the Expiry Date.

74.3 Notwithstanding any other provision of this Agreement, this Agreement shall only terminate in accordance with the express provisions of this Agreement.

74.4 NBPco shall, no more than thirty (30) months and no later than twenty four (24) months in advance of the Expiry Date, notify the Minister in writing whether or not it intends to comply with Clause 74.5 (Term of this Agreement and Service Continuity).

74.5 If NBPco notifies the Minister, in accordance with Clause 74.4 (Term of this Agreement and Service Continuity), that it shall comply with this Clause 74.5 (Term of this Agreement and Service Continuity):

74.5.1 the Contract Term shall be extended to include the Service Continuity Period;

74.5.2 the Minister shall have no obligations during the Service Continuity Period component of the Contract Term (and, in particular, shall not be liable to pay any Subsidy Payments or other sums in respect of the Service Continuity Period or the performance by NBPco of its obligations under this Clause 74.5 (Term of this Agreement and Service Continuity) or otherwise);

74.5.3 the Parties shall use all reasonable endeavours, acting reasonably and in good faith, to agree in writing, by:

- (A) no later than twelve (12) months prior to the Expiry Date; and
- (B) no later than three (3) months from the date of request by the Minister from time to time during the Service Continuity Period (provided that the Minister may not make such a request within twelve (12) months of the previous request),

the Industry Standard Benchmark Service Levels and the Industry Standard Service Level Agreements;

74.5.4 if the Parties do not agree, in accordance with Clause 74.5.3 (Term of this Agreement and Service Continuity), either the Industry Standard Benchmark Service Levels and/or the Industry Standard Service Level Agreement by the timeline set out in that Clause, the Minister is entitled to refer the, as applicable, Industry Standard Benchmark Service Levels and/or the Industry Standard Service Level Agreements for determination by the Benchmarking in accordance with Schedule 6.12 (Benchmarking);

74.5.5 NBPco, subject to Clause 74.6.1 (Term of this Agreement and Service Continuity), shall:

- (A) use its best endeavours to extend the term of the Infrastructure Access Agreements with any Key Subcontractors (at the end of Contract Period) to cover the duration of the Service Continuity Period (to the extent they do not do so already);
- (B) throughout the Service Continuity Period:
 - (1) continue to operate and maintain the entire Network and provide Services and Wholesale Products (and, in particular, at least those Wholesale Products that were available to Service Providers in the six (6) months prior to the Expiry Date) to those Premises that were Passed and Connected during the Contract Period in accordance with the Industry Standard Benchmark Service Levels and Industry Standard Service Level Agreements;
 - (2) adhere to the governance and auditing reporting compliance requirements set out at Schedule 2.7 (NBPco Requirements) and Schedules 6.1 (Contract Liaison Board) to 6.5 (Reports and Records) (inclusive) to the extent reasonably necessary to enable the Minister monitor and verify compliance with the NBPco's obligations under this Clause 74.5.5 (Term of this Agreement and Service Continuity); and
 - (3) offer all Wholesale Products on a Non-Discriminatory and Equivalence of Inputs basis as outlined in Paragraph 1.1.2 (Introduction), 1.1.3 (C) (Introduction), 3.1.3 (Product Requirements, Evolution and Roadmap), 3.3.4 and 4.1.1

(Operational Environment Requirements) of Schedule 2.1 (Technical Solution Specification),

- (C) throughout the Service Continuity Period accept the jurisdiction of the Regulator (to the extent it does not already have such jurisdiction) to directly supervise and regulate the terms and implementation of service level agreements between NBPCo and any Service Providers; and

subject to Clause 74.7 (Term of this Agreement and Service Continuity) and the provisions of Clause 80 (Consequences of Termination or Expiry) and Schedule 6.9 (Consequences of Termination), NBPCo shall not have any other obligations under the provisions of this Agreement during the Service Continuity Period except those which apply during the Service Continuity Period component of the Contract Term pursuant to the provisions of this Agreement. For clarity, Performance Credits do not apply during the Service Continuity Period.

74.6 If, during the Service Continuity Period:

74.6.1 NBPCo notifies the Minister that it no longer intends to comply with Clause 74.5 (Term of this Agreement and Service Continuity), either Party may issue to the other Party a Termination Notice stating:

- (A) it is terminating the Agreement under this Clause 74.6.1 (Term of this Agreement and Service Continuity); and
- (B) that the Agreement will terminate on the date specified in the notice, which must be a minimum of thirty (30) Working Days and no more than ninety (90) Working Days after the date of receipt by NBPCo of the Termination Notice,

in which case the Agreement will, subject to Paragraph 2 (The Termination Date and Scheduled Ownership Transfer Date) of Part 5 (Change in Ownership and Asset Transfer) of Schedule 6.9 (Consequences of Termination), terminate on the date specified in the Termination Notice;

or

74.6.2 NBPCo fails to comply with its obligations under Clause 74.5 (Term of this Agreement and Service Continuity), the Minister is entitled to issue a Termination Notice in accordance with Clause 76.2.2(A) (Termination by Minister for NBPCo Termination Event).

74.7 If:

74.7.1 a Party issue a Termination Notice pursuant to Clause 74.6.1 (Term of this Agreement and Service Continuity) or, pursuant to Clause 74.6.2 (Term of this Agreement and Service Continuity), the Minister issue a Termination Notice pursuant to Clause 76.2.2(A) (Termination by Minister for NBPCo Termination Event); or

74.7.2 NBPCo does not notify the Minister in accordance with Clause 74.4 (Term of this Agreement and Service Continuity) that it intends to comply with Clause 74.5 (Term of this Agreement and Service Continuity), the Contract Term shall not be

extended to include the Service Continuity Period and accordingly shall terminate on the Expiry Date and,

NBPco agrees that:

74.7.3 Part 5 (Change in Ownership and Asset Transfer) and Part 6 (General) of Schedule 6.9 (Consequences of Termination) will apply in which case that Part will apply, unless the Minister notifies NBPco otherwise in writing; and

74.7.4 the Minister shall unless the Termination Notice is deemed revoked and the Agreement continues in accordance with Clause 76.4 (Termination by Minister for NBPco Termination Event), be entitled at its discretion (but not obliged) to elect, in accordance with the provisions of Part 5 (Change in Ownership and Asset Transfer) and Part 6 (General) of Schedule 6.9 (Consequences of Termination), to either (with the choice between the alternative options in Clause 74.7.4(A) (Term of this Agreement and Service Continuity and Clause 74.7.4(B) (Term of this Agreement and Service Continuity) at the Minister's discretion):

(A) exercise the Share Option; or

(B) exercise the Asset Option,

(provided that, for clarity, the Service Continuity Period Equity Value is only payable by the Minister in accordance with the provisions of Schedule 6.9 (Consequences of Termination) if the Minister exercises either the Share Option or the Asset Option).

74.8 Subject to the terms of this Clause 74.8 (Term of this Agreement and Service Continuity), for clarity, despite any other provision of this Agreement, the Minister is not under any obligation to pay any sums to NBPco or any other person pursuant to Part 1 (Termination by Minister for NBPco Termination Event, Prohibited Acts or Prevention of Bribery) of Schedule 6.9 (Consequences of Termination) in circumstances where the Agreement terminates pursuant to a Termination Notice issued by the Minister pursuant to Clause 74.6.1 (Term of this Agreement and Service Continuity) or pursuant to Clause 74.6.2 (Term of this Agreement and Service Continuity). The preceding sentence of this Clause 74.8 (Term of this Agreement and Service Continuity) does not limit or affect the Minister's obligation to pay, by way of Schedule 6.9 Payment, the Service Continuity Period Equity Value payable subject to, and in accordance with, the provisions of Schedule 6.9 (Consequences of Termination) where the Minister exercises the Share Option or Asset Option under Clause 74.7.4 (Term of this Agreement and Service Continuity).

74.9 The Parties, for the purposes of Clause 74.5.5(B)(2) (Term of this Agreement and Service Continuity), shall meet, no later than forty eight (48) months prior to the Expiry Date, and use all reasonable endeavours, acting reasonably and in good faith, to promptly agree in writing which of the requirements set out in the Schedules referred to in Clause 74.5.5(B)(2) (Term of this Agreement and Service Continuity) are not reasonably necessary to enable the Minister monitor and verify compliance with NBPco's obligations under Clause 74.5.5 (Term of this Agreement and Service Continuity).

75 TERMINATION SUSPENSION

75.1 If either Party issues a Termination Notice:

75.1.1 the Minister is entitled, at any time prior to the Termination Date, to issue a Termination Suspension Notice to NBPco in which case if the Minister exercises the NBPco Share Option or the Novation Option, subject to Clause 75.1.2(A) (Termination Suspension) and despite any other provision of this Agreement, the instant immediately before the termination of the Agreement would have taken effect but for the issue of the Termination Suspension Notice ("**Instant before Termination**"), the termination of the Agreement will be suspended and the Agreement will, on and from the Instant before Termination, continue as if no Termination Notice had been issued except that the provisions of Schedule 6.9 (Consequences of Termination) (including the provisions in respect of Schedule 6.9 Payments to NBPco) will apply as if the Agreement terminated (without, where applicable, any novation of the Agreement to the new counterparty replacing NBPco) pursuant to that Termination Notice;

and

75.1.2 the Minister is entitled

- (A) at any time before what would have been the Termination Date but for the issue of the Termination Suspension Notice, to issue a notice revoking a Termination Suspension Notice in which case the Agreement shall terminate in accordance with its provisions as if no Termination Suspension Notice had been issued; or
- (B) at any time within the period of six (6) months starting on the date that would have been the Termination Date but for the issue of the Termination Suspension Notice, to issue a notice stating that the Agreement shall terminate on the date specified in the notice, which must be a minimum of thirty (30) Working Days and no more than ninety (90) Working Days after the date of receipt by NBPco of the Termination Notice.

