



**DATED**

**Royal Borough of Windsor & Maidenhead**  
and  
[SUPPLIER]

**Agreement for small cell electronic communications  
equipment on Street Furniture**

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RBWM

# Agreement

## DATED

## Parties

- (1) **ROYAL BOROUGH OF WINDSOR & MAIDENHEAD** a local authority constituted under the Local Government Act 2000 and having its principal place of business at Town Hall, St Ives Road, Maidenhead, SL6 1RF (the **Authority**); and
- (2) **[name of supplier]** (registration number) whose registered office is situated at [address] (the **Supplier**).

## Introduction

The Authority and the Supplier (as an Electronic Communications Operator) wish to set out the basis upon which the Authority will enable the Supplier to deploy electronic communications infrastructure on the Authority's Assets and this Agreement is made pursuant to Part 2 of the Code.

## Agreed terms

### 1 Definitions and interpretation

- 1.1 In this Agreement, the following terms have the following meanings unless inconsistent with the context:

**Agreement** means the terms and conditions of this Agreement which include the recitals, the body of this Agreement, the attached schedules, together with any expressly incorporated documents, including without limitation, the Toolkit;

**Asset(s)** means all the Authority's lighting columns, CCTV columns and bus shelters within the area governed by the Authority;

**Business Day** means a day (other than a Saturday or Sunday) on which banks are open for domestic business in the City of London;

**Code** the Electronic Communications Code set out in Schedule 3A to the Communications Act 2003 as inserted by Schedule 1 of the Digital Economy Act 2017 (as amended from time to time);

**Commencement Date** means the date of this Agreement;

**Confirmed Asset(s)** means the Assets that are approved by the Authority pursuant to this Agreement for the hosting of Equipment by the Supplier pursuant to Schedule 1;

**Confidential Information** means the provisions of this Agreement and any information that ought to be considered as confidential (however it is conveyed or on whatever media it is stored) and includes information whose disclosure would, or would be likely to, prejudice the commercial interests of any person, trade secrets, Intellectual Property Rights and know-how of either party and all personal data (including special categories

of personal data and personal data relating to actual or potential criminal offences and convictions) within the meaning of Data Protection Law, in all cases whether disclosed orally or in writing before or after the date of this Agreement;

**Controller** has the meaning given in, and shall be interpreted in accordance with, the Data Protection Law;

**Data Protection Law** means:

- (a) all applicable data protection and privacy legislation in force from time to time in the UK including the UK GDPR; the Data Protection Act 2018 (DPA 2018) (and regulations made thereunder) and the Privacy and Electronic Communications Regulations 2003 (SI 2003/2426) as amended and all other legislation and regulatory requirements in force from time to time which apply to a party relating to the use of personal data (including, without limitation, the privacy of electronic communications); and
- (b) any code of practice or guidance published by a competent supervisory authority in relation to the Processing of Personal Data or marketing activities to which a party is subject, from time to time;

**EIRs** means the Environmental Information Regulations 2004, together with any guidance and/or codes of practice issued by the Information Commissioner or any Central Government Body in relation to such Regulations;

**Electronic Communications Operator** an electronic communications operator to whom a direction applies under section 106(3) (a) of the Communications Act 2003;

**Equipment** means electronic communications equipment comprising of either a "small cell system" and/or "small cell antennae" (as each term is defined in the Town and County Planning (General Permitted Development) (England) (Amendment) (No.2) Order 2016), and which is owned or operated by the Supplier including any electricity and/or power connections including without limitation, any coaxial, CAT6, power cables, fibre cables, network termination equipment and any other equipment to be installed on the Asset;

**Fees Regulations** means the Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004;

**Fixed Connection** means any fibre or other fixed line connection which the Supplier may deploy or procure to connect Equipment to an Asset;

**FOIA** means the Freedom of Information Act 2000 and any subordinate legislation (as defined in section 84 Freedom of Information Act 2000) made under the Freedom of Information Act 2000 from time to time together with any guidance and/or codes of practice issued by the Information Commissioner or relevant Government Department in relation to such Act;

**Force Majeure** shall mean an event beyond the reasonable control of the Supplier or the Authority which does not relate to its fault or negligence. Force Majeure includes (without limiting the generality thereof) acts of God, expropriation or confiscation of facilities, war hostilities, rebellion, terrorist activity, local or national emergency, government action, national pandemic, sabotage or riots, floods, fires and explosions or other catastrophes;

**Group Company** means in relation to the Supplier, that company and every Subsidiary or Holding Company of the Supplier or a Subsidiary or Holding Company of any such Subsidiary or Holding Company from time to time;

**Highways Law** means the primary and secondary legislation and any orders made pursuant thereto and the body of caselaw relating to the rights and obligations and restrictions applicable to the use of and carrying out of works to highways and associated apparatus and structures (including without limitation the Highways Act 1980, the Road Traffic Regulation Act 1984 and the New Roads and Street Works Act 1991 and any secondary legislation or orders made pursuant thereto)

**Holding Company** has the meaning set out in section 1159 of the Companies Act 2006;

**Information** means all information of whatever nature, however conveyed and in whatever form, including in writing, orally, by demonstration, electronically and in a tangible, visual or machine readable medium (including CD ROM, magnetic and digital form);

**Insolvency Proceeding** means the taking of any corporate action, legal proceedings or other procedures in relation to any of the following:

- (a) suspension of any payments;
- (b) applying for or obtaining a moratorium for the whole or any part of any indebtedness whether pursuant to an administration or Part A1 of the Insolvency Act 1986 or otherwise;
- (c) winding up;
- (d) dissolution, administration, administrative receivership, restructuring (pursuant to Part 26A of the Companies Act 2006) or reorganisation (by way of voluntary arrangement, scheme of arrangement or otherwise) except (in the case of a corporate) solvent liquidation or reorganisation;
- (e) the making of an order in relation to a composition, compromise, assignment, or arrangement with any creditor;
- (f) appointment of a liquidator (except on a solvent liquidation), receiver, administrative receiver, administrator, compulsory manager or similar officer for the person or any part of its assets;
- (g) (in the case of an individual) appointment of a trustee in bankruptcy or a provisional receiver or similar officer for that individual or any part of his assets; or

the service any notice or any other action pursuant to Section 72 of the 2007 Act;

**Intellectual Property Rights** any and all patents, trademarks, service marks, copyright, database rights, moral rights, rights in a design, know-how and all or any other intellectual or industrial property rights whether or not registered or capable of registration and whether subsisting in the United Kingdom or any other part of the world together with all or any goodwill relating or attached thereto which is created, brought into existence, acquired, used or intended

to be used by the Supplier or by the Suppliers employees, agents and subcontractors for the purposes of this Agreement;

**Licensed Asset** means an Asset on which the Supplier has deployed Equipment in accordance with this Agreement;

**Necessary Consents** means all necessary permissions and approvals (including but not limited to planning agreements and permissions and other approvals required by the Planning Acts, building warrants and permissions permits agreements and other approvals required under Highways Law), licences and approvals required for the Works and/or the use of the Equipment;

**Operational Procedures** means the procedures set out in Schedule 1 which will apply when the Supplier wishes to inspect an Asset for possible use, deploy and install Equipment on the Asset, undertake Works at an Asset, or anything else which may impact the functioning of the Asset or the Equipment;

**Party** means either the Supplier or the Authority and **Parties** means both the Supplier and the Authority;

**Permitted Use** means the use of Equipment on Licensed Assets for the reception and transmission of telecommunications signals and data/provision and/or operation of electronic communications networks and/or electronic communications services (each within the meaning of section 32 Communications Act 2003);

**Personal Data** means personal data as defined in the Data Protection Law which is Processed by the parties in relation to the performance of this Agreement;

