

## 6.11 AUDITS

## 1 AUDIT RIGHTS

- 1.1 The provisions of this Schedule do not limit or affect the provisions of Clause 47 (Audit), Schedule 6.10 (Independent Assurance) or Schedule 6.7 (Performance Levels) or any other audit, access, spot check or other rights of the Minister and/or a Regulatory Body set out or referred to in this Agreement or under Law.
- 1.2 The Minister, acting by itself or through its Audit Agents, has the right during the Contract Term and for a period of eighteen (18) months after that, in accordance with this Schedule, to undertake spot checks and audits of NBPco and to assess and verify compliance by NBPco with its obligations under this Agreement, including for the following purposes:
- 1.2.1 to verify that the Services, Wholesale Products and Network are being provided and all relevant obligations of NBPco are being performed in accordance with the provisions of this Agreement;
  - 1.2.2 to verify that Wholesale Products are available and that Wholesale Products meet the requirements of the Agreement including:
    - (A) that the relevant Wholesale Product meets the Wholesale Product Specifications and fully complies with the Wholesale Product Benchmarking Rules; and
    - (B) compliance with governance requirements in relation to Reference Offers;
  - 1.2.3 to verify that the Wholesale Products, Services and Network fully meet and satisfy the Service Requirements and NBPco Solution;
  - 1.2.4 to verify that Network coverage is provided in accordance with the Agreement;
  - 1.2.5 to verify compliance with the Wholesale Pricing Rules, Retail Pricing Rules and/or Wholesale Product Benchmarking Rules;
  - 1.2.6 to verify that the Operational Environment is provided in accordance with the Agreement;
  - 1.2.7 to verify that the requirements of the Service Provider Engagement Framework as set out in the Implementation Programme and the Service Provider Engagement Framework Project Plan are being met;
  - 1.2.8 to verify the integrity and content of any relevant financial report or information provided to or in respect of the Minister under or pursuant to this Agreement;
  - 1.2.9 to verify the accuracy of the Subsidy Payments payable by the Minister under this Agreement (and proposed or actual variations to such Subsidy Payments);
  - 1.2.10 to verify the Permitted Expenditure (including the amounts paid to all Key Subcontractors);
  - 1.2.11 to verify the Open Book Data;
  - 1.2.12 to verify the Premises Database, the Electronic Network Maps and/or the Premises Passed Map;

- 1.2.13 to verify NBPco's and each Critical Key Subcontractor's compliance with this Agreement, the Buildco Key Subcontract, the Key Subcontractor Direct Agreement and applicable Law;
  - 1.2.14 to identify or investigate actual or suspected fraud or impropriety, and in these circumstances the Minister shall have no obligation to inform NBPco of the purpose or objective of its investigations;
  - 1.2.15 to identify or investigate any circumstances which may impact upon the financial stability of NBPco, the Guarantor and/or any Critical Key Subcontractor or their ability to perform any of the Services;
  - 1.2.16 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;
  - 1.2.17 to carry out the Minister's internal and statutory audits and to prepare, examine and/or certify the Minister's annual and interim reports and accounts;
  - 1.2.18 to verify the accuracy and completeness of any Management Information delivered or required by this Agreement;
  - 1.2.19 to review any Reports and/or other records relating to NBPco's performance of the Services and provision and performance of the Wholesale Products and/or Network and to verify that these reflect NBPco's own internal reports and records; and
  - 1.2.20 to review the accuracy and completeness of the Asset Register, the Inventory Management System and/or the Network Infrastructure Map including any activities and/or methods used by NBPco for the purposes of developing, maintaining and updating them.
- 1.3 The Minister, acting by itself or through its Audit Agents, has the right during the Contract Term and for a period of eighteen (18) months after that, in accordance with this Schedule, to undertake spot checks and audits of Critical Key Subcontractors and to assess and verify compliance by Critical Key Subcontractors with NBPco's obligations under this Agreement, and Critical Key Subcontractors' compliance with their obligations under the Key Subcontractor Direct Agreements and/or Buildco Key Subcontract, for the following purposes:
- 1.3.1 to verify the accuracy of the Subsidy Payments payable by the Minister under this Agreement (and proposed or actual variations to such Subsidy Payments);
  - 1.3.2 to verify the Permitted Expenditure (including the amounts paid to all Critical Key Subcontractors);
  - 1.3.3 to identify or investigate actual or suspected fraud or impropriety and in these circumstances the Minister shall have no obligation to inform NBPco or Critical Key Subcontractors (as applicable) of the purpose or objective of its investigations; and
  - 1.3.4 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.

