

6.8 PERSISTENT DEFAULTS AND REMEDIAL PLAN PROCESS

1 INTRODUCTION

1.1 This Schedule sets out:

- 1.1.1 in Part 1 (Persistent Default), the manner in which the Minister may elect to deal with Persistent Defaults and the implication of a Persistent Default Notice and Final Persistent Default Notice; and
- 1.1.2 in Part 2 (Remedial Plan Process), the Remedial Plan Process with which NBPco shall comply.

PART 1

PERSISTENT DEFAULT

1 PERSISTENT DEFAULT

1.1 If a Default (other than a Default for which Performance Credits could have been made) of this Agreement has continued for more than [REDACTED] or occurred more than [REDACTED] in any [REDACTED], then the Minister may serve a notice on NBPco:

1.1.1 stating that it is a Persistent Default Notice;

1.1.2 specifying the relevant provision of the Agreement and giving reasonable details of the Default; and

1.1.3 stating that such Default is a Default which, if it recurs or continues, may result in a termination of this Agreement.

1.2 If following service of such Persistent Default Notice, the Default has:

1.2.1 continued beyond [REDACTED]; or

1.2.2 recurs [REDACTED] more times within the [REDACTED],

after the date of service of the Persistent Default Notice, then the Minister may serve another notice on NBPco:

1.2.3 specifying that it is a Final Persistent Default Notice;

1.2.4 stating that the Default specified has been the subject of a Persistent Default Notice served within the [REDACTED] prior to the date of service of the Final Persistent Default Notice; and

1.2.5 stating that if such Default:

(A) continues for more than [REDACTED]; or

(B) recurs [REDACTED] or more times within the [REDACTED]

after the date of service of the Final Persistent Default Notice, the Default shall constitute a Persistent Default and the Agreement may be terminated in accordance with Clause 76 (Termination by Minister for NBPco Termination Event).

1.3 A Persistent Default Notice may not be served in respect of any incident of Default in respect of which a separate Persistent Default Notice has already been served until a period of [REDACTED] has elapsed since the date of service of the previous Persistent Default Notice.

1.4 Where a Default has occurred which is irremediable, a further Persistent Default Notice shall not be served by the Minister in respect of the failure to remedy the original Default (as distinct from the reoccurrence of the Default). This does not limit or affect the Minister's entitlement to issue a Final Persistent Default Notice in respect of the Default where it continues or reoccurs.

1.5 Nothing in this Paragraph 1 (Persistent Default) limits or affects the provisions of Paragraph 2 (Persistent Buildco Specific Default).

2 PERSISTENT BUILDCO SPECIFIC DEFAULT

2.1 If a Buildco Specific Default of the Buildco Key Subcontract or Buildco Key Subcontractor Direct Agreement has continued for more than **[REDACTED]** or occurred more than **[REDACTED]** times in any **[REDACTED]** then the Minister may serve a notice on NBPco:

2.1.1 stating that it is a Persistent Buildco Specific Default Warning Notice;

2.1.2 specifying the relevant provision of the Buildco Key Subcontract or Buildco Key Subcontractor Direct Agreement and giving reasonable details of the Buildco Specific Default; and

2.1.3 stating that such Buildco Specific Default is a Buildco Specific Default which, if it recurs or continues, may result in the issue of a Persistent Default Notice.

2.2 If the Buildco Specific Default of the Buildco Key Subcontract or Buildco Key Subcontractor Direct Agreement referred to in Paragraph 2.1 (Persistent Buildco Specific Default) has continued for more than **[REDACTED]** or occurred more than **[REDACTED]** times in any **[REDACTED]** after the date of service of the Persistent Buildco Specific Default Warning Notice, then the Minister may serve another notice on NBPco:

2.2.1 stating that it is a Persistent Default Notice;

2.2.2 specifying the relevant provision of the Buildco Key Subcontract or Buildco Key Subcontractor Direct Agreement and giving reasonable details of the Buildco Specific Default; and

2.2.3 stating that such Buildco Specific Default is a Buildco Specific Default which, if it recurs or continues, may result in a termination of this Agreement.