**Planning Acts** means (without limitation) the Town and Country Planning Act 1990; the Planning (Listed Buildings and Conservation Areas) Act 1990; the Planning (Hazardous Substances) Act 1990; the Planning (Consequential Provisions) Act 1990; the Planning and Compulsory Purchase Act 2004; the Planning Act 2008; the Localism Act 2011; the Growth and Infrastructure Act 2013; the Housing and Planning Act 2016; and the Neighbourhood Planning Act 2017 and all secondary legislation or guidance made or issued pursuant thereto;

**Processing** means has the definition in, and shall be interpreted in accordance with, the Data Protection Law, and the terms "Process," "Processed" and "Processing" shall be construed accordingly;

**Processor** means has the definition in, and shall be interpreted in accordance with, the Data Protection Law;

**Programme Plan** means the Supplier's plan for the installation of the Equipment on the Assets to be prepared as outlined in Schedule 1; **Request** for Information shall have the meaning set out in the FOIA or the Environmental Information Regulations as relevant (where the meaning set out for the term "request" shall apply);

**Surveys/Structural Tests** means as defined in paragraph 4 of Schedule 1;

**Subsidiary** has the meaning set out in section 1159 Companies Act 2006; **Term**

**Term** means the term set out at clause 4.1 and any statutory continuation of it;

**Toolkit** means The Royal Borough of Windsor & Maidenhead's Digital Infrastructure Toolkit, the current version of which is annexed and as may be updated from time to time by the Authority acting reasonably and provided to the Supplier in writing;

**Upgrade Works** means as defined in paragraph 4 of Schedule 1;

**Works** means the works to be carried out by the Supplier, its agents or contractors (including any Upgrade Works) pursuant to and in accordance with this Agreement;

## 1.2 Interpretation

1.2.1 The words **including, include, for example, in particular** and words of similar effect shall be construed so that they do not limit the general effect of the words which precede them, and so that any examples that are given are not to be exclusive or limiting examples of the matters in question. References to this Agreement and any other document referred to in this Agreement, is a reference to it as validly varied, supplemented and/or novated from time to time.

1.4 References to any party include (where applicable), its lawful successors, permitted assignees and permitted transferees.

1.5 References to the singular include the plural and vice versa.

1.6 References to any one gender do not exclude other genders.

1.7 Recitals and headings are all for reference only and shall be ignored in construing this Agreement.

1.8 If any provision in this Agreement is held to be invalid, illegal or unenforceable then it shall not affect the validity or enforceability of the remaining provisions.

1.9 Obligations of a Party shall be deemed to be joint and several obligations where that Party is more than one person.

1.10 Unless expressly stated to the contrary any reference to a statute or statutory provision shall include any subordinate legislation made at the Commencement Date under that statute or statutory provision and shall include any extension or modification, amendment or re-enactment of that statute and any regulations or orders made under that statute, and any general reference to a statute includes any regulations or orders made under that statute.

## 2 General

2.1 This Agreement is a framework that will enable the Supplier to assess, access and use the Assets for the Permitted Use, pursuant to the provisions of this Agreement. For the avoidance of doubt, the Authority shall continue to use the Asset(s) for its own purposes and the Supplier's Equipment shall not affect the normal operation of the Assets. In the case where an Asset hosts deployed Equipment, then (without prejudice to clause 2.22) the Authority shall not interfere with the operation of the Equipment for the Permitted Use by the Supplier except where the Equipment is adversely affecting

the normal operation of the Assets or the Authority is carrying out routine, preventative or reactive maintenance or in an emergency where by such works of maintenance shall be carried out as soon as reasonably practicable and (without prejudice to paragraph 7.3 of Schedule 1) the Authority shall not be liable for any interference caused to the operation of the Equipment due to the presence of other telecommunications or other equipment on an Asset belonging to the Authority or a third party.

- 2.2 Notwithstanding the terms of clause 2.1, this Agreement is non-exclusive. The Supplier acknowledges that the Authority may enter into similar agreements with other person(s) and companies, including agreements for the use of the same Assets.
- 2.3 Each Party shall liaise with and provide reasonable advice and assistance to the other in relation to the Permitted Use and the matters contemplated by this Agreement, including but not limited to the co-ordination of all activities set out in the Operational Procedures or as otherwise stated in this Agreement.
- 2.4 Title to and property in the Equipment shall remain vested in the Supplier at all times.
- 2.5 Title to the Assets shall remain vested in the Authority at all times.
- 2.6 The Authority is providing the Assets to the Supplier for the Permitted Use but is not responsible for the Supplier's provision of services to its customers and the Authority gives no warranty to the Supplier that the Assets are suitable for the Permitted Use.
- 2.7 The Authority grants to the Supplier a non-exclusive licence to access and assess the suitability of the Assets, to install Equipment on the Confirmed Assets and to maintain, repair, use, alter, renew, upgrade and replace Equipment on the Licensed Assets for the Permitted Use in accordance with and subject to the terms of this Agreement.
- 2.8 The references to the Supplier in respect of provisions requiring performance of the Supplier's obligations under this Agreement shall be deemed to include Nominated Third Parties.
- 2.9 The Parties shall comply with the Schedules to this Agreement.

### 3 Fees and associated costs

- 3.1 In consideration of the Authority's costs and expenses in preparing, negotiating and facilitating this Agreement, the Supplier shall pay the Authority **£7,500 (the Initial Fee)**, plus VAT if applicable on or before the date hereof. The Authority shall invoice the Supplier for the Initial Fee on execution of this Agreement by both Parties.
- 3.2 Where the Supplier requires to inspect the Assets and/or undertake any Surveys/ Structural Tests or upgrades or carry out any other activities to the Asset which require attendance by the Authority, the Supplier shall pay to the Authority a rate of **£310 plus VAT** for 3 hours and over 3 hours the rate is **£465 plus VAT** if applicable (the **Inspection Fee**). The Authority shall invoice the Supplier for the Inspection Fee as soon as reasonably practicable after each inspection or set of inspections. The Authority may (acting reasonably) increase the daily rate periodically (but not more



frequently than once every 12 months) as may reasonably be required to reflect any increases in costs and with due regard to other comparable local authorities daily rates.

- 3.3 The Supplier shall pay to the Authority an annual fee quarterly in arrears on the usual quarter days of **£300 plus VAT** per Licenced Asset (the **Annual Fee**) regardless of how many days during the preceding quarter that an Asset was a Licensed Asset. The Supplier shall provide a quarterly statement to the Authority of each Asset on which Equipment has been deployed in the last quarter and the Authority shall have the opportunity to verify this and shall provide a quarterly invoice for the Annual Fee for the Licensed Assets in line with the Supplier's statement. No pro-rated refunds shall be given by the Authority to the Supplier if the Agreement is terminated in the course of that year for any reason under clause 8 or Schedule 1. The Annual Fee shall be reviewed pursuant to the provisions of Schedule 3.
- 3.4 All other costs or expenses as outlined in the Toolkit and/or for additional permits, consents or approvals required for the installation of the Equipment or any associated Works, as further described in Schedule 1, shall be payable by the Supplier.
- 3.5 All power costs related to the Equipment shall be paid by the Supplier, based on the UMSUG charge code for the installed Equipment configuration.
- 3.6 The Supplier agrees to pay invoices within 30 days from the end of the month in which the invoice is received PROVIDED THAT the relevant invoice is valid and properly addressed to the Supplier. In the event of late payment by the Supplier of any amount payable under this Agreement, the Supplier shall pay to the Authority interest on the outstanding amount at a rate of 3% per annum above the base rate from time to time of the Bank of England, from the due date of payment until the date the outstanding amount is actually received by the Authority.

#### 4 **Term**

- 4.1 This Agreement shall come into force on the Commencement Date and shall continue for a period of five (5) years from and including the Commencement Date . For the avoidance of doubt, the licence to have Equipment on the Assets pursuant to and in accordance with this Agreement shall expire at the end of the Term, regardless of when the Supplier installed its Equipment on each Asset.
- 4.2 This Agreement shall expire at the end of the Term and the Supplier shall remove the Equipment in accordance with the process set down in the Operational Procedures.