- 1.4 The Minister, acting by itself or through its Audit Agents, has the right during the Contract Term and for a period of eighteen (18) months after that, in accordance with this Schedule, to undertake spot checks and audits of Key Subcontractors and to assess and verify compliance by Key Subcontractors with NBPco's obligations under this Agreement, and Key Subcontractors' compliance with their obligations under the Buildco Key Subcontract and/or the Key Subcontractor Direct Agreements, in order to identify or investigate actual or suspected fraud or impropriety. In these circumstances the Minister shall have no obligation to inform NBPco or Key Subcontractors (as applicable) of the purpose or objective of its investigations.
- 1.5 NBPco shall use all reasonable endeavours to procure that:
- 1.5.1 Key Subcontractors provide NBPco and Critical Key Subcontractors (as applicable) with all necessary information in order for NBPco and Critical Key Subcontractors (as applicable) to comply with their respective obligations under this Schedule; and
- 1.5.2 Critical Key Subcontractors provide NBPco with all necessary information in order for NBPco to comply with its obligations under this Schedule.
- 1.6 The Minister or its Audit Agents may carry out audits and spot checks as deemed appropriate by the Minister subject to the frequency limits in Paragraph 1.7 (Audit Rights). Without limiting or affecting its rights under this Schedule or otherwise in this Agreement, a spot check may comprise of any examination, review and/or test, which is requested by the Minister without warning (but shall only be conducted during the hours of 9am to 5.30pm on a Working Day), on a randomly selected subject related to the Wholesale Products, Network, Services and/or this Agreement. NBPco shall be entitled to require that any spot check is carried out in the presence an NBPco authorised representative, provided that any such authorised representative shall be identified and made immediately available on the commencement of the spot check and NBPco shall not be entitled to refuse or delay a spot check on the basis that its preferred authorised representative is not available. The Minister or its Audit Agents shall be entitled to proceed with the spot check without the presence of an NBPco authorised representative where NBPco has not complied with these requirements in respect of the authorised representative.
- 1.7 Without prejudice to any other Audit Right and subject to Paragraph 1.8 (Audit Rights), the Minister shall undertake no more than:
- 1.7.1 one audit (pursuant to this Schedule) of NBPco or a particular Critical Key Subcontractor or a particular Key Subcontractor in each Contract Year; and
- 1.7.2 two spot checks (pursuant to this Schedule) of NBPco or a particular Critical Key Subcontractor or a particular Key Subcontractor in each Contract Year.
- 1.8 The frequency limits in Paragraph 1.7 (Audit Rights) shall not apply to any audit or spot check:
- 1.8.1 where the Minister is obliged under Law to undertake any audits and/or spot checks from time to time;

1.8.2 where the audit or spot check is in respect of a matter covered by Paragraph 1.2.16 (Audit Rights); or

1.8.3 where there has been a non-trivial breach of this Agreement or the Minister reasonably suspects a non-trivial breach of this Agreement,

in each of which above cases, the frequency limits in Paragraph 1.7 (Audit Rights) shall not apply.

1.9 Nothing in this Agreement (including Paragraph 1.7 (Audit Rights)) prevents or restricts the rights of:

1.9.1 the Comptroller and Auditor General and/or its representatives from carrying out an audit, examination, spot check or investigation of NBPco, any Critical Key Subcontractors and/or any Key Subcontractors for the purposes of and pursuant to applicable Law; and

1.9.2 the Minister or any Audit Agent or the ERDF from carrying out an audit, examination, spot check or investigation of NBPco, any Critical Key Subcontractors and/or any Key Subcontractors where required by the ERDF for the purposes of ensuring compliance with any ERDF requirements applicable in respect of this Agreement.

