



Supplier Terms and Conditions

Scottish Broadband Voucher Scheme

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Part A: Introduction

The Scottish Broadband Voucher Scheme (the "**SBV Scheme**") is part of the R100 Programme and is managed by the Scottish Government (the "**Authority**"). The R100 Programme involves a series of interventions by the Authority with the objective for every home and business in Scotland to have access to superfast broadband of 30 Megabits per second (Mb/s) - this is our Reaching 100% (R100) commitment.

The SBV Scheme operates across the whole of Scotland. Under the SBV Scheme, vouchers are available to eligible Beneficiaries anywhere in Scotland that do not have, and are not scheduled to receive, a Superfast connection under a Public Intervention (e.g. under any contract awarded by the Authority pursuant to the procurement element of the R100 Programme) or under a planned commercial deployment by a supplier.

The purpose of the SBV Scheme is to increase the speed of deployment of Superfast networks within Scotland by providing micro-grants to support the cost of new connectivity. Vouchers are the mechanism the SBV Scheme uses to provide these grants. The SBV Scheme aims to encourage Suppliers to invest in Superfast services. The voucher is a benefit to eligible Beneficiaries who must receive the full value of the voucher.

Using their grant, Beneficiaries are able to contract with Suppliers for Superfast products (referred to in the SBV Scheme as Pre-Registered Packages). This is the only mechanism by which a Beneficiary can take a voucher under the SBV Scheme.

Payments of grant to Beneficiaries under the SBV Scheme are made by the Authority direct to Suppliers, once they have confirmed that new connections have been delivered, although the Beneficiary is the recipient of the new connection and the beneficiary of the grant.

Following the precedent of the BDUK Super-Connected Cities Voucher Scheme, payments for vouchers issued up from 4 January 2023 will be awarded to beneficiaries of the scheme on the basis of the Minimal Financial Assistance route, as set out at Section 36 and 37 of the Subsidy Control Act 2022.

This version of these Terms and Conditions is effective from the date specified at the start of these Terms and Conditions.

Part B: Core Terms

1. Application of these Terms and Conditions

1.1 Suppliers agree to comply with these Terms and Conditions:

1.1.1 as a condition of their participation in the SBV Scheme and the issue of vouchers for the benefit of relevant Beneficiaries; and

1.1.2 for the duration of their participation in the SBV Scheme.

1.2 The Authority may, at any time, contact any referee named by Suppliers in connection with their applications for registration to the SBV Scheme.

1.3 Use by the Suppliers of any third-party sales or delivery agent on their behalf in no way alters the responsibility of the Suppliers to comply with these Terms and Conditions.

1.4 Unless otherwise provided or the context otherwise requires:

1.4.1 in these Terms and Conditions references to clauses are references to clauses of these Terms and Conditions in this Part B and references to paragraphs are references to paragraphs in the relevant Schedules to these Terms and Conditions; and

1.4.2 capitalised terms used in these Terms and Conditions have the meanings set out in Schedule 1 – Definitions.

2. Additional guidance

The Authority may provide Suppliers with Additional Guidance regarding the operation of the SBV Scheme which, if so provided, Suppliers shall comply with. In the event of any conflict between the Additional Guidance (or any other Authority guidance or information including as set out on the SBV Scheme website) and these Terms and Conditions, these Terms and Conditions shall take precedence.

3. Provision of information

3.1 Suppliers:

3.1.1 confirm that any information provided to the Authority in connection with the SBV Scheme is correct to the best of their knowledge and belief;

3.1.2 shall not knowingly or recklessly conceal or falsify information or provide false or misleading information to the Authority (either by inclusion or omission);

3.1.3 acknowledge that providing or omitting information in connection with the SBV Scheme in breach of clauses 3.1.1 and/or 3.1.2 may give rise to criminal or other legal consequence and the application of the Issue Escalation Procedure including de-registration from the SBV Scheme;

3.1.4 shall provide the Authority with such additional information and assistance, as requested by the Authority, within 10 Working Days of the request unless another

timeframe is specified within these Terms and Conditions or by the Authority in writing (failure to provide the information by the date requested and in the format required may lead to, where applicable, the Supplier not being registered to the SBV Scheme and/or the relevant Pre-Registered Package not being approved or suspension from the Scheme until resolution of the issue); and

3.1.5 shall provide the Authority with details of the Supplier Contact (who shall have overall responsibility for the Supplier's operational involvement in the SBV Scheme and oversight of any other third parties involved in the sales, delivery, reporting and management of connections delivered by the Supplier with support from the SBV Scheme).

4. Supplier status and capability

4.1 Subject to clause 4.2, Suppliers:

4.1.1 confirm that, prior to participation in the SBV Scheme, they have delivered viable connections on a commercial basis to the Authority's satisfaction to the type of Beneficiaries the Supplier wishes to submit Pre-Registered Packages for (being residential and/or SME customers) which meet the Connectivity Requirements;

4.1.2 confirm that for the duration of their participation in the SBV Scheme they:

- (a) are capable of entering into Beneficiary Contracts for the delivery of connections which meet the Connectivity Requirements, or, are a wholesale supplier of telecommunications services that has retail internet service providers that are capable of entering into contractual relationships with Beneficiaries which meet the Connectivity Requirements;
- (b) shall ensure that Beneficiary Services are performed by appropriately qualified, trained, skilled and experienced personnel;
- (c) shall ensure the execution, delivery and performance of Beneficiary Services are within the Supplier's or their subcontractors' corporate capacity and powers;
- (d) shall ensure that there is no law binding on the Supplier and no provision in any document binding on the Supplier that prevents or would prevent the Supplier from observing any of the Supplier's obligations contained in the Terms and Conditions;
- (e) have the necessary expertise, skill and experience to provide the Beneficiary Services;
- (f) shall ensure all personnel used in the performance of the Beneficiary Services are entitled to work in the United Kingdom either by right or by virtue of possessing the necessary visa or permits;
- (g) shall not act in any manner which in the reasonable opinion of the Authority is prejudicial to the image or reputation of the Authority;
- (h) shall not make any representation or give any warranty on behalf of the

Authority nor create any expense chargeable to the Authority or otherwise pledge the credit of the Authority;

- (i) are registered for VAT;
- (j) are not sole traders;
- (k) hold insurances as set out in clause 17.3; and
- (l) are a member of an Ofcom approved Alternative Dispute Resolution (ADR) service. Or if they are a wholesaler, that all Internet Service Providers (ISPs) using their network are members of an Ofcom approved ADR service.

4.1.3 acknowledge that the Authority does not offer any opinion on the capability of Suppliers and Suppliers shall not make any representations to that effect;

4.1.4 must inform the Authority immediately of any change in circumstances which may affect their registration to, or participation in, the SBV Scheme; and

4.1.5 acknowledge that any failure to notify the Authority of any material change in their status, their applicable product costs and/or their performance capability shall constitute a material breach of these Terms and Conditions and will be subject to the Issue Escalation Procedure which may result in the suspension or removal of the Supplier from the SBV Scheme.

4.2 The Authority reserves the right to amend or substitute the requirements set out in clause 4.1.1 if the Supplier is a community-based or similar non-commercial organisation.

4.3 Non-participation by Suppliers in the SBV Scheme (such as the continued refusal to offer services to Beneficiaries when requested without reasonable explanation or cause) may be considered a breach of these Terms and Conditions and managed in accordance with the Issue Escalation Procedure.

4.4 The Authority reserves the right to suspend the account of Suppliers that are not active for a period of 12 months or more. For the purpose of this clause "not active" means the Supplier has not submitted any projects to the Authority for approval, or requested or claimed any vouchers under the Scheme.

4.5 The Authority reserves the right, in its absolute discretion, to refuse Supplier status for any person, entity or body seeking to register with the SBV Scheme as a Supplier if at any time the Authority has concerns as to the financial status, probity or conduct of the person, entity or body or any of its officers or shareholders or has any concerns as to the person, entity or body's, or any of its officers or shareholders, suitability to receive public money.

4.6 The Authority may require the Supplier to attend meetings to review their status and capability, performance, and involvement in the SBV Scheme in general, against the requirements of these Terms and Conditions. Meetings will take place on reasonable notice at the Supplier's cost, and during any meetings the Supplier will discuss with and present to the Authority's representative any information which has been reasonably requested. Without prejudice to any rights or remedies of the Authority under these Terms and Conditions or in law, if it is decided during a meeting that the Supplier is not meeting the requirements of these Terms and Conditions, and that issue cannot be remedied within 14 Working Days, the Authority has the right to initiate the

Issue Escalation Procedure, including suspending the Supplier from the SBV Scheme whilst that is in process.

4.7 The Supplier shall not (and shall ensure that its personnel and subcontractors and their personnel shall not) commit any Prohibited Act or fraud.

5. Pre-Registered Packages

5.1 As a condition of their participation in the SBV Scheme, Suppliers shall provide details of their proposed Pre-Registered Packages (being packages of eligible products the Suppliers wish to offer as part of the SBV Scheme) for authorisation by the Authority using the Pre-Registered Package application form and procedure provided by the Authority. Any proposed Pre-Registered Packages must be fully compliant with the relevant Terms and Conditions and any costs claimed in respect of authorised Pre-Registered Packages must genuinely be incurred and be Eligible Costs only.

5.2 Each Pre-Registered Package application must demonstrate how the value of the voucher grant will be realised in full by the Beneficiaries. The voucher should only be used to fund (or part-fund) a connection charge (non-recurring charge) associated with a commercially- available product that would otherwise be paid by customers (either individually or collectively). Suppliers should not use voucher funding to discount their standard monthly (recurring) charges to Beneficiaries. Suppliers should include an analysis of the standard market price to the Beneficiaries in the absence of vouchers (and provide appropriate evidence), and details of how this compares to the price reflecting the voucher contribution. Any documents provided (along with any subsequent amendments or clarifications sought by the Authority) will form part of the relevant application and may be incorporated within any subsequent authorisation documents provided by the Authority.

5.3 A fundamental principle of the SBV Scheme is that the Beneficiaries are the financial beneficiaries of the SBV Scheme and must receive the full value of their respective voucher grants. All proposed Pre-Registered Packages are therefore subject to commercial assessment to ensure that the benefit to Suppliers for voucher-funded deployments is no greater than for non-voucher projects. For all Suppliers this may involve an assessment of the project submission to ensure that the voucher contribution is not substitutional for investment which the Supplier would normally make, and represents a contribution that would otherwise be provided by Beneficiaries.

