

ATISN 11921 Changes to the contract agreement

KEY CHANGES

Below is the new text for each clause.

Clause 5.3.2

that Broadband Coverage is achieved throughout the Contract Intervention Area by 30th June 2017 and in any event by the Drop Dead Date, as follows:

Clause 5.3.3

For the avoidance of doubt and notwithstanding any other term to the contrary the sole right and remedy for the Welsh Ministers if the Grantee fails to achieve Broadband Coverage at 30th June 2017 and the Drop Dead Date is set out in clause 20 below.

Clause 7.5.2

The Grantee undertakes that it will carry out Implementation Works in Value Zones as follows:

In Financial Year 2013 / 2014, in two (2) Value Zones;

In Financial Year 2014 / 2015, in twenty per cent (20%) of the remaining Value Zones;

In Financial Year 2015 / 2016, in thirty per cent (30%) of the remaining Value Zones

During Financial Year 2016 / 2017 and up to 30 June 2017, in the remaining Value Zones.

Clause 7.6

Annual Implementation Targets:

The Annual Implementation Targets in respect of total Premises Passed for each of Financial Years 2013 / 2014, 2014 / 2015, 2015 / 2016, 2016 / 2017 and 2017 / 2018 are set out in Schedule 2 (Quarterly Targets).

The Annual Implementation Targets in respect of Priority Areas (excluding Value Zones) for Financial Year 2013 / 2014 are set out in Schedule 2 (Quarterly Targets).

The Annual Implementation Targets in respect of Priority Areas (excluding Value Zones) for Financial Years 2014 / 2015, 2015 / 2016, 2016 / 2017 and 2017 / 2018 will be set by the Grantee no later than 31st October 2013, 31st

July 2014, 31st July 2015 and 1st August 2015 respectively (and they shall be recorded in Schedule 2 (Quarterly Targets)).

The Grantee must carry out the Broadband Works in order to meet each of the Annual Implementation Targets by the relevant Completion Target Date. Notwithstanding any other term to the contrary, the sole right and remedy for the Welsh Ministers if the Grantee fails to achieve any Annual Implementation Target is set out in clause **Error! Reference source not found.** below.

Clause 7.7

Quarterly PP Target: The Quarterly PP Targets for the Financial Year 2013 / 2014 are detailed in Schedule 2 (Quarterly Targets). The Grantee may, no later than 30th September 2013, review and amend those Quarterly PP Targets (and Schedule 2 (Quarterly Targets) shall be amended appropriately), provided that the aggregate of the Quarterly PP Targets shall be the same as the Annual Implementation Target for that Financial Year for total Premises Passed as specified by the Grantee under clause 0. Quarterly PP Targets for the Financial Years 2014 / 2015, 2015 / 2016, 2016 / 2017 and 2017 / 2018 will be set by the Grantee no later than 31st October 2013, 31st July 2014, 31st July 2015 and 1st August 2015 respectively (and they shall be recorded in Schedule 2 (Quarterly Targets)), provided that the aggregate of the Quarterly PP Targets in each such Financial Year shall be the same as the Annual Implementation Target for that Financial Year for total Premises Passed as specified by the Grantee under clause 0. Unless changed by agreement between the Parties pursuant to paragraphs 6 and 7 of Schedule 3 (Relationship Management), the Quarterly PP Targets set out in Schedule 2 (Quarterly Targets) are binding on the Grantee. Notwithstanding any other term to the contrary, the sole right and remedy for the Welsh Ministers if the Grantee fails to achieve any Quarterly PP Target is set out in clause **Error! Reference source not found.** below.

Clause 7.15

The Parties acknowledge that the Contract Intervention Area was increased by Change 16 however, the Grantee was not able to survey the new Premises and postcodes set out at tab 2 of Schedule 4 prior to their addition to the Contract Intervention Area. Accordingly, the Parties agree that the mechanism set out in this clause shall apply to a maximum of 2,289 Premises within tab 2 of Schedule 4 (**"New Premises"**):

the Grantee shall conduct field surveys and planning of the New Premises;

the Grantee shall be entitled to charge for the field surveys and planning of the New Premises. The Parties agree that the cost of the field surveys and planning are Eligible Costs (whether the New Premises remain within the Contract Intervention Area or not);

following the field surveys and planning the Grantee will report to the Welsh Ministers on the cost of deployment on a per New Premise basis. If the cost of deployment to any New Premise is above the Premises Cap then the

Parties agree that they will complete a Change in accordance with the Change Control Procedure to remove such New Premises from the Contract Intervention Area by 30 December 2016. For the avoidance of doubt, the Premises Cap Maximum is not relevant to any New Premises removed in accordance with this clause; and

if any New Premises are removed from the Contract Intervention Area by this clause then the Maximum Grant will be reduced by the number of New Premises removed multiplied by the unit rate that is agreed by the Parties and set out in the Financial Model.

Clause 21.2

Maximum Financial Contribution for 90% Broadband Coverage: Under no circumstances will the maximum Financial Contribution (excluding the Financial Contribution for Marketing Activities) payable to the Grantee under this Agreement for achieving Broadband Coverage in not more than ninety per cent (90%) of Premises within the Contract Intervention Area exceed two hundred and fourteen million four hundred thousand pounds (£214,400,000), that figure of ninety per cent (90%) to consist of the following:

Clause 21.3.1 and 21.1.2

Where Broadband Coverage is achieved in less than ninety per cent (90%) of Premises within the Contract Intervention Area, using the formula

$$[(P / 90\% \text{ of the total number of Premises in the Contract Intervention Area}) \times £214.4\text{m}]$$

Where Broadband Coverage is achieved in more than ninety per cent (90%) but less than ninety five per cent (95%) of Premises within the Contract Intervention Area, using the formula

$$[£214.4\text{m} + (P - 90\% \text{ of the total number Premises in the Contract Intervention Area}) / 5\% \text{ of the total number of Premises in the Contract Intervention Area}) \times £8.3\text{m}]$$

Schedule 1

DEFINITIONS AND INTERPRETATION

– DEFINITIONS

Additional Grantee Expenditure	is made up of: (a) Qualifying Capital Expenditure ; and (b) Deployment Operating Expenditure, which has not attracted a Financial Contribution;
---------------------------------------	---

Contract Intervention Area	means the entire dataset consisting of Premises and postcodes set out in Schedule 4 (Contract Intervention Area) in respect of
-----------------------------------	--

which the Grantee is obliged to carry out Broadband Works pursuant to this Agreement. For the avoidance of doubt, the tabs of Schedule 4 (Contract Intervention Area) under the headings “Pre Change 16 Postcodes” and “Post Change 16 Postcodes” list the total Contract Intervention Area and two tabs are used only for the Parties’ ease of reference in distinguishing to which Premises and postcodes were included by Change 16;

**Deployment
Expenditure**

Operating the amount of Grantee incremental expenditure that cannot be capitalised that is incurred and directly attributable to bringing the wholesale access infrastructure to the location and working condition necessary for its intended use including the management of the programme during the Implementation Phase, capped at the amount set out in the standalone SEP Financial Model inserted into the Agreement by CN016 under 'FTTC/FTTP Deployment Opex' and reported in the Financial Model to the extent such Deployment Operating Expenditure is incurred in respect of Premises Passed in accordance with CN016;

Drop Dead Date

means 30th December 2017;

Maximum Grant

means two hundred and twenty four million four hundred thousand pounds (£224.4m);

New Premises

has the meaning set out in clause 7.15;