

Up to date as at January 2022

Redacted Version

Schedule 6.13 – Ministerial Oversight of Deployment Subcontract Procurement Process

6.13 MINISTERIAL OVERSIGHT OF DEPLOYMENT SUBCONTRACT PROCUREMENT PROCESS

1 INTRODUCTION & DEFINITIONS

- 1.1 The purpose of this Schedule is to outline the nature of the oversight available to the Minister in relation to the procurement process to be used by NBPco and/or Buildco to select and appoint any Subcontractor to supply any labour element and/or Equipment and/or materials, the cost of which is subject, as applicable, to the provisions of Paragraph 6A (Subcontractor Labour Rates) or Paragraph 6B (Subcontractor Equipment and Material Rates) of Annex 6 (Build Related Contract Assumptions) of Schedule 6.2 (Change Control Procedure).
- 1.2 This Schedule applies to any Procurement Process which commences or concludes on or after the Commencement Date but excludes:
- 1.2.1 any such process or negotiations with Nokia and enet; or
- 1.2.2 **[REDACTED]**
- 1.3 Without limiting or affecting Paragraph 1.2 (Introduction & Definitions), NBPco shall, and shall procure that Buildco shall, complete the Procurement Process for each Key Service within nine (9) months from the Commencement Date.
- 1.4 In this Schedule, the following capitalised terms shall be defined as follows:
- 1.4.1 “**Bill of Materials**” means an itemised list of all the Equipment, materials and labour together with their unit costs and volumes needed to meet the supply requirements of the relevant Subcontract;
- 1.4.2 “**Buildco CEO**” means the chief executive officer of Buildco;
- 1.4.3 “**Director of Network Deployment**” means the individual that is responsible for Network Deployment activities within Buildco;
- 1.4.4 “**Evaluation Report**” has the meaning given to it in Paragraph 4.3.1 (Shortlisting);
- 1.4.5 “**Evaluation Team**” means a suitably qualified evaluation team within Buildco with relevant expertise to assess submitted tenders for the relevant Procurement Process in accordance with Good Procurement Practice;
- 1.4.6 “**Good Procurement Practice**” means carrying out each stage of the Pre-Procurement Design and Procurement Process:
- (A) in a manner which avoids any actual, apparent, or potential conflict of interest arising;
- (B) in accordance with the principles of transparency, equal treatment, proportionality and non-discrimination;
- (C) in a manner which achieves efficiency and effectiveness;
- (D) in accordance with the agreed process stages set out in this Schedule;
- (E) in a manner which meets NBPco’s objectives and obligations under the Agreement including Schedule 2.3 (Deployment Requirements),

Schedule 2.7 (NBPco Requirements) and Paragraph 6A (Subcontractor Labour Rates) and Paragraph 6B (Subcontractor Equipment and Material Rates) of Annex 6 (Build Related Contract Assumptions) of Schedule 6.2 (Change Control Procedure); and

(F) in accordance with Best Industry Practice;

