

## General Conditions

**1. Interpretation** – Unless a different meaning is reasonably otherwise required, words phrases and expressions will have the meanings given them either below or as defined elsewhere in the Contract. In the event of any inconsistency between these General Conditions and any plan or other document that forms part of the Contract, these General Conditions will prevail except to the extent that an alternative intention is expressly indicated. The expressions “You”, “Your” (whether capitalised or not), “Client” or “CL” means the entity named on the Project Form as the Client (whether you are a developer, a contractor of a developer (including an Infrastructure Provider (“IP”)), a housing association, local authority or another entity). The expressions “We”, “Our”, “Ourselves” (whether capitalised or not) or “NWO” means the network operator named on the Project Form as the Network Operator. Those expressions will have that meaning even where any document is signed by or on behalf of any affiliate of NWO. “Upstream Network Operators” means any operator of a Network, which is not named as a Party on the Project Form. “Network” means the transmission system and, where applicable, switching or routing equipment and other resources which permit the conveyance of signals by wire, by radio, by optical or by electromagnetic means including satellite networks, hybrid fibre coax networks, next generation access networks, fixed and mobile terrestrial networks and integrated reception systems as the case may be and which is designed or installed so that either one or alternatively several buildings can be connected to it. “Next Generation Access Network” or “NGAN” means a packet based Network able to provide services including telecommunication services and able to make use of multiple broadband, quality of service or “QoS” enabled transport technologies and in which service related functions are independent from underlying transport-related technologies. “Integrated Reception System” or “IRS” means a system that provides broadcast signals from multiple sources (typically terrestrial television – both analogue and digital, FM radio, DAB digital radio and satellite television) to multiple outlets, via a single aerial cluster, signal booster-distributor electronics and cabling. Except to the extent agreed otherwise in the Contract, in either case the Network includes any and all cables, ducting, fittings, aerial masts (“Installation Materials”) and all active electronics and optical network termination devices (where necessary) and other ancillary plant and equipment (“Equipment”) constructed or to be constructed pursuant to the Contract. The expression “Party” means either or both of you and ourselves. In all those cases cognate expressions will be interpreted accordingly. A “Related Person” of a Party is all and any of its Holding or Subsidiary companies as defined in the Companies Acts, any co-ventures, assignees and successors, all of any directors, officers, servants, or contractors (not being the other Party) of any of those, together with the Related Persons of any of those entities. “Reference Price” means the price, if any, determined by Ofcom (or any successor in whole or in part) as the price for any electronic communication services provided by NWO. Subject to the other provisions of the Contract a reference to the Contract or to any Statute, means the Contract as varied according to its provisions and the Statute as modified, varied, re-enacted, amended or consolidated. “Statute” is an Act of Parliament including Acts of the Scottish Parliament. It also includes any regulations, statutory orders or codes of practice made under it, any Ofcom authorisation, appointment or other relevant authorisation or conditions. It also includes any European Union directives or regulations. The headings are for convenience and do not affect interpretation. Unless the context requires a different meaning, words of inclusion are without limitation and any reference in the Contract to the plural includes the singular and vice versa.

**2. Performance** – “Client Works” means the works indicated in the Contract as being your responsibility. “NWO Works” means the works indicated in the Contract as being our responsibility. “Works” means each of the Client Works and the NWO Works together. The Client in respect of the Client Works, and NWO in respect of the NWO Works, warrants and represents that it has obtained or will obtain all the permissions, consents, licences appointments and/or authorisations necessary (the “Relevant Consents”) to do so before commencing their respective part of the Works. You warrant and represent that you have complied and will comply with the terms of each of the Relevant Consents. Each Party must perform its respective Works according to the timetable in the Programme of Works (if any). Without affecting its obligation to perform, each Party may procure performance through the use of contractors or IP. As a condition of the appointment by the Client of any contractor or IP in relation to the Client Works, the Client shall procure a collateral warranty from such party for the benefit of and enforceable by the NWO on the terms set out on our website at the URL web site address specified in the Project Form. We may require you or any contractors of yours to demonstrate prior suitability according to the requirements of any technical standards we may supply. You must send us any maps, items or certificates that we reasonably require. You will also provide us with a suitable storage compound and other temporary items or facilities we require. Where through no fault of the NWO, construction of buildings at a Project has been delayed by more than 180 days from the date the Project was accepted under the Project Acceptance Form, the NWO shall have the right, at any time after the delay, to terminate all or any part of the Contract without liability and the Client shall repay to NWO on demand any Contribution to Works paid by NWO or its representatives. The right shall only be exercised if the NWO gives written notice to this effect to the Client.

