

DATED THIS

DAY OF

2019

CONSORTIUM AGREEMENT

Full Fibre Northern Ireland Consortium (FFNI) Programme

This **CONSORTIUM AGREEMENT** is made the 21 of May 2019 between the following Councils:

1. Antrim and Newtownabbey Borough Council
2. Ards and North Down Borough Council
3. Armagh City, Banbridge and Craigavon Borough Council
4. Causeway Coast and Glens Borough Council
5. Derry City and Strabane District Council
6. Fermanagh and Omagh District Council
7. Lisburn and Castlereagh City Council
8. Mid East Antrim Borough Council
9. Mid Ulster District Council
10. Newry, Mourne and Down District Council

(together referred to as “the Consortium”, each referred to as “Consortium Members”)

1. DEFINITIONS

Term	Meaning
Agreement	means this Consortium Agreement
Consortium	means the Full Fibre Northern Ireland Consortium and its Programmes and Projects defined in this Consortium Agreement
Consortium Budget	means the financial resources made up of contributions from Consortium Members and contributions from other sources such as grants
Consortium Member and Consortium Members	means the Councils within the Consortium and listed above, including the Lead Council
Customer	means a public sector body that is not a Consortium Member but that benefits from services procured by the Consortium

Initial Funding	means the £15m DCMS Local Full Fibre Programme Wave 3 grant conditionally offered to the Consortium in its letter of 18 th February 2019
Lead Council	means Newry, Mourne & Down District Council
Operations Group	means the FFNI Operations Group described in the Governance section of this Agreement
Operations Team	means the FFNI Operations Team described in the Governance section of this Agreement
Provider	means a supplier of fibre infrastructure services procured by the Consortium to deliver full fibre
Programme	means any Programme operated by the Consortium
Secondment	means a voluntary transfer from a permanent employer (the Employer) for a fixed period which does not sever the employment relationship with the permanent employer, of the person seconded
Steering Group	means the FFNI Steering Group described in the Governance section of this Agreement

2. BACKGROUND

- 2.1. The Consortium Members recognise that high quality digital infrastructure, including full fibre broadband services, is essential for economic prosperity in their region. They recognise that they have a part to play in ensuring that digital infrastructure is made available, and that customers benefit from it.

With their objectives of promoting local economic development, and their local knowledge, Consortium Members are well positioned to help stimulate the market and proactively encourage greater investment in digital infrastructure across the region.

- 2.2. The Consortium Members recognise that their efforts to drive the better availability and benefits of digital infrastructure will be more efficiently delivered collectively than individually, and have therefore set in place the Full Fibre Northern Ireland Consortium to co-ordinate those efforts.
- 2.3. The Consortium will set in place a Programme, within which to manage Projects to deliver aspects of digital infrastructure. It is possible that the Consortium might initiate further Programmes in future, although this is not currently envisaged.

- 2.4. The Department for Digital, Culture, Media and Sport (DCMS) Local Full Fibre Networks Programme (LFFN) is designed to stimulate commercial investment in full fibre networks in rural and urban locations across the whole of the UK.

The programme is part of the government's £740m National Productivity Investment Fund to support the next generation of digital infrastructure. Full fibre broadband uses fibre to the premises (FTTP) technology and is considered a fast and reliable technology.

Its aim is to provide funding to help local bodies deliver Projects that can meet the objectives of the LFFN programme as follows:

- Stimulate more commercial investment to deliver more gigabit-capable connectivity
- Directly maximise the availability and benefit of gigabit-capable broadband services to public sector, business and residential users
- Improve commercial investment conditions in local areas

LFFN is a digital infrastructure programme that will have important long-term benefits. Although it is likely to directly improve availability of high bandwidth connectivity in some areas, its main effect will be felt more slowly through the commercial investment that will follow in time.

- 2.5. The Consortium has been awarded £15m funding from the DCMS LFFN Programme Wave 3 (the Initial Funding). The first group of Projects in the Consortium's Programme will address the deployment of this funding by 31st March 2021, in line with the Consortium's bid document. Other Projects will promote fibre deployment through a range of measures, including voucher promotion and barrier busting.

- 2.6. The Consortium's Programme will provide a vehicle through which to bid for future fibre investment funding that may be available, and to manage the deployment of such funding.

3. CONSORTIUM

- 3.1. The Councils have entered into this Agreement which defines their respective rights and responsibilities within the FFNI Consortium.
- 3.2. The Councils agree that they have full legal power and authority to enter into this Agreement and are committed to jointly delivering a Fibre Intervention Programme for Northern Ireland, with the objective of maximising the availability of full fibre connectivity to domestic, public sector and commercial premises in Northern Ireland.
- 3.3. This Agreement shall commence on 1st May 2019 and shall terminate on 30th April 2027.

- 3.4. Newry, Mourne and Down District Council ('the Lead Council') has agreed to undertake the role of Lead Council on behalf of and with the agreement of the Consortium Members.
- 3.5. The Lead Council will recruit, procure and host a dedicated Operations Team to carry out the shared functions of the Consortium. It will assure the work of the Operations Team.
- 3.6. The Consortium will establish the FFNI Operations Group and the FFNI Steering Group to oversee programme delivery and review performance of the programme against its Investment Objectives to ensure that they are met.
- 3.7. The role, functions and governance structures of the FFNI Steering Group, FFNI Operations Group and FFNI Operations Team are as set out in the Governance section of this agreement.
- 3.8. The Operations Group will direct the activities of the Operations Team, so that the Consortium Members control the operations of the Consortium.
- 3.9. The Steering Group will direct the Operations Group, so that the Consortium Members control the strategic direction of the Consortium.
- 3.10. The Steering Group may agree to extend the scope of the Programme, for example to provide a procurement and delivery vehicle for other digital infrastructure or related initiatives.
- 3.11. The Steering Group may agree to extend or shorten the Agreement's duration as required, and to add new members where appropriate. The Steering Group may agree to make changes to the terms of reference of the FFNI Governance Bodies, or to the contents of this Agreement.
- 3.12. The Programme will deliver several LFFN delivery Projects comprising multiple interventions in different areas. These Projects will be determined in detail during the planning phase and as agreed by Steering Group.
- 3.13. The Programme may include Projects that procure fibre services for public sector organisations that are not Consortium Members, for example the Education Authority. There is no requirement for such bodies to become Consortium Members.

4. LEAD COUNCIL ROLE AND RESPONSIBILITIES

Administer the FFNI Operations team

- 4.1. On behalf of the Consortium, the Lead Council will recruit, procure, host and administer the FFNI Operations Team that will carry out the administration activities of the Consortium.

- 4.2. The Lead Council will be responsible for the recruitment, secondment and procurement of the FFNI Operations Team posts, as appropriate. The Team could include permanent and seconded staff, fixed term contracts, consulting contracts and any other arrangements. It is expected that seconded staff will be from Consortium Members.
- 4.3. The Lead Council will agree the terms and conditions for each of the Operations Team members in their respective contracts of employment, contracts or secondment agreements.
- 4.4. During the period of a Secondment, the secondee remains an employee of the Employer, and as such, no employment liability is created for the Lead Council.
- 4.5. The rates of pay and overtime, the organisation responsible for disciplinary matters, Occupational and Statutory Sick Pay, Maternity Pay, Pension arrangements and any other statutory payments, the applicable travel and subsistence arrangements, and other relevant conditions will be defined by the Lead Council in a Secondment Agreement for each secondee.
- 4.6. The Lead Council will be responsible for the actions of the Operations Group, providing line management support.
- 4.7. The Lead Council will be responsible for all administration of payments to all FFNI Operation team members, whether in permanent, fixed-term contract, or seconded roles.
- 4.8. The Lead Council will be responsible for the procurement of consulting resources and any other third-party support required, and for the payment of consulting contracts.
- 4.9. The Lead Council will provide accounting and financial management for FFNI, through its finance function.
- 4.10. The Lead Council may perform internal auditing of the Consortium arrangements in line with standard Council audit processes, and make available the results of all audits to the Councils through the regular reporting mechanisms of the FFNI Programme Governance.
- 4.11. The Lead Council will provide financial information and governance documentation and any other assistance required for external audit.
- 4.12. The Lead Council will ensure that adequate insurance to cover its liabilities as may arise in the course of the Agreement programme is in place and shall produce evidence of same upon request to the FFNI Consortium Act.
- 4.13. For the avoidance of doubt, the Lead Council will not indemnify Consortium Members.

Administer DCMS and other Grant Funding

- 4.14. The Operations Team will administer grant claims from the DCMS LFFN fund on behalf of Consortium Members, based on agreed milestones for the delivery Projects and in accordance with the DCMS process to be agreed. The Lead Council will distribute grant payments from DCMS to each Council as required.
- 4.15. The current understanding of the LFFN grant claim process is as follows.
- Provider contracts for payment by delivery milestones
 - Operations Team agrees payment schedule based on delivery milestones with DCMS
 - Operations Team monitors planned achievement of delivery milestones
 - Provider invoices contract holder on successful delivery
 - Contract Holder provides grant claim information to Operations Team
 - Operations Team submits consolidated Consortium grant claim to DCMS
 - DCMS pays grant to Lead Council
 - Lead Council distributes grant to respective contract holders
 - Contract holders pay Provider invoices when they fall due
- 4.16. The Operations Team will administer, claim and distribute any other grant funding as may be secured, according to the process for such claims.
- 4.17. The Operations Team will co-ordinate all financial contributions from Consortium Members.

Provide Governance Support

- 4.18. The Operations Team will request and co-ordinate input from Councils wherever it is required.
- 4.19. The Operations Team will provide the governance groups with such materials, reports and so on as they may require.
- 4.20. The Operations Team will administer the meetings of the governance groups described in the Governance section of this Agreement to ensure effective governance.
- 4.21. The Operations Team shall ensure that it informs the FFNI Operations Group in a timely manner of all significant and / or untoward events especially those likely to attract media attention or become the subject of legal action which includes any circumstance which will or may affect the ability of the Consortium to meet the targets set out by the Consortium.

Manage the Procurement Vehicles

- 4.22. The Lead Council will operate procurements according to the Newry Mourne and Down District Council Procurement Policy, at <https://www.e-hub.com/epublic/displayframe.asp?id=143335>, and updated from time to time.
- 4.23. For each procurement or group of procurements, the Operations Team will define a Procurement Plan for approval by the Operations Group.

- 4.24. The Lead Council will operate any other procurement vehicles that the Consortium may require from time to time.

Oversee Fibre Implementations

- 4.25. The Operations Team will support the Consortium Members to work with Providers to ensure that fibre is delivered according to the contracted schedule, quality and price. Providers will be responsible for the timely delivery of the services and the management of the implementations.
- 4.26. The Operations Team will support the Consortium Members to work with Providers to ensure that any delivery issues are resolved in the most appropriate way.
- 4.27. The Operations Team will oversee the Provider testing to confirm successful completion of delivery milestones, and support the Consortium Members' sign off of Milestones.

5. CONSORTIUM MEMBER OBLIGATIONS

Work Together in the Consortium

- 5.1. Consortium Members will work together and to actively participate in the FFNI Consortium to support the FFNI Operations Team in achieving the Consortium's objectives.
- 5.2. Consortium Members will adhere to the FFNI governance structure and ensure that activities are delivered, and actions taken as required.
- 5.3. Consortium Members will be accountable for the performance of the respective roles and responsibilities set out in this Agreement.
- 5.4. Consortium Members will be open and transparent and communicate openly about major concerns, issues or opportunities relating to the FFNI Consortium and its Programmes and Projects.
- 5.5. Consortium Members will learn, develop and seek to achieve the full potential of the Consortium. In respect of the Consortium's aims, they will share information, experience, materials and skills to learn from each other and develop effective working practices, work collaboratively to identify solutions, eliminate duplication of effort, mitigate risk and reduce cost.