1.10 Without limiting or affecting its other rights and entitlements under this Schedule, the Minister shall be entitled, at its discretion, instead of or in association with any audit carried out under this Schedule, to rely on audits conducted by NBPco's Auditors or Buildco's Auditors during the Contract Term to demonstrate NBPco's compliance with its obligations under this Agreement, but only if and to the extent that NBPco procures from its Auditors written confirmation addressed to the Minister that the Minister may rely on its Auditors' reports for this purpose, in the same manner as if the Minister were NBPco for that purpose.

## **2 CONDUCT OF AUDITS**

2.1 The Minister shall provide at least thirty (30) Working Days' notice of its intention to conduct an audit, except where doing so would likely prejudice the objective of the audit. Each notice shall be deemed to include notice that the Minister or the Audit Agents may require access, at the expiry of the relevant notice period, to NBPco's, and Critical Key Subcontractors' (as applicable for the purpose of Paragraph 1.3 (Audit Rights)) and Key Subcontractors' (as applicable for the purpose of Paragraph 1.4 (Audit Rights)) offices, sites, premises, information, employees and other resources and facilities of the kind described in Paragraph 2 (Conduct of Audits). Any such audit shall be carried out between the hours of 9am to 5.30pm during a Working Day. No such notice shall be required to be given for spot checks conducted pursuant to this Schedule.

2.2 The Parties agree that they shall bear their own respective costs and expenses incurred in respect of compliance with their obligations under this Schedule, unless the audit or spot check identifies a material Default by NBPco in which case NBPco shall reimburse the Minister for the Minister's reasonable costs incurred in connection with the audit or spot check.

2.3 Subject to the Minister's obligations of confidentiality under Clause 60 (Confidentiality), NBPco shall on demand provide the Minister (and such persons as may from time to time be nominated by the Minister) and the Audit Agents with all reasonable cooperation and assistance (and shall use all reasonable endeavours to procure such reasonable co-

operation and assistance from its Critical Key Subcontractors and its Key Subcontractors (as applicable)) in relation to each audit and spot check, including providing:

- 2.3.1 all information and data requested by the Minister or Audit Agent within the permitted scope of the audit or spot check under this Schedule (including books, accounts, records, computer data, financial and purchasing documentation);
  - 2.3.2 reasonable access to any NBPco sites, premises, work places, system, activities, plant, facilities and Assets including any Network or Equipment used (whether exclusively or non-exclusively) in the performance of or in connection with the performance of the Services (or any part of them) and/or the discharge of NBPco's obligations under this Agreement;
  - 2.3.3 read only access to NBPco systems, read only access to Critical Key Subcontractor systems (as applicable for the purpose of Paragraph 1.3 (Audit Rights)) and read only access to Key Subcontractor systems (as applicable for the purpose of Paragraph 1.4 (Audit Rights)); and
  - 2.3.4 access to employees, agents, consultants and contractors of NBPco, Critical Key Subcontractors and Key Subcontractors (and their respective employees, agents, consultants and contractors) for the purpose of interviewing such persons in connection with the provision of the Services, the Network and/or this Agreement.
- 2.4 The Minister shall use reasonable endeavours to procure that its Audit Agents shall during each audit and spot check comply with the reasonable security, sites, systems and facilities and operating procedures of NBPco (as notified reasonably in advance in writing by NBPco to the Minister and the relevant Audit Agents) and shall use reasonable endeavours to procure that the conduct of each audit and spot check does not unreasonably disrupt NBPco or delay the provision of the Services, to the extent practical.
- 2.5 Subject to Paragraph 2.1 (Conduct of Audits), NBPco agrees that the Minister (and such persons as may from time to time be nominated by the Minister) or its Audit Agents may enter the registered office of NBPco and any location where it is carrying out any of the Services (and shall use all reasonable endeavours to procure the same rights to enter the registered office of its Critical Key Subcontractors (as applicable for the purpose of Paragraph 1.3 (Audit Rights)) and Key Subcontractors (as applicable for the purpose of Paragraph 1.4 (Audit Rights)) as is necessary in the Minister's or its Audit Agent's reasonable opinion to carry out audits and spot checks pursuant to this Schedule.
- 2.6 Where necessary, in the Minister's opinion acting reasonably, NBPco shall supply (and use all reasonable endeavours to procure the supply by its Critical Key Subcontractors and Key Subcontractors, as applicable) a copy of any information, data or records requested pursuant to Paragraph 2.3.1 (Conduct of Audits) (and in the format and condition reasonably requested by the Minister or its Audit Agents). The Minister or its Audit Agents (as applicable) are entitled to be present and observe the extraction of such information, data or records requested.
- 2.7 If an Independent Assurance Reviewer is appointed pursuant to Schedule 6.10 (Independent Assurance), NBPco agrees to extend (and use all reasonable endeavours to procure the extension of) all rights of access (including access to data and business premises), all permissions and all other rights as set out in this Schedule (and use all reasonable endeavours to procure necessary access, permissions and any other rights