#### 5 **Not Used**

#### 6 **Confidentiality**

- 6.1 Subject always to clause 12, each Party shall:
- 6.1.1 keep in confidence any Confidential Information of the other Party obtained under this Agreement; and

- 6.1.2 not disclose the Confidential Information of the other Party to any person (other than their employees, sub-contractors or professional advisers) without the written consent of the other Party.
- 6.2 This clause 6 shall not apply to any Confidential Information that the Party that wishes to disclose can show:
- 6.2.1 has been published other than through a breach of this Agreement;
- 6.2.2 is lawfully in the possession of the receiving Party before the disclosure of the Confidential Information under this Agreement took place;
- 6.2.3 was obtained from a third party who is free to disclose it; and
- 6.2.4 is required to be disclosed under any applicable law or by order of a court or governmental body. In such event, the Party shall notify the other Party in writing of such disclosure.

## 7 **Limitation of liability and insurance**

- 7.1 Nothing in this Agreement shall limit or exclude a Party's liability for death or personal injury caused by its negligence, or that of its employees, agents or subcontractors or anyone within its reasonable control. Neither Party shall be liable to the other Party under or in connection with this Agreement for any loss of income, loss of actual or anticipated profits, loss of contracts, loss of goodwill or reputation, loss of business, loss of anticipated savings, loss of, damage to or corruption of data, or for any indirect or consequential loss or damage of any kind, in each case howsoever arising, whether such loss or damage was foreseeable or in the contemplation of the Parties and whether arising in or for breach of contract, tort (including negligence), breach of statutory duty, indemnity or otherwise.
- 7.2 The Authority accepts no liability for any damage to the Equipment, except where any damage occurs as a result of a negligent or deliberate act of the Authority. In that case the Authority's liability will be limited to the replacement value of the relevant Equipment.
- 7.3 The Supplier shall make good any damage caused to any Assets by reason of any act or omission or default by the Supplier, or any third party for whom the Supplier is responsible at law arising out of the Supplier's Permitted Use or any other use of the Assets.
- 7.4 The Supplier shall be liable for and shall indemnify the Authority against, any expense, liability, loss, claim or proceedings incurred by the Authority and howsoever arising under any statute or at common law, to the extent that it is attributed to any negligence, breach of statutory duty, act, omission or default (including without limitation breach of this Agreement) of the Supplier or those authorised by it, except to the extent that the same is due to any negligence on the part of the Authority.
- 7.5 The Supplier shall, throughout the Term:

- 7.5.1 maintain employer's liability insurance in the sum of (£5,000,000) in respect of any one event and unlimited in the period;
- 7.5.2 maintain public liability insurance in the sum of (£10,000,000) in respect of any one event and unlimited in the period; and
- 7.5.3 maintain professional indemnity insurance in the sum of (£5,000,000) in respect of any one event and unlimited in the period.

and shall when reasonably requested to do so by the Authority and at least annually, produce for inspection insurance certificates to show that the above detailed insurance cover is being maintained. The minimum level of cover specified in clauses all be reviewed periodically (not more than once every 2 years) to maintain an adequate insurance provision in line with industry standards, with such revised level of cover to be agreed between the Authority and the Supplier (each acting reasonably)

7.6 All insurances must be with an insurance company registered with the Financial Conduct Authority (FCA) in the UK.

7.7 The Authority shall:

- 7.7.1 promptly notify the Supplier of any claims and proceedings in relation to which it considers the Supplier's indemnity applies;
- 7.7.2 take reasonable steps to mitigate any liabilities, losses and expenses (and the indemnity shall apply to the reasonable costs of the Authority in doing so); and
- 7.7.3 not compromise or settle any such claim without the prior written consent of the Supplier (such consent not to be unreasonably withheld or delayed).

7.8 The Supplier's liability for damage to any real or personal property shall be limited per incident or series of connected incidents to:

- 7.8.1 £1,000,000 for damage to buildings and contents thereof in respect of any one claim or series of connected claims; or
- 7.8.2 £20,000 for damage to the Assets or any other real or personal property above for any one claim or series of connected claims .

The minimum level of cover specified in clauses 7.8.1 and 7.8.2 above shall be reviewed periodically (not more than once every five (5) years) to maintain an adequate insurance provision in line with industry standards, with such revised level of cover to be agreed between the Authority and the Supplier (each acting reasonably)

7.9 This clause 7 shall continue in force after the termination or expiry of this Agreement.

## 8 Termination

- 8.1 The Authority may terminate this Agreement in respect of an individual Asset by giving as much notice as is reasonably practicable given the circumstances but not less than twelve months' notice to the Supplier where the relevant Asset is to be removed, altered, redeveloped or moved due to highways or other development or where the continued use or siting of the Equipment needs to be removed in order to facilitate other development or where otherwise required by Highways Law. For the avoidance of doubt, where the Supplier then wishes to transfer any Equipment from such Asset, this shall not be deemed as termination of this Agreement in relation to the relevant item of Equipment and the Authority and the Supplier shall cooperate in good faith to find an alternative suitable Asset in accordance with the Operating Procedures.
- 8.2 Where the Authority is prevented from continuing the use of an Asset due to damage to an Asset outside of the Authority's control, then the Authority may terminate this Agreement immediately on service of notice to the Supplier in respect of the relevant Asset and on service of the notice the Supplier 's use of the Asset shall terminate. The Authority and the Supplier shall cooperate in good faith to find an alternative suitable Asset in accordance with the Operating Procedures.
- 8.3 This Agreement may be terminated at any time by either Party if the other Party commits a material breach of the terms of this Agreement which is not capable of remedy, or if capable of remedy, is not remedied within 30 Business Days after receipt of notice from the non-breaching Party requiring the breach to be remedied.
- 8.4 This Agreement may be immediately terminated by the Authority upon giving written notice to the Supplier if there is a change of control of the Supplier, as defined by section 450 Corporation Tax Act 2010, where it may be reasonably anticipated that it will have a material effect on the Supplier's ability to perform its obligations under this Agreement, save that the Authority shall not be permitted to exercise the foregoing right of termination after the expiration of six months after the later of the concurrence of each such change of control or becoming aware of each such change of control (the Supplier being under an obligation to so notify), and shall not be permitted to exercise such right where the Authority has agreed in advance to the particular change of control and such change of control takes place as proposed.
- 8.5 This Agreement may be immediately terminated by the Authority upon giving notice to the Supplier if the Supplier suffers an Insolvency Proceeding:
- 8.5.1 suffers an Insolvency Proceeding; or
  - 8.5.2 ceases to be an Electronic Communications Operator.
- 8.6 Neither Party shall be liable to the other for any delay or non-performance of its obligations contained in this Agreement arising from an event of Force Majeure. The Party claiming Force Majeure will promptly notify the other in writing of the reasons for the delay or stoppage and the likely duration and will take reasonable steps to overcome the delay or the stoppage. If there is a Force Majeure event which continues for more than three months which affects the Assets, the Authority or the Supplier may terminate this Agreement by giving not less than 30 Business Days written notice of termination to the other Party in relation to the relevant Assets

- 8.7 The Supplier or the Authority may terminate this Agreement in its entirety or in respect of an individual Asset by giving not less than 6 months' notice.
- 8.8 Upon expiry or otherwise termination of this Agreement in its entirety, the Supplier shall:
- 8.8.1 provide to the Authority any Confidential Information which is in the Supplier's possession, power or control, either in its then current format or in a format reasonably nominated by the Authority, together with all other related documentation, and any other information and all copies thereof owned by the Authority in relation to all relevant Assets; and
- 8.8.2 remove the Equipment from all relevant Assets in accordance with the Operational Procedures and render reasonable assistance to the Authority, if requested, to the extent necessary to do so.