Support the Governance Structure

- 5.6. Consortium Members will undertake all of the FFNI Consortium responsibilities under the direction and guidance of the FFNI Steering Group and Operations Group.
- 5.7. Consortium Members will support the shared activities of the FFNI Operations Team and enable it to represent individual organisation interests to the Framework Supplier's, FFNI Steering Group and, and FFNI Operations Group as required and appropriate.
- 5.8. Consortium Members will respect the remit of FFNI Operations Team, the FFNI Steering Group and the FFNI Operations Group to enforce the terms of FFNI Agreement on Suppliers and all Consortium Members Councils.
- 5.9. Consortium Members will act at all times in a way that is not detrimental to the reasonable and agreed participation of other Consortium Members Councils.
- 5.10. Consortium Members who receive a request for information relating to the Consortium and which the Consortium Member is treating under the FOIA and/or EIR should:
 - Notify the Lead Council of the request within two working days;
 - Issue a 'draft response' for consideration to the Lead Council who may provide comment within 3 working days; and
 - Provide the final response issued to the requester by the Consortium Member.

6.

Support the FFNI Commercial & Financial models

- 6.1. Consortium Members will use any contracts entered into under this Agreement for the subject matter of the Agreement.
- 6.2. Consortium Members will invest in full fibre delivery any savings that are secured against future Wide Area Network costs as a result of the Initial Funding.
- 6.3. Consortium Members will make financial contributions to the operation of the FFNI Consortium as set out in the Financial Model and varied from time to time by the Steering Group.
- 6.4. Consortium Members will adhere to statutory requirements and best practice. They will comply with any and all applicable laws and standards including EU procurement rules, data protection (GDPR) and freedom of information legislation to act in a timely manner. They will recognise the potentially time-critical nature of the requests and respond accordingly to requests requiring a response.
- 6.5. Consortium Members will be responsible for their obligations detailed in their respective contracts with Providers, including in respect of payments, delays due to Authority Cause and others.

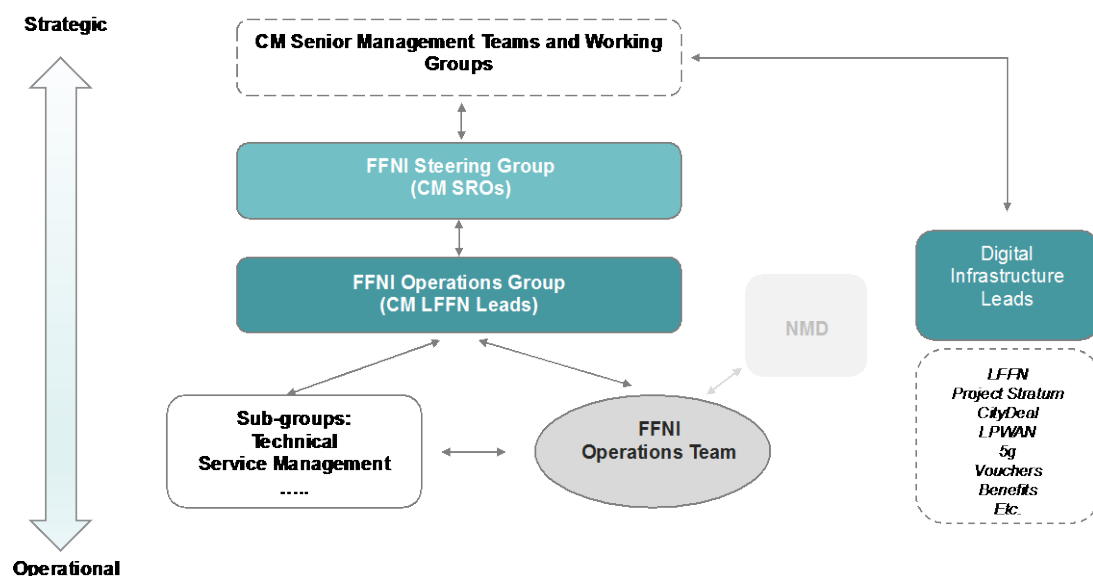
Deliver FFNI activities

- 6.6. Consortium Members will manage stakeholders effectively, ensuring that the objectives and activities of the Consortium are widely communicated and understood.
- 6.7. Consortium Members will oversee the delivery work of Providers within their respective geographical areas to ensure that disruption to citizens is managed and minimised. Consortium Members will be responsible for co-ordination between citizens and Providers in respect of any problems of disruption that may occur.
- 6.8. Consortium Members will deploy appropriate resources. They will ensure sufficient and appropriately qualified resources are available and authorised to fulfil the responsibilities set out in this Agreement.
- 6.9. Consortium Members will nominate resources to participate in and support the governance and practical operation of the Consortium, including membership of governance groups.
- 6.10. Consortium Members will provide local Digital Infrastructure resources to support the delivery of the Consortium's objectives.
- 6.11. Consortium Members will review specifications and other procurement or delivery related documentation in a timely fashion, to support the FFNI Operations team in the delivery of Project activity.

- 6.12. Consortium Members will ensure that communications about the Consortium are accurate and timely.
- 6.13. Consortium Members will ensure that all activities and services provided under the terms of the Agreement shall be delivered in such a way as to promote equality of opportunity and shall not discriminate on the grounds of religious belief, political opinion, race, disability, age, gender or sexual orientation.
- 6.14. Consortium Members will ensure that the requirements of the Health & Safety at Work Act 1974 and other Acts and Regulations, Directives and Orders on Health & Safety are observed.
- 6.15. Consortium Members will comply with the General Data Protection Regulation (GDPR) and comply with all Non-Disclosure Agreements in relation to third party suppliers.
- 6.16. Consortium Members will establish and maintain effective and robust financial control systems in relation to the FFNI programme and maintain proper and effective accounting records which identify individual financial transactions relating to it.

7. GOVERNANCE

7.1. The Governance Structure is shown below.



7.2. Strategic Management Levels – Steering Group

The FFNI Steering Group	
Role	The FFNI Steering Group will set the vision and overall strategic direction for FFNI. It will ensure that the Programme and Projects meet the strategic aims of the Consortium.

	The Steering Group will decide on financial matters where the value exceeds the £100,000 Limit of Authority of the FFNI Operations Group
Responsibilities	<ul style="list-style-type: none"> • Defining the strategic vision for the Consortium • Defining the remit of the Consortium and its Programmes and Projects • Championing the aims and work of the Consortium • Acting as a communication channel into Council bodies e.g. Senior Management Teams and Working Groups • Managing internal and external stakeholders • Providing strategic assurance of financial and auditing activity • Establishing governance arrangements and group participation aimed at encouraging close collaboration between FFNI, Department for Economy and DCMS as the programme develops • Making financial decisions that exceed the limit of authority of the FFNI Operations Group.
Members	As agreed by the Councils, but typically Senior Officers holding the role of Director or Assistant Director responsible for Economic Development, or equivalent.
Communication flow	Up to Council Senior Management Teams and Working Groups. Down to the FFNI Operations Group.
Frequency	Quarterly

7.3. Operational Management Level – Operations Group

The FFNI Operations Group	
Role	<p>The FFNI Operations Group will oversee Programme delivery and review the performance of Projects against their Investment Objectives to ensure that they are met.</p> <p>It will oversee the work of the FFNI Operations team, and any technical or service management subgroups that are likely to be established to support FFNI delivery.</p>
Responsibilities	<ul style="list-style-type: none"> • Ensuring Value for Money of any activity procured through and delivered by the FFNI Consortium • Overseeing and assuring the activities of the FFNI Operations Team • Developing new services, and service improvement • Escalating disputes or issues in the operation of the Services; • Internal and external stakeholder management

	<ul style="list-style-type: none"> • Providing reporting as required to the FFNI Steering Group • Overseeing risks and issues management • Overseeing benefits management activities • Making financial decisions up to £100,000, or to any other limit set by the FFNI Steering Group • Reviewing the performance of 3rd party consultant support within the FFNI Operations team • Overseeing any other matters relevant to the Services or as defined by the FFNI Steering Group over time
Members	As agreed by the Councils, but typically Council Officers holding the role of Head of Service, Economic Development Manager or Digital Infrastructure leads.
Communication flow	Up to FFNI Steering Group, and directly to Council Working Groups as required. Down to FFNI Operations Team.
Frequency	Quarterly to FFNI Steering Group Monthly and ad hoc oversight of FFNI Operations Team

7.4. Operational Management Level – Operations Team

The FFNI Operations Team	
Role	The FFNI Operations Team will manage, deliver and administer all operational Project activity.
Responsibilities	<ul style="list-style-type: none"> • Coordinating the Councils to maintain an organised and single approach for effective delivery; • To develop a process by which FFNI site lists will be checked and cleared from any overlap of sites within delivery of Project Stratum • Overseeing Supplier engagement, implementation to ensure strategic supplier delivery and value for money • Wider Stakeholder management according to procurement specifications and engagement with DCMS Barrier Busting Team to improve a coordinated and consistent approach to the delivery of Fibre in Northern Ireland. • Informing the FFNI Operations Group in a timely manner of all significant and / or untoward events especially those likely to attract media attention or become the subject of legal action which includes any circumstance that will or may affect the ability of the programme to meet the targets set out by the Consortium.

	<ul style="list-style-type: none"> • Knowledge transfer to the wider public sector, and where necessary, the commercial sector to maintain a joined-up approach to delivery • To participate in forums and working groups with the Department for Economy, OFCOM, Belfast Regional City Deal, Belfast City Council and others to ensure alignment of programmes and reduce duplication / overlap. • To effectively design and manage all elements of the procurements, on behalf of the Councils • Operational management of FFNI Wave 3 finances, ensuring appropriate audit control. • Operating of the Dynamic Purchasing System (DPS) (when implemented) • Tracking of benefits related to the FFNI programme • Reporting on all aspects of the project management and delivery through the Operations Group. • Reporting on milestone and KPI's to DCMS • Management of further funding awards • Supporting further initiatives and procurements as required
Members	A hybrid team hosted by the Lead Council comprised of permanent and seconded staff, fixed term contract staff, and specialist consulting and technical support.
Communication flow	Directly to FFNI Operations Team monthly, and to FFNI Steering Group quarterly. To both Groups as required.
Frequency	N/A

8. FINANCIAL MODEL

- 8.1. The Lead Council will maintain the Financial Model spreadsheet and update it as required over the term of the Consortium Agreement.
- 8.2. The costs of the Consortium will be borne equally by the Consortium Members, unless otherwise agreed by the FFNI Steering Group.
- 8.3. Grant funding will be distributed equally between the Consortium Members, unless otherwise agreed by the FFNI Steering Group.
- 8.4. The costs of the Operations Team will be funded from within the Consortium Budget based on Initial Funding for the Financial Years 19/20 and 20/21. Thereafter, the costs of the projected team will be met from contributions from Consortium Members, or from other future grants not yet identified.
- 8.5. Unplanned Operations Team staff costs such as cover for Maternity or Sickness, and Redundancy costs will be borne equally by the Consortium Members.
- 8.6. In respect of the Initial Funding of £15m, the savings secured against future Wide Area Network costs will be identified based on:

- the forecast long term evolution of prices
- the forecast effect of what the market would eventually provide unaided
- the likely service lifetime of each site and its services
- the additional migration and management costs of the new services
- the network integration and other risks
- other factors that affect the probability, scale and duration of the projected savings

The precise role of the Operations Team beyond the scope of the Initial Funding is yet to be determined. The scope, activity and funding for the Operations Team will be the subject of a business case in the future.