- 1.4.7 **“Head of Commercial”** means the individual within Buildco responsible for the procurement of Equipment, materials and labour elements through the Procurement Process including ongoing supplier contract, performance and relationship management or, where appropriate, such substitute as may be appointed by Buildco in accordance with the provisions of the Buildco Key Subcontract;
- 1.4.8 **“Limited Maximum Rates Review”** means in respect of any Subcontract under which maximum rates for Equipment and/or materials and/or labour elements have been contractually agreed with, and are legally binding upon, the relevant Subcontractor for a specific period, the process implemented by NBPco and/or Buildco in order to review and agree new maximum rates with the relevant Subcontractor;
- 1.4.9 **“Limited Maximum Rates Review Information”** has the meaning given to it in Paragraph 6.2 (Limited Maximum Rates Review);
- 1.4.10 **“NBPco Internal Procurement Procedure”** has the meaning given to it in Paragraph 2.1 (NBPco's and Buildco's Internal Procurement Procedures);
- 1.4.11 **“Preferred Supplier Recommendation”** has the meaning given to it in Paragraph 4.1 (Shortlisting);
- 1.4.12 **“Preliminary Procurement Information”** has the meaning given to it in Paragraph 3.1 (Preliminary Procurement Information);
- 1.4.13 **“Pre-Procurement Design”** means the preliminary internal planning and design stage of the Procurement Process;
- 1.4.14 **“Procurement Board”** has the meaning given to it in Paragraph 2.6 (NBPco's and Buildco's Internal Procurement Procedures) of this Schedule;
- 1.4.15 **“Procurement Documentation”** means the request or invitation to tender (or similarly named document) and any other documentation related to the Procurement Process which is issued to potential suppliers by NBPco and/or Buildco;
- 1.4.16 **“Procurement Process”** means, as applicable:
- (A) any procurement process through which suppliers are identified and invited to tender for the award of any Subcontract to supply any labour elements and/or Equipment and/or materials, the cost of which is, as applicable, subject to the provisions of Paragraph 6A (Subcontractor Labour Rates) and Paragraph 6B (Subcontractor Equipment and Material Rates) of Annex 6 (Build Related Contract Assumptions) of Schedule 6.2 (Change Control Procedure); or

(B) a Limited Maximum Rates Review,

but excludes Pre-Procurement Design;

1.4.17 “**Shortlisting Information**” has the meaning given to it in Paragraph 4.3 (Shortlisting).

1.5 NBPco acknowledges and agrees that the Minister has no duty of care to NBPco or Buildco in connection with any Procurement Process and that the operation of this Schedule is subject to Clause 1.2.19 (Definitions and Interpretation).

1.6 The provisions of this Schedule do not, in particular, limit or affect the provisions of Clause 42 (Subcontractors) or Clause 44 (Project Documents and Funding Documents).

1.7 The grant of any consent or approval or imposition of any change by the Minister under a provision of this Schedule does not limit or affect any requirement for NBPco and/or Buildco or any other person to obtain, and shall not be interpreted or deemed to be or require the grant of, a consent, approval, Change Authorisation or similar under or for the purposes of any other provision of this Agreement.

NBPco'S AND BUILDco'S INTERNAL PROCUREMENT PROCEDURES

2.1 NBPco shall, and shall procure that Buildco shall, implement and maintain documented internal procurement procedures detailing the rules, roles and responsibilities relevant to each stage of the Procurement Process in order to ensure that each of the Pre-Procurement Design and Procurement Process is carried out in accordance with Good Procurement Practice including a process for investigating and dealing with any claims or complaints from any person including Subcontractors, tenderers or potential tenderers that:

2.1.1 an actual, apparent or potential conflict of interest has arisen or is likely to arise during a Procurement Process; or

2.1.2 a breach of the Procurement Process has occurred,

(“**NBPco Internal Procurement Procedure**”)

2.2 NBPco shall, and shall procure that Buildco shall, conduct each Pre-Procurement Design and each Procurement Process in accordance with the NBPco Internal Procurement Procedure, Good Procurement Practice and the relevant Procurement Documentation.

2.3 NBPco shall procure that Buildco appoints a Head of Commercial to manage each Procurement Process. The Head of Commercial shall report directly to the Director of Network Deployment.

2.4 Prior to the commencement of each Pre-Procurement Design and each Procurement Process and, separately, at the point at which the identity of the tenderers has been confirmed, the Head of Commercial shall confirm to the Procurement Board that:

2.4.1 it has no actual, apparent or potential conflict of interest in respect of the relevant procurement;

2.4.2 each member of the Procurement Board has confirmed that it has no actual, apparent or potential conflict of interest in respect of the relevant procurement;

2.4.3 each member of the Evaluation Team has confirmed that it has no actual, apparent or potential conflict of interest in respect of the relevant procurement; and

2.4.4 it is not aware of any other circumstances which could give rise to any actual, apparent or potential conflict of interest.