5.4 Suppliers will be notified by the Authority in writing when any proposed Pre-Registered Package has been authorised and upon such authorisation the proposed Pre-Registered Package shall be deemed to be a Pre-Registered Package for the purpose of the SBV Scheme. This notification will include confirmation of the value of the voucher grant applicable for each package. Other than for initial registration of demand in the construction of a Pre-Registered Package, suppliers must not offer proposed Pre-Registered Packages to Beneficiaries until they have been authorised by the Authority in writing. A Pre-Registered Package may either be:

- 5.4.1 a "**Standard PRP**", being a Pre-Registered Package where typically the Eligible Costs are either fixed for each deployment (or vary within known parameters). These packages are registered once by Suppliers and then can be deployed as individual connections. The package can be replicated at other eligible premises. These products must be available to non-voucher customers (albeit on adjusted commercial terms to the Beneficiary which reflect the value of the voucher contribution); or

5.4.2 a "**Project PRP**", being a Pre-Registered Package comprising a location-specific project (e.g. business parks, villages, multi-occupancy Premises) and multiple Beneficiaries, where the magnitude of the Eligible Costs varies significantly between projects and is always greater than the applicable individual voucher financial limit (i.e. it is dependent upon the aggregation of multiple vouchers).

5.5 The table below specifies the maximum and minimum values of the voucher grant that will be made available for the relevant type of Beneficiary. However, for the avoidance of any doubt, the value of the voucher grant that is available to a Beneficiary under a Pre-Registered Package will be confirmed by the Authority in its notification of approval of the relevant Pre-Registered Package.

| Type of Beneficiary | Minimum Value | Maximum Value |
|---|----------------------|----------------------|
| SME Beneficiary (exclusive of VAT on the Eligible Costs, as vouchers cannot fund VAT for SME Beneficiaries) | £500 | £5,000 |
| Residential Beneficiary, or SME Beneficiary not registered for VAT (plus VAT on the Eligible Costs) | £500 | £5,000 |

5.6 Please note that for VAT registered SME Beneficiaries, vouchers cannot fund VAT which shall remain the responsibility of the SME Beneficiaries.

5.7 Where the Eligible Costs of connecting a SME Beneficiary or Residential Beneficiary are less than £500 (excluding VAT), no voucher funding will be made available.

5.8 The Authority reserves the right to limit the number of Pre-Registered Packages it will agree for any Supplier at its absolute discretion. Non-exhaustive examples of the factors that the Authority may take into account include the relevant Supplier's ability to deliver the Pre-Registered Packages as well as financial risk and market considerations.

5.9 Once a Pre-Registered Package has been authorised by the Authority, the relevant Supplier may offer the Pre-Registered Package to Beneficiaries. For Project PRPs the package must only be offered to premises authorised by the Authority.

5.10 Authorisation by the Authority of a Pre-Registered Package does not guarantee funding will be made available to support any connections within that package. Payment will only be made for vouchers issued by the Authority as part of Pre-Registered Packages where compliant connections are delivered to Beneficiaries who (i) agree to redeem the grant made available through the offer of a voucher; (ii) have agreed to the Beneficiary Terms and Conditions; and (iii) have verified their connections.

5.11 The maximum aggregate value of all vouchers issued for a single Project PRP is capped at £500,000 and no further vouchers will be issued for any Project PRP where this value has been reached in respect of that Project PRP.

5.12 Project PRPs may only be delivered within the locations set out in the relevant Pre-Registered Package application that has been authorised by the Authority in accordance with clause 5.4.

5.13 Suppliers may not make any material changes to any authorised Pre-Registered Package

without the prior written consent of the Authority, which consent shall not be unreasonably withheld or delayed.

- 5.14 Changes to Pre-Registered Package that are approved shall be subject to the Authority's approval in accordance with procedures set out in the Additional Guidance and subject to change from time to time.
- 5.15 The Authority reserves the right to suspend or close any Pre-Registered Package if;
- 5.15.1 the Maximum Voucher Funding for that Pre-Registered Package has been paid;
 - 5.15.2 the Pre-Registered Package has been inactive for a period of 365 or more continuous days;
 - 5.15.3 following a non-compliance investigation, the Pre-Registered Package is deemed non-compliant or;
 - 5.15.4 formal notice of closure of the SBV Scheme has been given by the Authority.

6. Engagement with Beneficiaries

- 6.1 Prior to requesting vouchers, Suppliers shall establish the eligibility of Beneficiaries using the criteria set out in Schedule 2 – Beneficiary Eligibility.
- 6.2 Suppliers may not enter into Beneficiary Contracts:
- 6.2.1 if they are aware that the Beneficiary does not meet the eligibility criteria set out in Schedule 2 – Beneficiary Eligibility;
 - 6.2.2 until the applicable Pre-Registered Package has been authorised by the Authority in accordance with clause 5.4.
- 6.3 Each Beneficiary Contract must be in writing and have a minimum contract period of 12 months. Suppliers must also be able to demonstrate to the Authority's satisfaction that the revenue lost as a result of the discount offered is not being funded by the financial benefit of vouchers.
- 6.4 It is the Supplier's responsibility to ensure all relevant Beneficiaries understand the requirements placed on them by the Beneficiary Terms and Conditions. Suppliers must provide a contact email address for which the Authority can direct related Beneficiary queries should the Authority receive any.
- 6.5 Vouchers will only be issued for Premises that are eligible according to the Authority's eligibility dataset as defined in accordance with Schedule 2 – Beneficiary Eligibility. This dataset will be updated throughout the operation of the SBV Scheme and the Authority shall provide regular updates to Suppliers. The Authority accepts no liability for any change in eligibility between the dates on which Pre Registered Package are submitted or approved and vouchers are requested and issued or rejected.
- 6.6 The financial benefit of vouchers must demonstrably be passed on in full to the relevant

Beneficiaries.

- 6.7 The Authority gives no undertaking and does not accept any liability for the ability or willingness of individual Beneficiaries to enter into Beneficiary Contracts, or for the authority of individual Beneficiaries to authorise connections at specific Premises. Suppliers are advised to exercise usual due diligence and best practice before entering into Beneficiary Contracts.
- 6.8 Suppliers acknowledge that they participate in the SBV Scheme (including offers and performance of Beneficiary Contracts) at their own cost and risk and that the Authority cannot bind Beneficiaries to Beneficiary Contracts.
- 6.9 Pre-Registered Packages (and associated Eligible Costs) must be sold to Beneficiaries solely on the basis of the relevant Beneficiary's need in accordance with standard market practice.
- 6.10 Vouchers will not be issued for Premises that have received (or are scheduled to receive) a connection which meets the Connectivity Requirements as part of a previous (or planned) public funded Intervention or under a planned commercial deployment by a supplier.
- 6.11 When promoting Pre-Registered Packages to potential or actual Beneficiaries, Suppliers must do so in a way which makes clear the source and nature of the financial support offered to the Beneficiaries and in compliance with Schedule 5 – SBV Scheme Marketing and Promotion Protocol. Suppliers shall provide each of their Beneficiaries with a clear statement of facts about the SBV Scheme, taking account of any guidance that the Authority may provide in this regard.
- 6.12 Additional terms apply relating to how the SBV Scheme is referenced and credited in Supplier sales and marketing material, including websites and other forms of electronic communication. These are set out in Schedule 5 – SBV Scheme Marketing and Promotion Protocol.

7. General Requirements

- 7.1 The Supplier shall provide services in accordance with the requirements, dates and periods shown in the approved Pre-Registered Package.
- 7.2 The Supplier shall participate in the SBV Scheme, deliver the Pre-Registered Packages and provide the Beneficiary Services in accordance with:
- 7.2.1 these Terms and Conditions;
 - 7.2.2 the requirements, dates and periods set out in the approved Pre-Registered Package documentation;
 - 7.2.3 Good Industry Practice; and
 - 7.2.4 all applicable law.
- 7.3 The Supplier is required to ensure that the affected Premises is operational and available for use by the Beneficiary at all times and must carry out services in a manner that enables Beneficiaries to carry out their business functions as normal. Any restrictions to the operation and use of the Premises, or impediments to the ability of a Beneficiary to carry out their business functions as usual, must be limited to that which is absolutely necessary to ensure the safe and efficient completion of the Pre-Registered Package. Consideration of the Beneficiary must be maintained

in relation to access and works being undertaken.

- 7.4 The Authority takes Beneficiary service and satisfaction very seriously and Suppliers are expected to adopt the same approach. Suppliers are therefore required to act in the best interests of Beneficiaries at all times. By way of example this will include, but is not limited to, making it as easy as possible for Beneficiaries to deal with the Supplier, taking Beneficiary views about Pre-Registered Packages and works into account and ensuring that they remain central to all decision making. Suppliers are also required to avoid doing or saying anything whilst working on Pre-Registered Packages which could be damaging or detrimental to the reputation of the Authority in the eyes of Beneficiaries.
- 7.5 The Supplier is required to keep the Beneficiary updated on the progress of the delivery to their Premises.
- 7.6 Supplier personnel must also be considerate at all times of residents and Beneficiaries on matters which may cause disruption or offence including, but not limited to, noise (e.g. radio, shouting), offensive language and parking.
- 7.7 The Supplier shall take reasonable measures not to damage any Beneficiary property and shall indemnify on demand and keep indemnified the Authority against any losses or claims in connection with any damaged property.
- 7.8 The Supplier shall immediately notify the Authority if they decide not to progress with a published Pre-Registered Package. Failure by the Supplier to notify the Authority within 5 Working Days of a decision not to progress will be regarded as a breach of these Terms and Conditions and will lead to the initiation of the Issue Escalation Procedure.
- 7.9 In the performance of the Beneficiary Services the Supplier shall at all times comply with the requirements of the Health and Safety at Work, etc. Act 1974, all approved codes of practice issued thereunder and all applicable laws relating to health and safety in respect of its own personnel and others who may be affected by the provision of the Beneficiary Services.
- 7.10 Where a Supplier is providing services at a Beneficiary's Premises, the Supplier shall:
- 7.10.1 make sure that all operatives under their control are competent and have the necessary experience and, where appropriate, industry-recognised qualifications to properly deliver the services;
 - 7.10.2 make sure that a safe system of work is in place for the duration of their provision of the services;
 - 7.10.3 have first aid arrangements in place prior to commencing any services;
 - 7.10.4 upon completion of works at a Premises, ensure that the Premises is safe and secure before leaving;
 - 7.10.5 immediately report to the Authority any health and safety incidents and/or accidents that could negatively impact upon the Authority and/or its reputation; and
 - 7.10.6 ensure that restoration of the ground is to the previous or higher standard.