## 9 **Variation**

This Agreement or any part of it shall not be amended, modified or supplemented except by a formal variation in writing signed by authorised representatives of both Parties.

## 10 **Assignment and subcontracting**

10.1 Neither Party shall be permitted to assign their rights under this Agreement, without the prior written consent of the other Party except in the case of assignments to Electronic Communications Operators and save that the Supplier is permitted to assign this Agreement to any Group Company Provided the Supplier enters into a guarantee agreement with the Authority which guarantees the assignee's compliance with all the Supplier's obligations under this Agreement.

10.2 This Agreement will be binding on, and inure to the benefit of, the Parties and their successors and permitted assigns.

## 11 **Notices**

All notices given under this Agreement shall be in writing, sent by prepaid post, personal delivery or email to the addresses below:

### 11.1 **To the Supplier**

Post: [ ]

Email: [ ] or any alternative address that the Supplier notifies to the Authority.

### 11.2 **To the Authority**

Post: Shasta Parveen, Infrastructure Service Lead at the Authority's registered office address shown above

Email: [shasta.parveen@rbwm.gov.uk](mailto:shasta.parveen@rbwm.gov.uk) or any alternative address that the Authority notifies to the Supplier.

12 **Freedom of information**

12.1 The Supplier acknowledges that the Authority is subject to the requirements of the FOIA and the EIRs and shall provide all necessary assistance and cooperation as reasonably requested by the Authority to enable the Authority to comply with its obligations under the FOIA and the EIRs.

12.2 Where the Authority receives a Request for Information in relation to Information that the Supplier is holding on its behalf, the Authority shall transfer to the Supplier such Request for Information and the Supplier shall:

12.2.1 provide the Authority with a copy of all such Information in the form that the Authority requires as soon as practicable and in any event within five (5) Business Days (or such other period as the Authority acting reasonably may specify) of the Authority's request; and

12.2.2 provide all necessary assistance as reasonably requested by the Authority in connection with any such Information, to enable the Authority to respond to a Request for Information within the time for compliance set out in section 10 of the FOIA or Regulation 5 of the Environmental Regulations.

12.3 Following notification under clause 12.2 (Freedom of Information) and up until such time as the Supplier has provided the Authority with all the Information specified in clause 12.2.1 (Freedom of Information), the Supplier may make representations to the Authority as to whether or not or on what basis Information requested should be disclosed, and whether further Information should reasonably be provided in order to identify and locate the Information requested, provided always that the Authority shall be responsible for determining at its absolute discretion:

12.3.1 whether the Information is exempt from disclosure under the FOIA and the Environmental Information Regulations; and

12.3.2 whether the Information is to be disclosed in response to a Request for Information,

and in no event shall the Supplier respond directly, or allow its sub-contractors to respond directly, to a Request for Information unless expressly authorised to do so in writing by the Authority.

12.4 The Supplier shall ensure that all Information held on behalf of the Authority is retained for disclosure for at least six years (from the date it is acquired) and shall permit the Authority to inspect such Information as requested from time to time.

12.5 The Supplier shall transfer to the Authority any Request for Information received by the Supplier and relating to Information that the Supplier is holding on behalf of the Authority; including Information relating to this Agreement, as soon as practicable and in any event within two Business Days of receiving it.

12.6 The Supplier acknowledges that the Authority may be required under the FOIA and EIRs to disclose Information (including Confidential Information) without consulting or obtaining consent from the Supplier. The Authority shall be responsible for determining in its absolute discretion whether any Confidential Information and/or any other information is exempt from disclosure in accordance with the FOIA and EIRs.

- 12.7 In the event of a request from the Authority pursuant to clause 12.2 (Freedom of Information), the Supplier shall as soon as practicable, and in any event within five Business Days of receipt of such request, inform the Authority of the Supplier's estimated costs of complying with the request to the extent these would be recoverable if incurred by the Authority under section 12(1) of the FOIA and the Fees Regulations. Where such costs (either on their own or in conjunction with the Authority's own such costs in respect of such Request for Information) will exceed the appropriate limit referred to in Section 12(1) of the FOIA and as set out in the Fees Regulations the Authority shall inform the Supplier in writing whether or not it still requires the Supplier to comply with the request and where it does require the Supplier to comply with the request the five Business Days' period for compliance shall be extended by such number of additional days for compliance as the Authority is entitled to under Section 10 of the FOIA. In such case, the Authority shall notify the Supplier of such additional days as soon as practicable after becoming aware of them and shall reimburse the Supplier for such costs as the Supplier incurs in complying with the request to the extent the Authority itself receives reimbursement of such costs in accordance with its own FOIA policy from time to time.
- 12.8 The Supplier acknowledges that (notwithstanding the provisions of this clause 12) the Authority may, acting in accordance with the Department of Constitutional Affairs' Code of Practice on the Discharge of Functions of Public Authorities under Part I of the Freedom of Information Act 2000 (the **FOIA Code**), be obliged under the FOIA, or the Environmental Information Regulations to disclose Information concerning the Supplier, the Works or the Permitted Use:
- 12.8.1 in certain circumstances without consulting with the Supplier; or
- 12.8.2 following consultation with the Supplier and having taken their views into account,
- provided always that where clause 12.8.1 (Freedom of Information) applies, the Authority shall, in accordance with the recommendations of the FOIA Code, draw this to the attention of the Supplier prior to any disclosure.
- 12.9 The Supplier acknowledges that the Authority may be required under the FOIA and EIRs to disclose information without consulting or obtaining consent from the Supplier. The Authority shall take reasonable steps to notify the Supplier of any requests for information to the extent that it is permissible and reasonably practical for it to do so but (notwithstanding any other provision in this Agreement) the Authority shall be responsible for determining in its absolute discretion whether any information is exempt from disclosure in accordance with the FOIA and/or the EIRs. Where the Authority is unable to provide the Supplier with advance notice prior to disclosing information, the Authority shall draw the disclosure to the Supplier's attention after any such disclosure.
- 12.10 Notwithstanding any other provision of this Agreement, the Supplier hereby consents to the publication of this Agreement in its entirety including from time-to-time agreed changes to this Agreement subject to the redaction of information that is exempt from disclosure in accordance with the provisions of the FOIA.
- 12.11 In preparing a copy of this Agreement for publication the Authority may consult with the Supplier to inform its decision making regarding any redactions but the final decision in relation to the redaction of information shall be at the Authority's absolute discretion.

12.12 The Supplier shall assist and co-operate with the Authority to enable the Authority to publish this Agreement.

12.13 This clause 12 (Freedom of Information) shall survive the expiry or earlier termination of this agreement.

### 13 **Data Protection**

13.1 In relation to all Personal Data that is Processed in connection with this Agreement, the Supplier shall, and shall procure that any sub-contractor that may Process Personal Data shall, at all times comply with the Data Protection Law and not by act or omission cause the Authority to breach the Data Protection Law.

13.2 The parties acknowledge that the factual arrangements between them dictate the role of each (or any) party in respect of the Data Protection Law. Notwithstanding the foregoing, the Authority and the Supplier shall act as Controllers individually (and in common from time to time) of any Personal Data Processed (including by being shared between the parties) in connection with this Agreement.

13.3 The parties do not envisage that either party will Process any Personal Data for or on behalf of the other party as a Processor or as joint Controllers, under or in connection with this Agreement. Where and to the extent that in undertaking the obligations in connection with this Agreement, the Supplier anticipates that either party will Process the Personal Data for and on behalf of the other party as a Processor, or as joint Controller, it shall:

13.3.1 notify the Authority immediately; and

13.3.2 agree and enter into a data processing agreement on terms acceptable to the Authority (acting reasonably) which shall incorporate appropriate provisions in accordance with articles 28 or 26 of the UK GDPR as appropriate, or as otherwise required by the Data Protection Law.

### 14 **Law and jurisdiction**

14.1 This Agreement and any issues, disputes or claims arising out of or in connection with it (whether contractual or non-contractual in nature such as claims in tort, from breach of statute or regulation or otherwise) shall be governed by the laws of England and Wales.