2.5 Should any actual, apparent or potential conflict of interest arise after the confirmation provided under Paragraph 2.4 (NBPco's and Buildco's Internal Procurement Procedures), the Head of Commercial shall take such steps as it considers appropriate in order to preserve the integrity of the Procurement Process which shall include:

2.5.1 ensuring that any person with an actual, apparent or potential conflict of interest is in no way involved with the Procurement Process; and

2.5.2 ensuring continuous oversight of the Procurement Process.

unless the actual, apparent or potential conflict of interest directly affects the Head of Commercial in which case the Director of Network Deployment shall assume responsibility for fulfilling the obligations under this Paragraph 2.5 (NBPco's and Buildco's Internal Procurement Procedures).

2.6 NBPco and Buildco shall establish a procurement board which shall have responsibility for the application of and compliance with the Procurement Process and the NBPco Internal Procurement Procedure ("**Procurement Board**"). The Procurement Board shall include the Chief Financial Officer, Chief Operations Officer and Chief Technical and Information Officer of NBPco in addition to the Buildco CEO, Director of Network Deployment and Head of Commercial. All decisions relating to key stages of the Pre-Procurement Design, Procurement Process and the terms of any Subcontract negotiated under any Procurement Process shall be approved by the Procurement Board.

2.7 NBPco shall keep a written record of all key decisions made in respect of the Procurement Process. Throughout the Procurement Process, NBPco shall notify the Minister of any deviation from the target milestone dates referenced in Paragraph 3.1.9 (Preliminary Procurement Information).

2.8 NBPco and/or Buildco shall not appoint any supplier as a Subcontractor to supply any labour elements and/or Equipment and/or materials, the cost of which is, as applicable, subject to the provisions of Paragraph 6A (Subcontractor Labour Rates) and Paragraph 6B (Subcontractor Equipment and Material Rates) of Annex 6 (Build Related Contract Assumptions) of Schedule 6.2 (Change Control Procedure) unless such supplier has been subject to a Procurement Process in accordance with this Schedule.

PRELIMINARY PROCUREMENT INFORMATION

3.1 NBPco shall, and shall procure that Buildco shall, submit to the Minister a notification of the commencement and the material elements of every proposed Procurement Process prior to the conclusion of Pre-Procurement Design. These elements shall include:

3.1.1 the identity of the target suppliers;

3.1.2 the specification of the Equipment, materials or labour being procured;

3.1.3 the volume of Equipment, materials or labour being procured;

- 3.1.4 the supply timeline commitment sought from suppliers in the Procurement Process;
- 3.1.5 where the Procurement Process is to be limited to a predetermined shortlist of suppliers, details of:
 - (A) the identity of the specific suppliers;
 - (B) a report detailing the reasons why the creation of the shortlist is appropriate for the Procurement Process and how the specific suppliers were selected; and
 - (C) confirmation that the shortlisting exercise has been conducted in accordance with Good Procurement Practice;
- 3.1.6 any pass/fail requirements;
- 3.1.7 the selection and evaluation criteria to be applied including the applicable minimum pass rates;
- 3.1.8 the scoring matrix and weighting to be used;
- 3.1.9 the target milestone dates for the Procurement Process;
- 3.1.10 whether the Equipment and/or materials and/or labour rates being procured shall be subject to a maximum rate and, if so, the duration of the maximum rate period;
- 3.1.11 confirmation that no actual, apparent or potential conflict of interest has been identified in relation to the Procurement Process and, to the extent that an actual, apparent or potential conflict has been identified, details of the steps taken by NBPco and/or Buildco to remedy or avoid the actual, apparent or potential conflict (as applicable); and
- 3.1.12 any other information reasonably requested by the Minister,

(“Preliminary Procurement Information”)

- 3.2 The Preliminary Procurement Information shall be submitted by way of file transfer and accompanying receipted email to PMO@DCCAIE.gov.ie or such other mailbox as may be nominated by the Minister from time to time.
- 3.3 Subject to Paragraph 3.5 (Preliminary Procurement Information), the Minister shall have ten (10) Working Days from the date that it receives the Preliminary Procurement Information from NBPco to either:
 - 3.3.1 respond to NBPco with written approval to proceed; or
 - 3.3.2 notify NBPco of one or more required changes to the Preliminary Procurement Information and the reason why each change is required.