8. Connectivity requirements and eligible costs

8.1 Claims for funding under the SBV Scheme must only be for:

8.1.1 connections that comply with the Connectivity Requirements; and

8.1.2 Eligible Costs.

8.2 Any Eligible Costs claimed must be (i) consistent with those charged to customers without the benefit of voucher support; and (ii) where requested by the Authority, supported by evidence (to the level of detail required or approved by the Authority) that they have been legitimately incurred and are in fact Eligible Costs. Suppliers will be in breach of these Terms and Conditions if they make claims for Eligible Costs which are greater than those which otherwise would have been charged to the relevant Beneficiary had a voucher not been in place.

9. Voucher requests and payment claims

9.1 There is a three-step process in respect of the treatment of vouchers and their payment:

9.1.1 Step 1: Suppliers initially submit requests for vouchers prior to the delivery of the relevant connections as part of the application for a Pre-Registered Package.

9.1.2 Step 2: The Authority issues vouchers for the benefit of the relevant Beneficiaries.

9.1.3 Step 3: Suppliers submit payment claims for the vouchers issued under Step 2 once the relevant connections have been delivered. Suppliers should note that the Authority's authorisation of any Pre-Registered Package is not a guarantee of funding support under the SBV Scheme and that the Authority will only make payments in respect of vouchers which are issued by the Authority under Step 2 up to the Maximum Voucher Funding for a Pre-Registered Package.

9.2 Suppliers must obtain the written consent of the relevant Beneficiary prior to submitting requests for vouchers. Submitting requests for vouchers without the relevant consent will be regarded as a breach of these Terms and Conditions and will lead to the initiation of the Issue Escalation Procedure.

9.3 The Authority will contact each Beneficiary before vouchers are issued in order to verify their acceptance of the Beneficiary Terms and Conditions and to confirm their eligibility details. If the Authority does not receive verification from a Beneficiary for whom a voucher has been requested within **28 days** of the date of request, the Authority may at its absolute discretion cancel the voucher requested. Suppliers must notify Beneficiaries of this step in the process.

9.4 Requests for vouchers and payment claims submitted to the Authority which reference a specific Pre-Registered Package must be delivered using only the cost inputs, commercial terms, technology, equipment and network architecture set out in the relevant Supplier's authorised Pre-Registered Package and any variation from those details not agreed in advance with the Authority will constitute a breach of these Terms and Conditions and result in the initiation of the Issue Escalation Procedure.

9.5 Before a voucher payment can be made the relevant Beneficiary must verify that the connection has been delivered. If the Authority does not receive this verification within **28 days** of the date on which a connection has been reported, the Authority will place the voucher at risk and notify the relevant Supplier. Payments will not be made for connections where this

verification has not been obtained. The Authority may at its absolute discretion subsequently refuse to accept the relevant payment claim and cancel the voucher. Suppliers must notify Beneficiaries of this step in the process.

- 9.6 The Authority may at its discretion carry out (or appoint a third party to carry out on the Authority's behalf) a site audit visit before or after any voucher payment is made and in such cases the Authority shall arrange for the site visit to take place as soon as possible.
- 9.7 Where the Authority, acting reasonably, concludes that a site audit has been failed for whatever reason, but that the failure is capable of remedy, the Supplier shall be given a period of time deemed appropriate by the Authority (acting reasonably) to make any adjustments or corrections necessary. These shall be carried out at the Supplier's own costs. Once the period for remedy has expired, the site audit shall be carried out again in the presence of an Authority representative.
- 9.8 The Supplier shall reimburse the Authority for all additional costs and expenses reasonably incurred as a result of failed, aborted or inconclusive site audits arising from the Supplier's non conformance with these Terms and Conditions.
- 9.9 The Authority shall aim to make voucher payments to Suppliers within 30 Working Days of the later of:
- 9.9.1 the receipt of the relevant Beneficiary's validation that the connection has been delivered; or
 - 9.9.2 the successful completion of any applicable site audit visit pursuant to clause 9.6.
- 9.10 Payment for any voucher issued for a Pre-Registered Package may be suspended whilst awaiting successful completion of any site audit for any other voucher related to that Pre-Registered Package.

10. Voucher validity and payment claims period

- 10.1 Vouchers may not be requested for compliant connections that have already been delivered and doing so will be deemed to be a breach of these Terms and Conditions. Voucher funding is not available retrospectively.
- 10.2 All connections must be delivered and voucher claims submitted for payment no later than 12 months from the issue date of the relevant voucher(s). Suppliers shall contact the Authority as soon as they become aware of any delays in meeting this requirement with details of the relevant circumstances and issues, including details of the expected connection date of these voucher(s). The Authority shall consider the evidence provided and may, at its sole discretion, agree a revised claim deadline for the voucher(s).
- 10.3 Where vouchers are paid and the Beneficiary chooses to exercise their right under any cooling off period to exit the contract, then the Supplier must notify the authority and return to the Authority the full value of the voucher funding related to that Beneficiary.

11. Reporting

- 11.1 Suppliers shall provide the reporting information set out in Schedule 2 – Beneficiary Eligibility, concerning sales, cancellations and connections delivered utilising the relevant Pre-Registered Package. Failure to do so with reasonable accuracy, and within the timescales set out in

Schedule 2 – Beneficiary Eligibility, constitutes non-compliance with these Terms and Conditions which will be managed in accordance with the Issue Escalation Procedure. The Authority reserves the right not to make payments in respect of vouchers where the relevant Supplier fails to complete and submit reports in accordance with these Terms and Conditions.

- 11.2 Suppliers may be required to provide additional information about the impact and benefit of the SBV Scheme and shall use their reasonable endeavours to comply in a timely manner with all reasonable requests from the Authority to provide additional information during (and for 7 years after) the SBV Scheme ends.
- 11.3 Where Beneficiary Contracts or connections are not reported to the Authority within 30 days of the date of the relevant Beneficiary Contract, the Authority reserves the right not to issue a voucher to the relevant Beneficiary, or to make payment for the connection, whichever is applicable. Failure to report the cancellation of any Beneficiary Contract for which a voucher has been issued within this timescale may be regarded as a breach of these Terms and Conditions and result in the initiation of the Issue Escalation Procedure.

12. Audit and value for money

- 12.1 The Authority reserves the right to conduct commercial assurance assessments in relation to any Pre-Registered Package submitted for registration (and prior to its authorisation in accordance with clause 5.4), in order to assess value for money and compliance with the relevant provisions of these Terms and Conditions (including clauses 6.2, 6.3 and 9). Where requested by the Authority, Suppliers are required to provide evidence that costs against which voucher funding will be claimed will be legitimately incurred and be Eligible Costs and/or provide such other reasonable assistance in respect of the commercial assurance assessments as the Authority may require.
- 12.2 As part of the Authority's anti-fraud procedures, Supplier quotes, Beneficiary Contracts and invoices will be subject to random audit. In addition, at the sole discretion of the Authority any services provided under Beneficiary Contracts may be subject to further clarification or inspection for audit purposes. Where further clarification is required by the Authority, its appointed agents and/or local bodies, Suppliers will be required to provide evidence (to a level of detail determined or approved by the Authority) that costs against which voucher funding has been claimed have been legitimately incurred and relate to Eligible Costs only (including evidence where requested by the Authority of input costs from the relevant wholesale infrastructure provider or third-party supplier). This information shall be provided by Suppliers within 5 Working Days of any request by the Authority. Where appropriate, the Authority will follow the Issue Escalation Procedure.
- 12.3 Where the Authority and/or local bodies suspect or identify fraud, malpractice and/or Supplier error and have carried out the steps described in the Issue Escalation Procedure, the Authority reserves the right to withdraw or recover voucher funds from the relevant Supplier and/or remove the Supplier from the SBV Scheme at its absolute discretion.
- 12.4 Where suspected fraud or malpractice by Suppliers has led to the Issue Escalation Procedure being followed and fraud/malpractice is discovered then the Authority reserves the right to recover costs incurred as a result of the investigation and any other losses arising from the fraud/malpractice.
- 12.5 The Authority shall review the costs provided as part of Pre-Registered Packages against internal benchmark costs and wider market rates to validate costs to ensure value for money for the tax

payer and may request further evidence (which the Suppliers shall provide within the period specified in clause 12.2). **The Authority reserves the right to cap any costs at its discretion.**

- 12.6 The Authority reserves the right to not approve any proposed Pre-Registered Package if the Authority considers the Pre-Registered Package to not be value for money.
- 12.7 On a sampled basis, the Authority and/or its agents will conduct pre and post-installation checks with Beneficiaries. Suppliers may be required to provide photographic or other evidence of relevant installations. In the case of Supplier error (e.g. where a Pre-Registered Package has erroneously been supplied to an ineligible Beneficiary on the basis of information provided by that Beneficiary), the Authority may choose to carry out the steps described in the Issue Escalation Procedure and the Authority reserves the right to recover voucher funds from the relevant Supplier (or retain funding). Where post-installation checks have identified that a Beneficiary has provided incorrect information to a Supplier and the Authority takes action to recover voucher funding, then the relevant Supplier shall provide reasonable assistance to the Authority to facilitate recovery of grant funding from the Beneficiary.

13. SBV Scheme variation and cessation

13.1 The Authority may:

13.1.1 amend these Terms and Conditions and the associated SBV Scheme processes from time to time. Suppliers will be notified in writing in advance with details of any proposed changes and will be given the option to accept the proposed changes or de-register from the SBV Scheme;

13.1.2 suspend (for any period) or cease the SBV Scheme at any time upon notice to the Supplier Contacts, in which case the Authority will:

- (a) not accept requests for vouchers for the period of the suspension or after the date and time of the cessation; and
- (b) make payments for voucher payment claims submitted (including during the period of suspension or after the date and time of the cessation) in respect of vouchers that have been issued by the Authority prior to the date and time of the suspension or cessation, subject to and in accordance with these Terms and Conditions and provided that voucher funding remains available; and

13.1.3 de-register, suspend or amend Pre-Registered Packages at any time during the SBV Scheme and carry out reviews of Pre-Registered Packages at its absolute discretion. If Pre-Registered Packages are amended by the Authority, this will be notified to relevant Suppliers in writing at least 2 Working Days prior to the effective date of such amendments.