- 8.7. Through their Wide Area Network contracts, Consortium Members may choose to order higher bandwidths for existing sites, or new connections. The costs of these will be met directly by the relevant Consortium Member; they are not within the scope of the Consortium.
- 8.8. The contracts set in place with providers will clearly set out payment milestones, delay payments and other controls, such that all payments from the Initial Funding can be made by their due date of 31st March 2021.

8.9. The current Financial Model is shown in the table below. The Financial Model is a document that will be developed and changed extensively during the term of the Consortium.

CAPITAL Spend										
	FY18/19	FY19/20	FY20/21	FY21/22	FY22/23	FY23/24	FY24/25	FY25/26	FY26/27	Total
Project Team Costs	£ 44,273	£ 225,194	£ 258,364	£ 20,000	£ 20,000	£ 10,000	£ 10,000	£ 10,000	£ -	£ 597,830
PSAT		£ 8,000,000	£ 14,472,170							£ 22,472,170
Total	£ 44,273	£ 8,225,194	£ 14,730,534	£ 20,000	£ 20,000	£ 10,000	£ 10,000	£ 10,000	£ -	£ 23,070,000
CAPITAL Funding										
	FY18/19	FY19/20	FY20/21	FY21/22	FY22/23	FY23/24	FY24/25	FY25/26	FY26/27	Total
Funded by LFFN	£ 44,273	£ 5,364,256	£ 9,591,471							£ 15,000,000
Funded by WAN budget		£ 2,860,938	£ 5,139,062	£ -						£ 8,000,000
Other				£ 20,000	£ 20,000	£ 10,000	£ 10,000	£ 10,000	£ -	£ 70,000
Total	£ 44,273	£ 8,225,194	£ 14,730,533	£ 20,000	£ 20,000	£ 10,000	£ 10,000	£ 10,000	£ -	£ 23,070,000
<i>Balance</i>	<i>£ 0</i>	<i>£ 0</i>	<i>£ 1</i>	<i>£ -</i>	<i>£ -</i>	<i>£ -</i>	<i>£ -</i>	<i>£ -</i>	<i>£ -</i>	<i>£ 0</i>
REVENUE Spend										
	FY18/19	FY19/20	FY20/21	FY21/22	FY22/23	FY23/24	FY24/25	FY25/26	FY26/27	Total
Project Team Costs	£ -	£ 491,879	£ 506,636	£ 661,038	£ 699,166	£ 717,022	£ 735,414	£ 754,358	£ 773,869	£ 5,339,382
Total	£ -	£ 491,879	£ 506,636	£ 661,038	£ 699,166	£ 717,022	£ 735,414	£ 754,358	£ 773,869	£ 5,339,382
REVENUE Funding										
	FY18/19	FY19/20	FY20/21	FY21/22	FY22/23	FY23/24	FY24/25	FY25/26	FY26/27	Total
Existing Staff Resources	£ -	£ 491,879	£ 506,636	£ 521,835	£ 537,490	£ 553,614	£ 570,223	£ 587,329	£ 604,949	£ 4,373,955
AR Income	£ -	£ -	£ -	£ -	£ -	£ -	£ -	£ -	£ -	£ -
New Funding	£ -	£ -	£ -	£ 139,203	£ 161,677	£ 163,408	£ 165,191	£ 167,028	£ 168,920	£ 965,427
Total	£ -	£ 491,879	£ 506,636	£ 661,038	£ 699,166	£ 717,022	£ 735,414	£ 754,358	£ 773,869	£ 5,339,382
	<i>£ -</i>	<i>£ -</i>	<i>£ -</i>	<i>£ -</i>	<i>£ -</i>	<i>£ -</i>	<i>£ -</i>	<i>£ -</i>	<i>£ -</i>	<i>£ -</i>
Consortium Member Costs										
REVENUE Costs per Consortium Member										
Existing Staff Resources	£ -	£ 49,188	£ 50,664	£ 52,183	£ 53,749	£ 55,361	£ 57,022	£ 58,733	£ 60,495	£ 437,395
Contribution to FFNI Costs	£ -	£ -	£ -	£ 13,920	£ 16,168	£ 16,341	£ 16,519	£ 16,703	£ 16,892	£ 96,543
Total	£ -	£ 49,188	£ 50,664	£ 66,104	£ 69,917	£ 71,702	£ 73,541	£ 75,436	£ 77,387	£ 533,938
CAPITAL Costs per Consortium Member										
Funded by LFFN	£ 4,427	£ 536,426	£ 959,147	£ -	£ -	£ -	£ -	£ -	£ -	£ 1,500,000
Funded by WAN budget	£ -	£ 286,094	£ 513,906	£ -	£ -	£ -	£ -	£ -	£ -	£ 800,000
Other TBA	£ -	£ -	£ -	£ 2,000	£ 2,000	£ 1,000	£ 1,000	£ 1,000	£ -	£ 7,000
CAPITAL Costs per Consortium Member	£ 4,427	£ 822,519	£ 1,473,053	£ 2,000	£ 2,000	£ 1,000	£ 1,000	£ 1,000	£ -	£ 2,307,000

9. REVIEW

9.1. This Agreement shall be reviewed on an annual basis by the FFNI Steering Group.

10. EXPERT ADVICE

10.1. The Lead Council shall be at liberty to procure whatever expert advice it requires, including legal, to undertake its responsibilities under this Agreement.

11. DISPUTE RESOLUTION

11.1. In the Event of any disagreement between the Consortium Members the matter may be referred by any of the Consortium Members to a suitable independent person to be agreed by the Consortium Members for determination, failing which to a person nominated by the President for the time being of the Law Society of Northern Ireland.

12. RELATIONSHIP OF THE CONSORTIUM MEMBERS

12.1. For the avoidance of doubt this Agreement shall not be construed as a Partnership Agreement within the meaning of Section 1 of the Partnership Act 1980 nor is there any intention on the part of the Consortium Members to form a Partnership.

13. VARIATION

13.1. Any variation to this agreement shall be in writing and signed by all Consortium Members.

14. LAW

14.1. The Agreement shall be construed and applied in accordance with the Laws of Northern Ireland and the Courts of Northern Ireland shall have exclusive jurisdiction thereto.

15. PUBLICITY/ FREEDOM OF INFORMATION ACT

15.1. The Lead Council reserves the right to publicly announce its funding of the FFNI Consortium and the extent of its commitment thereto, but otherwise all information passing between the Council and Consortium Member shall be treated as confidential, unless otherwise agreed, and nothing in this Clause shall preclude any Consortium Member from fulfilling its obligations under the Freedom of Information Act.

**Present when the Corporate seal of Antrim and
Newtownabbey Borough Council was affixed hereto:**

CHAIRPERSON

CLERK & CHIEF EXECUTIVE

**Present when the Corporate seal of Ards and North Down
Borough Council was affixed hereto:**

CHAIRPERSON

CLERK & CHIEF EXECUTIVE

**Present when the Corporate seal of
Armagh City, Banbridge and Craigavon Borough Council
was affixed hereto:**

CHAIRPERSON

CLERK & CHIEF EXECUTIVE

**Present when the Corporate seal of
Causeway Coast and Glens Borough Council
was affixed hereto:**

CHAIRPERSON

CLERK & CHIEF EXECUTIVE

**Present when the Corporate seal of
Derry City and Strabane District Council
was affixed hereto:**

CHAIRPERSON

CLERK & CHIEF EXECUTIVE

**Present when the Corporate seal of
Fermanagh and Omagh District Council
was affixed hereto:**

CHAIRPERSON

CLERK & CHIEF EXECUTIVE

**Present when the Corporate seal of
Lisburn and Castlereagh City Council
was affixed hereto:**

CHAIRPERSON

CLERK & CHIEF EXECUTIVE

**Present when the Corporate seal of
Mid and East Antrim Borough Council
was affixed hereto:**

CHAIRPERSON

CLERK & CHIEF EXECUTIVE

**Present when the Corporate seal of
Mid Ulster District Council
was affixed hereto:**

CHAIRPERSON

CLERK & CHIEF EXECUTIVE

**Present when the Corporate seal of Newry, Mourne and
Down District Council was affixed hereto:**

CHAIRPERSON

CLERK & CHIEF EXECUTIVE



9 May 2019

Michael Forster
Newry Mourne and Down Council
Downshire Civic Centre
Ardglass Road,
Downpatrick,
Co. Down
BT30 6GQ

Dear Michael

LFFN Programme Conditional Offer Letter in respect of the Full Fibre Northern Ireland - FFNI ("Project")

1. I am pleased to confirm that, subject to the terms of this letter, the Project has been conditionally approved by the Department for Digital, Culture, Media and Sport ("**DCMS**") for Challenge Fund funding under the LFFN Programme.

Funding amount and conditions

2. The capital funding amount that has been approved by DCMS is £15,000,000 and is conditional on the following:
 - (a) the applicant's compliance with:
 - (i) the LFFN Assurance Process (including the provision of relevant procurement and Project information), the details of which are summarised below and as further notified by DCMS to the applicant from time to time; and
 - (ii) any conditions set out in any applicable LFFN checkpoint confirmation letter issued by DCMS;
 - (b) the agreement and execution of a non-disclosure agreement with DCMS, which shall be substantively in the form provided by DCMS;
 - (c) the agreement and execution of a grant agreement with DCMS, which DCMS shall prepare based on the generic template grant agreement provided by DCMS ("**Grant Agreement**");
 - (d) the applicant's on-going compliance with the terms of the Grant Agreement once executed;
 - (e) the scope of the Project remaining consistent with the scope of the Project approved by DCMS at the date of this letter, unless DCMS approves or requires otherwise in writing;
 - (f) the funding being used only for Qualifying Capital Expenditure as defined in the Grant Agreement;

- (g) all of the applicant's costs to be funded by DCMS are incurred (but not necessarily defrayed) by 31 March 2021 or as otherwise specified in the Grant Agreement;
- (h) the applicant permitting DCMS to observe the applicant's procurement and bid evaluation processes, including being present at meetings (both with bidders and at meetings internal to the applicant) but not actively participating in the meetings (unless requested otherwise by the applicant) or any applicant decision-making process;
- (i) the applicant requiring its suppliers to comply with relevant terms set out in LFFN Programme documentation provided to the applicant; and
- (j) the applicant supporting DCMS in delivering the wider LFFN Programme and developing best practice, including attending networking events with other applicants and industry with the intention of sharing ideas and solving problems.

Funding status

3. This letter is issued on the basis that the specific level of funding for the Project:
 - (a) will be determined by DCMS during the LFFN Assurance Process and will be set out in the Grant Agreement as executed by the applicant and DCMS following the achievement of LFFN Assurance Gate C; and
 - (b) may differ from the funding amount set out in paragraph 2 above.
4. DCMS shall not be obliged to pay any funding for the Project unless and until such time as the Grant Agreement is executed by DCMS and the applicant.

LFFN Assurance Process

Following Checkpoint A, DCMS will continue to work with the applicant in developing the Project and progressing through future Checkpoints:

Checkpoint B (Authority to Procure): Continued testing of Project readiness, with additional focus on the procurement process, including procurement strategy and documentation, method to ensure value for money, sufficient balance of risk between DCMS, public body and the private sector (where applicable), management information, state aid considerations (where applicable) and process for milestone payments.

