

CUMBRIA COUNTY COUNCIL

LOT 2.2

SCHEDULE 5.1

MILESTONE PAYMENTS AND CLAIMS PROCEDURE

Redacted contract

SCHEDULE 5.1 – MILESTONE PAYMENTS AND CLAIMS PROCEDURE

1. BACKGROUND

This schedule 5.1 sets out:

- 1.1 the method by which Milestone Payments will be calculated;
- 1.2 the claims procedure applicable to Milestone Payments;
- 1.3 certain payment specific record keeping, audit and reporting obligations;
- 1.4 details of eligibility criteria for Eligible Expenditure;
- 1.5 testing procedures applicable to verify the accuracy of the Claimable Outputs; and
- 1.6 the claw-back mechanism applicable to Unsubsidised Qualifying Capital Expenditure.

2. MILESTONE PAYMENTS

2.1 [redacted]

[redacted]

3. FUNDING PROCEDURES

The parties agree to comply with their obligations pursuant to the Funding Procedures as updated by the parties from time to time.

4. MILESTONE PAYMENT CLAIMS

[redacted]

5. PAYMENT CLAIM SUPPORTING DOCUMENTATION

[redacted].

6. PROVISIONAL FINANCIAL CAPS

[redacted].

7. PROJECT ACCOUNTS AND FINANCIAL RECORDS

[redacted]

8. CONTRACTOR AUDIT

The Contractor shall ensure that all public subsidy it receives pursuant to this Agreement is subject to the Contractor's own internal and external audit processes.

9. INVESTMENT RATIOS

[redacted]

10. AUTHORITY TESTING

- 10.1 Testing will be carried by the Contractor in accordance with Annex 5 to schedule 4.1 (Implementation) and a Test Report provided to the Authority with each Milestone Completion Certificate.
- 10.2 The Authority may undertake its own testing ("**Authority Testing**") at any time during the Term to verify Milestone Completion.
- 10.3 Any Authority Testing shall be without prejudice to the Authority's rights and remedies set out elsewhere in this Agreement and the passing of any test shall not relieve the Contractor from complying with its other obligations in this Agreement.
- 10.4 If following any Authority Testing, any inaccuracies are identified in the Claimable Outputs submitted by the Contractor then the Authority shall notify the Contractor.
- 10.5 If following any Authority Testing it is identified that any Claimable Outputs within an phase that the Contractor has submitted as complete does not meet the Service Provider Requirements then the Authority shall be entitled to notify the Contractor.
- 10.6 Following receipt of notice by the Contractor in accordance with paragraph 10.5 above then the Contractor shall promptly, but in any event no later than three (3) Months following such notice, rectify the coverage to ensure that the Milestone is complete..
- 10.7 If the Contractor fails to ensure that a Milestone is complete in accordance with paragraph 10.6 above then for such premises that are not complete the holdback set out in paragraph **Error! Reference source not found.** shall be applied.

11. CLAW-BACK

[redacted]

12. OVER-SUBSIDY CLAW-BACK: CAPITAL EXPENDITURE

[redacted]

13. OVER-SUBSIDY CLAW-BACK: POST IMPLEMENTATION

[redacted]

14. OVER-SUBSIDY CLAW-BACK: ADDITIONAL SERVICES

[redacted]

15. SURVEY ASSUMPTIONS

[redacted]

16. INVESTMENT AMOUNT

[redacted]

APPENDIX 1:

[NOT USED]

Redacted contract

APPENDIX 2: ELIGIBLE EXPENDITURE

PART A: BDUK FUNDING

BDUK Permitted Expenditure and Authority Capital Funding	Expenditure not attracting BDUK and Authority Capital Funding
<p>That expenditure incurred by the Contractor which will attract the capital public subsidy made available by BDUK and the Authority for the purposes of this Agreement.</p> <p>Permitted Expenditure is that Contractor expenditure which (i) can be reasonably allocated or apportioned to this Agreement; (ii) is incurred in accordance with this Agreement; (iii) is directly attributable to bringing the wholesale broadband infrastructure to the Intervention Area and working condition necessary for its intended use; and (iv) is capable of being capitalised under generally accepted accounting practices.</p> <p>In the event that expenditure pertains to broadband infrastructure that might be used to provide services to both "white" and other broadband areas, then the Contractor should apportion that expenditure according to the expected level of consumer take up in the respective areas.</p> <p>[Detailed categories of Contractor Permitted Expenditure:</p> <ul style="list-style-type: none"> • The cost of tangible broadband infrastructure (plant, machinery and equipment) in both active and passive layers) • Infrastructure installation and assembly costs • Cost of active electronics, data transport and backhaul equipment 	<p>The following are examples of expenditure by the Contractor which will not attract the capital public subsidy made available by BDUK and the Authority for the purposes of this Agreement.</p> <p>Contractor expenditure that will not attract the capital public subsidy made available by BDUK and the Authority is any Contractor expenditure which is (i) not incurred in accordance with this Agreement; (ii) not directly attributable to bringing the wholesale broadband infrastructure to the Intervention Area and working condition necessary for its intended use; (iii) cannot be reasonably allocated or apportioned to this Agreement; and/or (iv) is not capable of being capitalised under generally accepted accounting practices.</p> <p>Detailed categories of Contractor expenditure which is considered as not attracting capital public subsidy made available by BDUK nor the Authority for the purposes of this Agreement:</p> <ul style="list-style-type: none"> • Expenditure supported from other government sources or EC structural funds • Operating and maintenance costs of the broadband infrastructure created • Additional costs incurred as a result of Contractor under performance against or in breach of this Agreement • Retail connection costs and Customer Premises Equipment at retail level. • Operating costs of providing broadband services (wholesale or retail) to third parties and consumers