13.2 If the Authority requires the use of Pre-Registered Packages to cease then no new Beneficiary Contracts may be entered into after the period of 2 Working Days following formal notification from the Authority. In these circumstances the Authority will not fund voucher payments for Pre-Registered Packages which have been contracted after this 2 Working Day period.

14. Information sharing

14.1 Information provided to the Authority in connection with the SBV Scheme may be made available

to BDUK, local bodies, Authority agents, Highlands & Islands Enterprise, Scottish Futures Trust, the Scottish or UK parliaments, Audit Scotland, Ofcom and the European Commission or any other department, office or agency of Her Majesty's Government in Scotland or the United Kingdom for purposes connected with the SBV Scheme and/or the R100 Programme but will not otherwise be disclosed to third parties without express permission, except where required by law (including under the Freedom of Information Act (Scotland) Act 2002 or equivalent legislation).

- 14.2 If Suppliers receive any information request under the Freedom of Information (Scotland) Act 2002 (or equivalent legislation) that concerns the SBV Scheme and/or the Authority the Suppliers shall provide such request to the Authority within 2 Working Days.
- 14.3 Information provided by Suppliers to Beneficiaries (including quotes and invoicing data) under the SBV Scheme may be shared with the Authority or its agents for the purposes of monitoring and fraud prevention.
- 14.4 Information submitted to the Authority by Suppliers (including Beneficiary contact details) may be shared with other associated organisations for the purposes of promoting the SBV Scheme, processing the voucher claims, evaluation of delivery of Project Gigabit in Scotland/R100 and making payment. Suppliers are required to comply with all applicable Data Protection Laws in force at the relevant time in respect of such information.

15. Personal data

- 15.1 The Authority and the Suppliers shall in relation to the SBV Scheme comply with their respective obligations under the Data Protection Laws, in each case to the extent necessary under those laws.
- 15.2 The Authority and the Suppliers acknowledge that:
 - 15.2.1 the Suppliers shall provide contact data of relevant Supplier personnel for use by the Authority in its administration, management, and operation of the SBV Scheme (including for determining eligibility for the SBV Scheme and (where applicable) for the purposes of monitoring, assurance, and fraud prevention) ("**Supplier Contact Data**");
 - 15.2.2 the Authority shall provide contact data of relevant Authority personnel for use by the Suppliers in its administration of, and participation in, the SBV Scheme (including for the purpose of receiving vouchers) ("**Authority Contact Data**"); and
 - 15.2.3 the Suppliers shall provide other Personal Data (including contact data of referee organisations and Beneficiaries) for use by the Authority in its administration, management, and operation of the SBV Scheme (including for determining Supplier eligibility for the SBV Scheme) ("**Other Supplier Data**"). This data shall include but not be limited to: Beneficiary contact name, installation address, email address, company number where relevant, date of agreement, current and planned broadband connection speed, date of order, date of installation.
- 15.3 For the purpose of the SBV Scheme the Authority and the Suppliers agree that:
 - 15.3.1 the Suppliers shall be the Controller of:
 - (a) the Supplier Contact Data and the Other Supplier Data for its own internal business purposes; and

- (b) the Authority Contact Data where it is Processed by the Supplier in accordance with clause 15.2.2; and

15.3.2 the Authority shall be the Controller of:

- (a) the Authority Contact Data for its own internal business purposes;
- (b) the Supplier Contact Data where it is Processed by the Authority in accordance with clause 15.2.1; and
- (c) the Other Supplier Data for: (i) its own internal business purposes; and (ii) the purpose of its administration, management, and operation of the S B V Scheme.

15.4 The Authority and the Suppliers shall Process the other party's Contact Data for the purposes set out above in accordance with that party's relevant privacy policy. Each party may be required to share the other party's Contact Data referred to above with its affiliates and other relevant parties, within or outside the country of origin, in order to carry out the activities specified above, but in doing so, each party will ensure that the sharing and use of the Contact Data complies with the Data Protection Laws.

15.5 Where acting as the Controller for the purposes of the Contact Data, the Authority and the Suppliers shall make available to the other a copy of their applicable privacy policy and the receiving party shall ensure that this policy is provided to the applicable persons whose Personal Data has been shared with the other party for the purposes set out in these terms.

15.6 Where acting as the Controller for the purposes of the Other Supplier Data, the Suppliers shall ensure that all fair processing notices have been given (and/or, as applicable, consents obtained) and are sufficient in scope to allow the supplier to disclose the Other Supplier Data to the Authority in accordance with the Data Protection Laws for its use as anticipated in these Terms and Conditions.

15.7 The Authority and the Suppliers warrant, represent and undertake to the other that they are not subject to any prohibition or restriction which would prevent or restrict them from disclosing or transferring their Contact Data or (in the case of the Suppliers) the Other Supplier Data in accordance with these Terms and Conditions.

15.8 Each Supplier shall indemnify on demand and keep indemnified the Authority against any losses incurred by, awarded against or agreed to be paid by the Authority to the extent arising from the relevant Supplier's failure to comply with the Data Protection Laws.

16. Intellectual Property

16.1 All rights, title and interest in or to any Intellectual Property Rights owned by (or licensed by a third party to) the Authority or the Supplier prior to the Supplier's registration to the SBV Scheme, or developed by the Authority or the Supplier during the period that the Supplier is registered to the Scheme, shall remain the property of the Authority or the Supplier or the relevant third party licensor as applicable.

16.2 The Supplier grants to the Authority an irrevocable, royalty-free, perpetual licence to use (and to sub-license the use of) its (or its licensors') Intellectual Property Rights in any information or

materials provided or made available to the Authority for any purpose connected with the SBV Scheme.

- 16.3 The Authority permits the Supplier to use Authority or Scottish Government branding or logos subject to the relevant provisions set out in Schedule 5 – SBV Scheme Marketing and Promotion Protocol.
- 16.4 The Supplier shall ensure that the Authority's use of any information, material and/or Intellectual Property Rights provided or made available by the Supplier does not infringe the rights of any third party.

17. Liability and Insurance

- 17.1 Each Supplier shall indemnify and keep indemnifying the Authority against any loss, damages, costs, awards or other liabilities suffered or incurred by the Authority arising out of the breach of these Terms and Conditions (or any negligent act or omission) of the Supplier or its subcontractors or their respective personnel.
- 17.2 The Supplier (and not the Authority) shall be responsible and liable for any harm, injury or death or any other loss or liability (including damage to property) arising from the Supplier's delivery of its Projects whether suffered by Beneficiaries, the Supplier's personnel, members of the public, business owners or otherwise.
- 17.3 The Supplier, while participating in the SBV Scheme, shall maintain, with a reputable insurance company, adequate insurance to cover all liabilities that may arise under or in connection with these Terms and Conditions, and shall at the Authority's request produce insurance certificates giving details of insurance cover. Notwithstanding the foregoing, the Supplier shall effect and maintain public liability insurance of £5,000,000 (five million pounds sterling), as well as any other insurances required under applicable law, while participating under the SBV Scheme.

18. Issue Escalation Procedure and Removal of Supplier from SBV Scheme

- 18.1 Subject to clause 18.2, the Issue Escalation Procedure set out in Schedule 6 – Issue Escalation Procedure shall be followed (i) where the relevant clauses of these Terms and Conditions expressly state that it shall be followed; and (ii) otherwise at the discretion of the Authority, and in each case may result in the Supplier being removed from the SBV Scheme.
- 18.2 The Authority may upon notice remove the Supplier from the SBV Scheme with immediate effect and without following the Issue Escalation Procedure if:
- 18.2.1 the Supplier suffers an Insolvency Event or, in the Authority's reasonable opinion, an event that indicates a high probability of an Insolvency Event which would adversely impact on the Supplier's ability to comply with these Terms and Conditions;
 - 18.2.2 the Supplier or any of its subcontractors or their respective personnel commits a Prohibited Act; or
 - 18.2.3 the Supplier breaches these Terms and Conditions and the Authority reasonably considers that following the Issue Escalation Procedure is not required.

- 18.3 If the Supplier is removed from the SBV Scheme in accordance with clause 18.2, without prejudice to its other rights under these Terms and Conditions or at law the Authority reserves the right to:
- 18.3.1 not Issue any requested vouchers;
 - 18.3.2 not make payments for voucher payment claims submitted; and/or
 - 18.3.3 recover any funding from the Supplier that has been obtained unlawfully or in breach of these Terms and Conditions.
- 18.4 Except with respect to any liability that cannot be excluded by law, the Authority shall not be liable for any losses, costs, expenses or liability of any kind that may be suffered or incurred by any Supplier or their subcontractors (including the relevant Supplier's or subcontractor's directors and other personnel) in connection with:
- 18.4.1 the removal of the Supplier from the SBV Scheme in accordance with clause 18.2 or relevant other provision of these Terms and Conditions;
 - 18.4.2 any suspension, cessation or de-registration in accordance with clause 13; and
 - 18.4.3 the initiation and operation of (or as a consequence of any decision made by the Authority under) the Issue Escalation Procedure.
- 18.5 Terms which expressly or impliedly are intended to have effect notwithstanding expiry or termination of these Terms and Conditions shall remain in force following expiry or termination of these Terms and Conditions.

19. **Anti-competitive behaviour**

Suppliers acknowledge that the SBV Scheme operates within the requirements of UK competition law and as such recognise that any anti-competitive behaviour (e.g. bid rigging or collusion) can be prosecuted by the competition authorities. Where breaches of competition law are found, the competition authorities have the power to levy fines against the company and bring criminal actions against individuals (in addition to director disqualification orders).

20. **Waiver**

The rights and remedies of the Authority under or in connection with these Terms and Conditions may be waived only by notice by the Authority and in a manner that expressly states that a waiver is intended.

21. **Severance**

If any provision of these Terms and Conditions is held invalid, illegal or unenforceable for any reason by any court of competent jurisdiction, such provision shall be severed without affecting the remaining provisions.

22. **Dispute Management**

- 22.1 If any dispute arises during the delivery of the SBV Scheme (a "**Dispute**"), an authorised Supplier representative and the Authority's representative shall, within 14 Working Days of the Dispute being notified by either party to the other in writing, meet in good faith to resolve the Dispute.