**3. Access and Obstructions etc.** – You must ensure that each Network Operator and any Upstream Network Operator together with our and their contractors are from time to time granted reasonable access within the Project.

Access will be to carry out and complete the NWO Works and to enable our and their statutory rights or obligations to be carried out. You agree to ensure that any transfer in fee simple or any easements, servitudes, leases or other interest in or right over land or the transfer thereof (all of which are referred to in this Contract as "Wayleaves") which we or they require from anyone, including yourself, who has or obtains any interest in any land which will contain part or all of the network (a "Land Owner") are granted free of charge upon request. You must also ensure that neither you nor your Related Persons nor any Land Owner damages, interferes with nor obstructs the construction, operation, maintenance or connection of any Network including so much of it as is completed at any time. You must make arrangements with such Land Owners (in a form satisfactory to us), which reflect all of the above obligations in this clause. We will ensure that neither ourselves nor our Related Persons damage, interfere with nor obstruct the construction of those buildings which are shown on the Development Plan. If the Client delays or prevents the carrying out by NWO of the NWO Works then the Client shall reimburse NWO for any loss and expense reasonably incurred which could have been avoided had the Client not so delayed or prevented NWO carrying out the NWO Works.

**4. Technical Standards, Warranties and Design** – You warrant that the Client Works (including any Equipment and/or Installation Materials you provide and which are intended to be part of the Network) meet the applicable Technical Standards (including the most recent design plan or specifications provided by us, our contractors or consultants as the case may be, if any). To the extent expressly incorporated these Standards will include the designs and/or standards required by the Upstream Network Operator (if any). By entering into this Contract, you warrant that any design prepared by you or any contractor, consultant or IP on your behalf or which is based upon any information provided in the Client Enquiry Form shall be fit for its intended purpose. In any event you must carry out the Client Works (other than the design thereof) to the standard of a reasonable and prudent operator (as defined in clause 10) and in accordance with all relevant Statutes, industry standards and codes of practice. Where more than one standard applies to the performance of the Works you will apply the highest standard. Where you provide Equipment and/or Installation Materials pursuant to the Contract the Equipment and Installation Materials Warranty in Part C of the Technical Standards Form will apply as updated or amended from time to time. You agree to be bound by those obligations. You agree that the benefit of Part C will inure to whichever entity acquires ownership of the Network as described below. Subject to other provisions of the Contract, the Client will be deemed to have designed any Network constructed as a result of or pursuant to the Contract. Where the designs or standards of the NWO or Upstream Network Operator have been incorporated into the Contract you agree that they will be deemed to have designed that part of the Network to which the designs or standards relate.

**5. Payments** – Where the duration of the Works is expected to exceed 45 days then either Party to whom payment is due shall be entitled to payment in instalments in the amounts and at the intervals as set out in the Continuation Form annexed to the Project Form. In relation to any given payment, the final date for payment shall be the date set out in the Project Form, or if no such date is specified the date specified in the relevant invoice, such date being not less than 14 days after the invoice date (the "Final Date for Payment"). For the purpose of the Housing Grants, Construction and Regeneration Act 1996 ("HGCRA") the due date for payment shall be the date falling 14 days before the relevant Final Date for Payment (the "Due Date for Payment"). Not later than 5 days after the Due Date for Payment, the party making payment shall give notice to the other specifying the amount (if any) of the payment made or proposed to be made, and the basis on which that amount was calculated (the "Payment Notice"). Neither Party may withhold payment from the other after the Final Date for Payment of a sum due under the Contract unless such Party gives a notice of intention to withhold payment not less than two days before the Final Date for Payment specifying (a) the amount to be withheld and the ground for withholding payment; or (b) if there is more than one ground, each ground and the amount attributable to it (a "Withholding Notice"). A Payment Notice may also serve as a Withholding Notice provided it complies with the requirement for a Withholding Notice as set out in this clause 5. Where a sum due under this Contract is not paid in full by the Final Date for Payment and no effective Withholding Notice has been given, the Party to whom the sum is due has the right (without prejudice to any other right or remedy) to suspend performance of his obligations under the Contract. The right may not be exercised without first giving to the other Party at least seven days' notice of intention to suspend performance, stating the ground or grounds on which it is intended to suspend performance. The right to suspend performance ceases when the Party in default makes payment in full of the amount due.