- 3.4 NBPco shall consider all changes required by the Minister under Paragraph 3.3.2 (Preliminary Procurement Information) and shall either:
- 3.4.1 implement the changes and resubmit the revised Preliminary Procurement Information to the Minister in which case the Minister's rights under Paragraph 3.3 (Preliminary Procurement Information) shall apply except that the Minister shall have ten (10) Working Days to review the revised Preliminary Procurement Information and respond in accordance with Paragraph 3.3 (Preliminary Procurement Information); or
 - 3.4.2 notify the Minister that it disagrees with part or all of the Minister's determination and the reasons for NBPco's position (for example, that the Minister's proposed changes would put NBPco and/or Buildco at an economic disadvantage). The Procurement Board and the Minister shall meet to resolve the issue within five (5) Working Days of NBPco's notification of disagreement under this Paragraph 3.4.2 (Preliminary Procurement Information). Where the matter cannot be resolved within a further seven (7) Working Days, the matter shall be referred to the Dispute Resolution Procedure and, unless otherwise agreed by the Parties in writing, the Procurement Process shall not commence until such time as the Dispute is resolved.
- 3.5 Where NBPco or Buildco submits Preliminary Procurement Information to the Minister: (a) in respect of more than one Procurement Process within the same ten (10) Working Day period; or (b) during the ten (10) Working Day period for the Minister's review of any Preliminary Procurement Information under this Paragraph 0 (Preliminary Procurement Information):
- 3.5.1 the ten (10) Working Day maximum review period applicable to each set of Preliminary Procurement Information under Paragraph 3.3 (Preliminary Procurement Information) ("**Maximum PPI Review Period**") shall apply to each set of Preliminary Procurement Information received;
 - 3.5.2 the Maximum PPI Review Period for the Minister's review of each set of Preliminary Procurement Information shall begin to run from the next Working Day following the date that the Minister issues its response or notification (as applicable) under Paragraph 3.3 (Preliminary Procurement Information) for the preceding Preliminary Procurement Information review ("**Applicable PPI Review Commencement Date**") and each Maximum PPI Review Period shall run consecutively;
 - 3.5.3 subject to Paragraph 3.5.4 (Preliminary Procurement Information), each set of Preliminary Procurement Information shall be reviewed by the Minister in the order in which it is received by the Minister;
 - 3.5.4 NBPco or Buildco may, at the time of submitting the Preliminary Procurement Information, inform the Minister of the priority of the relevant Procurement Process relative to any other ongoing Procurement Process in respect of which it has submitted, or intends to submit, Preliminary Procurement Information and, where such information is provided by NBPco or Buildco, the Minister may (but is not obliged to) agree to review certain Preliminary Procurement Information in advance of other Preliminary Procurement Information received; and

3.5.5 for the avoidance of doubt, nothing in this Paragraph 3.5 (Preliminary Procurement Information) shall:

- (A) oblige the Minister to review any Preliminary Procurement Information before its Applicable PPI Review Commencement Date or within a shorter time than the Maximum PPI Review Period; or
- (B) allow the Minister time in excess of the Maximum PPI Review Period to issue its response or notification (as applicable) under Paragraph 3.3 (Preliminary Procurement Information).

3.6 Where the Minister fails to respond to NBPco within the timescale specified under Paragraph 3.3 (Preliminary Procurement Information) or, as applicable, Paragraph 3.4 (Preliminary Procurement Information), NBPco may proceed with its Procurement Process in accordance with the NBPco Internal Procurement Procedure and the Preliminary Procurement Information submitted under Paragraph 3.1 (Preliminary Procurement Information) as amended, to the extent applicable, in accordance with Paragraph 3.4.1 (Preliminary Procurement Information).