- 22.2 If the representatives are for any reason unable to resolve the Dispute within 14 Working Days of the Dispute first being notified, the Dispute shall be referred by either party to the Authority's Programme Manager who shall attempt in good faith to resolve it with the Supplier's representative within a period of 14 Working Days of the referral.
- 22.3 If the Authority's Programme Manager is unable to resolve the Dispute within 14 Working Days of the Dispute being referred to them, either party shall immediately refer the Dispute to the Authority's Programme Director who shall seek to reach an agreement with the Supplier representative within 30 Working Days of referral.
- 22.4 For the avoidance of doubt, the dispute management process under this clause 22 shall only apply in circumstances where the Issue Escalation Procedure has not already been instigated by the Authority.

23. Governing law

These Terms and Conditions shall be subject to and construed in accordance with Scots law and subject to the exclusive jurisdiction of the courts of Scotland.

Schedule 1 – Definitions

Unless otherwise provided or the context otherwise requires, in these Terms and Conditions the following expressions have the meanings set out below.

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|---|---|
| Access Line Speed | the maximum speed a consumer will be able to experience with the expectation that a customer would experience close to this speed for most of the times outside the Busiest Hours and will take into account any network contention; |
| Additional Guidance | any applicable guidance set out in the Supplier Guidance Document and/or in any Supplier Bulletin; |
| Authority | the Scottish Ministers (also known as the Scottish Government); |
| Authority Contact Data | has the meaning given in clause 15.2.2; |
| BDUK | Building Digital UK; |
| BDUK Voucher Scheme | any scheme that is operated by or on behalf of BDUK and/or DSIT that provides grant support on a voucher basis to eligible beneficiaries towards the cost of installing a Superfast (or higher speed) broadband connection at their premises, including (but not limited to) the BDUK-operated Better Broadband, Super-Connected Cities, Gigabit Voucher and Rural Gigabit Voucher Schemes; |
| Beneficiaries | SME Beneficiaries and Residential Beneficiaries (and Beneficiary refers to any individual one of them); |
| Beneficiary Contract | each contract entered into between a Supplier and Beneficiary for one or more Superfast connections which is supported by one or more vouchers under the SBV Scheme; |
| Beneficiary Services | services, products and/or equipment Suppliers provide to Beneficiaries for the purpose of establishing and maintaining Superfast connections (including under Beneficiary Contracts); |
| Beneficiary Terms and Conditions | the current version from time to time of the SBV Scheme terms and conditions for Beneficiaries; |
| Busiest Hours | the hours of the day (not more than four (4) out of every twenty-four (24)) with the highest measured total data use in aggregate for a service. All measurement periods shall exceed one (1) hour and shall consist of at least four (4) measurements taken at not more than fifteen (15) minute intervals; |
| Capable Network | a broadband network able to provide a service to end users with an Access Line Speed capability of at least 30 Mb/s; |

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| Connectivity Requirements | the connectivity requirements set out in Schedule 3 – Connectivity Requirements; |
| Contact Data | the Supplier Contact Data or the Authority Contact Data as applicable; |
| Controller | has the meaning given in the Data Protection Laws; |
| Data Protection Laws | <p>(a) any law, statute, declaration, decree, directive, legislative enactment, order, ordinance, regulation, rule or other binding pronouncement, including findings, orders, decisions and judgements of a competent court or regulator with jurisdiction as updated and amended from time to time which relates to the protection of individuals with regards to the processing of personal data to which a relevant party is subject, including in relation to the UK the Data Protection Act 2018, the Privacy and Electronic Communications Regulations 2003 (amended by SI 2011 no. 6) and the General Data Protection Regulation (as incorporated into UK law under the UK European Union (Withdrawal) Act 2018) as the same are amended in accordance with the Data Protection, Privacy and Electronic Communications (Amendments etc) (EU Exit) Regulations 2019 (as amended by SI 2020 no. 1586); and</p> <p>(b) any code of practice or guidance published by the UK Information Commissioner's Office from time to time.</p> |
| DSIT | the UK Government Department for Science, Innovation and Technology; |
| Eligible Costs | has the meaning given in paragraph 1.1 of Schedule 4 – Eligible Costs; |
| Eligible Subsidy | <p>the amount of subsidy received by the relevant Enterprise in the current and two previous financial years from the following sources:</p> <ul style="list-style-type: none"> - MFA; - Small Amounts of Financial Assistance under 364(4) of the EU-UK Trade and Cooperation Agreement (which allows up to 325,000 Special Drawing Rights of subsidy); - SPEIA under Section 38 of the Subsidy Control Act; and - De Minimis under EU State aid law (which allows up to €200,000 in the current and two previous financial years); |
| Enterprise | business group of the recipient; |
| Good Industry Practice | standards, practices, methods and process conforming to the law and the exercise of that degree of skill and care, diligence, prudence and foresight which would reasonably and ordinarily be expected from a skilled and experienced person or body engaged in a similar undertaking in the same or similar circumstance; |

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| Insolvency Event | <p>in respect of a person,</p> <p>(a) if the person is insolvent;</p> <p>(b) where the person is a company, LLP or a partnership, if an order is made or a resolution is passed for the winding up of the person (other than voluntarily for the purpose of solvent amalgamation or reconstruction);</p> <p>(c) if an administrator or administrative receiver is appointed in respect of the whole or any part of the person's assets or business;</p> <p>(d) if the person makes any composition with its creditors; or</p> <p>(e) if the person takes or suffers any similar or analogous action to any of the actions detailed in this definition as a result of debt in any jurisdiction;</p> |
| Intellectual Property Rights | 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; |
| Issue Escalation Procedure | the procedure described in Schedule 6 – Issue Escalation Procedure; |
| Maximum Voucher Funding | the maximum total amount of voucher funding that can be paid by the Authority for a Pre-Registered package under the SBV Scheme, as determined by the Authority. |
| Minimum Download Speed | the minimum download speed measured with standard tools, which should be achieved for ninety five per cent (95%) of measurements in the Busiest Hours in accordance with standard industry practice which is normal operating procedure; |
| Minimal Financial Assistance / MFA | the Minimal Financial Assistance route as set out at Section 36 and 37 of the Subsidy Control Act 2022; |
| MFA threshold | £315,000 of Eligible Subsidy; |
| Other Supplier Data | has the meaning given in clause 15.2.3; |
| Personal Data | has the meaning given in the Data Protection Laws; |
| Pre-Registered Package | each package of products authorised by the Authority in accordance with clause 5.4, which is either a Standard PRP or a Project PRP; |

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| Premises | a building in the UK which attracts either council tax or business rates; |
| Process | has the meaning given in the Data Protection Laws; |
| Processed | has the meaning given in the Data Protection Laws; |
| Prohibited Act | to directly or indirectly offer, promise or give any person working for or engaged by the Authority a financial or other advantage to: <ul style="list-style-type: none"> (a) induce that person to perform improperly a relevant function or activity; (b) reward that person for improper performance of a relevant function or activity; and/or (c) commit any offence: <ul style="list-style-type: none"> i. under the Bribery Act 2010; ii. under legislation creating offences concerning fraud; iii. at common law concerning fraud; and/or iv. committing or attempting or conspiring to commit fraud; |
| Project PRP | a Pre-Registered Package of the nature described in clause 5.4.2 of these Terms and Conditions; |
| R100 Programme | the Authority's "Reaching 100" programme, the objective of which is for every home and business in Scotland to have access to Superfast broadband by 2021; |
| Residential Beneficiary | a resident in the UK that meets the Residential Beneficiary requirements set out in Schedule 2 – Beneficiary Eligibility and is eligible to benefit from vouchers under the SBV Scheme; |
| SBV Scheme | has the meaning given in Part A of these Terms and Conditions; |
| SME | the small and medium-sized enterprises described in paragraph 1.1.1 of Schedule 2 – Beneficiary Eligibility; |
| SME Beneficiary | a SME trading in Scotland that meets the SME Beneficiary requirements set out in Schedule 2 – Beneficiary Eligibility and is eligible to benefit from vouchers under the SBV Scheme; |
| Standard PRP | a Pre-Registered Package of the nature described in clause 5.4.1 of these Terms and Conditions; |
| Superfast | the relevant connection is capable of delivering at least 30Mb/s connectivity using any technology (upload or download, not necessarily at the same time); |
| Supplier | each supplier that the Authority has confirmed in writing is registered to the SBV Scheme following the Authority's review of the relevant supplier's registration application; |
| Supplier Bulletin | each bulletin issued by the Authority to the Suppliers relating to the SBV Scheme; |

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| Supplier Contact | the individual (with associated email address) notified by the Supplier to the Authority from time to time using sbvs@gov.scot , who shall be the main Supplier point of contact for the Authority for all matters relating to the SBV Scheme and have the additional responsibilities set out in clause 3.1.5; |
| Supplier Contact Data | has the meaning given in clause 15.2.1; |
| Supplier Guidance Document | the SBV Scheme document(s) entitled "Supplier Guidance" made available to Suppliers as may be updated and notified by the Authority from time to time; |
| Terms and Conditions | these terms and conditions (including the Schedules) as may be updated by the Authority in writing from time to time; and |
| Working Day | any day other than a Saturday, Sunday or public holiday in the jurisdiction of the party affected by the relevant Working Day provision. |

Schedule 2 – Beneficiary Eligibility

1. SME Beneficiaries

- 1.1 Organisations may be SME Beneficiaries only if Suppliers provide the Authority with the information set out in paragraph 4 of this Schedule and establish that:
- 1.1.1 the relevant organisation is no larger than a medium-sized company under sections 465 to 467 of the Companies Act 2006 which can be summarised as:
 - (a) up to 249 employees (in total in the organisation) and annual turnover no greater than £36 million; and/or
 - (b) an annual balance sheet no greater than £18 million;
 - 1.1.2 the organisation has not received a previous voucher under the SBV Scheme and/or under any BDUK Voucher Scheme. SME Beneficiaries may benefit from multiple connections supported by the SBV Scheme at different locations;
 - 1.1.3 as a result of the voucher contribution included within the relevant package, the organisation will have received less than the MFA Threshold from date of contracting for the relevant package;
 - 1.1.4 the organisation will receive the requisite step-change in service (as described in the Connectivity Requirements) as a result of contracting for the relevant Pre-Registered Package;
 - 1.1.5 the organisation is not:
 - (a) owned, linked through ownership or controlled by any Supplier;
 - (b) a publicly funded school;
 - (c) a public sector organisation;
 - (d) a privately funded school operating between the ages of 3-18; and/or
 - (e) an organisation solely involved in offering provision under the requirement for young people to remain in education or training until their 18th birthday; and
 - 1.1.6 the organisation has confirmed that they are content for their voucher to be used as part of the relevant Pre-Registered Package.
- 1.2 Where multiple organisations operate from the same shared location, the Authority reserves the right to limit the number of SME Beneficiaries in the location.
- 1.3 where a Beneficiary has more than one Premises, the Authority reserves the right to limit the number of vouchers a Beneficiary can claim;
- 1.4 The Authority shall only issue one voucher per Premises, identified by unique UPRNs.

