

## **5.4 ELIGIBILITY REQUIREMENTS FOR ERDF FUNDING**

## **1 GENERAL**

- 1.1 Eligibility Rules for ERDF Funding are applied to ERDF co-funded projects regarding costs that qualify for ERDF Funding as Eligible ERDF Expenditure. For expenditure to be considered for eligibility under Eligible ERDF Expenditure, the expenditure must qualify as Permitted Expenditure (as outlined in Appendix 4 (Costs, Permitted Expenditure and Revenues) of Schedule 5.1 (Subsidy Payments), have been funded under this Agreement and comply with the Eligibility Rules for ERDF Funding. Accordingly, this Schedule 5.4 (Eligibility Requirements for ERDF Funding) outlines and incorporates funding requirements in relation to ERDF Funding and NBPco shall comply with the Eligibility Rules for ERDF Funding to the extent set out in this Schedule 5.4 (Eligibility Requirements for ERDF Funding).
- 1.2 NBPco shall:
- 1.2.1 maintain and provide all documentation and assistance required by the Minister under this Schedule 5.4 (Eligibility Requirements for ERDF Funding) and Schedule 5.3 (The Project Financial Model) and Schedule 6.5 (Reports and Records) to support and/or validate Eligible ERDF Expenditure and compliance with the Eligibility Rules for ERDF Funding;
  - 1.2.2 provide such assistance and information as the Minister may reasonably require from time to time and as soon as reasonably practicable in relation to the ERDF Funding; and
  - 1.2.3 present its Eligible ERDF Expenditure in accordance with the provisions of this Schedule 5.4 (Eligibility Requirements for ERDF Funding), Schedule 5.3 (The Project Financial Model) and Schedule 6.5 (Reports and Records).
- 1.3 Without limiting or affecting the Eligibility Rules for ERDF Funding, the obligations contained in this Schedule 5.4 (Eligibility Requirements for ERDF Funding) shall only apply to the extent and for such period that the Minister is subject to any obligation to the ERDF in respect of ERDF Funding.
- 1.4 Any Dispute regarding NBPco's compliance with the Eligibility Rules for ERDF Funding or the provisions of this Schedule shall be resolved in accordance with the Expedited Dispute Resolution Procedure.

## **2 ERDF PROJECT SPECIFIC CONDITIONS**

- 2.1 The Minister as at the Commencement Date has not obtained the Major Projects Approval to confirm the use by the Minister of ERDF Funding.
- 2.2 Upon receipt of the Major Projects Approval, the Minister may, by notice in writing to NBPco, require the ERDF Project Specific Conditions to be incorporated into this Agreement (in whole or in part) by way of a Change to the extent that the Minister is reasonably unable to comply with those ERDF Project Specific Conditions without the assistance of NBPco. Any ERDF Project Specific Conditions resulting from the Major Projects Approval shall be dealt with in accordance with the Change Control Procedure, except that NBPco shall not be entitled to reject any such Change Request. To such extent, Paragraph 5 (NBPco's Right of Rejection of Change Request) of Part 2 (Change Procedure) of Schedule 6.2 (Change Control Procedure) does not apply in such regard.
- 2.3 NBPco shall as soon as reasonably practicable, following a request from the Minister, and prior to the Major Projects Approval being received by the Minister, provide to the

Minister such information as is reasonably necessary from time to time to demonstrate to the ERDF and satisfy the ERDF that NBPco has sufficient funds available to pay for costs and expenditure in relation to the Project which are not Eligible ERDF Expenditure, including:

2.3.1 latest financial accounts and credit ratings (where credit ratings are available) of NBPco, Shareholders, Guarantor, Buildco, and Buildco Shareholders (as applicable), and letter(s) from each of their chief financial officers attesting to the financial status of NBPco and explaining the sources and amounts of funding available to NBPco to pay for the Additional NBPco Expenditure (Passed); and

2.3.2 a copy of the Funding Documents for the Project (or extracts or details of them) as required to satisfy the requirements of the ERDF.

2.4 The documentation required to be provided and retained by NBPco in respect of a payment claim for a Subsidy Payment (as described in Schedule 5.1 (Subsidy Payments)) must clearly state and evidence whether and to what extent (e.g. clearly distinguishing ERDF Funding from non-ERDF Funding elements) the Permitted Expenditure that is the subject of the claim is Eligible ERDF Expenditure.