3.7 This Paragraph 0 (Preliminary Procurement Information) shall not apply to any Limited Maximum Rates Review.

SHORTLISTING

4.1 The Evaluation Team shall evaluate all supplier responses submitted by suppliers within the prescribed timeframes set out in the Procurement Documentation in accordance with the Procurement Documentation and NBPco Internal Procurement Procedure. On completion of its evaluation, the Evaluation Team shall make a recommendation to the Procurement Board of the suppliers proposed for advancement to preferred supplier status and final contract negotiations (“**Preferred Supplier Recommendation**”).

4.2 The Procurement Board shall review the Preferred Supplier Recommendation and shall satisfy itself that:

4.2.1 the selection and evaluation criteria as referenced in Paragraph 3.1.7 (Preliminary Procurement Information) of this Schedule has been applied;

4.2.2 the scoring matrix and weighting as referenced in Paragraph 3.1.8 (Preliminary Procurement Information) of this Schedule has been applied; and

4.2.3 each stage of the Pre-Procurement Design and Procurement Process up to (and including) the date of the Procurement Board’s review has been conducted in accordance with NBP’s Internal Procurement Procedures, Good Procurement Practice and the Procurement Documentation.

4.3 Within five (5) Working Days of the Procurement Board’s review of the Preferred Supplier Recommendation under Paragraph 4.2 (Shortlisting), NBPco shall notify the Minister of the outcome of the Procurement Board’s review and, at the time of providing notice under this Paragraph 4.3 (Shortlisting) shall, and shall procure that Buildco shall, provide the Minister with:

- 4.3.1 an evaluation report including:
- (A) information demonstrating how each stage of the Pre-Procurement Design and the Procurement Process was carried out in accordance with Internal NBPco Procurement Procedures, Good Procurement Practice and Procurement Documentation;
 - (B) a summary of the nature and content of the responses received from each supplier that submitted a completed tender;
 - (C) the completed selection and evaluation criteria and scoring matrix and weighting for each supplier who submitted a completed tender, including the reasons for the scores given under each criterion and for any pass/fail decisions; and
 - (D) details of any complaints or claims from any person including Subcontractors, tenderers or potential tenderers together with an explanation of how the complaint or claim was properly resolved and addressed,

(“**Evaluation Report**”);

- 4.3.2 the Bill of Materials received from each preferred supplier;
- 4.3.3 to the extent applicable, a copy of the amended subcontract received from each supplier as part of its response;
- 4.3.4 confirmation that no actual, apparent or potential conflict of interest has been identified in relation to the Procurement Process and, to the extent that an actual, apparent or potential conflict has been identified, details of the steps taken by NBPco and/or Buildco to remedy or avoid actual, apparent or potential conflict (as applicable); and
- 4.3.5 any other information reasonably requested by the Minister,

(items 4.3.1 (Shortlisting) to 4.3.5 (Shortlisting) together the “**Shortlisting Information**”).

4.4 Subject to Paragraph 4.6 (Shortlisting) and Paragraph 4.7 (Shortlisting), the Minister shall, within ten (10) Working Days of receiving the Shortlisting Information either:

- 4.4.1 respond to NBPco with written approval to proceed to the final stages of the Procurement Process in accordance with Paragraph 0 (Final Negotiations); or
- 4.4.2 notify NBPco of its finding of any non-compliance with the Procurement Process, the Procurement Documentation or the NBPco Internal Procurement Procedure.

4.5 NBPco shall consider any findings of non-compliance made by the Minister under Paragraph 4.4.2 (Shortlisting) and shall:

- 4.5.1 to the extent that such non-compliance is capable of remedy whilst preserving the integrity of the Procurement Process, remedy the issue and resubmit the Shortlisting Information to the Minister in which case the Minister’s rights under Paragraph 4.4 (Shortlisting) shall apply except that the Minister shall have ten

(10) Working Days to review the revised documentation and respond in accordance with Paragraph 4.4 (Shortlisting);

4.5.2 to the extent that such non-compliance is not capable of remedy whilst preserving the integrity of the Procurement Process, re-commence the Procurement Process on prior notice to the Minister; or

4.5.3 notify the Minister that it disagrees with part or all of the Minister's findings and the reasons for NBPco's position for example, that the Minister's proposed changes would put NBPco and/or Buildco at an economic disadvantage). The Procurement Board and the Minister shall meet to resolve the issue within five (5) Working Days of NBPco's notification of disagreement under this Paragraph 4.5.3 (Shortlisting). Where the matter cannot be resolved within ten (10) Working Days, the matter shall be referred to the Dispute Resolution Procedure and, unless otherwise agreed by the Parties in writing, the Procurement Process shall be suspended pending resolution of the Dispute.