2. Residential Beneficiaries

- 2.1 Residential Beneficiaries may only benefit from the SBV Scheme if Suppliers provide the Authority with the information set out in paragraph 4 of this Schedule and establish that the Premises is eligible for a voucher via the SBV Scheme.
- 2.2 To be eligible for a voucher via the SBV Scheme, a Premises must:
- 2.2.1 be part of a Supplier led project;
 - 2.2.2 be recognised by the Authority as premises where a superfast-capable connection would provide benefit (e.g. dwelling or business);
 - 2.2.3 not be under construction or built within the last 2 years unless determined eligible by the authority;
 - 2.2.4 not be vacant / unoccupied / derelict;
 - 2.2.5 not have speeds of more than 30 Mb/s;
 - 2.2.6 not be part of a planned or ongoing other UK Government subsidy initiative or programme to deliver Superfast Capable Networks, as determined by the Authority; and
 - 2.2.7 not be assessed by the Authority as likely to receive Superfast Capable Networks without public subsidy.
- 2.3 The Authority shall only issue one voucher per Premises, identified by UPRNs.
- 2.4 Where a Beneficiary has more than one Premises, the Authority reserves the right to limit the number of vouchers a Beneficiary can have.
- 2.5 The Authority will publish and maintain a "Go List" identifying premises which the Authority has assessed meet these criteria.

3. Beneficiary confirmation

Suppliers must obtain written consent from each Beneficiary before requesting vouchers for that Beneficiary following Approval of a Project.

Vouchers will not be issued by the Authority until this confirmation has been received. **Suppliers should note that a Beneficiary's voucher funding will only be confirmed as available after this step has taken place and the voucher is issued and whilst the Maximum Voucher Funding for a Pre-Registered Package has not been paid.**

4. Supplier reporting

- 4.1 Suppliers must report the following information to the Authority within 30 days of the date of each Beneficiary Contract and/or the date of the relevant Beneficiary's connection:
- 4.1.1 company name (where applicable);

- 4.1.2 Beneficiary contact name;
- 4.1.3 Supplier's unique customer reference number for the Beneficiary Contract;
- 4.1.4 voucher number – provided by Authority;
- 4.1.5 installation address;
- 4.1.6 installation postcode;
- 4.1.7 Beneficiary email address;
- 4.1.8 Beneficiary contact number;
- 4.1.9 Pre-Registered Package reference;
- 4.1.10 value of voucher claimed (actual Eligible Costs incurred as set out in the Pre-Registered Package);
- 4.1.11 existing connection speed (upload/download);
- 4.1.12 nature of previous connection (contended/uncontended);
- 4.1.13 new connection speed (when not fixed for the relevant Pre-Registered Package);
- 4.1.14 date Beneficiary Contract signed (date of sale); and
- 4.1.15 connection date (when completed).

5. Subsidy notification

The Authority shall issue a subsidy notification to the relevant Beneficiary when an installation has been completed and payment has been made to the relevant Supplier which outlines the nature, value of the subsidy they have received and that the award was made on the basis of the Minimal Financial Assistance threshold.

6. Multiple connection scenarios

The following limitations apply in respect of the following multiple connection scenarios:

| Beneficiary type | Number of Premises for which vouchers may be used | Max aggregate voucher value |
|---|---|---|
| SME (including sole trader) (single user of Premises) | As many Premises as it operates from. | Max SME permitted value for the SME Beneficiary per Premises up to the MFA Threshold. |

| | | |
|---|--|---|
| SME (including sole trader) (in shared Premises) | Vouchers are available per Premises only and the number of users of a Premises does not increase available funding. | Max SME permitted value for the SME Beneficiary up to the MFA Threshold. |
| Resident | As many Premises as the resident resides at (see the separate guidance issued by the Authority, including in relation to holiday homes etc). | Max residential permitted value for the Residential Beneficiary per Premises. |
| SME (including sole trader) operating from a residential Premises | As many eligible residential Premises as the SME is registered at. | Max SME permitted value for the SME Beneficiary. |
| Landlords with >1 Premises in different locations | As many eligible Properties as the landlord owns. | Up to the MFA Threshold. |

7. Residential Rental and Holiday Premises

- 7.1 Vouchers for holiday homes which are let must be requested for the Premises owner.
- 7.2 Vouchers for holiday homes which are let are considered as business vouchers if the property owner does not reside in the Premises.
- 7.3 Vouchers for holiday homes which are not let and where the owner resides (i.e. a second home) are considered as residential vouchers.
- 7.4 Vouchers for holiday homes where the owner resides must be classified as occupied by the local authority.
- 7.5 Residential vouchers can be requested for rental Premises if the expectation is for the tenant to reside at the property for a minimum of 12 months from date of installation. Vouchers must be requested in the name of the tenant and not the landlord.
- 7.6 Vouchers requested for rental Premises where the tenant is not expected to reside for 12 months should be requested in the name of the landlord/ property owner and would be considered as a SME voucher.

Schedule 3 – Connectivity Requirements

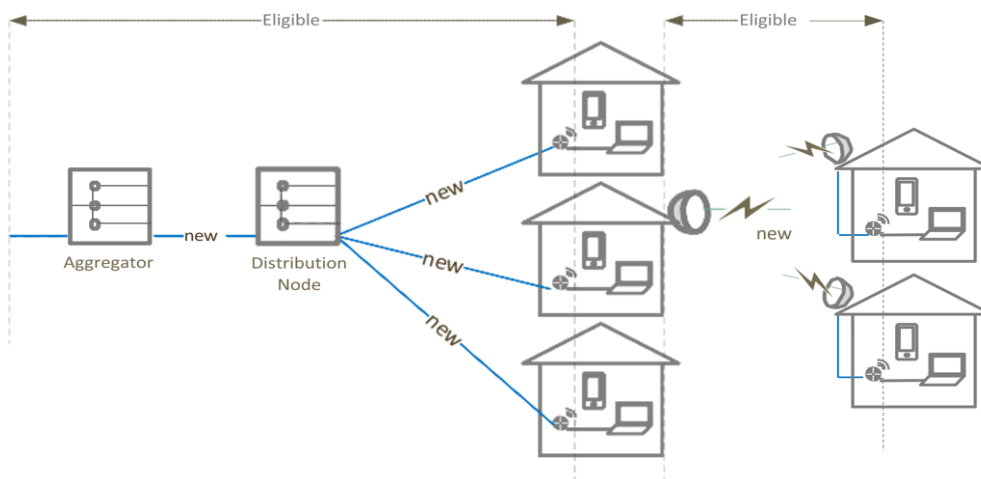
1. All connections supported by vouchers under the SBV Scheme must fulfil the following characteristics:
 - 1.1 the upgraded broadband service must deliver a service capable of a minimum of 30Mb/s to the Beneficiary's Premises; and
 - 1.2 the upgraded broadband service must deliver a "step change" in service which is at least a doubling of download and upload speeds compared to the service currently being consumed.
2. Any Premises that is capable of receiving a speed of greater than 30Mb/s (as determined by the Authority) is not eligible to benefit from a voucher under the SBV Scheme, whether or not that connection is currently in use.
3. In order to be eligible for the SBV Scheme, once the final connection has been made to a Beneficiary's Premises and the Beneficiary is taking services, the Supplier must confirm that the infrastructure supporting their service is Superfast within 10 Working Days of a valid retail/wholesale upgrade order (or the minimal timescale which may be achieved due to system processing constraints) with no additional capital/infrastructure/passive equipment upgrades required (excluding CPE).

Schedule 4 – Eligible Costs

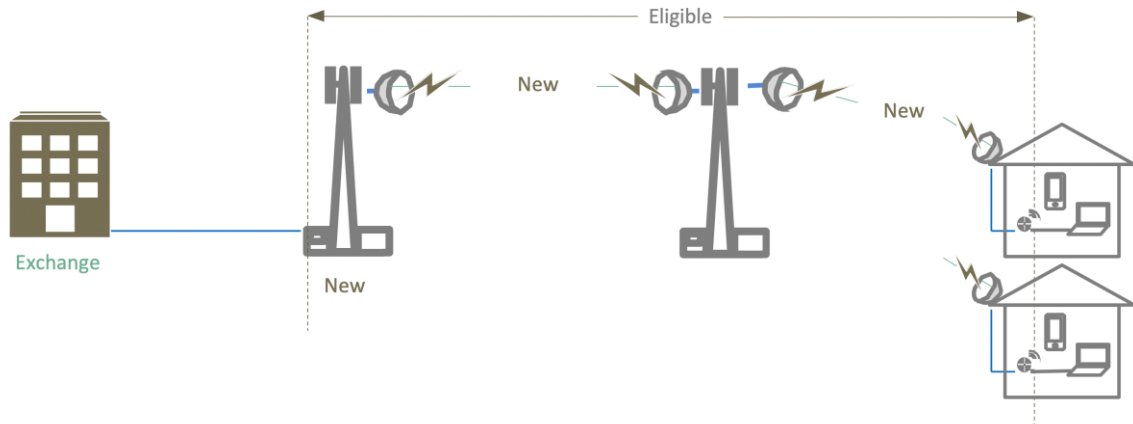
1. Introduction

- 1.1 For the purpose of the SBV Scheme, "**Eligible Costs**" means the full, or the significant part of, the directly attributable incremental costs (that are capable of being capitalised under generally accepted accounting practices in the UK) of connecting Beneficiaries to commercially deployed access infrastructure to enable Beneficiaries to obtain the high-speed/high-grade service capability they require, which meet the Connectivity Requirements and as such costs are further described in this Schedule 4.
- 1.2 **In accordance with these Terms and Conditions, Suppliers are responsible for ensuring that all claims submitted for voucher funding relate to Eligible Costs only, and should seek further guidance from the Authority if necessary before submitting claims for payment.**
- 1.3 Broadly, the lines of demarcation in the network that qualify for subsidy are:
 - 1.3.1 **Network side:** The downstream port of the nearest point of significant aggregation to a customer's Network Termination Equipment (NTE); and
 - 1.3.2 **Customer side:** the customer-side ports of the CPE.
- 1.4 This is further illustrated by reference to the diagrams below, which apply these demarcation principles to various types of network deployment:

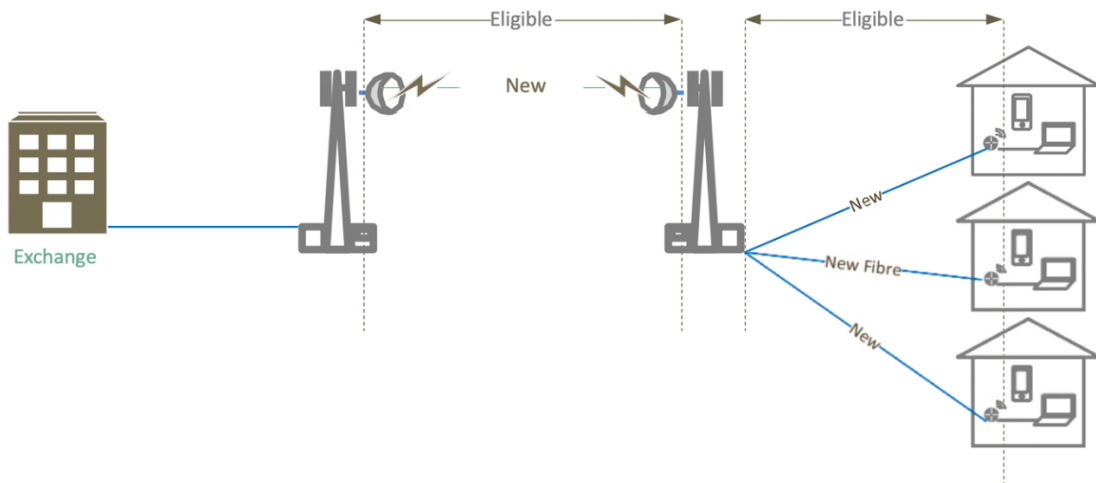
1. Example Deployment (Fibre)



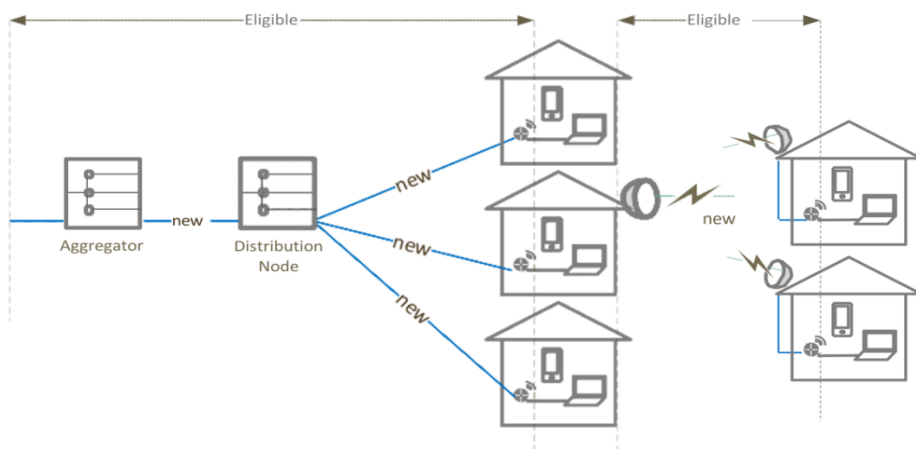
2a Example Deployment (Wireless)



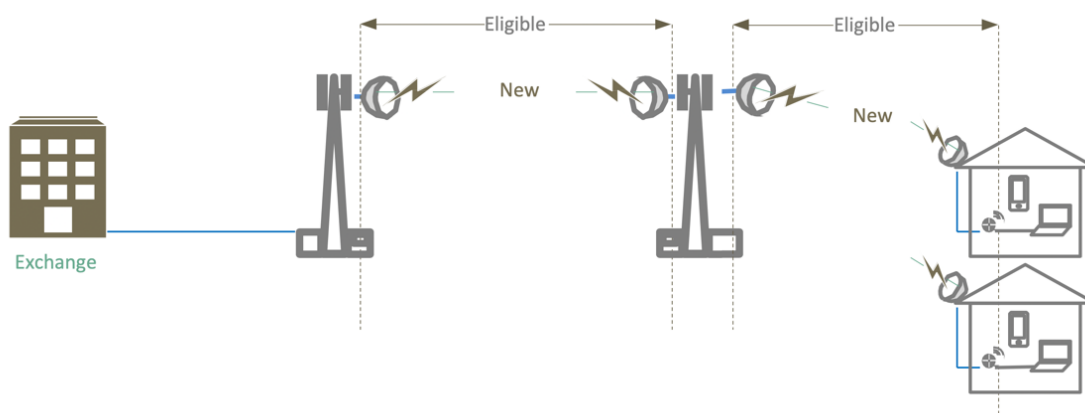
2b Example Deployment (Wireless)



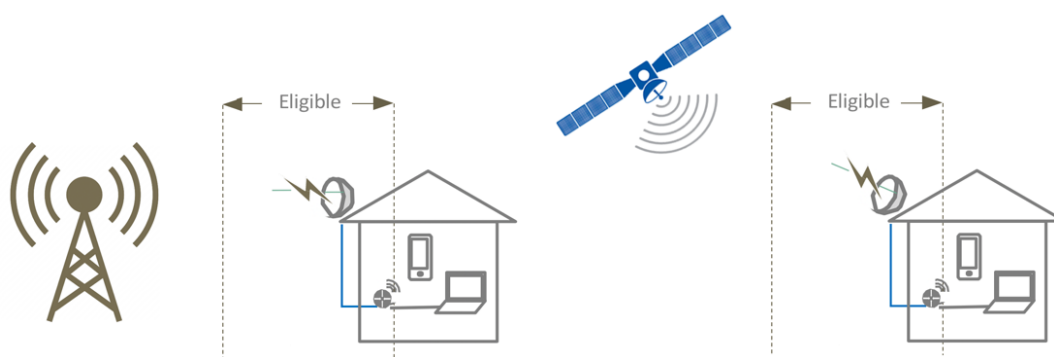
2c Example Deployment (Wireless)



2d Example Deployment (Wireless)



2e Example Deployment (4G and Satellite)



- 1.5 Switches, routers, splitters/combiners, amplifiers, repeaters and regenerators necessary to provide the Connectivity Requirements that are within these lines of demarcation **qualify for subsidy**, as do other intermediate items that are required to provide the requisite service, as described below.
- 1.6 Customer Premises Equipment (CPE) or NTE devices which provide a general computing function beyond supporting a network data service **do not qualify** for subsidy, including most NCE devices, firewalls, telephones, tablets, laptops and PCs. By contrast CPE devices that **only** provide a networking function, including modems, qualify. Only one wireless access point as part of the CPE may qualify. The maximum contribution made to the cost of any CPE by the voucher is £250 ex VAT. In addition to the cap of £250 for CPE, the contribution made by a voucher to the costs of active switching equipment for multi-occupancy buildings or sites is capped at **£400** ex VAT per voucher (i.e. a total maximum contribution of £650 ex VAT for CPE and active equipment).
- 1.7 While the precise categories of Eligible Costs will be dependent on the solutions offered to the Beneficiaries, the categories of Eligible Costs provided in paragraph 2.1 below are intended to provide Suppliers with an indication of the likely qualifying items.
- 1.8 The Authority reserves the right at its sole discretion to determine that costs submitted with proposed Pre-Registered Package for approval are not Eligible Costs.

- 1.9 Where a Supplier provides aggregate costs as part of a proposed Pre-Registered Package, the Supplier must be able to show the breakdown of these costs when requested by the Authority.
- 1.10 The Authority reserves the right to ask the Supplier to provide information about any existing assets or equipment being used as part of the Pre-Registered Package in connection with the Authority's commercial assessment process.
- 1.11 The Authority reserves the right to take into account any reduction in costs the Supplier will receive as a result of the Pre-Registered Package, such as savings from changing equipment.
- 1.12 The Authority reserves the right to remove any costs related to contingency or clearing blockages where third party assets are used where a Network Adjustment (or similar) process can be used to reclaim costs.

2. Eligible Costs

2.1 The costs set out below are non-exhaustive examples of Eligible Costs:

- adapters/converters to ensure that all the pre-existing communications functionality is effectively maintained (e.g. adapters/converters for analogue telephones, dialup modems, alarm diallers or other devices that may contain embedded modems such as medical alarms);
- civils and cabling costs;
- CPE (e.g. Optical Network Terminal (ONT) or fibre modem), backup battery, patch panel and residential gateway and associated intermediate power and fibre communications cables);
- external wireless repeaters if necessary, for coverage;
- fibre optic cables, sheaths, connectors, joints, splitters and enclosures;
- materials costs;
- microwave feeders, jumpers, connectors, antenna radomes and enclosures, lightning protection devices, and electrical earthing systems;
- necessary supporting structures including poles and other mountings, brackets, fixings, and associated civil works (including craneage);
- switches, routers, splitters/combiners, amplifiers, repeaters and regenerators necessary to provide the Connectivity Requirements that are within these lines of demarcation qualify for subsidy;
- planning, project management, survey, acquisition, site preparation, installation, and commissioning fees;
- power supplies equipment to support network electronics and optics, including power company connection costs, uninterruptible power supplies (UPS) and generators but excluding any CPE power supplies beyond an existing 240V AC socket;
- provision of building entry points and (including breaking/drilling charges for entry through external and internal walls), trunking and tray work (within end-user's curtilage) and fibre cable and jointing;
- provision of building location points (including all associated mounting costs);
- provision of new verge, footway and carriageway boxes, poles and duct infrastructure;
- Radio Frequency (RF) connectors, splitters, combiners, duplexers, filters;
- traffic management costs;
- tree surgery costs.