BDUK Permitted Expenditure and Authority Capital Funding	Expenditure not attracting BDUK and Authority Capital Funding
<ul style="list-style-type: none"> • Software and systems (including reporting systems) development costs directly attributable to bringing the broadband infrastructure into use • Staff costs directly attributable to bringing the broadband infrastructure into use • Planning, way-leaves, site investigation and site preparation costs directly attributable to bringing the broadband infrastructure into use • Network termination equipment and Customer Premises Equipment as required to deliver wholesale services • Power connection costs • Borrowing costs (capitalised under IAS 23) which are attributable to bringing the broadband infrastructure into use and where the Authority has a policy of capitalising such costs. • Professional fees directly attributable to bringing the broadband infrastructure into use 	<ul style="list-style-type: none"> • Demand surveys, marketing other sales costs • Corporation tax and non domestic rates • Power and other utility running costs • Costs incurred before the date of this Agreement (including bid costs) • Any cost relating to insurance and insurance policies • Customer acquisition and churn costs • General corporate or unabsorbed overheads • Depreciation, amortisation and impairment of assets • Service and financing costs under finance leases of broadband infrastructure, plant, machinery and equipment • Operating lease rentals • Provisions and contingent liabilities (including for risk related to this Agreement) • Contractor profit mark up, margin or administration charge that is added to the actual bought in costs of goods or services procured from third parties • Administration and general management costs • Dividends • Other interest and financing charges • Costs resulting from the deferral of payments to creditors • Costs involved in winding up a company • Payments for unfair dismissal • Payments into private pension schemes • Payments for un-funded pensions • Compensation for loss of office

BDUK Permitted Expenditure and Authority Capital Funding	Expenditure not attracting BDUK and Authority Capital Funding
	<ul style="list-style-type: none"> • Bad debts arising from loans to employees, proprietors, partners, directors, guarantors, shareholders or a person connected with any of these • Payments for gifts and donations • Payment for entertainment • Input VAT reclaimable by the Contractor • Statutory fines and penalties • Criminal fines and damages • Legal expenses in respect of litigation • Expenditure on works or activities which any person has a statutory duty to undertake • Any liability arising out of negligence • Professional fees not directly attributable to bringing the broadband infrastructure into use

PART B - ERDF PROJECT SPECIFIC ELIGIBLE EXPENDITURE

[Bidder note: the Eligible expenditure should be inserted here as we do not believe annex 2.3 forms part of the contract]

Redacted contract

APPENDIX 3: SURVEY ASSUMPTIONS

Redacted contract

APPENDIX 4: - FUNDING SUMMARY

Funding Source	Maximum Eligible Expenditure
ERDF	£14,007,000
BDUK	£17,100,000
PRG	£4,741,000
Total	£35,848,000

Redacted Contract

APPENDIX 5: FUNDING PROCEDURES

1. INTRODUCTION

This Appendix 5 sets out the approach to certification of Milestone Payments.

Preparatory Work:

- 1.1 This Implementation Plan will be subject to amendment throughout the life of the Project based on expediency, value for money and requirements for geographical coverage from the Authority, as agreed by the parties and set out in schedule 4.1 (Implementation) of the Agreement.
- 1.2 The Authority will determine which postcodes are ERDF Eligible or Fibre Permitted Spend areas to enable the Contractor to collect costs.

2. MILESTONE PAYMENT REQUEST VALUE

[redacted]

APPENDIX 6:

[NOT USED]

Redacted contract

APPENDIX 7: CONTRACTOR ASSETS

1. The Contractor shall maintain a record of Contractor Assets and provide a Milestone Completion Value Certificate with each Milestone Completion Report detailing the Contractor assets added during that Milestone.
2. The Contractor shall ensure that throughout the Term no Contractor Assets of wholesale infrastructure within the Network is physically removed, decommissioned or disabled once it has been deployed if that change will materially and permanently degrade the services received by any end user of the Network without the Authority's prior written consent.

Redacted contract

APPENDIX 8: SCT (SPEED COVERAGE TABLE)

[Redacted]

Redacted contract

Annex 1 - SCT

Redacted contract