2.3 If following service of such Persistent Default Notice, the Buildco Specific Default has:

2.3.1 continued beyond **[REDACTED]**; or

2.3.2 recurs **[REDACTED]** more times within the **[REDACTED]**,

after the date of service of the Persistent Default Notice, then the Minister may serve another notice on NBPco:

2.3.3 specifying that it is a Final Persistent Default Notice;

2.3.4 stating that the Buildco Specific Default specified has been the subject of a Persistent Default Notice served within the **[REDACTED]** prior to the date of service of the Final Persistent Default Notice; and

2.3.5 stating that if such Buildco Specific Default:

(A) continues for more than **[REDACTED]**; or

(B) recurs **[REDACTED]** or more times within the **[REDACTED]**;

after the date of service of the Final Persistent Default Notice, the Buildco Specific Default shall constitute a Persistent Default and the Agreement may be terminated in accordance with Clause 76 (Termination by Minister for NBPco Termination Event).

- 2.4 A Persistent Default Notice may not be served in respect of any incident of a Buildco Specific Default in respect of which a separate Persistent Default Notice has already been served until a period of **[REDACTED]** has elapsed since the date of service of the previous Persistent Default Notice.
- 2.5 Where a Buildco Specific Default has occurred which is irremediable, a further Persistent Default Notice shall not be served by the Minister in respect of the failure to remedy the original Buildco Specific Default (as distinct from the reoccurrence of the Buildco Default). This does not limit or affect the Minister's entitlement to issue a Final Persistent Default Notice in respect of the Buildco Specific Default where it continues or reoccurs.
- 2.6 Nothing in this Paragraph 2 (Persistent Buildco Specific Default) limits or affects the provisions of Paragraph 1 (Persistent Default).

PART 2

REMEDIAL PLAN PROCESS

1 NOTIFICATION

1.1 If:

- 1.1.1 NBPco commits a material Default (which 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) and such Default is capable of remedy;
- 1.1.2 NBPco commits a Persistent Default and such Persistent Default is capable of remedy or Buildco commits a Buildco Persistent Default and such Buildco Persistent Default is capable of remedy;
- 1.1.3 there is a Delay or there is reasonably likely to be a Delay of [REDACTED] or more to a Programme Level Milestone or in achieving a task, milestone or activity in the Wholesale Product Roadmap, Technology Roadmap and/or Wholesale Product & Coverage Template (irrespective of its cause);
- 1.1.4 in any Measurement Period, a Material KPI Failure or Material PI Failure occurs;
- 1.1.5 a Test is failed where the Test failure results or may result in a material Delay;
- 1.1.6 NBPco fails to comply (or, as applicable, procure compliance) with the provisions of Schedule 5.7 (Financial Distress); or
- 1.1.7 any other event to which the Remedial Plan Process is stated, in this Agreement, to apply occurs,

(each a “**Notifiable Event**”), NBPco shall notify the Minister in writing of the Notifiable Event as soon as reasonably practicable, but in any event, whichever is earliest:

- (A) within [REDACTED] of NBPco and its employees; or
- (B) within [REDACTED] of the Shareholders, any Key Subcontractor, Subcontractor and NBPco Personnel (but excluding NBPco’s employees),

first becoming aware (or, in complying with this Agreement, ought to have first become aware) of the Notifiable Event, detailing the actual or anticipated effect of the Notifiable Event.

1.2 If:

- 1.2.1 NBPco notifies the Minister pursuant to Paragraph 1.1 (Notification) that a Notifiable Event has occurred; or
- 1.2.2 the Minister notifies NBPco that it considers that a Notifiable Event has occurred,

then, unless the Notifiable Event constitutes an NBPco Termination Event and the Minister serves a Termination Notice or the Minister serves a notice in writing pursuant to Paragraph 6 (No Obligation to Implement Remedial Plan Process) that he has elected not

to commence the Remedial Plan Process, NBPco shall comply with the Remedial Plan Process.