from its Critical Key Subcontractors, in order for NBPco to comply with its obligations under Schedule 6.10 (Independent Assurance)) to any Independent Assurance Reviewer or representatives of such Independent Assurance Reviewer to conduct an Independent Assurance Review.

- 2.8 NBPco shall use all reasonable endeavours to ensure that its contract with each Critical Key Subcontractor and each Key Subcontractor contains provisions enabling it to comply with its obligations under this Schedule.
- 2.9 The Minister shall, at the reasonable written request of NBPco, require its Audit Agent to enter into a written and legally binding confidentiality undertaking with NBPco and the Minister on terms as protective as Clause 60 (Confidentiality). This Paragraph shall not apply to the extent that the Audit Agent is subject to obligations of confidentiality to NBPco under Law which apply to the relevant audit or spot check being undertaken under or pursuant to this Schedule.

### **3 RESPONSE TO AUDITS**

- 3.1 Without limiting or affecting the Minister's other rights or remedies under or pursuant to this Agreement, if an audit or spot check undertaken pursuant to this Schedule identifies that:
- 3.1.1 NBPco has committed a Default, the Minister may require NBPco to correct such Default as soon as reasonably practicable and, if such Default constitutes a Notifiable Event, to comply with the Remedial Plan Process;
  - 3.1.2 there is an error in a financial report, NBPco shall promptly rectify the error;
  - 3.1.3 an overpayment has been made by the Minister (including where it is apparent that a Milestone had not in fact been Achieved), NBPco shall pay to the Minister in accordance with Paragraph 4.9 (Deployment Milestone Payment Claims), Paragraph 7.9 (Connection Milestone Payment Claims) and/or Paragraph 9.10 (Ongoing Capital Payment Claims) of Schedule 5.1 (Subsidy Payments):
    - (A) the amount overpaid;
    - (B) at the Minister's discretion, interest on the amount overpaid, provided that such overpayment does not relate to an administrative error made by the Minister; and
    - (C) the reasonable costs incurred by the Minister in undertaking the audit or spot check;
  - 3.1.4 an underpayment has been made by the Minister, NBPco shall be entitled to be paid the amount of underpayment but shall not be entitled to interest or to increase the Subsidy Payments paid or payable by the Minister.
- 3.2 NBPco shall ensure that actions agreed in response to audit and/or spot check findings by the Minister or its Audit Agents are remediated in accordance with the timelines agreed in writing by the Parties at the relevant time (or in the absence of agreement within ten (10) Working Days of the date of the first attempt to so agree the timelines for remediation, in the reasonable timeline specified by the Minister). NBPco shall provide status reports to the Minister of its remediation progress monthly or in the timeline as otherwise agreed in writing by the Parties at the relevant time (or as specified by the

Minister in connection with any reasonable timeline specified for carrying out the remediation measures under this Paragraph).

- 3.3 For the avoidance of doubt, nothing in this Schedule limits or affects NBPco's obligations or the Minister's rights and remedies elsewhere in this Agreement or in Law.