

APPENDIX 1

[CONTRACTOR'S TERMS AND CONDITIONS TO BE ATTACHED]



Network Connection Agreement Number XX-XXX-XX

For the provision of a Dark Fibre Cable Network for XXX

This Agreement dated XX/XX 2018 is made between:

- (1) Concept Solutions People Limited of The Pinnacle, 67 Albion Street, Leeds, LS1 5AA, (hereinafter called "CSP"); and
- (2) XXXXX (hereinafter called "the Client").

(All parties collectively referred to as the Parties and individually "Party")

WHEREAS:

- (A) CSP is a telecommunications operator who owns and operates fibre optic infrastructure in the United Kingdom
- (B) The Client is user of a Dark Fibre Network
- (C) CSP is providing The Client a Dark Fibre Infrastructure for [set out network use] together with maintenance services all of which forms part of its fibre optic network infrastructure for The Client to provide telecommunications services to its client.

NOW IT IS AGREED as follows:

TERMS AND CONDITIONS

DEFINITIONS

- o In this Agreement the following words and expressions shall, unless the context otherwise requires, have the following meanings:

"Acceptance Date" means the date on which the Acceptance Notice has been issued.

"Acceptance Notice" means the notice issued by The Client to CSP that confirms and acknowledges that the Fibre satisfies the Acceptance Tests and complies with the Specification, in accordance with schedules 1 and 3.

"Acceptance Tests" means the acceptance tests on the Fibre conducted by CSP in accordance with the acceptance procedures set out in Schedule 3

"Agreement" means this agreement, including all Schedules, which becomes effective on the date of signature by both Parties (where this varies the later date will be used as the effective date).

"Build Start Date" means the soonest date following receipt by CSP of all notices and licenses and permits of any description from all competent authorities required to install the Network and on which it is reasonably practical to commence installation of the Network

"Charges" means the charges to be paid by The Client to CSP for the Network as identified in Schedule 2;

"Completion Certificate" means the notification issued by CSP to The Client after completion of the Acceptance Tests in respect of each Link. The Completion Certificate will form part of the Service Handover Document as defined in Schedule 3.

"Completion Date" means the date by which all of the Links comprising the Network shall have Acceptance Notices from the Client to CSP.

"Confidential Information" means confidential information (whether oral or written and including without limitation all trade secrets, know-how or other information marked as confidential or which is by its nature confidential including, designs, drawings, specifications, data, diagrams, expertise, techniques, financial models or project requirements) concerning the business and/or affairs of a party ("Disclosing Party") disclosed by the Disclosing Party to the other party ("Receiving Party") or otherwise obtained by the Receiving Party pursuant to the terms of this Agreement;

"Connection Points" means the connection points set out in the Schedule 1;

"Contract Date" means the date of this contract

"CSP Equipment" means any equipment installed by CSP at a Client Premises or Third Party Premises in order to provide the Network as specified in Schedule 2,

"Client Apparatus" means any apparatus situated at Client Premises or any other Third Party Premises, not being CSP Equipment, and used by The Client alone or in conjunction with the CSP Equipment in order to access the Network;

"Client Premises" means any premises owned or directly managed by the Client at which the Connection Points are located;

"Due Date" means the period within which any invoice received by The Client from CSP should be paid. The Due Date will be taken from the date of issue of an invoice by CSP to the time interval specified for payment in Schedule 2.

"Event of Force Majeure" means any cause beyond any Party's reasonable control affecting the performance of its obligations hereunder, including, but not limited to, war, acts of terrorism, governmental requirements, acts of local or central Government or other competent authorities, Acts of God and industrial disputes (other than industrial disputes by the relevant Party's employees). For the avoidance of doubt, the failure or delay of any obligations of any subcontractor will not be deemed to be beyond the reasonable control of a Party unless the delay or failure is a result of an event beyond the reasonable control of the subcontractor;

"Funder" shall mean a Financial Third Party which has made a loan to The Client for this asset and which shall at all times be entitled to notify CSP that it has been assigned the benefits and burdens under this contract as though it were The Client and which shall be entitled to make payments due under this contract as though it were The Client.