Checkpoint C (Ready to Contract): Continued testing of Project readiness, with additional focus on confirmation of sufficient funding and necessary approvals being in place, contract management and financial treatment processes, Grant Agreement ready for signature, milestone payment process agreed, audit processes confirmed.

Checkpoint D1, D2 etc: Will take place during the delivery phase of the Project to review progress against milestones and assess success measures.

Checkpoint E1, E2 etc: Will assess any fibre contract variations that require DCMS approval in accordance with the Grant Agreement.

Checkpoint F: Review completion of the Project against success measures and confirm closure.

I look forward to the Project progressing through the LFFN Assurance Process and it being successfully delivered.

Yours sincerely

Billy McClean
BDUK Project Director

DATED _____ **2019**

THE SECRETARY OF STATE FOR DIGITAL, CULTURE, MEDIA AND SPORT

AND

[INSERT LOCAL BODY NAME]

GRANT AGREEMENT RELATING TO THE LOCAL FULL FIBRE NETWORK PROGRAMME

IN RESPECT OF [NAME OF PROJECT]

VERSION CONTROL

VERSION	DATE	COMMENT
0.1	18 June 2019	First draft prepared by DCMS

CONTENTS

1	DEFINITIONS AND INTERPRETATION	1
2	GRANT OFFER.....	8
3	PURPOSE AND EXTENT OF THE GRANT	9
4	TIMING AND ADMINISTRATION OF THE GRANT	9
5	VAT	10
6	MANAGING THE GRANT AND REPORTING.....	10
7	RECORDS TO BE KEPT	12
8	AUDIT AND INSPECTION	13
9	LAWFUL CONDUCT, PROCUREMENT PROCESSES AND STATE AID REGULATIONS.....	13
10	CONFLICT OF INTEREST AND FINANCIAL OR OTHER IRREGULARITIES.....	14
11	BREACH OF GRANT CONDITIONS	14
12	INSURANCE COVERAGE.....	16
13	LIMIT OF LIABILITY	16
14	INTELLECTUAL PROPERTY RIGHTS.....	17
15	ENTIRE AGREEMENT AND VARIATIONS.....	17
16	DISPUTE RESOLUTION PROCEDURE	17
17	FREEDOM OF INFORMATION	18
18	WARRANTIES.....	18
19	CONFIDENTIALITY	19
20	PERSONAL DATA	19
21	NOTICES.....	19
22	CONTRACT (RIGHTS OF THIRD PARTIES) ACT 1999.....	20
23	GOVERNING LAW	20
24	NO PARTNERSHIP OR AGENCY	20
25	ASSIGNMENT AND NOVATION	20
26	WAIVER AND CUMULATIVE REMEDIES	20
27	SEVERANCE	21
28	COUNTERPARTS.....	21
	SCHEDULE 1 – GRANT CLAIMS	22
	SCHEDULE 2 – GRANT MILESTONES.....	1
	SCHEDULE 3 – MONITORING REPORT TEMPLATE.....	1
	SCHEDULE 4 – ADDITIONAL REPORTING REQUIREMENTS	3
	SCHEDULE 5 – END USER UPGRADE SITES.....	5

THIS AGREEMENT is made on

2019

BETWEEN:

(1) **THE SECRETARY OF STATE FOR DIGITAL, CULTURE, MEDIA AND SPORT** of 100 Parliament Street, London SW1A 2BQ ("**Authority**"); and

(2) **[INSERT LOCAL BODY DETAILS]** of [Insert Local Body Address] ("**Recipient**")

each one a "**Party**" and together the "**Parties**".

BACKGROUND

- (A) The Authority has conditionally approved a funding allocation from the Challenge Fund in respect of the Project and issued the Conditional Grant Offer Letter.
- (B) The Parties have agreed terms of the funding to be provided by the Authority to the Recipient in respect of the Project as set out in this Agreement.

1. DEFINITIONS AND INTERPRETATION

1.1 In this Agreement:

Achieved	means a Contract Milestone has been achieved and the Recipient has received a valid invoice from the Supplier in each case in accordance with the Contract, and " Achievement " shall have a corresponding meaning;
ADR Notice	has the meaning given to that term in Clause 16.1.3;
Agreement	means the Clauses of this Agreement together with the Schedules to it (as amended by the Parties from time to time in accordance with this Agreement);
Authority	has the meaning given to that term on page 1 of this Agreement;
Bribery Legislation	means the Bribery Act 2010, the Anti-Terrorism, Crime and Security Act 2001, the Criminal Law Act 1977, the Proceeds of Crime Act 2002, and any and all similar or other anti-bribery and/or anti-corruption legislation and/or codes of practice of any jurisdiction applicable from time to time to the Recipient, the Authority, this Agreement and/or its subject matter;
Challenge Fund	means the grant fund administered by the Authority under the LFFN Programme;
Conditional Grant Offer Letter	means the letter dated [date] from the Authority to the Recipient which sets out certain preliminary information in relation to the Grant;

Confidential Information	has the meaning given to that term in the Non-Disclosure Agreement;
Contact Data	means the contact details of each Party's Representatives and, in the case of the Recipient, the Supplier;
Contract	means the contract between the Recipient and the Supplier for the provision of fibre infrastructure dated on or around the date of this Agreement, which is funded (in whole or in part) by the Grant;
Contract Milestone	means each milestone in the Contract in respect of which a milestone payment applies under the Contract;
Contracting Authority	means any contracting authority as defined in Regulation 2 of the Public Contracts Regulations 2015 excluding the Authority;
Controller	has the meaning given to that term in the Data Protection Laws;
Costs	means the total expenditure, costs and expenses to deliver the Project, including any Qualifying Capital Expenditure funded by the Grant under this Agreement and all other expenditure, costs and expenses funded by the Recipient or any third party (in all cases net of VAT);
Data Protection Laws	means: <ul style="list-style-type: none"> (a) any law, statute, declaration, decree, directive, legislative enactment, order, ordinance, regulation, rule or other binding restriction (as amended, consolidated or re-enacted from time to time) which relates to the protection of individuals with regards to the processing of Personal Data to which a Party is subject, including the GDPR and the Data Protection Act 2018; and (b) any code of practice or guidance published by the UK Information Commissioner's Office and/or the European Data Protection Board from time to time;
De Minimis Aid Regulation	means Commission Regulation (EC) No 1407/2013;
Default	means any breach of the obligations of the Recipient or any other default, act, omission, negligence or statement of the Recipient, its employees, servants, or agents in connection with or in relation to the subject matter of this

	Agreement and in respect of which the Recipient is liable to the Authority;
Dispute	has the meaning given to that term in Clause 16.1;
Dispute Notice	has the meaning given to that term in Clause 16.1.1;
Effective Date	means the date on which this Agreement is signed by both Parties;
End User Sites	means the public sector sites listed in the 'connections granular' tab of the management information workbook set out in Schedule 4;
End User Upgrade Sites	means the public sector sites listed in the table in Schedule 5 (being a sub-set of the End User Sites);
Extended Date	the date described as such in paragraph 1.3.2 of Schedule 5;
Finance Officer	means an officer who has responsibility for the proper administration of the Recipient's financial affairs in accordance with section 151 of the Local Government Act 1972;
Financial Year	means each period of twelve (12) consecutive months during the Term commencing on and including 1 April, provided that the first Financial Year shall commence on the Effective Date and the final Financial Year shall end on the last day of the Term;
FOI Legislation	means FOIA and the Environmental Information Regulations 2004, together with any relevant guidance and/or codes of practice issued by the Information Commissioner or any relevant central government body;
FOIA	means the Freedom of Information Act 2000 and any subordinate legislation made under that Act from time to time;
Funding Period	means the period during which Qualifying Capital Expenditure must be incurred (but not necessarily defrayed) by the Recipient and/or the Supplier in order to be eligible for inclusion within Grant Claims under this Agreement, being the period from the Effective Date to the end of 31 March 2021;

GDPR	means regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and repealing Directive 95/46/EC (General Data Protection Regulation) OJ L 119/1, 4.5.2016;
Grant	means the sum or sums of money payable by the Authority to the Recipient under the terms of this Agreement, which in aggregate shall not exceed the Grant Cap;
Grant Cap	means the maximum aggregate Grant payable by the Authority under this Agreement, being [insert amount in words] (£insert amount in pounds sterling);
Grant Claim	means a claim for Grant (in such form as may be approved or required by the Authority from time to time) made by the Recipient in accordance with the Grant Claim Procedure;
Grant Claim Procedure	means the procedure for the Recipient to claim Grant set out in Schedule 1;
Grant Milestone	means each milestone described as such Schedule 2;
Information	means all records and information of any sort obtained, created, collected or held by either Party in relation to this Agreement;
Information Request	means a request for information within the meaning of section 8 of FOIA;
Intellectual Property Rights	means all patents, rights to inventions, copyright and related rights, database rights, rights in designs, trademarks, service marks, trade names, and other similar or equivalent rights or forms of protection (whether registered or unregistered) and all applications (or rights to apply) for, and for renewals and extensions of, such rights as may now or in the future exist anywhere in the world;
Law	means any law, statute, subordinate legislation within the meaning of section 21(1) of the Interpretation Act 1978, bye-law, enforceable right within the meaning of section 2 of the European Communities Act 1972, regulation, order, mandatory guidance or mandatory code of practice, judgment of a relevant court of law, or directives or requirements of any regulatory body;

LFFN Programme	means the Local Full Fibre Networks Programme;
Local Full Fibre Networks Programme	means the Authority's programme to stimulate commercial investment in full fibre infrastructure within the UK;
Maximum Grant Amounts	means the maximum Grant amounts set out in Schedule 2 that the Recipient may claim in respect of the Contract Milestones;
Media Protocol	means the media protocol notified by the Authority to the Recipient from time to time;
Monitoring Report	means the report described as such in paragraph 6.2;
Non-Disclosure Agreement	means the non-disclosure agreement entered into by the Parties pursuant to the LFFN Programme;
Personal Data	has the meaning given to that term in the Data Protection Laws and for the purposes of this Agreement includes Sensitive Personal Data;
Process	has the meaning given to that term in the Data Protection Laws;
Procurement Laws	means any law or legislation regulating procurement process and practices in the UK public sector, including, but not restricted to, the Public Contracts Regulations 2015 (SI 2015/102), the Utilities Contracts Regulations 2016 and Directive 2014/24/EC of the European Parliament and of the Council and the principles of transparency, non discrimination, equality of treatment, proportionality and mutual recognition in the Treaty of the European Union;
Project	means the provision of gigabit capable connections to [XXX] End User Sites across Northern Ireland through an infrastructure deployment with a [20 year right of use] to fibre along with the upgrades to the End User Upgrade Sites in accordance with Schedule 5; [DCMS: Description to be refined and updated once the Supplier and solution is understood]
Project Board	means the board for the management of the Project established by the Recipient;
Prompt Payment Code	means the payment practices and best practice code administered by the Chartered Institute of Credit

Management and set out at
www.promptpaymentcode.org.uk;

Purpose	means to fund certain capital costs of the Project, only where and to the extent that the capital costs qualify as Qualifying Capital Expenditure;
Qualifying Capital Expenditure	means expenditure which (i) can be reasonably allocated or apportioned to the Project; (ii) is incremental to the Recipient's cost base that would otherwise have been incurred; (iii) is incurred in accordance with the Project; (iv) is directly attributable to the implementation of the relevant infrastructure and working condition necessary for its intended use but excluding those costs directly attributable to connecting customers to the infrastructure; and (v) is capable of being capitalised under the generally accepted accounting conventions, principles and practices in the UK at the relevant time;
Quarter	<p>means:</p> <ul style="list-style-type: none">(a) the period from and including the Effective Date up to and excluding the next Quarter Day;(b) thereafter each period commencing on and including a Quarter Day up to but excluding the next Quarter Day during the Term; and(c) the period from and including the last Quarter Day during the Term up to and including the date of termination or expiry of this Agreement, <p>and the term "Quarterly" should be construed accordingly;</p>
Quarter Day	means 1 April, 1 July, 1 October and 1 January;
Recipient	has the meaning given to that term on page 1 of this Agreement;
Representatives	means a Party's directors, employees and professional advisers (including consultants);
Required Date	means 31 March 2021;
Required Speeds	means the relevant minimum speeds identified in Schedule 5 that the End User Upgrade Sites shall be upgraded to;

Sensitive Personal Data	has the meaning given to that term in the Data Protection Laws;
State Aid Regulations	means the terms set out in: <ul style="list-style-type: none"> (a) the relevant articles of the TFEU, in particular Articles 107 - 109; (b) European Community rules, regulations, guidelines and case law relating to State aid in force from time to time; (c) where applicable: <ul style="list-style-type: none"> (i) the De Minimis Aid Regulation; and (ii) Commission Regulation (EU) N°651/2014 of 17 June 2014 declaring certain categories of aid compatible with the internal market in application of Articles 107 and 108 of the TFEU;
Supplier	means [insert];
Term	means the period during which this Agreement is in force, which shall commence on the Effective Date and end at the expiry of the date which is five (5) years from the end of the Funding Period;
TFEU	means the Treaty on the Functioning of the European Union;
Value Added Tax	means any value added tax; and
Working Day	means any day other than a Saturday, Sunday or public holiday in England and Wales.