3. Excluded Costs

3.1 The following costs are non-exhaustive examples of costs that do not qualify as being Eligible Costs:

- SME connections to basic broadband technologies (see Note 2 below);
- bonded VDSL connections;
- additional charges for expedited connection e.g. time related charges (TRCs);
- cancellation fees for any pre-existing connection or contract;
- historic capital costs associated with network deployment, with the exception of equipment racks and associated power supply costs in 3rd party points of presence or exchanges;
- cabling on the customer side of the CPE to support (e.g. in-Premises installation of cat5e and RG6 coax cable or more than one wireless access point) inter-site connectivity;
- any of the network elements that may require upgrading to support the final connection e.g. 'middle' mile/trunk and core upgrades that are required to support the final connection;
- costs related to the purchase of wayleaves or other easement rights (see Note 1 below);
- operational expenditures and overheads (Opex), save for those that are direct incremental and one-off costs associated with the installation of the new high-speed / high-grade connection;
- operating lease rentals, general corporate or unabsorbed overheads, interest and financing charges;
- wayleaves;
- demand surveys, marketing & other sales costs; and
- unless explicitly approved otherwise by the Authority in writing, any margin applied by Suppliers or any related party to goods and/or services provided by any related party (see Note 3 below).

Explanatory Notes:

Note 1: Wayleave and easement rights being payments made to landowners for the legal right to access that land in order to install and maintain communications cabling and piping.

Note 2: Several different technology platforms can be considered as basic broadband networks including asymmetric digital subscriber lines (up to ADSL2+ networks), non-enhanced cable (e.g. DOCSIS 2.0), mobile networks of third generation (UMTS) and older satellite systems.

Note 3: The definition of "related party" is based on the definition of same in International Accounting Standard (IAS) 24 which for the purpose of these Terms and Conditions means (i) a person or a close member of that person's family who has control, joint control, or significant influence over the Supplier or is a member of the Supplier's key management personnel; (ii) a parent, subsidiary, fellow subsidiary, associate, or joint venture of the Supplier; or (iii) an entity that is controlled, jointly controlled, or significantly influenced or managed by a person who is a related party.

Schedule 5 – SBV Scheme Marketing and Promotion Protocol

1. Introduction

This protocol aims to ensure there is clear understanding of how Suppliers should present their involvement in the SBV Scheme, how media enquiries should be handled and when announcements need to be flagged to all parties involved.

2. Media Enquiries

Suppliers shall respond to all local and regional specific enquiries as they are best placed to provide this information. General questions about Scottish Government programmes should be directed to the Authority by contacting our general enquiries email at sbvs@gov.scot. Suppliers may respond to questions relating to the specific work they are undertaking and general broadband enquiries. When responding to queries or promoting the SBV Scheme, Suppliers should state the contribution being made by the Authority, and when doing so may use the Authority's logo and branding in accordance with the guidance below. Any material disseminated by a Supplier with Scottish Government branding or logos must be signed off by the Authority before release. The sign-off process is to send all proposed documents for release to sbvs@gov.scot.

3. Social Media

The Authority's press team are keen to support announcements through social media and ministers are happy to re-tweet where appropriate. If space permits and where appropriate, we would encourage the Authority funding to be referenced in tweets and social media content, linking to Authority social media accounts on Twitter (@ScotSuperfast) and Facebook (facebook.com/scotlandsuperfast). To help us join up, we suggest Suppliers follow us on Twitter and like us on Facebook so we can follow them back and also look out for retweets and content to share.

4. Press Releases

All parties (the Authority, relevant Suppliers, and local bodies if applicable) need to approve, and be offered an opportunity to provide a quote for inclusion in, any press release relating to the following:

- Supplier registration;
- projects and connections commenced or delivered; and
- any other significant milestones being reached.

All press releases or public announcements should be approved by the Authority – please email copies to superfastcommunications@gov.scot. Whilst comments or quotes are rarely added the Authority still needs to be aware of, and approve, any planned communications activity. Please ensure you allow sufficient time for feedback/approval from the Authority.

5. Use of Logos/Brands and References to the SBV Scheme

The Authority will make logos available for Suppliers in accordance with the arrangements described in the relevant Additional Guidance. These will only be provided/made available to users that have been authorised by the Authority.

The following guidelines **must** be followed when using these logos or references to the S B V Scheme:

- The use of the logo must not imply any endorsement of one Supplier over another.
- The logo must be of equal size to other partner logos.
- Suppliers with registered PRPs may present them to their customers as "available with support from Scottish Government".
- Suppliers must NOT present themselves or any Pre-Registered Package products as "approved" by the Authority nor infer that Authority agreement to a Project PRP implies any sole supplier rights for the relevant location.
- The logos may not be used following the end of the SBV Scheme or the cessation of the relevant Supplier's involvement in it.
- Placement of the logos must not imply any other accreditation or support of the supplier or its products other than the agreed SBV Scheme.
- The Authority reserves the right to have a quote included in any press release associated with the SBV Scheme and/or the R100 Programme.

Suppliers should **only** describe their involvement in the SBV Scheme as "Registered Supplier" and any Pre-Registered Packages as "authorised". Further guidance and examples of how to use these logos can be found in the relevant Additional Guidance issued by the Authority.

The right for Suppliers to use the logos are under a non-exclusive licence only and do not confer upon Suppliers any right or interest in the logos other than as set out in these Terms and Conditions. Logos should be used only as provided by the Authority.

Suppliers must not do, nor cause or authorise to be done: (i) anything which shall impair, damage or be detrimental to the reputation or goodwill associated with the Authority, the S B V Scheme, the R100 Programme and/or the logos; or (ii) anything which may adversely affect the value of the logos or their registration. The logos shall not be altered in any way without prior written consent from the Authority and the Suppliers shall ensure that any reproduction under these Terms and Conditions shall be a true and exact replica of the relevant logos.

Suppliers authorise the Authority to use their logo on the SBV Scheme website and to link to their websites.

Schedule 6 – Issue Escalation Procedure

1. Issues

- 1.1 The following procedure will be followed if there are issues arising with any Supplier in respect of the SBV Scheme, such issues including but not limited to:
- 1.1.1 provision of Pre-Registered Project proposals, quotes or invoices which have been identified as suspicious by Authority anti-fraud procedures;
 - 1.1.2 provision of quotes or invoices which seek to secure voucher funding for costs which have not been genuinely incurred or are not Eligible Costs;
 - 1.1.3 provision of invoices for costs which are not consistent with commercial rates for comparable installations;
 - 1.1.4 instances of suspected or actual collusion between Suppliers;
 - 1.1.5 instances of Supplier involvement with directors or suppliers who have (where applicable):
 - (a) previously been de-registered from the SBV Scheme for non-compliance reasons;
 - (b) been de-registered from other schemes (as set out in section 3 below) for non-compliance reasons;
 - (c) been de-registered from a relevant trade body (or other similar body) for non-compliance reasons;
 - (d) been disqualified from acting as a director in accordance with the Company Directors Disqualification Act 1986;
 - 1.1.6 any Supplier behaviour which the Authority considers to be inappropriate within the context of the SBV Scheme and/or these Terms and Conditions; and/or
 - 1.1.7 any suspected or actual breach of these Terms and Conditions.

2. Procedure

- 2.1 Following an initial investigation by the Authority and/or the relevant local body, or the Authority's appointed agent, without prejudice to any rights or remedies of the Authority under these Terms and Conditions or in law one of the following courses of action will be followed:
- 2.1.1 Do nothing – the Authority's assessment determines that no further action is required.
 - 2.1.2 Monitor – the Authority's assessment determines that the Supplier(s) in question should be monitored for an agreed period of time before determining if action is required.
 - 2.1.3 Investigate – the Authority's assessment determines that further investigation of the issue is required. The Authority's Senior Responsible Officer (SRO) will be

notified.

- 2.2 Suppliers should note that, should the Authority reasonably believe that public funding may be at risk, then the Authority reserves the right to immediately suspend relevant Suppliers from the SBV Scheme (and cease further payments to those Suppliers) pending further investigations.
- 2.3 If further investigations are deemed necessary, the relevant Supplier will be contacted in writing by the Authority and asked to provide clarification of the issue within 5 Working Days of receipt of the Authority's notification.
- 2.4 On receipt of the Supplier's response, the Supplier may be invited to attend a meeting with the Authority and/or the relevant local body to discuss the nature of the issue and the clarifications received.
- 2.5 Following completion of investigations (which may involve further discussions with the Supplier and the provision of further information by the Supplier) a written report will be prepared by the Authority. Depending on the specific nature of the issue, without prejudice to any rights or remedies of the Authority under these Terms and Conditions or in law the course of action that the Authority may take may include any one or all of:
 - 2.5.1 No action required – case closed.
 - 2.5.2 The Authority issuing clarification of guidance to all relevant local bodies.
 - 2.5.3 The Authority issuing clarification of guidance to the Supplier(s) concerned.
 - 2.5.4 The Authority issuing updated guidance to all Suppliers.
 - 2.5.5 The Authority amending the design of the SBV Scheme.
 - 2.5.6 The Authority determining special measures for the Supplier(s) in question, such as an increased frequency of audits.
 - 2.5.7 The Authority removing the Supplier(s) from participation in the SBV Scheme.
 - 2.5.8 The Authority seeking to recover funds from the Supplier(s) concerned or administering other sanctions on the Supplier, as deemed appropriate (such as referring the Supplier to the relevant authorities or using an external debt recovery agency).
- 2.6 Suppliers will have a right of appeal to the R100 Programme Director, if required. Otherwise, any decision made by the Authority under this Issue Escalation Procedure shall be final.

3. Issues relating to other schemes

In the event that there are issues arising with any Supplier in respect of any other existing or closed Authority programme or scheme (including without limit the R100 Programme), including issues analogous to the issues described in this Issue Escalation Procedure, such that the Authority reasonably believes that public funding may be at risk, then the Authority reserves the right at its discretion to (having completed an investigation) suspend the Supplier from the SBV Scheme, remove the supplier from the SBV Scheme, apply special measures to the Supplier (such as an increased frequency of audits) in respect of the SBV

Scheme and/or recover voucher funds from the Supplier paid under the S B V Scheme. The Authority may exercise such rights whether or not there are issues arising with the Supplier in respect of the SBV Scheme and such rights shall be without prejudice to, and unaffected by, any rights the Authority may have under or in connection with those other programmes or schemes.