"Hub Site" means that connection point at which all Links connect to a wider Third Party network for data communication

"Late Delivery" means a Link comprising the Network not being ready for the Acceptance Tests to be carried out by the Target Completion Date, time not being the essence of this Agreement;

"Link" means that part of the Network connecting a Connection Point to the Hub Site.

"Network" means the network to be installed by CSP between the Connection Points, comprising the sub duct, fibre cable and the CSP Equipment specified in the Schedule 1

"Ready for Use Date" means the date by which a Link has been certified by The Client as having satisfied the Acceptance Tests and The Client has provided the respective Acceptance Notice to CSP.

"Rejection Notice" means the notice issued by The Client to CSP rejecting the Completion Certificate specifying any respects in which the Link does not meet the Specification, , in accordance with clause 2 and Schedules 1 and 3.

"Schedule" means the schedules to this Agreement;

"Specifications" means the technical and operational specifications for the Dark Fibre solution as set out and referenced in Schedule 1 and Schedule 3.

"Target Completion Date" means the date [XX] weeks after the Build Start Date

"Term" means the period that CSP shall provide the Network for the use and benefit of The Client , being the period specified as such in the Schedule 2 (and any extensions thereto) and commencing on the Completion Date other than Links that are specified in an Request for Change Notice. .

"Third Party" means any person either natural or unnatural who may affect the installation of the Network other than employees, agents, contractors or subcontractors engaged by CSP.

"Third Party Premises" means any premises owned or directly managed by a Third Party at which the Connection Points are located;

"Working Day" means Mondays through Fridays except where such days have been designated as a public holiday by the respective country.

- The headings in this Agreement are for ease of reference only and shall not affect the construction or interpretation of this Agreement.
- Reference to any Law shall be deemed to include any amendment, replacement or re-enactment thereof for the time being in force.
- In this Agreement, unless the context otherwise requires words importing the singular number include the plural and vice versa, words importing a gender shall include all genders and words importing persons shall include unincorporated associations and partnerships and any entity with legal standing.
- In this Agreement any reference to a numbered Clause is a reference to a Clause herein of that number.
- CSP shall be responsible for obtaining and maintaining for the Term of this Agreement (at their own expense as applicable) all wayleaves, consents, approvals, servitudes and rights of way necessary for the installation of the Network up to and within the Connection Points. Wayleaves and approvals for access to Third Party Premises in which Connection Points are located will be the responsibility of The Client or its Client.
- In the event that The Client requires additions or changes to the Network then The Client will issue a Request for Change ("RFC") Notice to CSP specifying all details of the required changes. CSP will provide a fixed price proposal to The Client setting out: the fixed price to be paid in full on completion of the changes set out in the RFC Notice; any additional Annual Rental charges and a timetable for completion of the work. If the fixed price proposal and other terms are acceptable to The Client these will be included in a "Final RFC Notice" issued by The Client to CSP which will be subject to the terms of this Contract.

- **INSTALLATION OF THE NETWORK**

- Subject to The Client performing and continuing to perform its obligations under the Agreement, CSP shall install and allow The Client and/or the Client to use each Link for the period from its Ready for Use Date for the duration of the Term (and any extension thereto) in accordance with the terms of the Agreement.
- CSP shall use all reasonable endeavors to install the Network by the Target Completion Date, but CSP shall not be liable to The Client for any losses it may sustain as a result of any failure or delay in the installation of the Network.
- The Client shall ensure that the Client at its own expense, and in sufficient time to facilitate completion of the installation of the Network as reasonably requested by CSP, suitably prepare their Premises for installation of the Network providing all reasonable requirements of CSP (if any), including electrical and other connections, fittings and facilities which are necessary to operate the Network or which are otherwise required by CSP from time to time. All CSP requirements in respect of the Client's Premises will be notified to The Client in writing at least 2 weeks in advance of CSP's required date.
- CSP will provide the CSP Equipment at each Connection Point. The Client shall be responsible for ensuring that sufficient space is available within each data communications equipment cabinet to allow the installation of the CSP Equipment or sufficient working area to install the CSP Equipment at each Connection Point.
- The Client agrees to obtain permission from the Client or other Third Parties as required to allow CSP and its servants, agents and employees access to Client's or Third Party's Premises to install the Network.
- CSP shall ensure that the date in respect of the Acceptance Test of each Link is notified to The Client 10 working days in advance of the Acceptance Tests being carried out. The Client and the Client shall be entitled to verify the Acceptance Tests by attending the Acceptance Tests and observing the results obtained by CSP.
- On completion of the Acceptance Tests in respect of the each Link, CSP shall deliver to The Client a Completion Certificate and other Service Handover Documents as identified in Schedule 3.