- 1.3 The Remedial Plan Process is as set out in the provisions of Paragraphs 1 (Notification) to 7 (Review in the event of Material KPI Failure) (inclusive).

2 GENERAL

- 2.1 If:

2.1.1 a Notifiable Event has occurred and the Remedial Plan Process has been instigated; and

2.1.2 a Remedial Plan has not yet been agreed by the Parties in accordance with the provisions of this Part,

NBPco shall, in any event, undertake remedial efforts with respect to any problems or circumstances which have triggered the Remedial Plan Process and, to the extent that any such problems or circumstances may (in the opinion of the Minister) have an impact upon the Minister, Wholesale Products, Services or Network, NBPco shall, upon request, by the Minister advise the Minister within [REDACTED] of the request of the status of the remedial efforts being undertaken with respect to such problems or circumstances.

3 SUBMISSION OF THE DRAFT REMEDIAL PLAN

- 3.1 NBPco shall submit to the Minister a draft Remedial Plan for review by the Minister as soon as possible (and in any event within [REDACTED] of the date of the Minister's notice under Paragraph 1.2.2 (Notification) or within [REDACTED] of the date of NBPco's notice under Paragraph 1.2.1 (Notification) or such other period as may be agreed between the Parties, acting reasonably). NBPco shall submit a draft Remedial Plan even if NBPco disputes that it is responsible for the Notifiable Event (unless the Minister agrees to delay the submission of the Remedial Plan pending resolution of the Dispute). Any such dispute relating to NBPco's responsibility shall be considered a Dispute for the purposes of the Dispute Resolution Procedure and shall be resolved in accordance with that procedure. Until any such Dispute is resolved in accordance with the Dispute Resolution Procedure, NBPco shall continue to comply with the Remedial Plan Process and, where applicable, Clause 17 (Delay) on the basis that it is a Notifiable Event and otherwise comply with its obligations under this Agreement.

- 3.2 The draft Remedial Plan shall set out:

3.2.1 full details of the Notifiable Event that has occurred, including a root cause analysis (including the reasons for the Notifiable Event and the circumstances giving rise to such reasons);

3.2.2 the actual or anticipated consequences of the Notifiable Event;

3.2.3 an estimate, where applicable, of the likely effect of the Notifiable Event on the Milestone Dates (though this does not limit or affect NBPco's obligation to Achieve the Milestones Dates) and provision and performance of the Services, Wholesale Products and Network; and

3.2.4 an explanation of the steps which NBPco proposes to take to:

- (A) remedy the Notifiable Event (and any loss or damage resulting from it);
 - (B) where applicable, eliminate or mitigate the consequences of any Notifiable Event (and any loss or damage resulting from it); and
 - (C) prevent such Notifiable Event from recurring,
- including timescales for such steps.

3.3 NBPco shall provide within the Remedial Plan for:

- 3.3.1 the allocation and deployment by NBPco of additional resources;
- 3.3.2 the re-allocation and re-deployment by NBPco of existing resources; and
- 3.3.3 an expedited time frame for implementation and execution of the Remedial Plan and any related Services or Network Deployment,

to the extent reasonably necessary to eliminate or, where this is not possible, best mitigate the consequence of any Notifiable Event.

3.4 NBPco shall promptly provide to the Minister any further documentation that the Minister reasonably requires to assess NBPco's root cause analysis. If the Parties do not agree on the root cause set out in the draft Remedial Plan, this disagreement shall be considered a Dispute for the purposes of the Dispute Resolution Procedure and either Party may refer the matter for resolution by the Dispute Resolution Procedure. Until any such Dispute is resolved in accordance with the Dispute Resolution Procedure, NBPco shall comply with the Minister's decision as to the root cause of the Notifiable Event (provided that if NBPco (acting reasonably) Disputes the Minister's decision as to the root cause of the Notifiable Event, unless directed otherwise by the Minister (acting reasonably), NBPco is not required to undertake any remedial action that involves expenditure of more than [REDACTED] or which NBPco reasonably demonstrates is at real risk of causing material damage to the Network) and shall continue to comply with the Remedial Plan Process on that basis and otherwise comply with its obligations under this Agreement.