76 TERMINATION BY MINISTER FOR NBPCO TERMINATION EVENT

Notification of NBPco Termination Event

76.1 NBPco undertakes that it shall notify the Minister of the occurrence and details of any NBPco Termination Event and of any event or circumstance which would, with the passage of time or otherwise, constitute or give rise to an NBPco Termination Event, in either case promptly upon NBPco becoming aware of its occurrence.

NBPco Termination Event

76.2 Subject to Clause 76.9 (Termination by Minister for NBPco Termination Event), if an NBPco Termination Event has occurred and the Minister wishes to terminate this Agreement, it must serve a notice in writing upon NBPco. The Termination Notice must specify:

76.2.1 the type and nature of the NBPco Termination Event that has occurred, giving reasonable details of the type and nature of the NBPco Termination Event

(including, where applicable, the information set out in Clause 61.7.1 (Prohibited Acts and Prevention of Bribery); and

76.2.2 that in the case of a Rectifiable NBPco Termination Event this Agreement will terminate:

(A) in the case of a Termination Notice issued in respect of any of the following limbs of the definition of NBPco Termination Event (in Schedule 10 (NBPco Termination Events)):

- (1) Paragraph 1.1.4(A) (NBPco Termination Event);
- (2) Paragraph 1.1.4(B) (NBPco Termination Event);
- (3) Paragraph 1.1.5 (NBPco Termination Event);
- (4) Paragraph 1.1.6 (NBPco Termination Event);
- (5) Paragraph 1.1.7 (NBPco Termination Event);
- (6) Paragraph 1.1.8 (NBPco Termination Event);
- (7) Paragraph 1.1.11 (NBPco Termination Event);
- (8) Paragraph 1.1.14 (NBPco Termination Event); and/or
- (9) Paragraph 1.1.18 (NBPco Termination Event),

on the day falling eighty (80) Working Days after the date NBPco receives the Termination Notice, unless NBPco puts forward a rectification programme acceptable to the Minister (acting reasonably) ("**Rectification Programme**") within:

- (1) twenty-five (25) Working Days of the date NBPco first receives the Termination Notice (or, if applicable, such longer period specified in the Termination Notice by the Minister); or, if the Minister rejects the initial Rectification Programme put forward by NBPco,
- (2) the fifteen (15) Working Day period referred to in Clause 76.3 (Termination by Minister for NBPco Termination Event),

and in either case NBPco implements such Rectification Programme in accordance with its terms and rectifies the NBPco Termination Event in accordance with the Rectification Programme, including the timeline set out in the Rectification Programme; or

(B) in the case of a Termination Notice issued in respect of any of the following limbs of the definition of NBPco Termination Event (in Schedule 10 (NBPco Termination Events)):

- (1) Paragraph 1.1.1 (NBPco Termination Event);
- (2) Paragraph 1.1.2(B) (NBPco Termination Event);
- (3) Paragraph 1.1.3 (NBPco Termination Event);
- (4) Paragraph 1.1.10 (NBPco Termination Event);
- (5) Paragraph 1.1.12 (NBPco Termination Event);

forty-five (45) Working Days after the date NBPco receives the Termination Notice, unless NBPco rectifies the NBPco Termination Event within forty-five (45) Working Days of the date NBPco receives the Termination Notice; or

76.2.3 that in the case of a Termination Notice issued in respect of the NBPco Termination Event set out in Paragraph 1.1.17 (NBPco Termination Event) of Schedule 10 (NBPco Termination Events)), this Agreement will terminate on the date falling twenty (20) Working Days after the date NBPco receives the Termination Notice;

76.2.4 that in the case of a Termination Notice issued in respect of the NBPco Termination Event set out in Paragraph 1.1.9 (NBPco Termination Event) of Schedule 10 (NBPco Termination Events)), this Agreement will, subject to the provisions of 61.2 (Prohibited Acts and Prevention of Bribery), terminate on the date determined pursuant to the provisions of Clause 61.2 (Prohibited Acts and Prevention of Bribery); and

76.2.5 that in the case of any other NBPco Termination Event (not being a Rectifiable NBPco Termination Event or the NBPco Termination Event set out in Paragraph 1.1.9 (NBPco Termination Event) or Paragraph 1.1.17 (NBPco Termination Event) of Schedule 10 (NBPco Termination Events)), this Agreement will terminate on the date falling forty (40) Working Days after the date NBPco receives the Termination Notice.

Rectification Programme

76.3 The Minister shall notify NBPco in writing that it, acting reasonably, does or does not accept the Rectification Programme initially put forward by NBPco in accordance with Clause 76.2.2(A) (Termination by Minister for NBPco Termination Event) within twenty (20) Working Days of receipt of the initial Rectification Programme and shall, in the case of rejection, outline in writing in the notice of rejection the reasons why the Minister rejected the initial Rectification Programme. 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 shall be deemed to have accepted the Rectification Programme. NBPco shall have the opportunity, within the fifteen (15) Working Days

following issue of the initial notice of rejection pursuant to this Clause 76.3 (Termination by Minister for NBPco Termination Event), to:

- 76.3.1 engage with the Minister; and
- 76.3.2 submit a revised Rectification Programme to make it acceptable to the Minister (acting reasonably).

The Minister shall notify NBPco in writing that it, acting reasonably, does or does not accept the revised Rectification Programme put forward by NBPco in accordance with this Clause 76.3 (Termination by Minister for NBPco Termination Event) within twenty (20) Working Days of receipt of the revised Rectification Programme. If the Minister does not, by notice in writing to NBPco, reject the revised Rectification Programme within such twenty (20) Working Day period, the Minister shall be deemed to have accepted the Rectification Programme.

Revocation of Termination Notice

- 76.4 If, in the case of a Rectifiable NBPco Termination Event, either:
 - 76.4.1 NBPco rectifies the NBPco Termination Event within the time period specified in the Termination Notice; or
 - 76.4.2 in the case only of an NBPco Termination Event identified in Clause 76.2.2(A) (Termination by Minister for NBPco Termination Event), the Minister accepts the Rectification Programme within the period set out in that Clause and NBPco implements the accepted Rectification Programme and rectifies the NBPco Termination Event in accordance with the Rectification Programme (including by the timeline set out in the Rectification Programme),

the Termination Notice will be deemed to be revoked and this Agreement will continue.

Termination

- 76.5 If either:
 - 76.5.1 in the case of an NBPco Termination Event identified in Clause 76.2.2(A) (Termination by Minister for NBPco Termination Event), where no Rectification Programme acceptable to the Minister (acting reasonably) has been put forward pursuant to Clause 76.2.2(A) (Termination by Minister for NBPco Termination Event) within the time period referred to in that Clause; or
 - 76.5.2 in the case of an NBPco Termination Event identified in Clause 76.2.2(B) (Termination by Minister for NBPco Termination Event) 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, subject to Paragraph 2 (The Termination Date and Scheduled Ownership Transfer Date) of Part 5 (Change in Ownership and Asset Transfer) of Schedule 6.9 (Consequences of Termination), 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 in accordance with the Rectification Programme (including by the timeline set out in the Rectification Programme), this Agreement will,

subject to Paragraph 2 (The Termination Date and Scheduled Ownership Transfer Date) of Part 5 (Change in Ownership and Asset Transfer) of Schedule 6.9 (Consequences of Termination), terminate on the day that is ten (10) Working Days after the date of notification by the Minister to NBPco of such failure to implement the Rectification Programme in accordance with its terms and to rectify the NBPco Termination Event in accordance with the Rectification Programme (including by the timeline set out in the Rectification Programme).

76.7 In the case of any NBPco Termination Event that:

76.7.1 is an NBPco Termination Event pursuant to Clause 30.6 (State Aid), this Agreement will, subject to Paragraph 2 (The Termination Date and Scheduled Ownership Transfer Date) of Part 5 (Change in Ownership and Asset Transfer) of Schedule 6.9 (Consequences of Termination), terminate on the date falling twenty (20) Working Days after the date NBPco receives the Termination Notice;

76.7.2 is an NBPco Termination Event pursuant to Clause 61.2 (Prohibited Acts and Prevention of Bribery), this Agreement will, subject to 61.2 (Prohibited Acts and Prevention of Bribery) and Paragraph 2 (The Termination Date and Scheduled Ownership Transfer Date) of Part 5 (Change in Ownership and Asset Transfer) of Schedule 6.9 (Consequences of Termination), terminate on the date determined pursuant to the provisions of Clause 61.2 (Prohibited Acts and Prevention of Bribery); and

76.7.3 is not an event referred to in Clause 76.7.1 (Termination by Minister for NBPco Termination Event) or Clause 76.7.2 (Termination by Minister for NBPco Termination Event) or a Rectifiable NBPco Termination Event, this Agreement will, subject to Paragraph 2 (The Termination Date and Scheduled Ownership Transfer Date) of Part 5 (Change in Ownership and Asset Transfer) of Schedule 6.9 (Consequences of Termination), terminate on the date falling forty (40) Working Days after the date NBPco receives the Termination Notice.