14.2 All disputes or claims arising out of or relating to this Agreement shall be subject to the exclusive jurisdiction of the courts of England and Wales to which the Parties irrevocably submit.

### 15 **Miscellaneous provisions**

#### 15.1 **Entire Agreement**

This Agreement and its Schedules and annexures contain the entire agreement between the Parties with respect to its subject matter and supersedes any prior arrangement, understanding or written or oral agreements between the Parties in relation to such subject matter.



## 15.2 **Acknowledgement**

The Parties acknowledge that this Agreement has not been entered into wholly or partly in reliance on, nor has either Party been given any statement, promise, representation, warranty or other assurance not expressly incorporated into this Agreement. All warranties, conditions, terms and representations not set out in this Agreement whether implied by statute or otherwise are excluded to the extent permitted by law.

## 15.3 **No waiver**

Except as otherwise specifically provided in this Agreement, no failure to exercise, or delay in exercising, any right, power or privilege set forth in this Agreement will operate as a waiver of any right, power or privilege. Any waiver of any breach of this Agreement shall be in writing. The waiver by either party of any breach of this Agreement shall not prevent the subsequent enforcement of that provision and shall not be deemed to be a waiver of any subsequent breach of that or any other provision.

## 15.4 **Severance**

If any provision of the Agreement is held to be invalid or unenforceable, it will be severed from this Agreement, the remaining provisions will remain in full force and effect and the Parties will promptly negotiate a replacement.

## 15.5 **Survival of obligations**

The Parties' rights and obligations, which, by their nature would continue beyond the termination or expiration of this Agreement, will survive termination or expiration of this Agreement.

## 15.6 **Rights of Third Parties**

A person who is not a party to this Agreement has no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Agreement, but this does not affect any right or remedy of a third party that exists or is available apart from that Act.

## 15.7 **Publicity**

Except with the prior written consent of the Authority, the Supplier shall not make any press announcement or publicise this Agreement in any way.

## 15.8 **Bribery Act**

The Supplier shall not offer or give, or agree to give, to any employee or representative of the Authority any gift or consideration of any kind as an inducement or reward for doing or refraining from doing or for having done or refrained from doing, any act in relation to the obtaining or execution of this or any other agreement with the Authority for showing or refraining from showing favour or disfavour to any person in relation to this or any such agreement. The attention of the Supplier is drawn to the criminal offences created by the Bribery Act 2010.

15.9 **Capacity**

Save as otherwise expressly provided, the obligations of the Authority under this Agreement are obligations of the Authority in its capacity as an owner of the Assets and nothing in this Agreement shall operate as an obligation upon, or in any other way fetter or constrain the Authority in any other statutory capacity (including without limitation as highway authority for the purposes of Highways Law or local planning authority for the purposes of the Planning Acts) , nor shall the exercise by the Authority of its duties and powers in any other statutory capacity (including without limitation as highway authority for the purposes of Highways Law or local planning authority for the purposes of the Planning Acts) lead to any liability under this Agreement (howsoever arising) on the part of the Authority to the Supplier. For the avoidance of doubt this Agreement and any step taken by the Authority in connection with it shall not operate as a Necessary Consent under Highways Law or under the Planning Acts.

16 **Counterparts**

- 16.1 This Agreement may be signed in counterparts, each of which when signed shall be an original and all of which together evidence the same agreement.
- 16.2 Transmission of a signed counterpart of this Agreement (for the avoidance of doubt not just a signature page) by email (in PDF, JPEG or other agreed format) shall take effect as delivery of an executed counterpart of this Agreement.
- 16.3 No counterpart shall be effective until each Party has signed and delivered at least one counterpart.

This Agreement has been executed as a deed and is delivered and takes effect on the date stated at the beginning of it.

## Schedule 1

### Operating Procedures

#### 1 Purpose of this Schedule

1.1 The purpose of this Schedule is to detail the operational procedures for the installation, alteration, renewal, upgrade or replacement of the Equipment on the Authority's Assets. It covers the technical solutions, asset diligence and selection process, pre-deployment and deployment process and subsequent operational responsibilities.

1.2 This Schedule should be read in conjunction with the Toolkit and the Supplier acknowledges the provisions of the Toolkit and the Parties shall comply with the provisions of the Toolkit relevant to each of them and in the event of a discrepancy between the provisions of this Agreement and the Toolkit, the provisions of this Agreement shall prevail.

1.3 For the avoidance of doubt, once Equipment has been deployed on an Asset pursuant to and in accordance with this Agreement, any subsequent replacement, renewal, upgrade or material alteration shall be the subject of a separate application by the Supplier to the Authority pursuant to the terms of this Schedule.

#### 2 Assets

2.1 Potentially suitable assets in the Authority's streetscape for deployments of the Equipment are confined to the Assets;

#### 3 Planning and demand

3.1 The Supplier shall identify the Assets on which it would like to deploy Equipment via the Authority's application form [as prescribed by the Toolkit].

3.2 The Authority shall provide, where available, details of the Assets to the Supplier, including location, height, type, Asset ID and power supply (the **Asset Data**). The Authority shall use its reasonable endeavours to provide further asset information where requested by the Supplier, for example, pre-existing conflicting plans for the Assets, pre-existing telecommunications equipment on the Asset and shall update the details of the Assets when available or when requested by the Supplier.

3.3 The Supplier shall conduct a desktop assessment of the Assets and produce a written plan based on demand, including potential demand from wholesale and enterprise customers and provide this to the Authority for information.

3.4 The Supplier shall provide the Authority with a list of Assets it intends to use (the **Provisional Demand**) for the deployment of Equipment. The Supplier shall include with the Provisional Demand:

3.4.1 the make and model number of all Equipment;

3.4.2 size and weight of Equipment;

- 3.4.3 proposed mounting height for the Equipment;
- 3.4.4 power consumption and Elexon Charge Code (UMSUG)
  
- 3.4.5 evidence that the Supplier has or will be able to procure an un-metered electricity supply agreement for the Equipment; and
- 3.4.6 evidence that all Necessary Consents are in place

and any other information relating to the Equipment as the Authority reasonably requires in order to assess the suitability of the Asset for hosting the Equipment.

- 3.5 The Supplier shall undertake due diligence to confirm Asset Data as required, which may involve visiting the Assets (the **Site Visits**) and where the Authority is required to attend these visits, this will incur the Inspection Fee. The Authority grants no warranty to the Supplier for the accuracy of the Asset Data.
- 3.6 The Authority may also elect to conduct Site Visits where this is reasonably required to assess the Assets the subject of the Provisional Demand and this will incur the Inspection Fee, provided that the Authority will not charge more than once for its attendance on any one Site Visit.
- 3.7 The Authority shall confirm whether the Provisional Demand is approved. The Supplier acknowledges that it is entirely at the Authority's discretion what Assets may be used but where Assets are not to be used the Authority shall, acting reasonably, provide reasonable written justification for its decisions (which may include, inter alia, where the Asset is already committed to an alternative supplier or its customer. or due to be relocated or removed within the next 3 months in relation to planned development works) or that in the Authority's opinion the use of the asset for siting of the Equipment would cause harm to the environmental social or economic wellbeing of the area) and the Authority is entitled to reject any Provisional Demand for any Asset. The Authority shall work with the Supplier to establish any alternative available Assets in case of any rejection.