- 1.1.1 use of the singular includes the plural (and vice versa) and use of any gender includes the other genders;
- 1.1.2 a reference to a party is to a party to this Agreement and shall include that party's personal representatives, successors or permitted assignees;
- 1.1.3 a reference to persons includes individuals, corporations, and unincorporated bodies or associations that are recognised at law (whether or not having separate legal personality and irrespective of their jurisdiction of origin, incorporation or residence);
- 1.1.4 unless expressly stated otherwise, a reference to a Clause is to the relevant clause of this Agreement; a reference to a Schedule is to the relevant schedule to this Agreement; and a reference to a paragraph is to the relevant paragraph of the Schedule in which it appears;

- 1.1.5 a reference to any Law includes a reference to that Law as amended, extended, consolidated or re-enacted from time to time including any Laws as amended or repealed to deal with the UK's exit from the European Union;
- 1.1.6 any phrase introduced by the words "including", "includes", "in particular", "for example" or similar, shall be construed as illustrative and without limitation to the generality of the related general words;
- 1.1.7 where a standard, policy or document is referred to in this Agreement by reference to a hyperlink, then if the hyperlink is changed or no longer provides access to the relevant standard, policy or document, the reference shall be deemed to be to the replacement hyperlink and the Parties shall update this Agreement with a reference to the replacement hyperlink as soon as is practicable; and
- 1.1.8 the headings in this Agreement are for ease of reference only and shall not affect its interpretation.

2. GRANT OFFER

- 2.1 The Parties agree to be bound by this Agreement which shall subsist, subject to early termination in accordance with Clause 11, for the Term.
- 2.2 Where applicable the terms of the Conditional Grant Offer Letter shall continue to apply in respect of the Grant provided that in the event of any conflict between the terms set out in the Conditional Grant Offer Letter and the terms set out in this Agreement, the terms set out in this Agreement shall prevail.
- 2.3 In consideration of the Recipient's involvement in the Project and otherwise complying with the terms and conditions set out in this Agreement, the Authority agrees to pay the Grant to the Recipient subject to and in accordance with this Agreement.
- 2.4 The Recipient acknowledges and agrees that the Authority agrees to provide funding only:
 - 2.4.1 in respect of the Grant, provided that the aggregate Grant payable by the Authority under this Agreement shall not exceed the Grant Cap;
 - 2.4.2 in respect of Qualifying Capital Expenditure incurred (but not necessarily defrayed) by the Recipient and/or the Supplier (as applicable) during the Funding Period; and
 - 2.4.3 for the Purpose.
- 2.5 The Recipient acknowledges that at the Effective Date it is familiar with the purpose, scope and operation of the Authority's checkpoint assurance process and associated requirements for the LFFN Programme as applicable to this Agreement and the Project and agrees that the Recipient shall comply with that process and associated requirements. The Recipient shall upon reasonable notice comply with all reasonable updates to such process and associated requirements as may be notified by the Authority from time to time during the Term.
- 2.6 The Recipient shall ensure that the End User Upgrade Sites are upgraded to the Required Speeds on or before the Required Date in accordance with Schedule 5.
- 2.7 The Recipient shall undertake its own evaluation of the Project if requested to do so by the Authority at any time during the Term and provide details of its findings to the Authority in accordance with any reasonable instructions provided by the Authority.

3. **PURPOSE AND EXTENT OF THE GRANT**

- 3.1 The Recipient shall not use the Grant for any activities other than the Purpose, or as otherwise approved in writing by the Authority, and shall use the Grant only on the terms and conditions set out in this Agreement.
- 3.2 The Grant is made by the Authority under Section 13A of the Industrial Development Act 1982. The Authority's financial processes and procedures in connection with this Agreement will be carried out in accordance with HM Treasury guidance: "Managing Public Money" (ref: <https://www.gov.uk/government/publications/managing-public-money>) and other HM Treasury Guidance in effect from time to time.
- 3.3 The Recipient shall ensure that any relevant terms in this Agreement are, where appropriate, reflected in the arrangements with the Supplier.
- 3.4 Schedule 1 contains the Recipient's bank account details and the Recipient shall provide the Authority with any related administrative details upon request.

4. **TIMING AND ADMINISTRATION OF THE GRANT**

- 4.1 Subject to the remainder of this Agreement, the Authority shall pay the Grant to the Recipient:
- 4.1.1 in arrears once the Recipient has incurred the relevant Qualifying Capital Expenditure (but, where applicable, has not necessarily paid the relevant Qualifying Capital Expenditure); and
- 4.1.2 in accordance with the Grant Claim Procedure and the terms of this Agreement, provided that:
- 4.1.3 subject to Clause 2.4.2, the final Grant Claim provided by the Recipient under this Agreement must be received by the Authority no later than the end of 30 June 2021; and
- 4.1.4 the Recipient has been and remains in compliance with the terms of this Agreement on the relevant date for payment of the Grant.
- 4.2 The Authority may reduce, suspend or withhold any Grant payment for the period of any material delay to:
- 4.2.1 the Project; and/or
- 4.2.2 the upgrade of the End User Upgrade Sites pursuant to Schedule 5.
- 4.3 The Recipient shall not carry forward any unused Grant allocated by the Authority to a Financial Year for application in the next (or any future) Financial Year unless the Authority has given its prior written approval to do so in respect of such Grant.
- 4.4 The Recipient acknowledges and agrees that the Authority may from time to time in connection with the Authority's operation of the LFFN Programme require reasonable changes to the Grant Claim Procedure and/or the reporting requirements set out in this Agreement. Any such changes shall be subject to Clause 15.2 provided that the Recipient's consent to such changes shall not be unreasonably withheld or delayed.
- 4.5 The Authority acknowledges and agrees that the Recipient may from time to time require reasonable changes to the Contract Milestones for alignment with the Contract. Any such changes shall be subject to Clause 15.2 and the other provisions of this Agreement (including the Grant Cap) provided that the Authority's consent to such changes shall not otherwise be unreasonably withheld or delayed.

- 4.6 The Recipient shall ensure that the End User Upgrade Sites are upgraded to the Required Speeds on or before the Required Date in accordance with Schedule 5.

5. **VAT**

- 5.1 The Grant is paid net of any Value Added Tax for which the Recipient may be liable. If any Value Added Tax shall become payable by the Recipient (including under the Contract) the Recipient shall bear the cost the Value Added Tax and the Authority shall not be obliged to pay any additional amount by way of the Grant or any other payment.

- 5.2 All sums or other consideration payable to or provided by the Recipient to the Authority at any time, excluding repayment of Grant, shall be deemed to be exclusive of all Value Added Tax payable and where any such sums become payable or due or other consideration is provided the Recipient shall, at the same time, or as the case may be, on demand by the Authority, in addition to such sums or other consideration, pay to the Authority all the Value Added Tax so payable upon the receipt of a valid Value Added Tax invoice.

6. **MANAGING THE GRANT AND REPORTING**

Representatives

- 6.1 Each Party shall notify the other in writing of:
- 6.1.1 the nominated person from time to time who shall act as the Party's authorised representative for the purposes of this Agreement; and
 - 6.1.2 the contact details of the authorised representative and any deputies from time to time.

Monitoring Report

- 6.2 The Recipient shall provide a Monitoring Report to the Authority as soon as practicable after the end of each Financial Year in which a Grant payment is made and in any event within three (3) months. Each Monitoring Report must:
- 6.2.1 be in the format set out in Schedule 3; and
 - 6.2.2 subject to Clause 6.15, be signed by the Finance Officer (or suitably qualified and nominated equivalent).
- 6.3 Where the Recipient has received funding from a third party (including capital funding received from, or contributed to the Project by, the Supplier) in connection with the Purpose, the Recipient shall include the amount of such funding in the Monitoring Report and any other financial reports submitted to the Authority, together with a short description of the purpose of such funding and what the funding has been used for.

Other Reporting

- 6.4 The Recipient shall provide to the Authority:
- 6.4.1 (or, where required by the Authority, procure that the Supplier provides to the Authority direct) the additional reporting information set out in Schedule 4 at the frequency and in such form as may be approved or required by the Authority in writing from time to time;
 - 6.4.2 details of any anticipated divergence from the funding profile set out in Schedule 2 for each Financial Year by 30 September of the relevant Financial Year or other date as may be approved or required by the Authority in writing from time to time; and

- 6.4.3 on the first Working Day following (i) the end of each Quarter during the Funding Period; and (ii) the end of the Funding Period, details of the Grant (if any) expected to be claimed by the Recipient in respect of the preceding Quarter.
- 6.5 The Authority may, acting reasonably, at any time also require the Recipient to provide it with forecast outturn information for a Financial Year end. The Recipient shall comply with any such request within a reasonable period of time.
- 6.6 If any additional reporting is required by the Authority on an ad-hoc basis (for example, to respond to a parliamentary question) then the Authority shall:
- 6.6.1 notify the Recipient in writing of the information required;
- 6.6.2 set out the format of the information required; and
- 6.6.3 indicate the timeframe in which the information should be provided,
- and the Recipient shall comply with the relevant additional reporting requirements referenced above.
- 6.7 The Recipient shall ensure that it has the necessary authority and consents to provide the Authority with any and all reporting information under this Agreement.

Grant Underspend and Repayment

- 6.8 The Recipient shall notify the Authority as soon as reasonably practicable upon becoming aware that the Recipient does not intend to claim any or all of the Maximum Grant Amounts in accordance with the Grant Claim Procedure.
- 6.9 The Recipient shall within twenty (20) Working Days (or within such other applicable period as may be expressly provided elsewhere in this Agreement) of any applicable notification provided pursuant to this Agreement repay to the Authority any money incorrectly paid to it by the Authority or where a repayment is otherwise required under the terms of this Agreement. This includes (without limitation) instances where an incorrect sum of money has been paid by the Authority and/or where Grant monies have been paid in error or not in accordance with the terms of this Agreement.