76.8 In the event of a termination of this Agreement pursuant to this Clause 76 (Termination by Minister for NBPco Termination Event), subject to Clause 74.8 (Term of this Agreement and Service Continuity):

76.8.1 the Parties shall comply with the provisions of Clause 80 (Consequences of Termination or Expiry);

76.8.2 Part 1 (Termination by Minister for NBPco Termination Event, Prohibited Acts or Prevention of Bribery) and Part 6 (General) of Schedule 6.9 (Consequences of Termination) will apply (whether or not the Minister exercises the Share Option or the Asset Option);

76.8.3 Part 5 (Change in Ownership and Asset Transfer) of Schedule 6.9 (Consequences of Termination) will apply, unless the Minister notifies NBPco otherwise in writing; and

76.8.4 the Minister is entitled at its discretion (but not obliged) to elect, in accordance with the provisions of Part 5 (Change in Ownership and Asset Transfer) of Schedule 6.9 (Consequences of Termination), to either (with the choice between the alternative options in Clause 76.8.4(A) (Termination by Minister for NBPco

Termination Event) and Clause 76.8.4(B) (Termination by Minister for NBPco Termination Event) at the Minister's discretion):

- (A) exercise the Share Option; or
- (B) exercise the Asset Option.

Warning Notice: Buildco Specific NBPco Termination Event

76.9 If a Buildco Specific NBPco Termination Event occurs, the Minister shall not be entitled to issue a Termination Notice pursuant to Clause 76.2 (Termination by Minister for NBPco Termination Event) in respect of the Buildco Specific NBPco Termination Event concerned unless:

76.9.1 the Minister issues a written warning notice to NBPco pursuant to this Clause 76.9 (Termination by Minister for NBPco Termination Event) stating that it is a warning notice under this Clause; and

76.9.2 NBPco has not rectified the Buildco Specific NBPco Termination Event concerned by the day that is thirty (30) Working Days from the date on which the Minister issued the warning notice,

except that the Minister is not required to issue a warning notice pursuant to this Clause 76.9 (Termination by Minister for NBPco Termination Event) in respect of a Buildco Specific NBPco Termination Event which has recurred one or more times within six (6) months of the date of issue a previous warning notice pursuant to this Clause 76.9 (Termination by Minister for NBPco Termination Event).

76.10 If the Minister enforces its security under the Minister Debenture or Minister NBPco Share Charge without terminating this Agreement or issuing an (unrevoked) Termination Suspension Notice, the provisions of Schedule 6.9 (Consequences of Termination) (including the provisions in respect of Schedule 6.9 Payments to NBPco and other sums payable under the provisions of Schedule 6.9 (Consequences of Termination)) will apply as if the Agreement was terminated pursuant to Clause 76 (Termination by Minister for NBPco Termination Event) and, for this purpose and the purposes of Schedule 6.9 (Consequences of Termination), the date on which the Minister enforces the security will be deemed to be the Termination Date for the purposes of Schedule 6.9 (Consequences of Termination) (including for the purposes of determining the date of payment of any sums payable under Schedule 6.9 (Consequences of Termination)).

77 TERMINATION BY NBPCO FOR MINISTER DEFAULT

77.1 Within forty five (45) Working Days of becoming aware of a Minister Default, NBPco may, at its option, serve notice on the Minister of the occurrence of such Minister Default, specifying the type of Minister Default has occurred and give such other information as the Minister will reasonably require to verify and/or rectify the Minister Default. If the relevant matter or circumstance has not been rectified or remedied by the Minister or otherwise within forty five (45) 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, subject to Paragraph 2 (The Termination Date and Scheduled Ownership Transfer Date) of Part 5 (Change in Ownership and Asset Transfer) of Schedule 6.9 (Consequences of

Termination), terminate on the day that is twenty (20) Working Days from the date of receipt of the written notice by the Minister.

77.2 NBPco may give notice to the Minister terminating, and terminate, this Agreement only in accordance with the provisions of this Clause 77 (Termination by NBPco for Minister Default).

77.3 In the event of a termination of this Agreement pursuant to this Clause 77 (Termination by NBPco for Minister Default):

77.3.1 the Parties shall comply with the provisions of Clause 80 (Consequences of Termination or Expiry);

77.3.2 Part 2 (Termination for Minister Default or Minister Voluntary Termination) and Part 6 (General) of Schedule 6.9 (Consequences of Termination) will apply (whether or not the Minister exercises the Share Option or the Asset Option);

77.3.3 Part 5 (Change in Ownership and Asset Transfer) of Schedule 6.9 (Consequences of Termination) will apply, unless the Minister notifies NBPco otherwise in writing;

77.3.4 the Minister is entitled (but not obliged), at its discretion, to elect, in accordance with the provisions of Part 5 (Change in Ownership and Asset Transfer) and Part 6 (General) of Schedule 6.9 (Consequences of Termination), to either (with the choice between the alternative options in Clause 77.3.4(A) (Termination by NBPco for Minister Default) and Clause 77.3.4(B) (Termination by NBPco for Minister Default) at the Minister's discretion):

(A) exercise the Share Option; or

(B) exercise the Asset Option.

78 NON-DEFAULT TERMINATION

Force Majeure

78.1 If, as a direct consequence of a Force Majeure Event, NBPco is incapable:

78.1.1 during the Deployment Period, of Achieving Network Deployment Complete in respect of one or more particular Deployment Areas for a period, in the case of each respective Deployment Area, in excess of twelve (12) months after the Milestone Date on which, but for the Force Majeure Event, it was due to Achieve Network Deployment Complete for the Deployment Area concerned; or

78.1.2 during the Operational Period, of performing the Services in respect of any one or more particular Deployment Areas in a manner that meets the Target Performance Levels for a period in excess of twelve (12) months;

then, following consultation in good faith with the other Party for a period of not less than forty-five (45) Working Days to reach a solution acceptable to both Parties, so long as the Force Majeure Event or its consequences are continuing at the time of giving notice and

the Parties have not at the time concerned agreed a solution acceptable to both Parties by execution of a Change Authorisation in such respect:

78.1.3 if Clause 78.1.1 (Non-Default Termination) applies:

- (A) the Minister may; or
- (B) NBPco, provided it has complied with its obligations under Clause 71.4 (Force Majeure) 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) by written notice to the other Party in which case this Agreement will terminate to that extent on the day that is twenty (20) Working Days from the date of receipt of the written notice by the Party concerned; and/or

78.1.4 if Clause 78.1.2 (Non-Default Termination) applies:

- (A) the Minister may; or
- (B) NBPco, provided it has complied with its obligations under Clause 71.4 (Force Majeure) 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) by written notice to the other Party in which case this Agreement will terminate to that extent on the day that is twenty (20) Working Days from the date of receipt of the written notice by the Party concerned.

78.2 If a Party is terminating this Agreement in respect of some, but not all, Deployment Areas pursuant to Clause 78.1 (Non-Default Termination), the Party concerned shall clearly set out in the Partial Termination Notice for which Deployment Areas the Services, Network and Wholesale Products are being terminated.

78.3 If the Agreement is terminated pursuant to Clause 78.1 (Non-Default Termination) in respect of all the Deployment Areas (whether as a result of one single termination covering all Deployment Areas or by virtue of a number of separate terminations for various Deployment Areas), then the Agreement shall, subject to Paragraph 2 (The Termination Date and Scheduled Ownership Transfer Date) of Part 5 (Change in Ownership and Asset Transfer) of Schedule 6.9 (Consequences of Termination), also terminate with effect from the date the Agreement is terminated with respect to the final Deployment Area.

78.4 In the event of a termination of this Agreement pursuant to Clause 78.1 (Non-Default Termination):

78.4.1 the Parties shall comply with the provisions of Clause 80 (Consequences of Termination or Expiry);

78.4.2 Part 3 (Force Majeure, Insurance and Change in Law) and Part 6 (General) of Schedule 6.9 (Consequences of Termination) will apply;

78.4.3 where it is a Partial Termination:

(A) the Parties shall comply with the provisions of Clause 79.2 (Partial Termination);

(B) NBPco agrees that:

(1) Part 5 (Change in Ownership and Asset Transfer) of Schedule 6.9 (Consequences of Termination) will apply, unless the Minister notifies NBPco otherwise in writing; and

(2) the Minister is entitled (but not obliged), at its discretion, to elect, in accordance with the provisions of Part 5 (Change in Ownership and Asset Transfer) and Part 6 (General) of Schedule 6.9 (Consequences of Termination), to exercise the Asset Option in respect of some or all of the Force Majeure Impacted Transferable Assets in the Force Majeure Terminated Area,

provided that, for clarity, the Force Majeure Impacted Transferring Assets Market Value is only payable by the Minister if the Minister exercises the Asset Option);

and

78.4.4 where the Agreement will terminate pursuant to Clause 78.3 (Non-Default Termination):

(A) Part 5 (Change in Ownership and Asset Transfer) of Schedule 6.9 (Consequences of Termination) will apply, unless the Minister notifies NBPco otherwise in writing; and

(B) the Minister is entitled (but not obliged), at its discretion, to elect, in accordance with the provisions of Part 5 (Change in Ownership and Asset Transfer) and Part 6 (General) of Schedule 6.9 (Consequences of Termination), to either (with the choice between the alternative options in Clause 78.4.4(B)(1) (Non-Default Termination) and Clause 78.4.4(B)(2) (Non-Default Termination) at the Minister's discretion):

(1) exercise the Share Option; or

(2) exercise the Asset Option.

Termination on Change in Law

78.5 If a Change in Law comes into effect which renders illegal or impossible (but not merely more expensive) all or substantially all of NBPco's obligations under this Agreement:

78.5.1 NBPco shall notify the Minister in writing as soon as reasonably practicable; and

78.5.2 the Parties shall then consult with each other in good faith and act reasonably and propose any lawful amendments to this Agreement to mitigate the effect of the Change in Law which are acceptable to both Parties, for a period of ninety (90) Working Days (or such longer period as either (a) the Parties, acting reasonably, may agree or (b) the Minister may, in its discretion, determine) to agree on an acceptable outcome to both Parties (unless agreement is reached earlier).