- The Client shall within 2 Working Days following the date of the Completion Certificate provide an Acceptance Certificate to CSP unless the Acceptance Tests can be shown to be subject to material deviation or noncompliance with the specification:

- § If a Link is shown to have any material deviation or non-compliance with the Specification The Client shall notify CSP within 2 Working days of the Link failure and providing CSP with the results of the testing conducted, surveys completed or observations made evidencing such material deviation or non-compliance in a Rejection Notice,.

- In the event that The Client shall provide a Rejection Notice for a Link then CSP agrees to perform such rectification works as is reasonably required to ensure that the Link meets the required Specification. These works will be performed as soon as is reasonably practicable, but, subject to Clause 10.1, in no event later than within five (5) Working Days of receipt of such Rejection Notice. Upon completion of such works and resulting Acceptance Tests, the provisions of Clauses 2.6, 2.7, 2.8 and 2.9 shall again apply.

- In the event that CSP fails to complete the rectification works and issue a new Completion Certificate for each Link within the 5 Working Days period or where The Client or the Client have served three (3) Rejection Notices in respect of a Link, The Client shall be entitled either to;

- § Require CSP to reinstate a Link in its entirety or

- § Terminate that part of the Agreement in respect of such rejected Link and CSP shall reduce all sums payable under this contract in proportion to the number of Links rejected compared with the total number of Links specified in this Contract.

- In the event that The Client shall fail within the timescale set out in Clause 2.8 to deliver an Acceptance Notice or a Rejection Notice to CSP, The Client shall be deemed to have accepted the Link on the 5th Working Day after the date of the Completion Certificate.

- **WARRANTIES**

- CSP will install the Network with reasonable care and skill.

- CSP has and will for the duration of this contract have all necessary licenses, consents and authorisations or rights as may be provided for under any relevant legislation, regulations or administrative orders to enter into and perform this contract.

- CSP shall until [end date for service agreement] be bound by the Maintenance Service Level Agreement set out at Schedule 4.

- **CHARGES**

- The Client shall pay the Charges and all other sums payable and to become payable under this Agreement to CSP on the Due Dates for payment set out in Schedule 2, without any deduction, withholding, counterclaim or set-off whatsoever save as expressly provided in this agreement or where agreed separately in writing between the parties.

- CSP shall render invoices to The Client at intervals in accordance with Schedule 2 at the address specified in Schedule 2 or other such address as notified by The Client from time to time. Payment of the Charges shall be made by The Client on the Due Date.

- If any amount payable by The Client remains unpaid after the Due Date, except for those amounts disputed by The Client, then CSP shall be entitled to charge interest (whether before or after judgment) at the annual rate of

4% above the base lending rate of The Royal Bank of Scotland plc for the time being until payment of such amount and all accrued interest in full.

- If The Client disputes any portion of an invoice, then The Client must pay the undisputed portion of the invoice without counterclaim or set off in accordance with this clause and submit written notice of the disputed amount (including all details reasonably requested by CSP) for the disputed amount. In the event that the dispute is resolved against The Client, The Client shall pay such amounts plus interest at the rate referenced in clause 4.3.
- If CSP carries out work in response to a fault in the Network reported by The Client and following such work CSP determines that there is no fault found in the Network or the fault was due to the negligence or an act or omission of The Client, then CSP shall be entitled to charge The Client for the reasonable costs incurred in carrying out such works.
- The Client shall not be entitled to any reduction in any of the Charges in the event that it does not use all or any part of the Network.
- All amounts payable by The Client are stated exclusive of Value Added Tax and The Client shall pay in addition any Value Added Tax applicable thereto from time to time.
- CSP does not provide any maintenance or other services in respect of any Client Apparatus;
- Should The Client fail to make any payment under this agreement but such payment is made by the Funder then this agreement will continue with full force and effect and the word The Client will be replaced by Funder in the entirety of this contract provided that the Funder shall enter into an agreement with CSP to novate this contract on the same terms as The Client;