**6. Ownership and Operation of the Network** – Where a Network has been or is being installed by another person as a result of or pursuant to the Contract you will not at any time own or claim the right to own or operate it or any part of it. Without affecting NWO's obligation to make any payment for the same, the Network (or so much of it as is installed at any one time) will at all times instead legally and beneficially belong exclusively to the NWO. Where the Network or any part does not already belong to NWO, ownership will pass to it in the manner and at the times specified under any adoption agreement ("Adoption Agreement") which either NWO or its affiliate has or may have with the original owner. Ownership will pass free of any lien, encumbrance or defect in title. You must ensure that any sale or transfer of land or any other interest created therein within the Project (a "Land Sale") is subject to whichever of the above

ownership agreements apply. The Contract requires the Client to ensure that all buildings to be connected to the Network are actually connected. You are also required to ensure that any buildings that are to be connected to the Network are constructed so as to accommodate (and are in fact constructed and/or equipped with) such Installation Materials and Equipment as may be necessary to allow the Network to serve those premises once it has been connected to them. Where a Land Sale takes place, and unless NWO requires otherwise, the Client agrees to pass on these obligations to any future owner of the Land which is the subject of the Land Sale. The Client agrees to take all those steps (at its own cost) required of it by NWO to give effect to this clause.

**7. Liability** – Except for the obligation of a Party to pay any sum or indemnity expressly due under or arising in connection with the Contract (including under any Price Policy) neither Party will be liable to the other for any Excluded Loss suffered or incurred by the other Party. This applies whether or not such loss was foreseeable at the date of the Contract. It applies irrespective of whether such loss was caused by delict, negligence or any other tortious act or omission or by breach of the Contract. To the maximum extent allowed by law any liabilities and/or obligations of NWO (after it begins to operate the Network) will be governed by Statute and will not be affected by the Contract. "Excluded Loss" means any loss of use, revenue, or property sale or increased cost of working or any indirect or special loss however caused, arising out of or in connection with the Contract.

**8. Information and Confidentiality** – You must provide us with any information we reasonably ask for from time to time so that the Contract can be performed. Details of the Contract or any prior negotiations must be kept confidential by you even if any part of the Contract is rescinded or otherwise terminated. This obligation does not apply to the extent that any are or come into the public domain other than through breach of the Contract except where specified otherwise. Provided they are not a direct competitor of ours or of any of our Related Persons, disclosure may be made to your Holding or Subsidiary Company's professional advisers, consultants, contractors and to the extent properly needed to perform the Contract, to sell any buildings in the Project or to any person to the extent required by law. Such disclosure must be to the minimum level needed for the purpose for which it is disclosed and must make the recipient subject to the same restrictions.

**9. Entire Agreement, Variation, Additional Payments** – In relation to the Project, this Contract represents the entire agreement between us and supersedes any previous correspondence or anything previously said, done, agreed or implied which adds to or conflicts with it. Purchase Order terms or invoice terms and conditions (however named) are excluded from the Contract. If made before the Contract becomes binding on each of us, any additional Special Requirements or any prior variations to either the Technical Standards or any other document which is intended to form part of the Contract will not be valid unless referred to on the signed Project Form or Continuation Form. This Contract annuls, supersedes and subsumes any prior arrangement or agreement including any enabling or other early works agreement which for the avoidance of doubt shall be governed by this Contract as if such works had been instructed hereunder. The occurrence of or subsequent variation to any of the items referred to in our Price Policy will be a deemed variation and which will take effect for all Works to the extent not yet performed as at the date that the Price Policy was placed on our website (or the website of whichever of our affiliates we have nominated to administer the Contract) as specified in the Project Form. No variation of any other part of the Contract will be effective after it has become binding unless it is contained in a Variation Form. This must be countersigned except where provided for otherwise in the Contract. Such prior or subsequent variations will in any case be ineffective to vary the provisions dealing with Excluded Loss. The words "vary" and "variations" consist of any changes, occurrences, modifications, additions, deletions or replacements. The whole of this clause 9 is subject to the following provisions: In calculating the existence/level of the contribution (the "Price") from either Party, NWO has made assumptions about the income it expects to earn for particular activities. The activities are; connecting buildings to the Network and within the Project and (where covered by the Contract) providing, installing and operating any / all of the following: optical network termination devices, active communication electronics, cable, ducting and all associated fittings. So as to maintain its assumed income for the Project the Parties agree that the NWO may increase or decrease the Price (a) if between the date of the Contract and the connection being made the regulator (if any) changes the income allowable on any/all of the activities, or (b) if the total income for the Project is reduced owing to the publication of a Reference Price for an activity (or owing to any change to a Reference Price) assuming that such a Reference Price exists or applies and the Client shall pay the amount of such adjustment to the Price to NWO in accordance with clause 5. In re-calculating the contribution we confirm that the investment criteria will remain unchanged and that the increase or decrease will only reflect the above mentioned changes in income. This paragraph will not affect the validity of the shortfall provisions in the Contract (if any).