If the Parties do not agree on an acceptable outcome to both Parties, either Party may, after expiry of the ninety (90) Working Days (or, if applicable, longer period as the Parties may agree) terminate this Agreement by written notice to the other Party having effect, subject to Paragraph 2 (The Termination Date and Scheduled Ownership Transfer Date) of Part 5 (Change in Ownership and Asset Transfer) of Schedule 6.9 (Consequences of Termination), twenty (20) Working Days following service of the notice on the Party concerned.

78.6 All of NBPco's obligations under this Agreement which have been rendered illegal or impossible (but not merely more expensive) as a result of a Change in Law shall be suspended for the period of any consultations between the Parties under Clause 78.5 (Non-Default Termination) until the earlier of termination of this Agreement or the agreement by the Parties of proposals to mitigate the effect of the Change in Law.

78.7 In the event of a termination of this Agreement pursuant to Clause 78.5 (Non-Default Termination):

78.7.1 the Parties shall comply with the provisions of Clause 80 (Consequences of Termination or Expiry);

78.7.2 Part 3 (Force Majeure, Insurance and Change in Law) (whether or not the Minister exercises the Share Option or Asset Option) and Part 6 (General) of Schedule 6.9 (Consequences of Termination) will apply;

78.7.3 Part 5 (Change in Ownership and Asset Transfer) of Schedule 6.9 (Consequences of Termination) will apply, unless the Minister notifies NBPco otherwise in writing; and

78.7.4 the Minister is entitled, at its discretion, (but not obliged) to elect, in accordance with the provisions of Part 5 (Change in Ownership and Asset Transfer) and Part 6 (General) of Schedule 6.9 (Consequences of Termination), to either (with the choice between the alternative options in Clause 78.7.4(A) (Non-Default Termination) and Clause 78.7.4(B) (Non-Default Termination) at the Minister's discretion):

(A) exercise the Share Option; or

(B) exercise the Asset Option.

Minister Voluntary Termination

- 78.8 If the Minister wishes to terminate the Agreement under this Clause 78.8 (Non-Default Termination), it must give a Termination Notice to NBPco stating:
- 78.8.1 that the Minister is terminating the Agreement under this Clause 78.8 (Non-Default Termination); and
 - 78.8.2 that the Agreement will terminate on the date specified in the notice, which must be a minimum of thirty (30) Working Days and no more than ninety (90) Working Days after date of receipt of the Termination Notice.
- 78.9 The Agreement will, subject to Paragraph 2 (The Termination Date and Scheduled Ownership Transfer Date) of Part 5 (Change in Ownership and Asset Transfer) of Schedule 6.9 (Consequences of Termination), terminate on the date specified in the Termination Notice referred to in Clause 78.8.2 (Non-Default Termination).
- 78.10 In the event of a termination of this Agreement pursuant to Clause 78.8 (Non-Default Termination):
- 78.10.1 the Parties shall comply with the provisions of Clause 80 (Consequences of Termination or Expiry) and Part 2 (Termination for Minister Default or Minister Voluntary Termination) (whether or not the Minister exercises the Share Option or Asset Option) and Part 6 (General) of Schedule 6.9 (Consequences of Termination) will apply; and
 - 78.10.2 NBPco agrees that:
 - (A) Part 5 (Change in Ownership and Asset Transfer) of Schedule 6.9 (Consequences of Termination) will apply, unless the Minister notifies NBPco otherwise in writing; and
 - (B) the Minister is entitled (but not obliged), at its discretion, to elect, in accordance with the provisions of Part 5 (Change in Ownership and Asset Transfer) and Part 6 (General) of Schedule 6.9 (Consequences of Termination), to either (with the choice between the alternative options in Clause 78.10.2(B)(1) (Non-Default Termination) and Clause 78.10.2(B)(2) (Non-Default Termination) at the Minister's discretion):
 - (1) exercise the Share Option; or
 - (2) exercise the Asset Option.

First and Second Deployment Contract Viability Checks – Undertaking the Checks

78.11 [REDACTED]

78.11.1 [REDACTED]

78.11.2 [REDACTED]

[REDACTED]

78.12 [REDACTED]

78.12.1 [REDACTED]

(A) [REDACTED]

(B) [REDACTED]

[REDACTED]

78.12.2 [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

78.13 [REDACTED]

78.14 [REDACTED]

78.14.1 [REDACTED]

78.14.2 [REDACTED]

78.15 [REDACTED]

78.15.1 [REDACTED]

78.15.2 [REDACTED]

78.15.3 [REDACTED]

78.15.4 [REDACTED]

78.16 [REDACTED]

78.17 [REDACTED]

78.17.1 [REDACTED]

78.17.2 [REDACTED]

[REDACTED]

78.18 [REDACTED]

78.18.1 [REDACTED]

78.18.2 [REDACTED]

[REDACTED]

78.19 [REDACTED]

78.19.1 [REDACTED]

78.19.2 [REDACTED]

78.20 [REDACTED]

78.20.1 [REDACTED]

78.20.2 [REDACTED]

[REDACTED]

78.20.3 [REDACTED]

78.20.4 [REDACTED]

[REDACTED]

78.21 [REDACTED]

78.22 [REDACTED]

78.22.1 [REDACTED]

(A) [REDACTED]

(B) [REDACTED]

78.22.2 [REDACTED]

(A) [REDACTED]

(B) [REDACTED]

(C) [REDACTED]

[REDACTED]

78.23 [REDACTED]

78.23.1 [REDACTED]

78.23.2 [REDACTED]

[REDACTED]

78.24 [REDACTED]

78.24.1 [REDACTED]

78.24.2 [REDACTED]

78.24.3 [REDACTED]

(A) [REDACTED]

(B) [REDACTED]

[REDACTED]

78.24.4 [REDACTED]

78.24.5 [REDACTED]

(A) [REDACTED]

(B) [REDACTED]

[REDACTED]

78.25 [REDACTED]

78.25.1 [REDACTED]

78.25.2 [REDACTED]

78.25.3 [REDACTED]

[REDACTED]

78.26 [REDACTED]

78.26.1 [REDACTED]

78.26.2 [REDACTED]

(A) [REDACTED]

(B) [REDACTED]

[REDACTED]

78.27 [REDACTED]

78.27.1 [REDACTED]

78.27.2 [REDACTED]

78.27.3 [REDACTED]

(A) [REDACTED]

(B) [REDACTED]

78.28 [REDACTED]

78.28.1 [REDACTED]

78.28.2 [REDACTED]

78.29 [REDACTED]

[REDACTED]

78.30 [REDACTED]

78.30.1 [REDACTED]

(A) [REDACTED]

(B) [REDACTED]

78.30.2 [REDACTED]

(A) [REDACTED]

(B) [REDACTED]

[REDACTED]

78.30.3 [REDACTED]

[REDACTED]

78.31 [REDACTED]

[REDACTED]

78.32 [REDACTED]

78.32.1 [REDACTED]

78.32.2 [REDACTED]

[REDACTED]

78.33 [REDACTED]

78.33.1 [REDACTED]

78.33.2 [REDACTED]

[REDACTED]

78.34 [REDACTED]

78.34.1 [REDACTED]

78.34.2 [REDACTED]

(A) [REDACTED]

(B) [REDACTED]

[REDACTED]

78.34.3 [REDACTED]

(A) [REDACTED]

(B) [REDACTED]

[REDACTED]

[REDACTED]

78.35 [REDACTED]

[REDACTED]

78.36 [REDACTED]

78.36.1 [REDACTED]

78.36.2 [REDACTED]

[REDACTED]

78.36.3 [REDACTED]

(A) [REDACTED]

(B) [REDACTED]

(1) [REDACTED]

(2) [REDACTED]

[REDACTED]

78.36.4 [REDACTED]

(A) [REDACTED]

(B) [REDACTED]

[REDACTED]

78.36.5 [REDACTED]

78.37 [REDACTED]

78.37.1 [REDACTED]

78.37.2 [REDACTED]

78.37.3 [REDACTED]

[REDACTED]

78.38 [REDACTED]

78.38.1 [REDACTED]

78.38.2 [REDACTED]

[REDACTED]

78.39 [REDACTED]

78.39.1 [REDACTED]

78.39.2 [REDACTED]

[REDACTED]

78.40 [REDACTED]

78.40.1 [REDACTED]

78.40.2 [REDACTED]

[REDACTED]

78.40.3 [REDACTED]

(A) [REDACTED]

(B) [REDACTED]

[REDACTED]

(C) [REDACTED]

(D) [REDACTED]

(1) [REDACTED]

(2) [REDACTED]

[REDACTED]

78.40.4 [REDACTED]

- (A) [REDACTED]
- (B) [REDACTED]
 - (1) [REDACTED]
 - (2) [REDACTED]
 - (3) [REDACTED]

[REDACTED]

- (C) [REDACTED]
- (D) [REDACTED]

78.41 [REDACTED]

78.41.1 [REDACTED]

78.41.2 [REDACTED]

78.41.3 [REDACTED]

- (A) [REDACTED]
- (B) [REDACTED]

78.42 [REDACTED]

78.42.1 [REDACTED]

78.42.2 [REDACTED]

78.43 [REDACTED]

[REDACTED]

78.44 [REDACTED]

[REDACTED]

78.45 [REDACTED]

78.45.1 [REDACTED]

78.45.2 [REDACTED]

78.46 [REDACTED]

78.47 [REDACTED]

78.47.1 [REDACTED]

78.47.2 [REDACTED]

- (A) [REDACTED]
- (B) [REDACTED]
 - (1) [REDACTED]
 - (2) [REDACTED]

Cost of Independent Assurance Review

78.48 Each Party shall bear its own costs in respect of any Independent Assurance Review undertaken under this Clause 78 (Non-Default Termination).