- **CLIENT OBLIGATIONS**

- In order to allow CSP to carry out its obligations under this Agreement, The Client shall ensure that at all reasonable times and on reasonable notice provide CSP employees and subcontractors with access to any appropriate areas within, and externally leading into the Client's Premises or Third Party Premises.
- The Client shall be responsible for acquiring from any Third Parties all required permits, authorizations, and other agreements or rights which are necessary to construct, install and keep installed, and maintain the Network in respect of any Third Party Premises.
- The Client shall indemnify and hold harmless CSP in respect of any loss, damage, liability, cost and/or expense suffered or incurred by CSP as a result of any of the following: (i) The Client's breach of this Agreement, (iii) operation or break down of any equipment or software owned or used by The Client including without limitation Client Apparatus but not the Network; (iv) The Client's inappropriate or unauthorised use or misuse of the Network; (v) The Client infringing (whether innocently or knowingly) any Third Party rights of any type.
- The Client agrees that it shall:
 - § immediately notify CSP if it becomes aware of any unauthorised use of all or any part of the Network;
 - § not knowingly use the Network or allow it to be used for any unlawful purpose;
 - § ensure that it has all necessary consents, permissions and licenses to make use of the Client Apparatus and the Network including without limit any registration required under the Data Protection Act 1998;
 - § be entirely liable for all data transferred from time to time using the Network whether authorised by it or not and The Client acknowledges that CSP shall not be liable for the content of any such data, any loss of the same nor for the confidentiality of such data;

- **CSP OBLIGATIONS**

- CSP shall, at its own expense, obtain (prior to the commencement of the Term), maintain and if necessary renew, for and during the Term, all required licenses, permits, authorizations, and other agreements or rights which are necessary to construct, install and keep installed, and maintain the Network to the Connection Points in the public highway.
- CSP undertakes that for the duration of this contract, it will be adequately insured against employee misfeasance, accident, third party injury, defective products, fire and other risks normally covered by insurance by persons carrying on telecommunications services performing all of its obligations under this contract. CSP will produce to The Client, at its reasonable request, satisfactory evidence of the insurance arrangements.
- CSP will as soon as reasonably practicable upon becoming aware notify The Client of any unauthorised use of all or any part of the Network
- CSP will, following any damage to the Network caused by a Third Party, use all reasonable endeavors to repair any such damage as soon as reasonably practical after becoming aware of the same so that the Network is made functional, although not necessarily within Specification. The Network will be repaired to Specification as soon as reasonably practical following this repair. The reasonable costs of such repairs will be invoiced by CSP and will become payable on the Due Date following the invoice. CSP will provide all reasonable assistance to The Client, to recover the costs and damages caused by the action of a Third Party as The Client or its advisers shall reasonably require.

- **THE NETWORK**

- The Client shall be responsible for all loss, damage or destruction to the equipment and/or the Network situated on Client Premises or Third Party Premises, other than where such loss, damage or destruction is as a result of any act or omission of CSP.
- The Client shall:
 - § Not alter, adjust or interfere in any way with any part of the Network unless CSP has given its prior written consent for The Client such consent not to be unreasonably withheld or delayed. The Client and/or the Client shall be entitled to alter, adjust or interfere with the Network only to the extent absolutely necessary in the case of emergency provided that The Client advises CSP forthwith thereafter of the emergency, the action taken and circumstances requiring it. The Client shall indemnify and hold CSP harmless against any loss, damage, liability, cost and/or expense CSP may suffer or incur due to such Client action; and
 - § permit CSP to enter onto the appropriate areas within Client Premises and Third Party Premises and to have free and safe access to the appropriate areas within those premises in order to provide, install, test, operate, inspect, repair, remove and ensure the security of the Network. Subject at all times that CSP shall provide reasonable notice of such requirements to The Client.
- Ownership of the Network shall pass to The Client absolutely on the expiry of the Term provided that The Client has made all of the payments due under this contract.

- **INFORMATION AND CLIENT APPARATUS**

- The Client shall provide CSP with information concerning the specifications of any Client Apparatus and any other information CSP reasonably requires in order to carry out its obligations under this Agreement.
- The Client shall be responsible for ensuring compliance with all statutes and other regulatory requirements relating to The Client Apparatus and for obtaining all consents, approvals, servitudes, rights of way and other

similar rights in relation to Client's Premises or Third Party Premises which are required for the purpose of installing the Network and connecting the same to The Client/Client Apparatus.