End of the Funding Period

- 6.10 Unless the Authority agrees otherwise in writing, any Grant held by the Recipient following the final Grant payment by the Authority under this Agreement which has not been used to pay Qualifying Capital Expenditure for the purposes of Clause 2.4.2 within twenty (20) Working Days of the date on which the final Grant payment is made by the Authority shall be repaid to the Authority within twenty (20) Working Days.
- 6.11 Any Costs or liabilities in connection with the Project and/or the Purpose remaining at the end of the Funding Period and not met by the Grant in accordance with the terms of this Agreement must be managed and paid for by the Recipient. No additional funding shall be available from the Authority for this purpose.

Grant Management

- 6.12 The Recipient may not transfer funds between this Grant and other grants made to it.
- 6.13 The Recipient (acting through its Finance Officer or suitably qualified and nominated equivalent) shall ensure that appropriate professional arrangements are put in place for the management of the Grant and the reporting of expenditure (including regarding value for money). The Recipient shall ensure that the Grant is accounted for, and monitored separately from, the Recipient's other finances and funding streams.

- 6.14 The Authority, acting reasonably, shall have the right to call and attend meetings with the Recipient in connection with allocation, expenditure of, and repayment of the Grant and the procurement and management of the Recipient's contracts with third parties (including the Contract) or otherwise in connection with the Purpose.
- 6.15 Where the Authority, acting reasonably, identifies any concerns in respect of (i) the Recipient's management and/or use of the Grant; and/or (ii) any information provided by the Recipient pursuant to the terms of this Agreement, the Authority may require the Monitoring Report to be submitted by the Recipient in accordance with Clause 6.2 to be certified by the Recipient's external auditor in which case the Recipient shall instruct its external auditor to undertake such certification and procure that the certified Monitoring Report is provided to the Authority as soon as reasonably practicable and in any event within two (2) months following receipt of the Authority's notice (or within such other period as the Parties may agree).

Governance

- 6.16 The Authority shall have the right to attend (for any reason) any Project Board meeting on the following basis:
- 6.16.1 The Recipient shall provide the Authority with reasonable advance notice of each Project Board meeting and (where available) the associated meeting agenda and board papers.
- 6.16.2 The Authority shall notify the Recipient as soon as reasonably practicable in advance of a Project Board meeting where it intends to attend such meeting (along with the name(s) of the individual(s) from the Authority who shall be attending).
- 6.16.3 If the Authority elects to attend any Project Board meeting it shall do so for the purpose of Project assurance and in the Authority's capacity as provider of the Grant under this Agreement. Whilst the Authority may provide support and/or guidance at or in connection with any such Project Board meeting, the Authority shall not be responsible or liable for any decision made by the Project Board or the Recipient at or in connection with any such Project Board meeting.

Prompt Payment Code

- 6.17 The Recipient shall comply with the Prompt Payment Code and therefore undertakes to (where applicable) ensure that all undisputed payments are made to the Supplier from Grant money paid under this Agreement by the relevant agreed date or within thirty (30) days if no date is agreed.

7. RECORDS TO BE KEPT

- 7.1 The Recipient shall:
- 7.1.1 maintain and operate effective monitoring and financial management systems in respect of the Grant;
- 7.1.2 without limiting the requirement in Clause 7.1.3, maintain records of the administrative management of the Grant and of the Contract procurement and Contract operation, including all relevant related decisions, for a period of at least six (6) years after the end of the Term; and
- 7.1.3 keep a record of all expenditure funded partly or wholly by the Grant, and retain all associated accounting records for a period of at least six (6) years after the end of the Term.

8. AUDIT AND INSPECTION

- 8.1 The Recipient shall, without charge, permit any officer or officers of the Authority and the National Audit Office or their nominees to (i) visit the Recipient's premises and/or Project locations (including the End User Sites); (ii) inspect any of the activities of the Recipient (including to verify that the End User Upgrade Sites have been upgraded in accordance with Schedule 5); and/or (iii) examine and take copies of the Recipient's books of account and such other documents or records as in such officers' view may relate to the use of the Grant and/or related capital expenditure. In addition, the National Audit Office or the Authority or their nominees may carry out examinations into the economy, efficiency and effectiveness with which the Grant has been used. The Authority shall endeavour, but shall not be obliged, to provide advance notice of any such visit or audit.
- 8.2 The Recipient shall ensure that the Grant is subject to the Recipient's internal and external audit procedures.
- 8.3 Without prejudice to Clause 8.1, the Recipient shall comply with, and shall ensure that it does not do or omit to do anything which the Recipient knows or could reasonably be expected to know causes the Authority to breach, relevant European Union and UK statutory and regulatory requirements as regards accounts, audit or examination of accounts, annual reports and returns applicable to the Recipient and, in relation to the Authority's compliance, the Authority.
- 8.4 The Recipient shall procure that the Supplier is subject to (and if necessary the Recipient shall enforce) an obligation to permit representatives of the Authority and the National Audit Office to examine the economy, efficiency and effectiveness with which the Grant has been used and to verify that the Recipient is complying with the audit, inspection and record keeping obligations of this Agreement.

9. LAWFUL CONDUCT, PROCUREMENT PROCESSES AND STATE AID REGULATIONS

- 9.1 The Recipient shall comply (and, where applicable, shall secure compliance of the Supplier and its sub-contractors engaged in the Project) with all applicable Law including:
- 9.1.1 the Equality Act 2010 and any other anti-discrimination and equal opportunities legislation;
 - 9.1.2 the Public Services (Social Value Act) 2012; and
 - 9.1.3 the Procurement Laws,
- in force from time to time throughout the Term.
- 9.2 Throughout the Term the Recipient shall comply (and, where applicable, shall secure the compliance by the Supplier) with the State Aid Regulations including in relation to the receipt of any Grant and its application in relation to the Project. This shall include (without limit), where applicable:
- 9.2.1 ensuring the Contract and/or any changes permitted to or in connection with the Contract do not give rise to any breach of the State Aid Regulations or the Procurement Laws; and
 - 9.2.2 operating in accordance with the terms of the Contract so as to comply with the State Aid Regulations and the Procurement Laws.
- 9.3 The Recipient shall ensure that use of the Grant and all associated procurement processes and contractual terms used in connection with the Project and/or the Purpose shall be compatible with the requirements referred to in Clause 9.2.

9.4 The Recipient shall secure, and is responsible for ensuring, best value for money in all expenditure that is (in whole or in part) funded by the Grant.

9.5 The Authority may provide the European Commission with information about the Grant and the Project in compliance with the State Aid Regulations under TFEU and related legislation.

9.6 The Recipient shall notify the Authority within five (5) Working Days if it becomes aware of:

9.6.1 any procurement or State aid or other legal challenge;

9.6.2 any examination or investigation by the European Commission; or

9.6.3 the issue by the European Commission of any recovery decision as defined in Article 16(1) of Council Regulation 2015/1589,

in respect of the Project, and shall provide such further reasonable information and/or assistance concerning such challenge, examination, investigation or decision as the Authority may reasonably require from time to time.

9.7 Without prejudice or limitation to the Recipient obligations as described in this Clause 9, the Authority may from time to time, acting reasonably, specify to the Recipient certain types of Contract change (whether by value threshold or otherwise) which must be notified by the Recipient to the Authority in advance of contractual commitment and where written Authority approval to proceed with the Contract change is required. The Parties acknowledge that any such Contract change (if approved) may require an amendment to this Agreement, which where applicable shall be processed in accordance with Clause 15.2.

10. **CONFLICT OF INTEREST AND FINANCIAL OR OTHER IRREGULARITIES**

10.1 The Recipient shall use all reasonable endeavours to ensure that its employees, agents, and advisers working on or in relation to the Project are not influenced by any conflict of interest.

10.2 The Recipient shall set up formal procedures to require all employees, agents and advisers of the Recipient to declare any personal or financial interest in any matter concerning the Recipient's activities and to be excluded from any discussion or decision-making relating to such matter.

10.3 If the Recipient has any grounds for suspecting any failure (whether by the Recipient or the Supplier) to comply with the Bribery Legislation, or any financial irregularity in the use of any Grant paid under this Agreement, it must notify the Authority immediately, explain what steps are being taken to investigate the suspicion, and keep the Authority informed on the progress of the investigation.

10.4 For the purposes of Clause 10.3, "**financial irregularity**" includes fraud or other impropriety, mismanagement, and the use of the Grant for purposes other than those permitted by this Agreement.

11. **BREACH OF GRANT CONDITIONS**

11.1 If any of the events mentioned in Clause 11.3 occur, then subject to Clauses 11.4 and 11.5 the Authority may:

11.1.1 reduce, suspend or withhold Grant payments;

11.1.2 require all or any part of the Grant to be repaid (excluding any sums paid to the Supplier in accordance with the terms of this Agreement and the Contract), and/or

11.1.3 terminate this Agreement,

in each case only in accordance with the process and the circumstances set out in this Clause 11.

11.2 The rights of the Authority set out in Clause 11.1 shall survive termination or expiry of this Agreement, except where due to the occurrence only of any or all of the events set out in Clauses 11.3.4 to 11.3.8, in which case the rights shall subsist only until the date on which the Authority pays the final Grant payment to the Recipient in accordance with the terms of this Agreement.

11.3 The events referred to in Clause 11.1 are as follows:

11.3.1 there is a material Default by the Recipient which results in:

(a) a failure to ensure regular or proper use of public funding or a failure to safeguard public funds, as required in each case by "Managing Public Money" as referred to in Clause 3.2; and/or

(b) a failure to use the Grant for the Purpose,

whether the circumstances set out in Clauses 11.3.1(a) and/or (b) are identified under any audit or inspection carried out under this Agreement or otherwise.

11.3.2 the Recipient purports to transfer or assign any rights, interests or obligations arising under this Agreement without the written agreement in advance from the Authority;

11.3.3 the European Commission or any competent court or authority judges that any element of the Grant or the Contract is in breach of:

(a) the conditions of the State Aid Regulations under TFEU, in particular Article 107(3)(c), or any subordinate legislation made under TFEU; or

(b) the Procurement Laws;

11.3.4 any information provided in, or in support of, the Recipient's application for the Grant or in a claim for payment or in any subsequent supporting correspondence from the Recipient is found to be materially incorrect or incomplete to an extent which the Authority acting reasonably considers to be materially detrimental to the Authority;

11.3.5 the Authority reasonably considers, having undertaken an appropriate review or investigation, that the Recipient is taking or has taken inadequate measures to investigate and resolve any reported irregularity regarding use of the Grant and has failed within thirty (30) days of being notified of such failure to take adequate measures to investigate and resolve any reported irregularity regarding the use of the Grant has failed to take such measures as would be adequate in the circumstances;

11.3.6 the Authority reasonably considers, having undertaken an appropriate review or investigation, that there is a material failure in the Recipient's management of:

(a) the Project; and/or

(b) the Supplier under the terms of the Contract;

11.3.7 the Authority reasonably considers, having undertaken an appropriate review or investigation, that there is a change in the Contract which, in the reasonable opinion of the Authority, is substantial and to which the Authority has not given prior written agreement (such agreement not to be unreasonably withheld or delayed); and/or