Application of Schedule 5.1

78.49 For clarity and despite any other provision of this Agreement, any Additional Subsidy payable as a result of:

78.49.1 any increase to the Maximum Deployment Subsidy (and/or, as applicable, any of (A), (B) or (C) as set out in Paragraph 2.3.1 (Subsidy Payments) of Schedule 5.1 (Subsidy Payments)) pursuant to Clause **Error! Reference source not found.** (Non-Default Termination);

78.49.2 any increase to the Contracted Maximum Subsidy (and/or any of (F), (G) or (H) as set out in Paragraph 2.3.3 (Subsidy Payments) of Schedule 5.1 (Subsidy Payments)) pursuant to Clause **Error! Reference source not found.** (Non-Default Termination); or

78.49.3 Clause **Error! Reference source not found.** (Non-Default Termination),

pursuant to an executed Change Authorisation does not otherwise limit or affect the application of the provisions of Schedule 5.1 (Subsidy Payments) with respect to any Additional Subsidy payable under this Agreement following any such Change (including as a result of any such Change) and any submissions, forecasts, calculations or determinations made under or pursuant to any of the provisions of Clause 78.11 (Non-Default Termination) to Clause **Error! Reference source not found.** (Non-Default Termination (inclusive) shall be made in a manner, and on a basis, consistent with the provisions of Schedule 5.1 (Subsidy Payments).

Subsidy Profile Recommendation

78.50 [REDACTED]

78.50.1 [REDACTED]

78.50.2 [REDACTED]

78.50.3 [REDACTED]

78.50.4 [REDACTED]

(A) [REDACTED]

(B) [REDACTED]

78.50.5 [REDACTED]

78.50.6 [REDACTED]

78.50.7 [REDACTED]

78.50.8 [REDACTED]

78.50.9 [REDACTED]

78.50.10 [REDACTED]

78.50.11 [REDACTED]

78.50.12 [REDACTED]

78.50.13 [REDACTED]

79 PARTIAL TERMINATION

79.1 [Not used]

79.2 The Parties shall address the consequences of any Partial Termination pursuant to Clause 78.1 (Non-Default Termination) in accordance with the Change Control Procedure, including the effect the Partial Termination may have on any non-terminated Services, Network, Wholesale Products and/or Deployment Areas, provided that:

79.2.1 NBPco is not entitled to any Subsidy Payments in respect of the Services, Wholesale Products, Network and/or Deployment Areas that have been terminated, except if and to the extent expressly provided otherwise in Paragraph 1.6.3(C) (Force Majeure, Insurance and Change in Law) of Part 3 (Force Majeure, Insurance and Change in Law) of Schedule 6.9 (Consequences of Termination);

79.2.2 the provisions of this Agreement shall continue to apply in respect of the Services, Network, Wholesale Products and Deployment Areas that have not been terminated in all respects and without modification, except:

(A) the Performance Points calculated in accordance with Schedule 6.7 (Performance Levels) and Schedule 5.1 (Subsidy Payments) shall be multiplied by a percentage, that percentage being calculated as: the number of Premises in the Intervention Area (at the time the Force Majeure Event first occurred) less the number of Premises in the Force Majeure Terminated Area (at the time the Force Majeure Event first occurred) expressed as a percentage of the number of Premises in the Intervention Area (at the time the Force Majeure Event first occurred); and

(B) unless, and in that case only to the extent, that the Parties agree otherwise in accordance with the Change Control Procedure;

79.2.3 NBPco shall continue to provide, in accordance with the provisions of this Agreement in all respects, the Services, Network and Wholesale Products that have not been terminated in all Deployment Areas that have not been terminated (but, provided that NBPco puts and maintains the Network and any other Assets in the terminated Deployment Areas during the remainder of the Contract Term and after that in a safe state and condition, NBPco is not required to complete Network Deployment in respect of the Deployment Areas that have been terminated, except to the extent necessary to enable NBPco comply with its obligations under this Agreement in respect of the Deployment Areas that have not been terminated); and

79.2.4 NBPco is not entitled to any increase or acceleration in the Subsidy Payments in respect of the Services, Network and/or Wholesale Products and/or Deployment Areas that have not been terminated.

80 CONSEQUENCES OF TERMINATION OR EXPIRY

80.1 Each Party shall continue to perform its obligations under this Agreement notwithstanding the giving of any notice of default or termination until the termination of this Agreement becomes final in accordance with the provisions of this Agreement.

Disputed Termination

80.2 Notwithstanding the provisions of any other Clauses or Schedules of this Agreement, where either Party has given notice of termination of this Agreement and the other Party has, within nineteen (19) Working Days of receipt of a Termination Notice (including where it is a Partial Termination Notice) issued pursuant to the provisions of this Agreement (the "Disputed Notice"), referred the question of whether or not the purported termination is wrongful to the Dispute Resolution Procedure, the Expedited Dispute Resolution Procedure shall apply to such Dispute and the termination of this Agreement shall not take effect pursuant to such notice unless and until it is agreed by the Parties or finally determined in accordance with the Dispute Resolution Procedure that such termination is not wrongful, except that if the Dispute has not been resolved within one hundred and eighty (180) days of the referral to the Expedited Dispute Resolution Procedure:

80.2.1 the termination of this Agreement shall take effect on the day after the expiration of that one hundred and eighty (180) day period despite the Dispute being unresolved; and

80.2.2 if it is subsequently determined pursuant to the Expedited Dispute Resolution Procedure or by an Irish Court that the Minister wrongfully terminated the Agreement, any such wrongful termination shall be treated as a Minister voluntary termination pursuant to Clause 78.8 (Non-Default Termination) and the Minister shall pay to NBPco any outstanding balance of the Schedule 6.9 Payment as if it had always been a Minister voluntary termination in accordance with Clause 78.8 (Non-Default Termination).

Savings

80.3 Except as otherwise expressly provided in this Agreement:

80.3.1 termination or expiration of this Agreement does not limit or affect any accrued rights and obligations of either Party under this Agreement as at the Termination Date (including the right of the Minister to recover damages from NBPco where the termination has arisen as a result of an NBPco Termination Event); and

80.3.2 termination or expiration of this Agreement does not affect the continuing rights and obligations of NBPco and the Minister under:

- (A) Clause 1 (Definitions and Interpretation), Schedule 1 (Definitions), Clause 3 (Order of Precedence), Clause 5 (Disclaimer), Clause 6.4 (Acknowledgements and Warranties), Clause **Error! Reference source not found.** (Subsidy Payments), Clause 27.8 (Subsidy Payments), Clause 30 (State Aid), Clause 32 (Tax), Clause 41.1 (Eligibility Requirements for ERDF Funding), Schedule 5.4 Eligibility Requirements for ERDF Funding), Clause 42.8 (Subcontractors), Clause 44.6 (Project Documents and Funding Documents), Clause 47 (Audit), Schedule 6.11 (Audits), Clause 48 (Records and Reports), Schedule 6.5 (Reports and Records), Clause 50 (Disputes), Schedule 6.3 (Dispute Resolution Procedure), Clause 51.12 (NBPco Personnel), Clause 51.13 (NBPco Personnel), Clause 51.14 (NBPco Personnel), Clause 54 (Intellectual Property Rights), Clause 55 (Licence Granted by NBPco), Clause 57 (Minister Data), Clause 59 (Requests for Information), Clause 60 (Confidentiality), Clause 65 (IPR Warranty and Indemnity), Clause 66 (Indemnity), Clause 67 (Handling of Indemnified Claims Clause 68 (Limitation of Liability), Clause 69 (Required Insurance), Schedule 5.6 (Required Insurance), Clause 71.17 (Force Majeure), Clause 73.5.4 (Step-In Rights), Clause 73.5.5 (Step-In Rights), Clause 73.8 (Step-In Rights), Clauses 75 (Termination Suspension) to 80 (Consequences of Termination or Expiry) (inclusive), Schedule 6.9 (Consequences of Termination), Clause 82 (Waiver and Cumulative Remedies), Clause 83 (Relationship of the Parties), Clause 84 (Publicity and Branding), Clause 85 (Severance), Clause 86 (Competition Law), Clause 87 (Further Assurances), Clause 89 (Entire Agreement), Clause 91 (Third Party Rights), Clause 92 (Notices), Clause 93 (Minister Powers), Clause 94 (Governing Law and Jurisdiction);
- (B) Clause 44.7 (Project Documents and Funding Documents) until all sums payable by NBPco and Buildco under this Agreement are and have been fully (and without deduction, set-off, withholding, abatement, counter-claim or otherwise) and unconditionally paid by NBPco to the Minister in cleared funds and the Minister has confirmed that it is not exercising either the Share Option or the Asset Option;
- (C) Paragraphs 2.7 (Subsidy Payments), 4.8 (Deployment Milestone Payment Claims), 4.9 (Deployment Milestone Payment Claims), 7.8 (Connection Milestone Payment Claims), 7.9 (Connection Milestone Payment Claims), 7B.7 (Additional Connection Milestone Payment Claims), 7B.8 (Additional Connection Milestone Payment Claims), 9.8 (Ongoing Capital Payment Claims), and 9.9 (Ongoing Capital

Payment Claims of Schedule 5.1 (Subsidy Payments) for the periods specified in that Schedule;

- (D) Paragraph 11.5 (Project Accounts and Financial Records) and Paragraphs 14 (Claw-Back) to 16 (Over-Subsidy Claw-Back: IRR) (inclusive) of Schedule 5.1 (Subsidy Payments);
- (E) if Paragraph 1.7 (Force Majeure, Insurance and Change in Law) of Part 3 (Force Majeure, Insurance and Change in Law) of Schedule 6.9 (Consequences of Termination) is or becomes applicable in accordance with its terms at any time up until the Expiry Date, any provisions of this Agreement necessary to give effect to Paragraph 1.7 (Force Majeure, Insurance and Change in Law) of Part 3 (Force Majeure, Insurance and Change in Law) of Schedule 6.9 (Consequences of Termination);
- (F) if Paragraph 10 (Enduring Project Agreement Obligations) of Part 6 (General) of Schedule 6.9 (Consequences of Termination) is or becomes applicable in accordance with its terms at any time up until the Expiry Date, any provisions of this Agreement necessary to give effect to the provisions of 10 (Enduring Project Agreement Obligations) of Part 6 (General) of Schedule 6.9 (Consequences of Termination); and
- (G) any other Clause, Paragraph or Schedule which is expressed to survive termination or expiration which is required to give effect to such termination or expiration or the consequences of such termination or expiration.