- **LIABILITY**

- CSP liability in contract tort or otherwise (including liability for negligence) under or in connection with this Agreement is limited to the Total Value of the Contract payable under this Agreement.
- Nothing in this Agreement shall exclude or limit the liability of either party for death or personal injury arising as a result of that party's negligence for fraud or fraudulent misrepresentation or for any other loss or damage the exclusion or limitation of which is prohibited by law.
- Subject to clause 9.2, neither party shall be liable to the other in any circumstances for any loss of revenue, loss of profit, loss of confidentiality, loss of use, loss of contract or loss of goodwill or any indirect or consequential loss including without prejudice to the generality of the foregoing loss or corruption of data transmitted over the Client network.
- CSP shall have no liability to The Client for the loss of any data transferred via the Network or for the late arrival or non-arrival of any such data.

- **FORCE MAJEURE**

- Neither party shall be liable to the other for any breach of its obligations under this Agreement or for any delay in performance of its obligations to the extent that such breach or delay is caused by an Event of Force Majeure. If either party is affected by an Event of Force Majeure it shall notify the other party and shall use reasonable endeavours to minimise the effects.
- The Client will not be liable to CSP for payment of fees for Annual maintenance services, during the period of any Event of Force Majeure.
- If a Party (the "affected Party") has ceased to perform its obligations under this Agreement as a result of an Event of Force Majeure for a period greater than forty five (45) days, the other Party may terminate this Agreement immediately, as of right, by giving the affected Party notice in writing to that effect.

- **TERMINATION AND SUSPENSION**

- Without prejudice to any other, the rights and remedies of CSP and The Client under the Agreement either party may terminate any Agreement forthwith by notice in writing to the other in the event that:-
 - § the other party is in material breach of the Agreement (including any failure to pay any sum due hereunder) and (in the case of a breach which is capable of remedy) fails to remedy the breach within 30 days of receiving notice of that breach from the other party; or
 - § the other party becomes insolvent or has a receiver appointed or any proceedings are commenced for the other party to be wound up (not being a members voluntary winding up for the purpose of a solvent reconstruction or amalgamation) or the other party enters into a composition with its creditors or any of them, save that this clause shall not apply where sums due under this contract have been paid by the Due Date by the Client or the Funder; or
 - § CSP entitlement to provide fibre optic cable, and associated facilities is suspended or restricted to such an extent by law that it is not permitted to provide the Fibre.
- If the Agreement is terminated by The Client for any reason other than as a result of a breach of this contract, The Client shall forthwith pay to CSP without any deduction, set-off or counterclaim the aggregate of the following: (a) all arrears of Charges leading up to the preparation and mobilisation of the network build which have accrued due as at the date of termination, and (b) a sum equal to the Charges which would (in the absence of any early termination) have been payable by The Client during the remainder of the term of the Agreement, less a discount of 2% per annum on each Charge from the due date for payment to the date of termination to reflect early receipt.

- On expiry or termination of this Agreement, The Parties shall cooperate fully with each other to facilitate a smooth transition of any terminated services to the terminating Party or its replacement contractor. To that end the Parties shall meet in good faith as soon as practicable and in any event no later than 7 days from receipt of a notice of termination to agree on a transition plan which shall take into account all relevant matters.
- Subject to the provisions of clause 11.2 and without prejudice to The Client's rights and payment obligations as set out in Schedule 2, upon expiry of the Term (or any extension thereto), The Client shall have no further payment obligations under this Agreement to CSP.

- **CONFIDENTIAL INFORMATION**

- Each party shall keep confidential and shall not, without the other party's prior written consent, copy or disclose to any third party any Confidential Information acquired from the other party or otherwise made available to such party pursuant to this Agreement and such Confidential Information shall be used only for the purposes of this Agreement, provided however that nothing shall prevent either party from disclosing any Confidential Information which is:-
 - \$ In its possession prior to receiving it from the other party; or
 - \$ Is or becomes public knowledge other than as a result of breach of this Clause 13. or
 - \$ Is received independently from a third party with the full right to disclose; or
 - \$ Is required to be disclosed by law.
- Each party shall, be entitled to disclose the Confidential Information to such of its employees, agents, directors or other authorised representatives who have a need to know such Confidential Information for the purposes of performing any obligations under this Agreement, provided that either party shall procure that such persons accept confidentiality undertakings on no less onerous terms than those set out in Clause 13.1 above.
- Each party shall obtain the prior written approval of the other, such approval not to be unreasonably withheld or delayed in relation to the timing and content of any news releases, articles, brochures, advertisements or other information releases relating to this Agreement.