#### 4 **Survey and design**

- 4.1 The Supplier shall undertake surveys and structural capacity testing of the relevant Assets identified in the approved Provisional Demand (which will be carried out in accordance with BSEN40 and with the guidance from the Institution of Lighting Professionals Guidance Note 22 (GN22) as amended from time to time) to establish the suitability of those Assets for the Equipment, and the route for any Fixed Connection that may be required, and the availability of a suitable electrical connection (the **Surveys/Structural Tests**) and provide a copy of the results to the Authority (**Asset Report**).
- 4.2 The Authority consents to the Supplier undertaking the Site Visits, Surveys/ Structural Tests and authorises the Supplier to access the relevant Assets for the purpose of conducting Site Visits, Surveys/Structural Tests subject to the Supplier having relevant qualifications (including, without limitation, Safe Isolation & Working in the

Vicinity of DNO/IDNO Equipment including G39 Certificate; New Roads and Street Works Act NRSWA accreditation)

- 4.3 The Supplier shall be responsible for all and any costs incurred by the Authority to repair any damage to the Assets, or as a result of a reduction in use of any Assets by the Authority whether accidental, negligent or otherwise, in connection with the carrying out of Site Visits and/or, Surveys/Structural Tests.
- 4.4 Where an Asset is confirmed to be suitable for hosting the Equipment pursuant to an Asset Report, or confirmed to be suitable for hosting the Equipment subject to certain conditions and recommendations, the Asset will be deemed to be a Confirmed Asset as from the date of the Asset Report.
- 4.5 Where an Asset fails any Surveys/Structural Tests, the Supplier may propose to the Authority to replace the Asset at the Supplier's expense to the Authority's then current specification for new Assets. The Supplier will request a quote from the Authority for:
- 4.5.1 Obtaining the Asset manufacturer's confirmation and guarantee that the proposed column is suitable to accept the additional load of the Equipment;
  - 4.5.2 procurement of the new Asset;
  - 4.5.3 removal of existing Asset;
  - 4.5.4 installation and certification of a new Asset and the power aspects;
  - 4.5.5 certification and acceptance as an Asset; and
  - 4.5.6 Authority management of the above activity,
- together the **Upgrade Works**.
- 4.6 If the Supplier confirms in writing to the Authority that it will procure that the Upgrade Works are carried out at the Supplier's cost, the Asset will be deemed to be a Confirmed Asset as from the date of the satisfactory completion of the Upgrade Works.
- 4.7 The Supplier shall use the Authority's contractor to carry out the Upgrade Works.
- 4.8 The new Asset will remain the property of the Authority (including the maintenance of the Asset). The Supplier will have the right to deploy Equipment on the new Asset without undertaking further structural tests provided that the Supplier can evidence to the reasonable satisfaction of the Authority that the Equipment is suitable to be deployed on the new Asset and will not invalidate any guarantee provided by the Asset manufacturer), on a non-exclusive basis (for the remaining Term) pursuant to and in accordance with this Agreement.
- 4.9 The Supplier shall produce design information for each Confirmed Asset (the **Site Design(s)**). This should include a detailed specification of the Equipment that the Supplier intends to deploy (to the extent not already provided pursuant to paragraph 3.4). This should include but not be limited to:

- 4.9.1 make and model number of all Equipment;
  - 4.9.2 size and weight of Equipment;
  - 4.9.3 mounting height for the Equipment;
  - 4.9.4 power consumption and Elexon Charge Code (UMSUG);
  - 4.9.5 confirmation that the Supplier has and will comply fully with all planning and regulatory obligations (where applicable); and
  - 4.9.6 a Programme Plan to include all activities, timeline, identifying any activities where it is dependent on the Authority (the **Dependencies**) and Risk and Method Statement (RAMS), detail on all contractors and coordination required with power and backhaul providers, and all necessary system testing for approval by the Authority [such approval not to be unreasonably withheld or delayed].
- 4.10 The Supplier shall notify the Authority of the Dependencies including any associated timelines. The Authority shall review the Dependencies and shall either confirm that they are agreed or shall suggest amendments which, once agreed [(each Party acting reasonably)], shall be incorporated into the Programme Plan. There may be several iterations of the Programme Plan reflecting mobile network operators' updates, changes and requirements.
- 4.11 The activities and/or Dependencies may be common to a number of relevant Assets, and where there are no changes to the activities and/or Dependencies between Assets, the Supplier may reference common activities and/or Dependencies in its Programme Plan.
- 4.12 The design information may be common to a number of relevant Assets, and where there are no changes to the design information between Assets, the Supplier may reference common design information.
- 4.13 [*Requirement for on-going load testing of Assets – drafting TBC*].

## 5 **Access and build**

- 5.1 The Supplier shall provide the Risk and Method Statement(s) (the **RAMS**). The Supplier shall install the Equipment on the Confirmed Assets in accordance with the agreed Programme Plan, RAMS and Equipment specifications. Any changes to the Programme Plan must be agreed in advance with the Authority [each Party acting reasonably].
- 5.2 If the Supplier needs to install a Fixed Connection to an Asset it will obtain all Necessary Consents and permissions to undertake the relevant works, and it will undertake any restoration works, at its own cost, that may be required.
- 5.3 The Supplier shall undertake all other preparatory activities for the Works to be undertaken at each Confirmed Asset as required, including any with respect to traffic management and pedestrian management, planning permission, risks assessments.

- 5.4 The Supplier shall identify any required changes to fixing of other equipment (e.g. signage) on the Asset but excluding any other telecommunications equipment belonging to a third party and shall discuss such required changes with the Authority who shall act reasonably and promptly in accommodating such changes at the cost of the Supplier provided that such changes would not in the Authority's opinion cause harm to the environmental social or economic wellbeing of the area.
- 5.5 The Supplier shall ensure that all Necessary Consents are obtained for the Works prior to commencement and shall ensure that the Works are carried out and completed (and thereafter the Works and Equipment are maintained used and operated) by appropriately qualified, competent and trained personnel, in a good and workmanlike manner in compliance with all such Necessary Consents and ensure that the Equipment is securely and safely fixed and at all times, complies with all applicable health and safety legislation and regulations and will ensure:
- 5.5.1 all contractors and sub-contractors are registered with the Highway Electrical Registration Scheme (HERS).
  - 5.5.2 all persons accessing the assets are trained in the Safe Isolation & Working in the Vicinity of DNO/IDNO Equipment including G39 Certificate
  - 5.5.3 that all Equipment deployed shall be ICNIRP compliant.
  - 5.5.4 that all Works shall be carried out in compliance with all applicable legislation including the New Roads and Street Works Act 1991 and Traffic Management Act 2004;
  - 5.5.5 that Electrical Test and Completion certificates are issued as required under BS7671 for each Site;
  - 5.5.6 compliance with the Construction (Design and Management) Regulations 2015;
  - 5.5.7 compliance at all times with the requirements of the Health and Safety at Work etc Act 1974, as amended;
  - 5.5.8 that all lighting Assets are tested to the relevant British Standards: BS EN 40 Standard before installation or change to hardware;
  - 5.5.9 that all Works are carried out in compliance with any conditions and recommendations set out in the relevant Asset Report; and
  - 5.5.10 that structural testing and analysis shall comply with Institution of Lighting Professionals Guidance Note 22 (GN22), where required.
- 5.6 The Supplier shall maintain the standard of cleanliness of the site locations during the carrying out of the Works and ensure the responsible removal and disposal of all packaging and casing used.
- 5.7 The area surrounding the Asset shall be left in a safe, clean and tidy condition and any damage shall be made good by the Supplier on completion of the Works.