2.5 NBPco shall on an annual basis:

2.5.1 review the actual Eligible ERDF Expenditure against the ERDF Expenditure Profile;

2.5.2 review the forecast Eligible ERDF Expenditure against the ERDF Expenditure Profile by ERDF Region; and

2.5.3 report the outcome of the above to the Minister as part of the ERDF Funding Report to be provided to the Minister pursuant to and in accordance with Schedule 6.5 (Reports and Records).

### **3 AUDIT REQUIREMENTS AND ACCESS RIGHTS**

3.1 NBPco shall maintain full and accurate accounts and documentary evidence for all Eligible ERDF Expenditure in accordance with Schedule 5.1 (Subsidy Payments) and all quotes, tenders and procurement practices, all financial contributions made towards the Project and all income generated by the Eligible ERDF Expenditure and all income generated by the Project in accordance with this Agreement. NBPco shall provide the Minister, its Audit Agents, any Independent Assurance Reviewer and any relevant Regulatory Body and its agents or representatives (as applicable) with all access, co-operation, information, documents, data and assistance (as applicable) as required under, and in accordance with, this Agreement in order for the Minister, its Audit Agents, any Independent Assurance Reviewer and any relevant Regulatory Body (as applicable) to conduct an audit, spot check or Independent Assurance Review in accordance with Clause 47 (Audit) and Schedule 6.10 (Independent Assurance) and/or Schedule 6.11 (Audits) (as applicable) in respect of Eligible ERDF Expenditure.

3.2 NBPco shall ensure that a clear audit trail is maintained by NBPco in respect of Eligible ERDF Expenditure including by:

3.2.1 ensuring that all Eligible ERDF Expenditure is supported by receipted invoices in accordance with Schedule 5.1 (Subsidy Payments), or, where this cannot be done, by accounting documents of equivalent probative value;

- 3.2.2 establishing and maintaining a system to record and store, in computerised form, data on each activity undertaken by NBPco which demonstrates NBPco's compliance with this Schedule 5.4 (Eligibility Requirements for ERDF Funding) and the Eligibility Rules for ERDF Funding;
- 3.2.3 retaining all documentation related to the ERDF Funding in accordance with this Agreement and in accordance with the manner, and for the retention period, whichever is longer, as prescribed under the Eligibility Rules for ERDF Funding or seven (7) years following the last payment from the Minister to NBPco of Eligible ERDF Expenditure pursuant to this Agreement; and
- 3.2.4 without limiting or affecting Paragraph 3.2.3 (Audit Requirements and Access Rights), retaining all documentation related to the ERDF Funding for such longer period than that prescribed under Paragraph 3.2.3 (Audit Requirements and Access Rights), as the Minister may reasonably request during the Contract Period in order for the Minister to comply with Law or its obligations under the Eligibility Rules for ERDF Funding.

#### **4 PUBLICITY**

##### 4.1 NBPco shall comply with:

- 4.1.1 Articles 4 and 5 of Commission Implementation Regulation (EU) No. 821/2014; and
- 4.1.2 the Information and Communication Guidelines for European Structural and Investment Funds 2014-2020,

in each case, as amended, supplemented or varied from time to time.

##### 4.2 NBPco shall in relation to all Publicity Material, information and communication measures (including any website, the Public Portal and Secure Portal) created and/or used by NBPco in connection with this Agreement acknowledge support from the ERDF in respect of the Project by:

- 4.2.1 displaying the ERDF and EU logo requirements, as required by the Eligibility Rules for ERDF Funding;
- 4.2.2 acknowledging ERDF as a source of funding under this Agreement, as required by the Eligibility Rules for ERDF Funding;
- 4.2.3 displaying the Union Emblem as required by the Eligibility Rules for ERDF Funding; and
- 4.2.4 include the following note in any editorial notes:

"The National Broadband Plan ERDF Project is part financed by the European Regional Development Fund under the Southern and Eastern and Border, Midlands and Western Regional Operational Programmes 2014 to 2020. The European Regional Development Fund Programme, which is one of the funds established by the European Commission to help local areas stimulate their economic development by investing in ERDF Projects which will support local businesses and create jobs. For more information visit <http://eufunds.gov.ie>."

- 4.3 NBPco shall provide evidence to the Minister at the end of each Contract Year of NBPco's compliance with the publicity requirements set out in this Paragraph 4 (Publicity), such evidence to be presented to the Minister in the ERDF Publicity Compliance Report pursuant to and in accordance with Schedule 6.5 (Reports and Records).