80.4 The rights, obligations and liability of NBPco, and rights and obligations of the Minister, under:

- 80.4.1 Clause 32.11 (Tax) shall continue after the expiration or termination of this Agreement for a period of six (6) years from the date of expiration or termination at which point such rights and obligations shall expire (unless NBPco's failure is deemed to be on account of or arise from a fraudulent or negligent act, in which case this six (6) year limitation shall not apply);
- 80.4.2 Clause 51.12 (NBPco Personnel) shall continue after the expiration or termination of this Agreement for a period of three (3) years from the date of expiration or termination at which point such rights and obligations shall, save in the event of fraud by NBPco, expire;
- 80.4.3 Clause 51.13.2 (NBPco Personnel) shall continue after the expiration or termination of this Agreement for a period of six (6) years from the date of expiration or termination at which point such rights and obligations shall expire (unless NBPco's failure is deemed to be on account of or arise from a fraudulent or negligent act, in which case this six (6) year limitation shall not apply); and
- 80.4.4 Clause 65.2 (IPR Warranty and Indemnity), Clause 66.1 (Indemnity) and Clause 66.2 (Indemnity) shall continue after the expiration or termination of this Agreement for a period of twelve (12) years from the date of expiration or

termination at which point such rights and obligations shall, save in the event of fraud by NBPco, expire.

80.5 Except as provided in Clause 80.2 (Consequences of Termination or Expiry), Clause 80.3 (Consequences of Termination or Expiry) and Clause 80.4 (Consequences of Termination or Expiry), all rights and obligations of the Minister and NBPco under this Agreement cease and are of no further force and effect upon the termination or expiration of this Agreement.

80.6 Notwithstanding any breach of this Agreement by either Party and without limiting or affecting any other rights which the innocent Party may have in relation to such breach, the innocent Party may elect to continue to treat this Agreement as in full force and effect and to enforce its rights under it and the failure of either Party to exercise any right under this Agreement (including any right to terminate this Agreement and any right to claim damages) shall not be deemed a waiver of such right for any continuing or subsequent breach.

Financial

80.7 NBPco shall within forty-five (45) days of the earlier of the service of a Termination Notice or the Termination Date pay in cleared funds and in full to the Minister all sums due and owing by NBPco to the Minister under or in connection with this Agreement (including under the provisions of Schedule 5.1 (Subsidy Payments) and/or Clause 30 (State Aid)), except that where the provisions of Schedule 6.9 (Consequences of Termination) specify a specific timeline for payment by NBPco of an amount, that amount shall be paid by NBPco within the period of time required under the provisions of that Schedule.

80.8 Subject to Clause 80.10 (Consequences of Termination or Expiry), no compensation or Schedule 6.9 Payment, liability, penalty, Subsidy Payment or any other sums whatever are payable by the Minister to NBPco as a result of or in connection with the termination or expiration of this Agreement (in whole or in part) and/or the Services (in whole or in part) and/or Network (in whole or in part) and/or Wholesale Products (in whole or in part) and/or Deployment Areas (any or all of them and in whole or in part) or on or after the termination or expiration of this Agreement.

80.9 On the termination or expiration of this Agreement, the provisions of Paragraphs 15 (Over-Subsidy Claw Back: Deployment) to 17 (Over-Subsidy Claw-Back: Terminal Value) of Schedule 5.1 (Subsidy Payments) apply.

80.10 On the termination of this Agreement:

80.10.1 by the Minister pursuant to Clause 76 (Termination by Minister for NBPco Termination Event), subject to Clause 74.8 (Term of this Agreement and Service Continuity), the provisions of Part 1 (Termination by Minister for NBPco Termination Event, Prohibited Acts or Prevention of Bribery) and Part 6 (General) of Schedule 6.9 (Consequences of Termination) and, where applicable pursuant to Clause 76.8.3 (Termination by Minister for NBPco Termination Event), the provisions of Part 5 (Change in Ownership and Asset Transfer) of Schedule 6.9 (Consequences of Termination) apply;

80.10.2 by NBPco pursuant to Clause 77 (Termination by NBPco for Minister Default), the provisions of (Part 2 (Termination for Minister Default or Minister Voluntary Termination) and Part 6 (General) of Schedule 6.9 (Consequences of Termination) and, where applicable pursuant to Clause 77.3.3 (Termination by

NBPco for Minister Default), the provisions of Part 5 (Change in Ownership and Asset Transfer) of Schedule 6.9 (Consequences of Termination) apply;

- 80.10.3 by either the Minister or NBPco pursuant to Clause 78.1 (Non-Default Termination):
- (A) the provisions of Part 3 (Force Majeure, Insurance and Change in Law) and Part 6 (General) of Schedule 6.9 (Consequences of Termination);
 - (B) where applicable pursuant to Clause 78.4.3(B)(1) (Non-Default Termination) or Clause 78.4.4(A) (Non-Default Termination), the provisions of Part 5 (Change in Ownership and Asset Transfer) of Schedule 6.9 (Consequences of Termination) apply; and
 - (C) in the event of a Partial Termination, the provisions of Clause 79.2 (Partial Termination) apply;
- 80.10.4 by either the Minister or NBPco pursuant to Clause 78.5 (Non-Default Termination), the provisions of Part 3 (Force Majeure, Insurance and Change in Law) and Part 6 (General) of Schedule 6.9 (Consequences of Termination) and, where applicable pursuant to Clause 78.10.2(A) (Non-Default Termination), the provisions of Part 5 (Change in Ownership and Asset Transfer) of Schedule 6.9 (Consequences of Termination) apply; or
- 80.10.5 by the Minister pursuant to Clause 78.8 (Non-Default Termination), the provisions of Part 2 (Termination for Minister Default or Minister Voluntary Termination) and Part 6 (General) of Schedule 6.9 (Consequences of Termination) and, where applicable pursuant to Clause 78.10.2 (Non-Default Termination), the provisions of Part 5 (Change in Ownership and Asset Transfer) of Schedule 6.9 (Consequences of Termination) apply; or
- 80.10.6 by the Minister pursuant to Clause **Error! Reference source not found.** (Non-Default Termination), the provisions of Part 4 (Termination by Minister for Failure of Deployment Contract Viability Check or Ten Year Contract Viability Check) and Part 6 (General) of Schedule 6.9 (Consequences of Termination) and, where applicable pursuant to Clause **Error! Reference source not found.** (Non-Default Termination), the provisions of Part 5 (Change in Ownership and Asset Transfer) of Schedule 6.9 (Consequences of Termination) apply;
- 80.10.7 by the Minister pursuant to Clause **Error! Reference source not found.** (Non-Default Termination) or 78.40.4 (Non-Default Termination), the provisions of Part 4 (Termination by Minister for Failure of Deployment Contract Viability Check or Ten Year Contract Viability Check) and Part 6 (General) of Schedule 6.9 (Consequences of Termination) and, where applicable pursuant to Clause **Error! Reference source not found.** (Non-Default Termination), the provisions of Part 5 (Change in Ownership and Asset Transfer) of Schedule 6.9 (Consequences of Termination) apply; or
- 80.10.8 by the Minister pursuant to Clause **Error! Reference source not found.** (Non-Default Termination), the provisions of Part 3 (Force Majeure, Insurance and Change in Law) and Part 6 (General) of Schedule 6.9 (Consequences of Termination) and, where applicable pursuant to Clause **Error! Reference source not found.** (Non-Default Termination), the provisions of Part 5 (Change

in Ownership and Asset Transfer) of Schedule 6.9 (Consequences of Termination) apply.

State aid

- 80.11 If the Agreement is terminated prior to the Expiry Date, the Parties shall consult with the European Commission and Regulator to ensure that any public funding paid under this Agreement is not rendered unlawful State aid as a result of the early termination of this Agreement. In that regard, the Parties acknowledge that certain ongoing requirements may be required by the European Commission in respect of or in connection with the Services, Wholesale Products and/or Network following the early termination of this Agreement. Any respective rights and obligations of either Party agreed pursuant to such consultation shall be set out in a written document and executed by duly authorised representatives of each Party.