- 5.8 The Authority may conduct a Site Visit on completion of the Works, to ensure that the Works have been carried out pursuant to the obligations on the part of the Supplier in this paragraph 5 and this will incur the Inspection Fee. The Supplier will carry out any remedial works identified by the Authority (acting reasonably) following such Site Visit and such process will repeat until the Works have been completed to the reasonable satisfaction of the Authority.
- 5.9 The Supplier will then commission the Equipment and update the Site Designs as appropriate providing a copy of the final Site Design (**As built**), to the Authority. The Authority will then update its Asset Data accordingly.
- 5.10 The Authority shall have the right at any time to inspect all installations of the Equipment and seek its removal at the Supplier's cost in the event it is affecting the ordinary purpose and operation of the Asset, but only after the Supplier has been given reasonable opportunity to resolve any issues identified by such inspection, at the Supplier's cost.
- 5.11 Where the Supplier fails to commission the Equipment within six months of an Asset being deemed a Confirmed Asset it shall provide the Authority with written reasons which the Authority shall consider, and if the Authority decides that the reasons are insufficient or not justified then it may terminate the Supplier's use of the relevant Asset by giving one month's written notice to the Supplier. The Supplier may make representations to the Authority regarding any recovery plan and the Authority may in its discretion withdraw its written termination notice. If the Authority does not withdraw its written termination notice, the Supplier may not apply to use the Asset again pursuant to the Operating Procedures for a period of 12 months from the date of such termination notice.
- 5.12 The Authority shall be entitled after the Supplier's deployment of Equipment onto the Asset to grant approval, permits or consents to another third-party supplier to use the Asset, except where the Supplier can demonstrate that this use by another third party supplier would materially diminish the operation of the Supplier's Equipment.

## **6 Power supply, business rates and other outgoings**

- 6.1 The Supplier shall provide adequate electricity supply for the operation of the Equipment at the Supplier's cost.
- 6.2 The Authority shall not be liable for any break in electricity supply due to any cause.
- 6.3 The Supplier will indemnify the Authority against the costs of repairing any damage to a private electrical network or the Distribution Network Operator's network resulting from any Works related to the installation of the Equipment (including the upgrade of columns).
- 6.4 The Supplier shall arrange payment of third-party charges such as non-domestic rates which directly relate to the installation and use of the Equipment, and all electricity charges.

## **7 Supplier and Authority post installation obligations**



- 7.1 The Supplier will maintain the Equipment in safe repair and condition in accordance with all Necessary Consents throughout the Term and the Supplier will manage any incidents arising with the Equipment, from initial contact through to resolution and shall keep the Authority informed of any such incidents and have due regard to all representations made by the Authority in relation to such incidents and where the incident does or may impact the Assets the parties (each acting reasonably) will agree how all such incidents should be resolved.
- 7.2 The Supplier shall inspect the Equipment on at least an annual basis (and upon reasonable request by the Authority in the event the Authority becomes aware of or reasonably suspects there may be an issue with the Asset and/or the Equipment), and such inspection will include the following:
- 7.2.1 visual inspection of the Asset, the Equipment, cables, connectors and electrical installation;
  - 7.2.2 check for leaks / water ingress on cable entry to the Asset;
  - 7.2.3 check for impact damage to the Asset or the Equipment;
  - 7.2.4 remedial mechanical works, including but not limited to, tightening of connectors where applicable;
  - 7.2.5 inspection of the electrical supply to the Equipment; and
  - 7.2.6 remedial works related to the electrical supply.

A copy of all inspections and remedial works reports should be sent to the Authority.

- 7.3 The Authority shall use reasonable endeavours to ensure that it does not authorise any telecommunications equipment to be installed on a Licensed Asset by a third party after the date of deployment of Equipment by the Supplier which interferes in any material way with the Equipment of the Supplier and in the event of such interference occurring and the Supplier demonstrating to the Authority's reasonable satisfaction that the third party equipment is the cause of the interference, to the Authority shall take reasonable steps to remedy (or procure the remedy of) the interference and, if necessary, switch off (or require the switch off of) the offending piece of equipment until the interference is remedied
- 7.4 The Supplier shall provide such further information as may be reasonably required by the Authority in relation to any Equipment which the Supplier has installed on a Licensed Asset (or is permitted to install) in connection with applications by third parties who also wish to deploy telecommunications equipment on such Asset.
- 7.5 The Supplier shall use reasonable endeavours to ensure that any Equipment deployed by the Supplier on an Asset does not interfere in any material way with any previously installed telecommunications equipment by a third party on such Asset and in the event of such interference occurring and the Authority demonstrating to the reasonable satisfaction of the Supplier that interference is being caused to such previously installed telecommunications equipment, the Supplier will take reasonable steps to remedy (or

procure the remedy of) the interference and, if necessary, switch off (or require the switch off of) the offending piece of Equipment until the interference is remedied.

- 7.6 The Authority may without prior notification to the Supplier shut down the electricity supply to an Asset where such shut down is required in connection with repair or maintenance works to an Asset. The Authority will keep the period of shut down to the minimum reasonably practicable and use reasonable endeavours to restore or procure the restoration of the supply of electricity to the Asset as soon as reasonably practicable following completion of such works.
- 7.7 If the Authority becomes aware that the electrical supply to any Asset is dead the Authority will notify the Supplier and use reasonable endeavours to procure that the electricity provider restores the supply of electricity to the Asset as soon as reasonably practicable.
- 7.8 The Supplier will arrange upon request from the Authority the shut-down of Equipment if this is necessary to enable the Authority to carry out maintenance or repair work to the Asset. The Supplier should provide safe practices and procedures for working near the Equipment. This should include the process for the shut-down of the Equipment where necessary provided that if a shutdown of the Equipment is necessary, the Authority shall give as much prior notice of this to the Supplier as is reasonably practicable and use reasonable endeavours to ensure that such period of shutdown shall be kept as short as reasonably possible; and
- 7.9 The Supplier shall manage all incidents relating to the Equipment at the Asset excluding Equipment failures caused by a road traffic collision (an **RTC**). In the event of an RTC, the Authority's contractors will attend the Asset and remove the Equipment and arrange temporary storage. Following an incident where an Asset is damaged beyond repair, the Authority will in its absolute discretion decide whether to replace the Asset. If the Authority elects to replace the Asset, the Authority will keep the Supplier updated on a regular basis regarding progress for resolution of such incidents to repair/replace or otherwise reinstate the affected Asset.
- 7.10 If there is an RTC then:
- 7.10.1 if the Equipment is written off and the Asset has to be replaced, then the Supplier will go through the Operating Procedures for the replacement of the Asset unless the replacement Equipment is the same as the Equipment which has been written off and the new Asset is to the same specification as the Asset which is being replaced in which case the replaced Asset will be deemed to be a Confirmed Asset as from the date of completion of the works of replacement ; and
- 7.10.2 if there is a requirement for changes to the Asset or its location as a result of road layout changes, then the Supplier will discuss the options with the Authority to move the Equipment to alternative locations, as per the existing Asset usage.
- 7.11 The Supplier will comply with any reasonable relocation request for the Equipment from the Authority, subject to provision of not less than six months' notice or as much

notice is as reasonably practicable in the circumstances from the Authority and the reasonable cost of the first such relocation will be payable by the Supplier and on each subsequent request will be covered by the Authority and provided that the Authority may not make more than three such requests per Asset.

- 7.12 The Supplier will respond to incidents which affect the Asset (such as an RTC) at the request of the Authority.
- 7.13 The Authority shall retain maintenance obligations for Assets and for any Authority equipment affixed to the Assets.
- 7.14 The Authority will ensure throughout the Term that the Assets are kept in good structural, working and decorative order.
- 7.15 Where the Authority wishes to deploy banner, baskets, signs or other attachments it will consider the structural test aspects, and the Authority will take reasonable steps to ensure that the Equipment is not removed without agreement with the Supplier.

## **8 Expiry of the Term or termination of this Agreement**

- 8.1 The Supplier shall remove at its own cost any and all Equipment from an Asset at the expiry of the Term or the termination of this Agreement under clause 8 within 20 Business Days.
- 8.2 The Supplier shall remove any and all Equipment within 20 Business Days where it is deemed to be at end of life.