3.5 The Minister may request NBPco to attend meetings or provide any further information or documentation which the Minister may reasonably require in connection with a Notifiable Event (including in connection with the consideration of any request for an extension to a Milestone Date in light of an alleged Relief Event or Force Majeure Event) and NBPco shall attend meetings and supply information and documentation within the timeframe reasonably requested by the Minister.

3.6 If NBPco receives or becomes aware of any further relevant information or documentation relating to the Notifiable Event (including in connection with any alleged Relief Event or Force Majeure Event) after the provision of information and documentation to the Minister pursuant to the provisions of this Paragraph 3 (Submission of the Draft Remedial Plan), it shall submit such further information and documentation to the Minister as soon as reasonably possible.

3.7 The question of whether, or to what extent, NBPco is entitled to any extension of time as a direct result of a Relief Event or Force Majeure Event shall be addressed in accordance with the provisions of Clause 18 (Relief Event) and Clause 71 (Force Majeure) respectively.

4 AGREEMENT OF THE REMEDIAL PLAN

4.1 The Minister may reject the draft Remedial Plan by notice to NBPco if, acting reasonably, it considers that the draft Remedial Plan:

- 4.1.1 is insufficiently detailed to be capable of proper evaluation;
- 4.1.2 will take too long to complete, having regard to the underlying problems and the time necessary to remedy the underlying problem;
- 4.1.3 will not prevent reoccurrence of the Notifiable Event;
- 4.1.4 will not remedy the Notifiable Event or address sufficiently the issues it is aimed at addressing;
- 4.1.5 will remedy the Notifiable Event but in a manner which does not comply with the provisions of this Agreement; and/or
- 4.1.6 in the case of a Notifiable Event which is a Delay or a reasonably likely Delay, will not mitigate the consequence of the Delay or reasonably likely Delay by leading to completion of the relevant Milestone within a reasonable period of time.

4.2 If the Minister rejects the draft Remedial Plan, the Minister:

- 4.2.1 shall give reasons for its decision; and
- 4.2.2 may at its sole discretion either:
 - (A) agree a further time period for the development of the Remedial Plan;
 - (B) agree a further time period for the development of the Remedial Plan and issue to NBPco an updated version of the Remedial Plan, reflecting the Minister's reasonable changes to the Remedial Plan proposed by NBPco in order to address the issues that gave rise to the decision to reject NBPco's proposed Remedial Plan; or
 - (C) escalate any issue with the draft Remedial Plan using the Dispute Resolution Procedure (utilising, at the Minister's discretion, either the Standard Dispute Resolution Timetable or Expedited Dispute Resolution Timetable).

Where the Minister agrees a further time period for the development and agreement of the Remedial Plan, NBPco shall submit the revised draft of the Remedial Plan to the Minister for review within the period agreed in writing by the Parties (or, failing which [REDACTED] of first endeavouring to so agree, as specified by the Minister) and shall take into account in the Remedial Plan any reasonable comments by the Minister so as to address the issues set out in Paragraph 4.1 (Agreement of the Remedial Plan), including any updated version of the draft Remedial Plan issued by the Minister.

4.3 The Minister shall notify NBPco in writing whether it consents to the draft Remedial Plan as soon as reasonably practicable.

4.4 If the Minister consents to the Remedial Plan, NBPco shall immediately implement the actions set out in the Remedial Plan.

4.5 NBPco shall provide to the Minister, in accordance with the relevant timescales agreed in each Remedial Plan or as otherwise reasonably requested by the Minister:

4.5.1 regular updates on the implementation of the Remedial Plan; and

4.5.2 evidence, either documentary or demonstrative as the Minister may reasonably require, of the implementation of the Remedial Plan.