Application of Part 5 of Schedule 6.9 (Consequences of Termination)

- 80.12 The application of Part 5 (Change in Ownership and Asset Transfer) and Part 6 (General) of Schedule 6.9 (Consequences of Termination) during a rectification period applicable pursuant to Clause 76.4 (Termination by Minister for NBPco Termination Event) or the provisions of 61.2 (Prohibited Acts and Prevention of Bribery) does not limit or affect the operation of Clause 76.4 (Termination by Minister for NBPco Termination Event) or the provisions of 61.2 (Prohibited Acts and Prevention of Bribery).

SECTION M - GENERAL

81 ASSIGNMENT AND NOVATION

- 81.1 This Agreement is binding on and ensures to the benefit of NBPco and the Minister and their respective successors and permitted assigns.
- 81.2 NBPco shall not, and shall procure that any Shareholder, Key Subcontractor and Guarantor, does not assign, novate or otherwise dispose of or create or allow to subsist any trust, benefit or interest or Encumbrance in, under or in relation to:
- 81.2.1 this Agreement (in whole or in part, including any rights or obligations under it);
 - 81.2.2 any Key Subcontract (in whole or in part, including any rights or obligations under it);
 - 81.2.3 any Key Subcontractor Direct Agreement (in whole or in part, including any rights or obligations under it);
 - 81.2.4 any Guarantee (in whole or in part, including any rights or obligations under it);
 - 81.2.5 any Project Document or Funding Document; or
 - 81.2.6 any other contract (in whole or in part, including any rights or obligations under it) entered into by NBPco for the purpose of performing any of its obligations under this Agreement,
- or all of its rights and obligations under and benefits and interests in or under them (in each case in whole or in part), without in any case the prior written consent of the Minister.
- 81.3 In circumstances where the Minister gives its prior written consent under Clause 81.2 (Assignment and Novation), it may stipulate certain conditions of such consent (such as the provision of a guarantee in a form satisfactory to the Minister from the parent company (or other company) of the assignee or novatee with sufficient legal capacity and credit status).
- 81.4 Deliberately blank
- 81.5 Subject to Clauses 81.6 (Assignment and Novation) and 81.7 (Assignment and Novation) the Minister shall not assign, novate or otherwise dispose of or create or allow to subsist any trust, benefit or interest or Encumbrance in, under or in relation to this Agreement (in whole or in part), including any rights or obligations under it without the prior written consent of NBPco.
- 81.6 The Minister may transfer the benefit and burden of this Agreement to any Minister of the State.
- 81.7 The Minister may transfer the benefit and burden of this Agreement to any local, regional or state authority or Public Service Body, subject (except where Clause 81.6 (Assignment and Novation) applies) to NBPco's prior written consent (not to be unreasonably withheld). Where this Clause applies, the Minister shall, in seeking NBPco's consent, provide details in writing of the proposed transferee together with supporting information in relation to its legal capacity and credit status to NBPco. NBPco shall notify the Minister of its consent or refusal pursuant to this Clause within thirty (30) Working Days of the Minister's written notification to NBPco pursuant to this Clause, failing which NBPco shall be deemed to

have consented to the transfer for the purposes of this Clause. NBPco shall not be entitled to withhold its consent under this Clause where the Minister has or will provide a letter of guarantee or other equivalent letter of comfort (whether from the Minister or another Minister of the State or other sovereign party) in respect of the proposed transferee's obligations in a form acceptable to NBPco, acting reasonably.

81.8 A change in the legal status of the Minister does not affect the validity of this Agreement and is binding on any successor to the Minister.

82 WAIVER AND CUMULATIVE REMEDIES

82.1 The rights and remedies provided by this Agreement may be waived only in writing by, as applicable, NBPco or the Minister by express reference to this Clause 82 (Waiver and Cumulative Remedies) and in a manner that expressly states that a waiver is intended, and such waiver is only operative with regard to the specific circumstances referred to in the written waiver.

82.2 A failure or delay by a Party in ascertaining or exercising a right or remedy provided under this Agreement or by Law does not constitute a waiver of that right or remedy and nor does it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of any right or remedy prevents or restricts the further exercise of that or any other right or remedy.

82.3 Unless a right or remedy of the Minister is expressed to be an exclusive right or remedy, the exercise of it by the Minister does not limit or affect the Minister's other rights and remedies under this Agreement or Law.

82.4 The rights and remedies of the Minister provided by this Agreement are cumulative and, except to the extent expressly provided otherwise in this Agreement, are not exclusive of any right or remedy of the Minister provided at Law or in equity or otherwise under this Agreement.

83 RELATIONSHIP OF THE PARTIES

83.1 Each Party is entering into the Agreement as a principal for and on its own behalf.

No Delegation

83.2 No provision of this Agreement shall be construed as a delegation by the Minister of any of its statutory authority to NBPco.

No Agency

83.3 Except as and only to the extent expressly provided otherwise in this Agreement, neither Party is or shall be deemed to be an agent or principal of the other Party and neither Party shall hold itself out as having authority or power to bind the other in any way.

83.4 NBPco does not have authority to act as agent of, make representations, act in the name of, or on behalf of, or to otherwise bind or incur any liability on behalf of the Minister.

No State Immunity

83.5 NBPco and the Minister do not have the benefit of any State immunity and NBPco shall apply for and obtain all Consents which NBPco would otherwise be obliged to obtain under

any Law on the basis that neither NBPco nor the Minister has the benefit of any such immunity.

83.6 [Not used]

Independent Contractor

83.7 NBPco is an independent contractor and nothing in this Agreement shall be construed as constituting a partnership, joint venture, agency or relationship of employer and employee between the Minister and NBPco or any of NBPco Personnel or Subcontractors and NBPco shall not (and shall use reasonable endeavours to procure that no member of NBPco Personnel or Subcontractors shall) hold itself out as having any such relationship with the Minister.

84 PUBLICITY AND BRANDING

84.1 NBPco shall not:

84.1.1 publicise the contents of this Agreement in any way; or

84.1.2 communicate directly or indirectly with the print or broadcast media or any agency or means of news or information dissemination whatsoever in relation to the Project, this Agreement or its contents in any way that is disparaging of the Project, Agreement, Regulator, Agency or Minister; or

84.1.3 use the Minister's name, logo, trade mark or brand in any promotion or marketing or announcement of orders,

without the prior written consent of the Minister.

84.2 NBPco acknowledges and agrees that nothing in this Agreement either expressly or by implication is an endorsement or approval of any products or services of NBPco (including their specification, performance levels, credits or prices) (including the Network and Services and, in particular, the Wholesale Products, Wholesale Product Specification and Wholesale Prices) and NBPco agrees not to conduct itself in such a way as to imply or express any such approval or endorsement.

84.3 NBPco shall not suggest or imply that the price or specification of its Wholesale Products has been set by, endorsed or approved by the Minister as a result of or in connection with this Agreement, including by application of the Wholesale Pricing Rules, Wholesale Product Benchmarking Rules or Retail Pricing Rules (or the Benchmark Reference Performance Specification or Benchmark Reference Price).

84.4 The State Aid Decision will be subject to certain express conditions (set out in the documentation comprising that State Aid Decision) concerning the publishing of information on the Department's website. NBPco shall work with the Minister (including providing applicable information for publication as required by the Minister and consistent with those publishing conditions) to help enable such publishing requirements to be satisfied. The specifics of the information to be published will be specified by the Minister at the relevant time(s).

85 SEVERANCE

- 85.1 Each of the provisions of this Agreement is severable and distinct from the others.
- 85.2 If at any time one or more of any provisions of the Agreement is or becomes invalid, illegal or unenforceable, then such provisions may be severed by the relevant court or competent authority from the remainder of the Agreement which will remain in full force and effect to the fullest extent permitted by Law and the validity, legality or enforceability of the remaining provisions of this Agreement shall not in any way be limited, affected or impaired by such.
- 85.3 The Parties agree, in the circumstances referred to in Clause 85.2 (Severance), to meet in good faith using all reasonable endeavours to agree a substitute provision for any invalid or unenforceable provision which achieves to the greatest extent possible the same effect as would have been achieved by the invalid or unenforceable provision. The obligations of the Parties under any invalid or unenforceable provision of this Agreement shall be suspended until such time as the Parties reach agreement on a relevant substitute provision (which agreement shall be effected in accordance with the Change Control Procedure). This Clause 85.3 (Severance) shall apply only to the extent that the express provisions of this Agreement do not otherwise address the Parties' obligations in circumstances where any of the provisions of this Agreement become illegal, invalid or unenforceable.

86 COMPETITION LAW

- 86.1 If any enquiry is made or investigation is initiated by a Relevant Competition Authority related to whether the Agreement infringes or may infringe the Competition Act 2002 and/or Article 101(1) of the Treaty on the Functioning of the European Union, then each Party will co-operate with the other using its respective reasonable endeavours and each bearing its own costs and expenses with a view to making representations to the Relevant Competition Authority, where necessary, and shall jointly undertake all such filings, notifications, discussions, negotiations or settlements with the Relevant Competition Authority as the Parties agree shall be necessary or desirable in the circumstances. The Parties shall jointly make any necessary written or oral submissions to the Relevant Competition Authority unless requested by the Relevant Competition Authority to respond individually (in which case, save to the extent restricted or prohibited by Law or at the request of the Relevant Competition Authority, the Parties shall take account of the reasonable comments of the other Party).
- 86.2 If any provision of this Agreement is deemed unenforceable by operation of Article 101(1) of the Treaty on the Functioning of the European Union and/or Section 4 of the Competition Act 2002 then the Parties shall in good faith consult with each other using all reasonable endeavours to agree an alternative provision which achieves a result as similar as possible to the result which would have been achieved by the provision deemed unenforceable.
- 86.3 If any provision of this Agreement is deemed unenforceable by operation of any Article 102 of the Treaty on the Functioning of the European Union or Section 5 of the Competition Act 2002 then the Parties shall in good faith consult with each other using all reasonable endeavours to agree an alternative provision which achieves a result as similar as possible to the result which would have been achieved by the provision deemed unenforceable.