## **9 Damage to highway**

- 9.1 The Supplier shall ensure that all interim and permanent restorations to excavations for the replacement of street furniture and any subsequent maintenance repair or other works shall be to the satisfaction of the highways manager and shall be carried out in a manner compliant with Highways Law and the Planning Acts.
- 9.2 The Supplier shall reinstate any damage to the highway structure or furniture caused by the Supplier their agents or representative during the work of installation maintenance or repair of the street furniture and Equipment and if the Supplier shall fail to reinstate any damage to the highway or any highway structure or furniture the Authority will carry out the necessary works and the costs of such works may be recovered from the Supplier as a debt recoverable by action.
- 9.3 If any damage or injury shall happen to any of the highways over which the Equipment is erected by reason of such Equipment or of any accidents to such Equipment or any defect or want of repair in such Equipment, such damage or injury shall as soon as practicable be made good by the Supplier to the reasonable satisfaction of the Authority.

## **Schedule 2**

### **Governance**

#### **1 Purpose of this Schedule**

The purpose of this Schedule is to detail the operational procedures for the governance of this Agreement and resolution of any issues arising.

#### **2 Operational Review Meeting (ORM)**

2.1 Representatives of the Parties shall attend an ORM which shall take place every six months (in person or virtually, as agreed) (or on a frequency as is mutually agreed) to review performance of the Parties of the Agreement and to discuss, but not limited to any issues arising in respect of:

- 2.1.1 the Assets, access or operation;
- 2.1.2 Asset Data;
- 2.1.3 approvals, consents or permits required from the Authority;
- 2.1.4 financial performance;
- 2.1.5 Supplier demand;
- 2.1.6 processes for pre- or post- deployment of Equipment on Assets;
- 2.1.7 incidents;
- 2.1.8 escalated issues.

#### **3 Dispute resolution**

3.1 If at any time any question, dispute or difference of opinion shall arise between the Supplier on the one hand and the Authority on the other hand as to any matter or thing of whatever nature arising under or in connection with this Agreement (a **Dispute**) then the Supplier or the Authority may give to the other notice in writing as to such Dispute (a **Dispute Notice**) and upon receipt of such notice the appropriate representatives of the Parties shall use their reasonable endeavours to resolve such Dispute in good faith in accordance with the provisions of this Schedule.

3.2 Representatives from each Party shall meet as soon as practicable after receipt of the Dispute Notice and in any event within five Business Days of delivery of such notice with a view to resolving the Dispute. Initially such Dispute will be discussed among the Level 1 representatives of the Supplier and the Authority described below.

3.3 The Level 1 and Level 2 representatives shall discuss the Dispute for a period of ten Business Days after which, unless resolved, the Dispute shall be notified to the next level of representatives for resolution, provided that the level of representatives discussing a Dispute may agree to extend the period for resolution by a further five

Business Days or to refer such Dispute to the next level of representatives immediately.

3.4 Where a Dispute is referred to the next level of representatives, the previous level of representatives may continue to discuss such Dispute with a view to finding resolution (subject to the approval of the next level of representatives to which the Dispute was referred).

3.5 If the unresolved Dispute is having a material adverse effect on the business of either the Supplier or the Authority, the Dispute shall be referred immediately to Level 3.

3.6 The levels of management referred to in this Schedule are as follows: -

3.6.1 The escalation paths for the various disciplines within the Supplier organisation are as follows:

| Escalation Level |  | Contact Details |
|------------------|--|-----------------|
| Level 1          | Supplier Small Cells Project Manager or Supplier Service Level Manager |                 |
| Level 2          | Supplier Head of Small Cells Delivery,                                 |                 |
| Level 3          | Supplier Director, Customer Infrastructure Projects                    |                 |

3.6.2 The escalation paths for the various disciplines within the Authority organisation are as follows:

| Escalation Level |  | Contact Details   |
|------------------|--|---|
| Level 1          | Street Light Asset Operational Officer | Charles Gaudoin<br><a href="mailto:charles.gaudoin@rbwm.gov.uk">charles.gaudoin@rbwm.gov.uk</a> |
| Level 2          | Infrastructure Service Lead            | Shasta Parveen<br><a href="mailto:Shasta.parveen@rbwm.gov.uk">Shasta.parveen@rbwm.gov.uk</a>    |
| Level 3          | Head of Service, ISEG                  | Chris Joyce<br><a href="mailto:Chris.joyce@rbwm.gov.uk">Chris.joyce@rbwm.gov.uk</a>             |

### [Schedule 3

### Annual Review

### Payment Increases by reference to CPI]

#### 1 Definitions

In this Schedule the following expressions shall (unless the context otherwise requires) have the following meanings:

|                             |  |
|-----------------------------|--|
| <b>Base Index Figure</b>    | 10.5%  |
| <b>Revised Index Figure</b> | the last Index Figure before the relevant Review Date  |
| <b>General Index</b>        | The Consumer Prices Index (or any identical index under a different title) officially published from time to time by the Office for National Statistics or any other government department ministry or other body upon which the duties in connection with such index may have been devolved |
| <b>Index Figure</b>         | the figure published at the relevant time as the General Index   |
| <b>Review Date</b>          | ( first anniversary of the date of the Agreement) and each anniversary of that date throughout the Term, and the expression 'relevant Review Date' shall be construed accordingly  |
| <b>Revised Annual Fee</b>   | the increased Annual Fee payable under this Agreement with effect from the relevant Review Date reviewed in accordance with this Schedule on each Review Date  |

#### 2 Review

2.1 The amount payable in respect of the Annual Fee will be reviewed in accordance with this paragraph 2 on the relevant Review Date.

2.2 The amount payable for the Annual Fee from and including each Review Date will be the sum equal to the greater of:

2.2.1 the amount payable for the Annual Fee under this Agreement immediately before the relevant Review Date (or that would have been payable but for any rent free periods or concessions or abatement or suspension or restriction on the right of collection of rent); and

2.2.2 the Revised Annual Fee that is calculated as follows:

Revised Annual Fee = £300 x (Revised Index Figure/Base Index Figure)

2.3 In the event of any change after the date hereof in the reference base used to compile the General Index, the figure taken to be shown in the General Index after such change shall

be the figure which would have been shown in the General Index if the reference base current at the date hereof had been retained.

2.4 If the General Index shall cease to be published then there shall be substituted as the relevant calculation in paragraph 2 a new arrangement for indexation (the **Revised Indexation**) whereby the figure to be calculated under paragraph 2 shall reflect increases in the cost of living on a similar basis to that set out in paragraph 2.

2.5 If the Authority and the Supplier are unable to agree a basis for the Revised Indexation within three months of the relevant Review Date then either of them may at any time request the President of the Institute of Chartered Accountants in England and Wales to appoint an arbitrator to determine in accordance with the Arbitration Act 1996 an appropriate basis for the Revised Indexation which would achieve a basis as near as possible to that which applies under paragraph 2.

### 3 **Interim payment pending the determination of the Revised Initial Fee and Revised Additional Fee**

3.1 Either party may provide their calculation of the Revised Initial Fee and/or Revised Additional Fee to the other at any time after the relevant Revised Indexed Figure has been published. If the Revised Initial Fee and/or Revised Additional Fee shall not have been ascertained by the relevant Review Date, until such time as the Revised Initial Fee and/or Revised Additional Fee is ascertained, the Supplier shall continue to pay the Initial Fee and/or the Additional Fee at the level previously payable.

3.2 Within thirty days of the Revised Initial Fee and/or Revised Additional Fee being ascertained, the Supplier shall pay to the Authority a sum equal to the difference between the Revised Initial Fee and/or Revised Additional Fee and the Initial Fee and/or Additional Fee actually paid during the interval between the relevant Review Date and the date upon which the Revised Initial Fee and/or Revised Additional Fee is ascertained plus interest at the base rate from time to time of the Bank of England calculated on a daily basis for that period

### 4 **Time not of the essence**

Time is not of the essence for the purposes of this Schedule.

executed as a deed by affixing )  
the Common Seal of )

**The Royal Borough of Windsor &)**

**Maidenhead**

in the presence of:

Authorised signatory

executed as a deed by  
acting by

a director and

)  
)  
)  
)  
)

Director

a director or its secretary

Director/Secretary