- 11.3.8 acting reasonably, the Authority considers, having undertaken an appropriate review or investigation, that the Recipient has failed to act reasonably and prudently with regard to the Supplier and/or any of the Supplier's key subcontractors (if and to the extent referred to as such or by an analogous term in the Contract) delivering the Project, or that the Supplier and/or any of the Supplier's key subcontractors are no longer being a fit and proper entity for the receipt of public funding due to:
- (a) the entity suffering any circumstances of financial distress or insolvency or circumstances which might in the Authority's reasonable view lead to financial distress or insolvency; and/or
 - (b) reasons which impact on national security, the operations, reputation or good standing of the Authority, which impact on the threat of criminal activity and/or which otherwise pose a risk to the successful delivery of the Project.
- 11.4 In the event that the Authority wishes to trigger any of the steps provided under Clause 11.1 with respect to any of the events specified in Clause 11.3, the Authority shall provide reasonable notice to the Recipient specifying particulars of the event concerned.
- 11.5 Following receipt of a notification pursuant to Clause 11.4, except in the case where the event is irremediable, the Recipient shall be given reasonable opportunity to resolve the event (taking into account the nature of the event and its consequences). If the event is irremediable or, where remediable, the event has not been resolved after the Recipient has been given reasonable opportunity, the Authority shall have the rights set out in Clause 11.1.
- 11.6 Notwithstanding the express process provided for in this Clause 11 above, nothing in this Clause 11 limits the Authority's other rights and remedies set out in this Agreement (provided that prior to exercising its rights and remedies in respect of any other Default the Authority shall provide reasonable prior written notice to the Recipient specifying the particulars of the Default concerned and give the Recipient reasonable opportunity to remedy such Default where it is remediable).
- 11.7 On termination or expiry of this Agreement, and without prejudice to the Authority's other rights under this Agreement, the Recipient shall within twenty (20) Working Days return to the Authority any unused Grant funds (unless the Authority gives its written consent to their retention) then in its possession.
- 11.8 Any provision of this Agreement which expressly or by implication is intended to come into or continue in force on or after expiry or termination of this Agreement including Clauses 6, 7, 11, 14, 17, 19, 20 and 23 shall remain in full force and effect.
- 12. INSURANCE COVERAGE**
- The Recipient shall ensure that it has adequate insurance coverage (including, but not limited to, public liability insurance) in place either as a self-insurance arrangement or with an insurer of good repute to cover all claims and liabilities under or in connection with this Agreement, and shall provide evidence of such insurance to the Authority on request.
- 13. LIMIT OF LIABILITY**
- 13.1 The Authority accepts no liability for any consequences or losses, whether arising directly or indirectly, that may arise in connection with:
- 13.1.1 the Recipient operating and managing the Project;
 - 13.1.2 the use of the Grant (including by the Recipient and by the Supplier);
 - 13.1.3 the Recipient's procurement, and the Supplier's performance, of the Contract; and/or

- 13.1.4 the Authority's reduction, suspension or withdrawal of the Grant and/or termination of this Agreement in accordance with Clause 11.
- 13.2 Save in respect of any liabilities that cannot be lawfully limited, the Authority's liability to the Recipient under this Agreement is limited to the obligation to make payment of the Grant monies when due and payable in accordance with this Agreement.
14. **INTELLECTUAL PROPERTY RIGHTS**
- 14.1 The Parties agree that all rights, title and interest in or to any information, data, reports, documents, procedures, forecasts, technology, know-how and any other Intellectual Property Rights whatsoever owned by either the Authority or the Recipient before commencement of this Agreement, or developed by either Party during the Term, shall remain the property of that Party.
- 14.2 Subject always to the provisions of the Non-Disclosure Agreement, the Recipient shall grant to the Authority at no cost an irrevocable, royalty-free perpetual licence to use and to sub-license the use of any material created by the Recipient in accordance with the operation and the requirements of this Agreement for such purposes as the Authority shall deem appropriate (acting reasonably).
- 14.3 The Recipient shall ensure that all publicity (whether written or online or otherwise) created, issued and/or used by the Recipient and/or the Supplier relating to the work funded by the Grant shall comply with the Media Protocol including (without limit):
- 14.3.1 The inclusion of 'Funded by DCMS' written alongside the DCMS logo.
- 14.3.2 The Authority reserves the right to have a quote included in any press release associated with the Project.
- 14.3.3 DCMS and LFFN Programme branding must be included in all publicity materials (including websites) associated with the Project, as further described in the Media Protocol.
15. **ENTIRE AGREEMENT AND VARIATIONS**
- 15.1 This Agreement, including the documents referred to in it (excluding the Contract), sets out the entire agreement between the Parties. It replaces all previous negotiations, agreements, understandings and representations between the Parties, whether oral or in writing. Neither Party has been given, nor has entered into this Agreement in reliance on, any warranty, statement, promise or representation other than those expressly set out in this Agreement.
- 15.2 Each Party shall notify the other Party of any proposed amendment to this Agreement. At its discretion the Authority may permit certain amendments proposed by the Recipient to be given effect (e.g. in relation to the number of End User Sites and the Grant profile set out in Schedule 2) without requiring this Agreement to be amended. Otherwise, any amendments to this Agreement shall only be valid if they are in writing and signed by an authorised representative of both Parties. In relation to any amendment to this Agreement the Authority reserves the right to require the Recipient to comply with such additional requirements and/or conditions as the Authority may require in its sole discretion.
16. **DISPUTE RESOLUTION PROCEDURE**
- 16.1 If a dispute arises out of or in connection with this Agreement or the performance, validity or enforceability of it (a "**Dispute**") then, except as expressly provided otherwise in this Agreement, the Parties shall follow the dispute resolution procedure set out in this Clause:
- 16.1.1 either Party shall give to the other written notice of the Dispute, setting out its nature and full particulars (a "**Dispute Notice**"), together with relevant supporting documentation. On service of the Dispute Notice the LFFN Programme Director of

the Authority and the [insert first level title] of the Recipient shall attempt in good faith to resolve the Dispute;

16.1.2 if the LFFN Programme Director of the Authority and the [insert first level title] of the Recipient are for any reason unable to resolve the Dispute within fifteen (15) Working Days of service of the Dispute Notice, the Dispute shall be referred to the Authority's Senior Responsible Owner for the LFFN Programme and the [insert second level title] of the Recipient who shall attempt in good faith to resolve it; and

16.1.3 if the Authority's Senior Responsible Owner for the LFFN Programme and [insert second level title] of the Recipient are for any reason unable to resolve the Dispute within fifteen (15) Working Days of it being referred to them, the parties shall attempt to settle it by mediation in accordance with the CEDR model mediation procedure. Unless otherwise agreed between the Parties, the mediator shall be nominated by CEDR. To initiate the mediation, a Party must serve notice in writing (an "**ADR Notice**") to the other Party requesting a mediation. A copy of the ADR Notice should be sent to CEDR. The mediation shall start not later than thirty (30) Working Days after the date of service of the ADR Notice. Unless otherwise agreed by the Parties, CEDR, in conjunction with the mediator, shall make the necessary arrangements for the mediation including:

- (a) nominating, and obtaining the agreement of the Parties to, the mediator;
- (b) organising a suitable venue and dates;
- (c) organising exchange of documents;
- (d) meeting with either or both of the Parties (and the mediator if appointed), either together or separately, to discuss any matters or concerns relating to the mediation; and
- (e) general administration in relation to the mediation.

[DCMS: The Recipient titles above must be commensurate with the relevant Authority titles above]

16.2 No Party may commence any court proceedings in relation to any dispute arising out of this agreement until sixty (60) Working Days after the appointment of a mediator, provided that the right to issue proceedings is not prejudiced by a delay in appointment.

17. **FREEDOM OF INFORMATION**

The provisions of Clause 3 of the Non-Disclosure Agreement shall apply in respect of the Parties' obligations under the FOI Legislation.

18. **WARRANTIES**

18.1 The Recipient warrants, represents and undertakes that:

18.1.1 all financial and other information concerning the Recipient and the Project which has been disclosed to the Authority is to the best of its knowledge and belief, true and accurate;

18.1.2 it is not subject to any contractual or other restriction imposed by its own or any other organisation's rules or regulations or otherwise which may prevent or materially impede it from meeting its obligations in connection with this Agreement;

18.1.3 it is not aware of anything in its own affairs, which it has not disclosed to the Authority or any of the Authority's advisers, which it believes, acting reasonably, might have

influenced the decision of the Authority to make the Grant on the terms contained in this Agreement; and

- 18.1.4 it is not aware of any financial or other advantage being given to any person working for or engaged by the Authority, or that an agreement has been reached to that effect, in connection with the execution of this Agreement and/or its subject matter, excluding any arrangement of which full details have been disclosed in writing to the Authority before execution of this Agreement.

19. **CONFIDENTIALITY**

19.1 The Parties acknowledge that:

- 19.1.1 the Non-Disclosure Agreement applies in respect of this Agreement (to the extent applicable); and
- 19.1.2 the Recipient's bank account details in Schedule 1 are treated as Confidential Information for the purposes of the Non-Disclosure Agreement.

20. **PERSONAL DATA**

- 20.1 Both Parties shall comply with all of their respective obligations under the Data Protection Laws which arise in connection with this Agreement.
- 20.2 The Parties each acknowledge and agree that (in their respective capacities as Controllers) they may need to Process the Contact Data provided by each Party in order to administer and manage, and comply with their respective obligations under, this Agreement.
- 20.3 Each Party shall Process the Contact Data in accordance with their respective privacy policies. The Parties acknowledge that they may be required to share Contact Data with their affiliates, group companies and other relevant parties, within or outside of the country of origin, in order to carry out the activities identified in Clause 20.1, and in doing so each Party will ensure that the sharing and use of the Contact Data complies with applicable Data Protection Laws.
- 20.4 Where acting as a Controller for the purposes of the Contact Data, each Party shall make available to the other Party a copy of their applicable privacy policy and the receiving Party shall ensure that this policy is provided to their Representatives whose Contact Data has been shared with the other Party for the purposes set out in this Agreement.
- 20.5 Each Party warrants, represents and undertakes that it is not subject to any prohibition or restriction which would prevent or restrict it from disclosing or transferring their Contact Data to the other Party in accordance with the terms of this Agreement.
- 20.6 The Recipient shall comply fully with the Data Protection Laws in respect of the Recipient's application of the Grant including in relation to the Project and the Contract. Upon reasonable request the Recipient shall provide to the Authority full details of the data protection arrangements and measures that are in place in connection with the application of the Grant. The Recipient shall comply with such reasonable additional arrangements or measures as the Authority may notify the Recipient in connection with the protection of Personal Data.

21. **NOTICES**

- 21.1 All notices, invoices and other communications relating to this Agreement shall be in writing and shall be provided by a Party on the other Party addressed to the person notified in accordance with Clause 6.1 or if there has been no such notification at its address shown at the start of this Agreement.
- 21.2 Notices delivered under this Agreement shall be deemed to be delivered:

- 21.2.1 if sent by hand, upon receipt;
- 21.2.2 if sent by pre-paid registered first class post (providing it is not returned as undelivered to the sender), two (2) Working Days after posting;
- 21.2.3 if sent by email, on the date of delivery (provided an error message is not received) subject to the following conditions:
 - (a) when an email is sent on a day which is not a Working Day or after 3:00pm on a Working Day the email is deemed to have been received on the next Working Day; and
 - (b) each email containing a notice under Clauses 9, 10, 11 or 16 shall be sent with a delivery receipt requested and shall not be deemed to have been received until the sender receives a confirmatory delivery receipt. Both Parties agree to ensure that delivery receipts are enabled and will be sent from the relevant email addresses provided for the purpose of serving such notices.

22. CONTRACT (RIGHTS OF THIRD PARTIES) ACT 1999

This Agreement does not and is not intended to confer any contractual benefit on any person who is not a Party pursuant to the terms of the Contracts (Rights of Third Parties) Act 1999.