87 FURTHER ASSURANCES

87.1 Each Party shall, at the request and cost of the other Party, do all acts and things reasonably within its power and execute all documents which may be necessary to give effect to the meaning of this Agreement.

88 COUNTERPARTS

88.1 This Agreement is effective only upon it being executed and delivered by or on behalf of each Party. This Agreement may be executed in any number of counterparts and by the different Parties on separate counterparts, each of which when executed and delivered constitute an original; all such counterparts together constituting but one and the same instrument.

89 ENTIRE AGREEMENT

89.1 Except where expressly provided in this Agreement, this Agreement, the Guarantees, the Key Subcontractor Direct Agreements, Ownership Letter, the Shareholders Agreement, Buildco Shareholders Agreement, Constitution, Buildco Constitution, Buildco Minister Debenture, Minister Debenture, Minister Limited Recourse Guarantee, Buildco Minister Limited Recourse Guarantee, Minister NBPco Guarantee, Minister Share Charge, Buildco Minister Share Charge, Minister Subordination Deed, the Independent Certifier Contract and the DPB Project Account Charge constitutes the entire agreement and understanding between the Parties in respect of the matters dealt with in it and overrides and supersedes all previous agreements, discussions, letters, agreements and other matters between the Parties in relation to such matters concerning it which are revoked by mutual consent of the Parties.

89.2 Each Party acknowledges and agrees that in entering into this Agreement and the documents referred to in it and attached to it, it does not rely on, and has no remedy (contractual or non-contractual) in respect of, any statement, representation, condition, warranty, promise or undertaking (whether negligently or innocently made) other than as expressly set out in this Agreement and that the Parties have not entered into any collateral contract which is not expressly referred to in it.

89.3 Nothing in this Clause 89 (Entire Agreement) excludes any liability which one Party would otherwise have to the other Party in respect of any statements made fraudulently.

90 AMENDMENTS

90.1 No amendment to this Agreement shall be binding unless such amendment is either:

90.1.1 in writing (excluding electronic methods of writing unless the Parties expressly agree in writing by referencing this Clause that an amendment may take such electronic written form), expressly refers to this Clause 90 (Amendments) and is signed by the duly authorised representatives of the Minister and NBPco; or

90.1.2 is contained in a Change Authorisation duly executed in accordance with the Change Control Procedure.

91 THIRD PARTY RIGHTS

91.1 Nothing in this Agreement grants any rights or benefits to any person other than the Parties or entitles any third party to enforce any term or condition of this Agreement. This does not limit or affect NBPco's obligation, owed to the Minister, to comply with provisions of

this Agreement which refer to third parties including the Agency, Audit Agents, Regulator and Regulatory Bodies.

92 NOTICES

92.1 Wherever in this Agreement provision is made for the giving or issuing of any notice, submission, endorsement, consent, approval, acknowledgement, certificate or determination by any person or for a person to specify something (a “**Notice**”), unless otherwise specified, such Notice shall be in writing and the words “notify”, “endorsed”, “consent”, “approve”, “acknowledge”, “certify”, “specify” or “determined” are construed accordingly.

92.2 Any Notice issued by NBPCo under this Agreement which requires a response from the Minister or Minister’s Representative within a particular period of time (pursuant to the provisions of this Agreement) shall expressly specify the particular period.

92.3 Notices and correspondence

92.3.1 Where this Agreement contemplates the service of any Notice to the Minister, such Notice must be delivered by NBPCo to the Minister itself, with a copy to the Minister’s Representative. All other correspondence in relation to this Agreement (including day to day written communications), not comprising a Notice, shall be sent to the Minister’s Representative.

92.3.2 The Minister shall send all Notices in relation to this Agreement to NBPCo’s Representative, copied to the chief executive officer of NBPCo. All other correspondence in relation to this Agreement (including day to day written communications), not comprising a Notice, shall be sent to NBPCo’s Representative.

92.4 Subject to Clause 92.6 (Notices), the following table sets out the method by which Notices may be served under this Agreement and the respective deemed time and proof of service:

Manner of Delivery	Deemed time of service	Proof of service
Email	9.00am on the first Working Day after sending	Dispatched as an email or a pdf attachment to an e-mail to the correct e-mail address without any error (as distinct from out of office) message.
Personal delivery	On delivery, provided delivery is between 9.00am and 5.00pm on a Working Day. Otherwise, delivery will occur at 9.00am on the same Working Day (if delivery before 9.00am) or at 9.00am on the next Working Day.	Properly addressed and delivered as evidenced by signature of a delivery receipt.
Pre-paid recorded delivery or pre-paid registered post, providing next Working Day	At the time recorded by the delivery service, provided that delivery is between 9.00am	Properly addressed prepaid and delivered as evidenced by signature of a delivery receipt.

service providing proof of delivery.	and 5.00pm on a Working Day. Otherwise, delivery will occur at 9.00am on the same Working Day (if delivery before 9.00am) or at 9.00am on the next Working Day (if after 5.00pm).	
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92.5 Notices shall be sent to the addresses set out below or at such other address as the relevant Party may give notice to the other Party for the purpose of service of Notices under this Agreement:

	Minister	NBPco
Attention	FAO Private Secretary Minister for Communications, Climate Action and Environment	Company Secretary, NBI Infrastructure Designated Activity Company
Address	29-31 Adelaide Road, Dublin D02C285	10 Earlsfort Terrace, Dublin 2, D02 T380
Email	Private.Secretary@DCCAIE.gov.ie	James.moreland@arthurcox.com

	Minister's Representative	NBPco's Representative
Name	To be confirmed by the Minister	Chief Legal Officer
Address		10 Earlsfort Terrace, Dublin 2, D02 T380
Email		

92.6 The following Notices may only be served as an attachment to an email if the original notice is then sent no later than the next Working Day to the recipient by personal delivery or recorded delivery in the manner set out in the table in Clause 92.4 (Notices):

- 92.6.1 Relief Notices;
- 92.6.2 Step-In Notices;
- 92.6.3 Step-Out Notices;
- 92.6.4 Force Majeure Notices;
- 92.6.5 notices issued by NBPco pursuant to Clause 77 (Termination by NBPco for Minister Default);

- 92.6.6 Termination Notices;
- 92.6.7 Notice of Dispute;
- 92.6.8 Mediation Notice;
- 92.6.9 a notice and request for NBPco consent pursuant to Clause 81.7 (Assignment and Novation);
- 92.6.10 an Option Notice.

92.7 Failure to send any original Notice by personal delivery or recorded delivery in accordance with Clause 92.6 (Notices) shall invalidate the service of the related e-mail transmission. The deemed time of delivery of such Notice shall be the deemed time of delivery of the original notice sent by personal delivery or recorded delivery post (as set out in the table in Clause 92.4 (Notices)) or, if earlier, the time of response or acknowledgement by the other Party to the email attaching the Notice.

92.8 This Clause 92 (Notices) does not apply to the service of any proceedings or other documents in any legal action or, where applicable, other method of dispute resolution (other than the service of a Notice of Dispute under Schedule 6.3 (Dispute Resolution Procedure)).

93 MINISTER POWERS

93.1 Nothing contained or implied in this Agreement or any consent or approval granted pursuant to it (or anything else done pursuant to this Agreement) fetters the discretion or otherwise prejudices, limits or affects the rights, powers, duties and obligations of the Minister, Agency or Regulator in the exercise of their functions under Law and such rights, powers, duties and obligations under Law may be as fully and effectually exercised as if the Minister were not party to this Agreement and the Agency and the Regulator did not have a role under this Agreement. This Clause 93 (Minister Powers) does not limit or affect Clause 25.3 (Changes in Law).

94 GOVERNING LAW AND JURISDICTION

94.1 The existence, formation, interpretation, operation and termination of this Agreement, and all matters and Disputes (whether contractual or non-contractual) arising out of or in connection with this Agreement or its subject matter, are subject to Irish Law and the Parties, subject to Clause 50 (Disputes), each agree that the Irish Courts have exclusive jurisdiction to settle all such matters and Disputes and that they are not an inconvenient forum.

94.2 Nothing contained in this Clause 94 (Governing Law and Jurisdiction) limits or affects the right of either Party to bring enforcement proceedings in another jurisdiction on foot of an Irish order or to seek interim, protective or provisional relief in the courts of Ireland or another jurisdiction.

IN WITNESS of which the Minister and NBPco have executed and delivered this Agreement as a deed on the date first written above.

GIVEN under the common seal of
**NBI INFRASTRUCTURE
DESIGNATED ACTIVITY COMPANY**
and delivered as a deed

{COMMON SEAL}

Witness Signature

Signature of [**Director/Registered Person**]

Print Name

Print Name

Print Address

Witness Occupation

Witness Signature

Signature of [**Director/Secretary**]

Print Name

Print Name

Print Address

Witness Occupation

Redacted Version

GIVEN under the common seal of
**THE MINISTER FOR
COMMUNICATIONS, CLIMATE
ACTION AND ENVIRONMENT**
(acting by Ciarán Ó hÓbáin, a person
duly authorised pursuant to section
15(4) of the Ministers and Secretaries
Act 1924) and delivered as a deed

{COMMON SEAL}

Witness Signature

Signature of Ciarán Ó hÓbáin

Print Name

Print Name

Print Address

Witness Occupation