- **NOTICES**

- All notices required to be given by one party to the other shall be given in writing and be given by prepaid registered mail, by facsimile or hand delivered to the other party's address or facsimile number set out in this Agreement or as either party notifies to the other.
- Such notices shall be deemed to have been received 3 business days after mailing if forwarded by prepaid registered mail, and the following business day if forwarded by facsimile(provided that a copy of the notice is also sent by prepaid registered mail), or hand-delivered.

- **ENTIRE AGREEMENT/VARIATION**

- This Agreement represents the entire understanding between the parties in relation to the subject matter hereof and supersedes all other agreements and representations made by either party whether oral or written in relation to the subject matter hereof. Each party acknowledges and accepts that in entering into this Agreement it has not relied upon any representation, undertaking or promise except as set out herein.
- Any amendment to this Agreement shall only be valid if made in writing and signed by a duly authorised representative of each party and approved by the Assignee in writing.

- **GENERAL**

- If any provision of this Agreement is held by any court or other competent authority to be void or unenforceable in whole or part, this Agreement shall continue to be valid as to the other provisions thereof and the remainder of the affected provision.

- The rights and remedies provided by this Agreement shall not limit or exclude any other rights and remedies (whether express or implied) that either party may have against the other.
- Failure by either party to exercise or enforce any right conferred by this Agreement shall not be deemed to be a waiver of any such right nor operate so as to bar the exercise or enforcement thereof or of any other right on any later occasion.
- The failure or delay of either party to enforce or to exercise, at any time or for any period of time, any term of or any right, power or privilege arising pursuant to this agreement does not constitute and shall not be construed as a waiver of such term or right and shall in no way affect either party's right later to enforce or exercise it, nor shall any single or partial exercise of any remedy, right, power or privilege preclude any further exercise of the same or the exercise of any other remedy, right, power or privilege.
- The termination or expiry of this Agreement shall be without prejudice to the rights of either party, which have accrued prior to termination or expiry. Clauses that are expressed to survive or which are by implication intended to survive termination or expiry of this Agreement shall so survive.
- The relationship of the parties shall be that of independent contractors and nothing contained in this agreement shall create a relationship of employer and employee, principal and agent or partnership between the parties. The Client shall not be entitled to bind or pledge the credit of CSP or sign any document, enter into any agreement or make any promise on behalf of CSP or in any way indicate that it is entitled to do so.
- Nothing in this Agreement confers any rights or benefits on a person who is not a party to this Agreement whether under the Contracts (Rights of Third Parties) Act 1999 or otherwise.

- **JURISDICTION**

- The Agreement shall be governed by and construed in accordance with English law and the parties agree to submit to the exclusive jurisdiction of the English Law Courts.
- The parties shall use their reasonable endeavours to resolve any dispute arising under this Agreement by direct negotiations between the parties. If the dispute is not resolved within 14 days through direct negotiation the parties will attempt to resolve the matter through the Alternative Dispute Resolution (ADR) procedure as recommended to the parties by the Centre for Dispute Resolution. If the matter has not been resolved by an ADR procedure within 30 days, or if either party will not participate in an ADR procedure within such thirty-day period, the dispute shall be referred to litigation. Notwithstanding the foregoing it is acknowledged and agreed that either party shall be entitled to seek injunctive relief in any court of competent jurisdiction if the other party is in breach of any of the terms hereof.

- **ASSIGNMENT**

The Client shall be entitled at any time to assign the whole of its rights and obligations under this Agreement without the consent of CSP to either the Client or the Funder.

- **A Party to this contract may not assign its rights under this Agreement to any other Third Party without the express prior written consent of the other Party, which will not be unreasonably withheld, delayed or conditioned.**