5 FAILURE TO AGREE OR IMPLEMENT REMEDIAL PLAN

5.1 If the Remedial Plan cannot be agreed (each Party acting reasonably) in writing within the relevant time period applicable pursuant to Paragraph 4.2 (Agreement of the Remedial Plan), or if NBPco has failed to comply with its obligations under Paragraphs 1 (Notification) to 4 (Agreement of the Remedial Plan) of this Part 2 (Remedial Plan Process) such that no Remedial Plan is submitted, the Minister may elect to end the Remedial Plan Process by notice in writing to NBPco.

5.2 If:

5.2.1 NBPco fails to comply with its obligations under Paragraphs 1 (Notification) to 4 (Agreement of the Remedial Plan) of this Part 2 (Remedial Plan Process); or

5.2.2 having agreed a Remedial Plan in accordance with Paragraphs 1 (Notification) to 4 (Agreement of the Remedial Plan) of Part 2 (Remedial Plan Process) of this Schedule, NBPco fails to implement the agreed Remedial Plan in accordance with its terms (including by the required timelines),

the failure shall constitute a Default under this Agreement.

6 NO OBLIGATION TO IMPLEMENT REMEDIAL PLAN PROCESS

6.1 Unless an express provision of this Agreement requires that the Minister must first invoke or implement the Remedial Plan Process before other steps under this Agreement can be taken:

6.1.1 the Minister is entitled to elect not to instigate or commence the Remedial Plan Process under Paragraph 1.2.2 (Notification) of this Part 2 (Remedial Plan Process) or otherwise in respect of a particular Notifiable Event; and

6.1.2 where NBPco has issued a notice in writing pursuant to Paragraph 1.2.1 (Notification), the Minister shall be entitled to elect not to commence the Remedial Plan Process by notice in writing to NBPco within [REDACTED] of the date of receipt of such notice.

Any decision by the Minister not to instigate or commence the Remedial Plan Process pursuant to Paragraph 6.1.1 (No Obligation to Implement Remedial Plan Process) and any notice pursuant to Paragraph 6.1.2 (No Obligation to Implement Remedial Plan Process) does not limit or affect any rights and remedies the Minister may have or any obligations of NBPco under any provisions of this Agreement (other than those set out in this Part).

6.2 Where the Remedial Plan Process has been commenced in accordance with Paragraph 1.2 (Notification) of this Part 2 (Remedial Plan Process), the process may be terminated in accordance with Paragraph 5.1 (Failure to Agree or Implement Remedial Plan) of this Part 2 (Remedial Plan Process).

7 REVIEW IN THE EVENT OF MATERIAL KPI FAILURE

- 7.1 Within [REDACTED] of the final conclusion of any Remedial Plan Process, NBPco shall be entitled to submit to the Minister for review a KPI which is or was the subject of a Material KPI Failure and which was notified to the Minister by NBPco and dealt with under the process described in this Part 2 (Remedial Plan Process) of this Schedule.
- 7.2 NBPco shall include the following with its submission:
- 7.2.1 details of the Material KPI Failure;
 - 7.2.2 a detailed explanation as to why a review is required;
 - 7.2.3 details of the proposed change;
 - 7.2.4 details of and all relevant documentation and information relating to reasons justifying any change to a KPI;
 - 7.2.5 an assessment of the impact of any such changes; and
 - 7.2.6 any other information or documentation relevant to the review as requested by the Minister.
- 7.3 Within [REDACTED] of receipt of all of the information to be provided under Paragraph 7.2 (Review in the event of Material KPI Failure), the Minister shall inform NBPco whether he will:
- 7.3.1 accept the change;
 - 7.3.2 reject the change; or
 - 7.3.3 accept the change subject to his amendments
- and this decision is solely at the Minister's discretion.
- 7.4 Any change accepted by the Minister under Paragraph 7.3 (Review in the event of Material KPI Failure) shall be effected and documented in accordance with Schedule 6.2 (Change Control Procedure).