23. GOVERNING LAW

This Agreement shall be subject to and construed in accordance with English law and subject to the exclusive jurisdiction of the courts of England and Wales.

24. NO PARTNERSHIP OR AGENCY

This Agreement shall not create any partnership or joint venture between the Authority and the Recipient, nor any relationship of principal and agent, nor authorise any Party to make or enter into any commitments for or on behalf of the other Party.

25. ASSIGNMENT AND NOVATION

- 25.1 The Recipient shall not assign, novate, create a charge of the benefit of, otherwise dispose of or create any trust in relation to any or all of its rights and obligations under this Agreement without the prior written consent of the Authority (such consent not to be unreasonably withheld).
- 25.2 The Authority may assign, novate or otherwise dispose of any or all of its rights and obligations under this Agreement to any Contracting Authority.
- 25.3 A change in the legal status of the Authority and/or the Recipient shall not affect the validity of this Agreement and it shall be binding on any successor body to the Authority and/or the Recipient (as the case may be).

26. WAIVER AND CUMULATIVE REMEDIES

- 26.1 The rights and remedies provided by this Agreement may be waived only in writing by an authorised representative of both Parties in a manner that expressly states that a waiver is intended, and such waiver shall only be operative with regard to the specific circumstances referred to.
- 26.2 Unless a right or remedy is expressed to be an exclusive right or remedy, the exercise of it by the relevant Party is without prejudice to that Party's other rights and remedies. Any failure

to exercise or any delay in exercising a right or remedy by either Party shall not constitute a waiver of that right or remedy or of any other rights or remedies.

- 26.3 The rights and remedies provided by this Agreement are cumulative and, unless otherwise provided in this Agreement, are not exclusive of any right or remedy provided at law or in equity or otherwise under this Agreement.

27. **SEVERANCE**

If any provision of this Agreement is held invalid, illegal or unenforceable for any reason by any court of competent jurisdiction, such provision shall be severed without effect to the remaining provisions.

28. **COUNTERPARTS**

This Agreement may be signed in any number of counterparts, each of which when signed and delivered shall constitute a duplicate original, but all the counterparts shall together constitute a single agreed Agreement. Transmission of a signed counterpart of this Agreement by email in PDF format shall take effect as delivery of a signed counterpart of this Agreement. If this method of delivery is adopted, without prejudice to the validity of the agreement so made, the Authority and the Recipient shall provide each other with the original of such counterpart as soon as reasonably practicable.

SIGNED for the **SECRETARY OF STATE FOR DIGITAL, CULTURE, MEDIA AND SPORT** by

SIGNED for and on behalf of **[INSERT LOCAL BODY NAME]** by

Signature:

Signature:

Name:

Name:

Position:

Position:

Date:

Date:

who is authorised by the Secretary of State in that regard

SCHEDULE 1 – GRANT CLAIMS

1. Recipient Bank Account

Account Name:	[DCMS: Recipient to provide details]
Account Number:	
Sort Code:	

2. Grant Claim Procedure

2.1 Subject to the terms of this Agreement, the Authority shall pay Grant Claims to the Recipient in accordance with this Grant Claim Procedure.

2.2 The Recipient may submit a Grant Claim to the Authority once the relevant Grant Milestone has been Achieved. Each Grant Claim shall contain:

2.2.1 in respect of the relevant Contract Milestone, a copy of the relevant milestone achievement report approved by the Recipient, the milestone achievement certificate issued by the Recipient to the Supplier and the valid invoice issued by the Supplier to the Recipient;

2.2.2 the relevant evidence set out in Schedule 2;

2.2.3 a summary Project highlight report confirming progress to date and setting out any Project risks that may impact the timing of future Grant Claims and/or Grant payments;

2.2.4 details of the Grant amount being claimed, which unless the Authority approves otherwise in writing shall be the lower of (i) the amount set out in the relevant Supplier invoice; and (ii) the relevant Maximum Grant Amount set out in Schedule 2;

2.2.5 a statement from the Finance Officer confirming that (i) the Grant amount being claimed relates only to Qualifying Capital Expenditure and has been incurred by the Recipient or the Supplier in accordance with the terms of this Agreement; and (ii) the Recipient has undertaken reasonable and proportionate assurance of the information and evidence provided by the Supplier and in accordance with any relevant guidance provided by the Authority; and

2.2.6 a statement confirming that all Qualifying Capital Expenditure previously claimed under this Grant Claim Procedure and in respect of which Grant has been paid by the Authority up to the date of the current Grant Claim has been defrayed by the Recipient.

2.3 If following receipt of any Grant Claim the Authority requires any further information and/or wishes to clarify any aspect of the Grant Claim then the Authority shall notify the Recipient of such requirement and/or clarification within ten (10) Working Days and the Recipient shall provide such information and/or clarification without delay.

2.4 The Authority shall use its reasonable endeavours to pay each valid and undisputed Grant Claim submitted in accordance with paragraph 2.2 above within twenty (20) calendar days of receipt to the Recipient's bank account set out above (provided that where paragraph 2.3 above applies the twenty (20) calendar day period shall commence when the relevant

information has been provided and/or the clarification has been made, in each case to the Authority's reasonable satisfaction).

SCHEDULE 2 – GRANT MILESTONES

GRANT MILESTONE	ACHIEVEMENT CRITERIA	GRANT CLAIM EVIDENCE	PLANNED ACHIEVEMENT QUARTER	MAXIMUM GRANT AMOUNT

SCHEDULE 3 – MONITORING REPORT TEMPLATE

The Recipient shall use the template below to produce each Monitoring Report in accordance with Clause 6.2 of this Agreement.

MONITORING REPORTING FOR FINANCIAL YEAR ENDING [INSERT DATE]		
Category	Component	Response
Narrative report on the progress of the Project		
Summary breakdown of Qualifying Capital Expenditure		£
		£
		£
		£
		£
		£
	Total Qualifying Capital Expenditure:	£
Unused Grant funding (if applicable)	Details of any Grant underspend and explanation	

CERTIFICATION BY FINANCE OFFICER AND (WHERE APPLICABLE) EXTERNAL AUDITOR

I certify to the best of my knowledge and belief that:

1. The information provided above is correct and provides a true reflection of the Project for the period covered by the Monitoring Report.
2. The Qualifying Capital Expenditure funded by the Grant has not also been funded from other sources.
3. Expenditure for which the Grant has been used consists solely of Qualifying Capital Expenditure.
4. The Grant has been used only for the Purpose, the objectives of the Project, and otherwise in accordance with the terms of the Agreement.

5. Any conditions imposed on or required in accordance with this Agreement and/or related to the objectives of the Project have been met.
6. The Recipient has not received any Grant which has been incorrectly paid to it.

Signature:	
Name (printed):	
Organisation/Position:	
Date:	

SCHEDULE 4 – ADDITIONAL REPORTING REQUIREMENTS

LOCAL AREA BASELINE

The Recipient shall ensure the following information (where applicable) is provided to the Authority on signing of this Agreement:

WHO reports: Data collected from and reported by	Information required	
	DIRECT OUTPUT	OUTCOME
Data from: Suppliers, public sources (such as Ofcom) and Local Bodies/Aggregators Reported by: Local Bodies/Aggregators	<ul style="list-style-type: none"> • SUPPLY: Current broadband market activity(active suppliers where they are and known delivery plans in LA/district or location) • Socio-economic characteristics of the delivery area (LA/district or location): <ul style="list-style-type: none"> ○ Local economic ○ Social and Well Being ○ Public Sector ○ Wider local specific socio-economic narrative • DEMAND: Addressable market in LA/district or location: <ul style="list-style-type: none"> ○ Average and Maximum speeds available, FTTC:FTTP ratio ○ Identify public sector premises and SMEs (possible residential opportunities where relevant) ○ Speed and connection types (tech/quality) 	<ul style="list-style-type: none"> • DEMAND: Subsequent build opportunities <ul style="list-style-type: none"> ○ Opportunity narrative(infrastructure ○ Future build size and scale requirements

REGULAR MANAGEMENT INFORMATION REPORTING

The following information on the Project will need to be collected by Recipients and Suppliers and reported to the Authority. The information enables the LFFN Programme to report against its overall objectives, progress against these and to establish the extent of success of different programme delivery mechanisms.

How programme data/information will be collected on LFFN

There are a number of mechanisms that the Authority will use to collect programme information, not all of these will be the responsibility of the Recipient to provide, but as a minimum many will require the Recipient to be aware of them to ensure the necessary data is built in to arrangements with Suppliers and connection recipients:

BEFORE	<ul style="list-style-type: none"> • Challenge Fund bid content • Contracts and grant fund agreements (including build specifications, site lists, market reviews and local area baselines). • Asset register - where specific assets are delivered or re-used as part of the LFFN Programme (information on asset, (re)use type, subsequent use of asset elements)
DURING	<ul style="list-style-type: none"> • MI and progress reporting • Annual monitoring report (project level),

	<ul style="list-style-type: none"> Some small scale, light touch and targeted survey work with end users/suppliers (undertaken by the Authority)
AFTER	<ul style="list-style-type: none"> Delivery mechanism build finalisation reports and/or end of wave impact and lessons learnt report Contract follow up Full project level summary Local project evaluation Follow up information at a set point up to 5 years post deployment
THROUGHOUT	<ul style="list-style-type: none"> Programme and local level evaluation: baseline and follow up evidence gathering from Suppliers, local bodies and end users of connections.

Data will be collected for a period up to 5 years beyond the build completion date and the programme will maintain an interest in third party build from LFFN enabled infrastructure. Consequently, the Authority will require some further basic information from third party projects resulting from the LFFN funding, such as premises connected/passed. We would require this information to be collected for 5 years post deployment for most delivery methods.

The Authority reserves the right to amend this information requirement and the format in which it is to be collected in consultation with the Recipient. Wherever possible information gathering processes will be facilitated through dedicated, purpose built templates, with guidance, that ensures simple completion.

Reporting template

The Recipient shall report to the Authority by populating the template below (which the Authority may update from time to time on notice to the Recipient) each Quarter during the Term.



Schedule 4 -
Management Informa

SCHEDULE 5 – END USER UPGRADE SITES

1. GENERAL

1.1 The Recipient shall ensure that the End User Upgrade Sites are upgraded to the Required Speeds on or before the Required Date. The costs of such upgrades shall be borne by the Recipient and Grant may not be used for this purpose.

1.2 The Recipient shall provide the Authority with evidence to demonstrate to the reasonable satisfaction of the Authority that the Required Speeds have been achieved.

1.3 In the event that the Required Speeds are not achieved on or before the Required Date in accordance with paragraph 1.2 the Authority may:

1.3.1 require the Recipient to repay Grant within twenty (20) Working Days which shall be calculated as follows:

(actual Grant paid by the Authority under this Agreement / actual no. of End User Sites connected using funding from such Grant) x total no. of End User Upgrade Sites not upgraded to the Required Speeds by the Required Date (or the Extended Date if paragraph 1.3.2(b) applies)

1.3.2 at its sole discretion, provide the Recipient with an Extended Date by which the Required Speeds shall be achieved provided that:

(a) the Recipient shall ensure that the applicable End User Upgrade Sites are upgraded to the Required Speeds by the Extended Date;

(b) in the event that the Required Speeds are not achieved on or before the Extended Date, the Authority may require the Recipient to repay Grant within twenty (20) Working Days which shall be calculated in accordance with paragraph 1.3.1.

2. END USER UPGRADE SITES

No.	End User Upgrade Site	Postcode	Existing Speed	Required Speed