4.6 Where the number of shortlisted suppliers is three (3) or less, the Minister shall have a total of twenty (20) Working Days under Paragraph 4.4 (Shortlisting) to review the Shortlisting Information.

4.7 Where NBPco or Buildco submits Shortlisting Information to the Minister: (a) in respect of more than one Procurement Process within the same ten (10) Working Day period (or, to the extent that Paragraph 4.6 (Shortlisting) applies, the same twenty (20) Working Day period); or (b) during the ten (10) Working Day period (or, to the extent that Paragraph 4.6 (Shortlisting) applies, the same twenty (20) Working Day period) for the Minister's review of any Preliminary Procurement Information under this Paragraph 0 (Shortlisting):

4.7.1 the:

(A) ten (10) Working Day maximum review period under Paragraph 4.4 (Shortlisting); or

(B) twenty (20) Working Day maximum review period under Paragraph 4.6 (Shortlisting),

as applicable (the "**Maximum SI Review Period**") shall apply to each set of Shortlisting Information received;

4.7.2 the Maximum SI Review Period for the Minister's review of each set of Shortlisting Information shall begin to run from the next Working Day following the date that the Minister issues its response or notification (as applicable) under Paragraph 4.4 (Shortlisting) (the "**Applicable SI Review Commencement Date**") and each Maximum SI Review Period shall run consecutively;

4.7.3 subject to Paragraph 4.7.4 (Shortlisting), each set of Preliminary Procurement Information shall be reviewed by the Minister in the order in which it is received by the Minister;

4.7.4 NBPco or Buildco may, at the time of submitting the Shortlisting Information, inform the Minister of the priority of the relevant Procurement Process relative to any other Procurement Process in respect of which it has submitted, or intends to submit, Shortlisting Information and, where such information is provided by

NBPco or Buildco, the Minister may (but is not obliged to) agree to review certain Shortlisting Information in advance of other Shortlisting Information received; and

4.7.5 for the avoidance of doubt, nothing in this Paragraph 4.7 (Shortlisting) shall:

4.7.6 oblige the Minister to review any Shortlisting Information before its Applicable SI Review Commencement Date or within a shorter time than the Maximum SI Review Period; or

4.7.7 allow the Minister time in excess of the Maximum SI Review Period to issue its response or notification (as applicable) under Paragraph 4.4 (Shortlisting) or Paragraph 4.6 (Shortlisting) (as applicable).

4.8 This Paragraph 0 (Shortlisting) shall not apply to any Limited Maximum Rates Review.

FINAL NEGOTIATIONS

5.1 NBPco shall procure that the Head of Commercial shall, upon receipt of written approval in accordance with Paragraph 4.4.1 (Shortlisting) or in the circumstances set out in Paragraph 4.8 (Shortlisting), enter into the final bilateral negotiations with the preferred suppliers and conclude final terms in accordance with the process outlined in the NBPco Internal Procurement Procedure.

5.2 In the event that:

5.2.1 there is a material adverse change to the legal, financial, technical and/or commercial position of or any tender submitted by any supplier to which NBPco and/or Buildco proposes to award a Subcontract;

5.2.2 any actual, apparent or potential conflict of interest is identified in relation to the Procurement Process; and/or

5.2.3 NBPco and/or Buildco receives any complaints or claims from any person including Subcontractors, tenderers or potential tenderers claiming or identifying that a breach of Good Procurement Process has occurred or a breach of Good Procurement Process is otherwise identified,

NBPco shall promptly notify the Minister of this fact and, at the same time as providing notice under this Paragraph 5.2 (Final Negotiations) shall, and shall procure that Buildco shall, provide the following information to the Minister, as applicable:

5.2.4 the reasons informing NBPco's and/or Buildco's proposal to award a Subcontract notwithstanding the change in the relevant supplier's position;

5.2.5 details of the steps taken by NBPco and/or Buildco to remedy or avoid actual, apparent or potential conflict (as applicable);

5.2.6 an explanation of how such complaint or claim was properly resolved and addressed; and/or

5.2.7 any other information reasonably requested by the Minister.