**10. Force Majeure** – If either Party cannot comply with the Contract for any reason beyond their control ("Force Majeure") this will not be a breach of the Contract provided the affected Party has notified the other of the non-compliance as soon as reasonably possible and to the extent that they are acting and have acted as a reasonable and prudent operator at all material times. The notifying Party must have and be exercising the skill and diligence to be

expected of an entity involved in the general activities of that entity. The obligations of the notifying Party will be suspended until those circumstances have ceased. If those circumstances last more than 90 days the Party to whom notice has been given may rescind the Contract but only for any outstanding Works which have been affected by the Force Majeure. A Party claiming the benefit of this clause must, on request, provide a report containing all relevant information relating to the Force Majeure. This clause will not apply to any obligation to pay money or send notices. A "reasonable and prudent operator" is a competent operator experienced in providing works and services of the nature, size, scale and complexity of those to be provided by NWA pursuant to this agreement in accordance with internationally accepted standards and best practice, acting in good faith and intending to perform its contractual obligations even if it is uneconomic to do so.

**11. Intellectual Property** – Unless agreed otherwise in the Contract all trademarks, designs, registered designs, know-how, inventions, patents and valuable concepts ("Intellectual Property") created in performing the Works either by the Client (or its contractors) or by or on behalf of NWO will be deemed to belong to the entity having ownership of the Network as provided for in clause 6. Where the Client owns any Intellectual Property this will pass to NWO at the time that title to the Network or any part to which the Intellectual Property relates passes from the Client in accordance with that clause. Subject to any prior rights, copyright on those documents that make up the Contract will belong exclusively to NWO. The Client agrees to take all those steps (at its own cost) required of it by NWO to give effect to this clause. Where this clause requires the Client to make any trade mark or design right registration or patent application or to take any enforcement steps to protect NWO Intellectual Property, the Client shall do so upon the reasonable request of NWO and at NWO's cost.

**12. General** – No delay by either Party in exercising any right under the Contract will operate as a waiver. These General Conditions may be revised from time to time for further Projects in the course of NWO's business. The Parties agree that this Contract and the terms and conditions thereof are reasonable. If any part is held invalid by a court or body of competent jurisdiction however, the Parties will (in good faith) within a reasonable time agree changes as similar to the deleted parts as the law allows. All notices must be in writing to the latest address we have provided to each other and will be ineffective to vary the Contract. Any which relate to rescission, termination or liability must be sent to your registered office and, for ourselves, to our registered office as shown in the Contract. All such notices will be deemed delivered at the time of delivery (if personally delivered) as confirmed by an acknowledgement of receipt given at that time, 3 days after posting (if posted by first class mail or by recorded delivery), or the time of transmission (if faxed as confirmed by a fax confirmation receipt, or if e-mailed). Where contributions are due to the Client under the Contract any notice from the Client relating to the contributions must be accompanied by a valid invoice. Unless agreed otherwise in the Contract neither Party will assign the Contract or any benefit or interest arising from it without the prior written consent of the other Party. Both Parties agree that such consent will not be unreasonably withheld or unreasonably delayed. An assignment (or in Scotland an assignation) in whole or in part by ourselves to a Related Party or to any Upstream Network Operators will not require consent. Alternatively if we require on reasonable notice you must enter into a novation of the Contract (or any part) in favour of whichever Upstream Network Operator we nominate. The Contract will be construed in accordance with and governed by the law of England and Wales and the Parties submit to the jurisdiction of the Courts of England and Wales. If the Project is situated in Scotland Scottish Law (without regard to its conflict of laws principles) will apply and the Parties submit to the non-exclusive jurisdiction of the Scottish Courts.

**13. Dispute Resolution** – Either Party shall have the right to refer any dispute arising under this Contract for adjudication in accordance with the provisions of the Scheme for Construction Contracts (as defined in the HGCRA). The decision of the adjudicator shall be binding until the dispute is finally determined by legal proceedings or by agreement. The parties may accept the decision of the adjudicator as finally determining the dispute. The adjudicator shall not be liable for anything done or omitted in the discharge or purported discharge of his functions as adjudicator unless the act or omission is in bad faith.

**14. Exclusion of Third Party Rights** – Unless expressly stated to the contrary, no term of this Contract is enforceable, whether under the Contracts (Rights of Third Parties) Act 1999 or otherwise, by a person who is not named as a Party to it.