5.3 The Minister shall, within ten (10) Working Days of receiving the relevant information under Paragraph 5.2 (Final Negotiations) either:

5.3.1 respond to NBPco with written approval to proceed to conclude the Procurement Process; or

5.3.2 notify NBPco of its determination that the Procurement Process has not been conducted in accordance with Good Procurement Practice and that the Procurement Process must be re-commenced,

and NBPco shall not, and shall procure that Buildco shall not, proceed to award a Subcontract to the relevant supplier until the Minister confirms to NBPco that, subject to NBPco's obligations under the other relevant provisions of this Schedule, the Procurement Process may be concluded and that Subcontract awarded.

5.4 If, in a given case, NBPco notifies the Minister that it disagrees with the Minister's findings under Paragraph 5.3.2 (Final Negotiations), the Procurement Board and the Minister shall meet to resolve the issue within five (5) Working Days of NBPco's notification of disagreement under this Paragraph 5.4 (Final Negotiations). Where the matter cannot be resolved within a further seven (7) Working Days, the matter shall be referred to the Dispute Resolution Procedure and, unless otherwise agreed by the Parties in writing, the Procurement Process shall be suspended pending resolution of the Dispute.

5.5 Nothing in this Schedule shall limit or affect NBPco's obligation to obtain the prior written consent of the Minister to the appointment of any Key Subcontractor in accordance with Clause 42.1 (Subcontractors and to provide the Minister with a copy of the proposed Key Subcontract in accordance with Clause 42.4.2 (Subcontractors).

5.6 NBPco shall, and shall procure that Buildco shall, ensure that any agreed Subcontracts that are Key Subcontracts comply with all requirements of the Agreement (including Clause 42 (Subcontractors) and Schedule 2.8 (Key Subcontractor Provisions)) and shall be internally approved, authorised and executed by NBPco or Buildco in compliance with the NBPco Internal Procurement Procedure.

5.7 Subject to Paragraphs 5.2 (Final Negotiations) to 5.6 (Final Negotiations), NBPco shall notify the Minister of the outcome of the final negotiation phase and the contract award decision and shall, at the date of notification, provide to the Minister:

5.7.1 an updated Evaluation Report with details of the selection and evaluation criteria, scoring matrix and weighting used to award the contract to the relevant supplier from the preferred suppliers;

5.7.2 confirmation that Good Procurement Practice has been adhered to throughout the Procurement Process;

5.7.3 details of the fixed maximum rates (if any) agreed with the Subcontractor in respect of any Equipment and/or materials and/or labour elements procured and the duration of such fixed maximum rates; and

5.7.4 a copy of each executed Subcontract and, where applicable, Key Subcontractor Direct Agreement.

- 5.8 NBPco shall notify the successful and unsuccessful bidders of the outcome of the competition providing written qualitative feedback to each unsuccessful bidder to enable each such bidder to understand why its tender response was unsuccessful.
- 5.9 This Paragraph 0 (Final Negotiations) shall not apply to any Limited Maximum Rates Review.

LIMITED MAXIMUM RATES REVIEW

- 6.1 NBPco shall, and shall procure that Buildco shall, commence each Limited Maximum Rates Review at least **[REDACTED]**.
- 6.2 Prior to the conclusion of any Limited Maximum Rates Review, NBPco shall, and shall procure that Buildco shall, provide the following information to the Minister:
- 6.2.1 **[REDACTED]**
- 6.2.2 **[REDACTED]**
- 6.2.3 **[REDACTED]**
- 6.2.4 **[REDACTED]**
- 6.2.5 any other information reasonably requested by the Minister,
[REDACTED]
- 6.3 The Minister shall, within fifteen (15) Working Days of receiving the information provided by NBPco under Paragraph 6.1 (Limited Maximum Rates Review), either:
- 6.3.1 **[REDACTED]**
- 6.3.2 **[REDACTED]**
- 6.4 NBPco shall consider any findings of non-compliance by the Minister under Paragraph **Error! Reference source not found.** (Limited Maximum Rates Review) and shall:
- 6.4.1 **[REDACTED]**
- 6.4.2 **[REDACTED]**
- 6.4.3 **[REDACTED]**
- 6.5 Where the Minister fails to respond to NBPco within the timescale specified under Paragraph 6.2 (Limited Maximum Rates Review), NBPco may proceed to the final stages of the Procurement Process in accordance with the NBPco Internal Procurement Procedure and the Limited Maximum Rates Review Information as amended, to the extent applicable, in accordance with Paragraph **Error! Reference source not found.** (Limited Maximum Rates Review).

AUDIT RIGHTS

- 7.1 The Minister shall have the right (but shall be under no obligation) to undertake an audit at any stage:
- 7.1.1 during a Procurement Process;
 - 7.1.2 upon receiving notice of any complaint from a supplier, potential supplier or other third party that a Procurement Process has not been carried out in accordance with Good Procurement Practice,
- to satisfy itself that each stage of the Procurement Process has been carried out in compliance with Good Procurement Practice, the Procurement Documentation and NBPco Internal Procurement Procedure (“**Compliance Requirements**”).
- 7.2 Without affecting the Minister’s rights under Paragraph 7.3 (Audit Rights), any audit conducted by the Minister under Paragraph 7.1 (Audit Rights) shall not preclude the continuation of the Procurement Process provided that NBPco shall not, and shall procure that Buildco shall not, conclude any Procurement Process until the earlier of:
- 7.2.1 such time as the Minister has confirmed that the findings of the audit do not raise any issues of non-compliance with the Compliance Requirements; or
 - 7.2.2 the Minister confirming to NBPco that, subject to NBPco’s obligations under the other relevant Paragraphs in this Schedule, the Procurement Process may be concluded; and
 - 7.2.3 in the event that any significant non-compliance with the Compliance Requirements is identified, the issue of non-compliance is remedied (if such non-compliance is capable of remedy).
- 7.3 Where any audit conducted by the Minister under Paragraph 7.1 (Audit Rights) is completed subsequent to the conclusion of the relevant Procurement Process and identifies that the relevant Procurement Process was non-compliant with the Compliance Requirements and, as a result of such non-compliance, a Build Related Contract Assumption proves to be inaccurate, the Minister shall notify NBPco of this finding and NBPco shall:
- 7.3.1 **[REDACTED]**
 - 7.3.2 **[REDACTED]**
- 7.4 The Minister shall have the right to require an Independent Assurance Review of any Procurement Process in order to confirm, to the Minister’s satisfaction, that each stage of the relevant Procurement Process has been carried out in compliance with the Compliance Requirements.

MATERIAL AND SERVICE CONTRACT RECONCILIATION

- 8.1 NBPco shall, and shall procure that Buildco shall, implement a full reconciliation process to confirm that Equipment, materials and labour ordered, purchased, delivered, deployed, invoiced and settled for under any Subcontracts awarded in accordance with this Schedule comply with the Subcontractor Rates Assumptions.

Up to date as at January 2022

Redacted Version

Schedule 6.13 – Ministerial Oversight of Deployment Subcontract Procurement Process

- 8.2 NBPco and/or Buildco shall implement this reconciliation process across NBPco and/or Buildco enterprise resource plans. Appendix 1 (Supply Chain to Build and Inventory Reconciliation) sets out an illustrative example of the type of reconciliation process that will be implemented by NBPco and/or Buildco under this Paragraph 0 (Material and Service Contract Reconciliation).

APPENDIX 1 (SUPPLY CHAIN TO BUILD AND INVENTORY RECONCILIATION)



