

NON-EXCLUSIVE SMALL CELL LICENCE AGREEMENT BETWEEN  
LOCAL AUTHORITY - and – SUPPLIER

Small Cell Framework Agreement

AGREEMENT BETWEEN:

(1) (Local Authority), a local authority having its principle place of business at (Local Authority's address) (the "Authority"); and

(2) (SUPPLIER), a company registered in England and Wales with Company Number ( ) whose registered office is at (SUPPLIER'S address )(the "Supplier").

BACKGROUND:

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 telecoms infrastructure on the Authority's Assets and this agreement is made pursuant to Part 2 of the Code.

IT IS AGREED:

1. DEFINITIONS AND INTERPRETATION

1.1. In this Agreement, the following words and phrases have the meaning given below unless the context otherwise requires:

"Agreement" means the terms and conditions of this Agreement which include the body of this Agreement, the attached schedules, together with any expressly incorporated documents;

"Asset(s)" means all the Authority's lampposts and other street furniture assets as more fully detailed in the Asset List;

"Asset Licence" means the licence for the Supplier to locate Equipment on a specific Asset, and to alter, renew and replace such Equipment, which is granted in accordance with the terms of this Agreement;

"Asset List" means the assets listed in Schedule 1;

"CDM Regulations" the Construction (Design and Management) Regulations 2015;

Code: Electronic Communications Code set out in Schedule 3A to the CA 2003 as inserted by Schedule 1 of the Digital Economy Act 2017;

"Commencement Date" means the last date of execution of this Agreement;

"Confidential Information" means any information which has been designated as confidential by either party in writing or that ought to be considered as confidential (however it is conveyed or on whatever media it is stored) including information the disclosure of which 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 and sensitive personal data within the meaning of Data Protection Law;

“Confirmed Asset(s)” means the Assets that the Supplier confirms that it intends to deploy Equipment on in accordance with Schedule 2;

“Data Protection Law” means (i) all applicable UK law relating to the processing of personal data and privacy, including but not limited to the UK GDPR, and the Data Protection Act 2018 to the extent that it relates to processing of personal data and privacy; and (ii) (to the extent that it may be applicable) the EU GDPR). The UK GDPR and EU GDPR are defined in section 3 of the Data Protection Act 2018;

“Electronic Communications Operator” an electronic communications operator to whom a direction applies under section 106(3) (a) of the Communications Act 2003 as set out in Schedule 1 of the Digital Economy Act 2017 (and as may be further amended, modified, replaced or re-enacted from time to time;

"Equipment" means the telecommunications apparatus, including apparatus required to provide coverage and capacity for wireless technologies such as cellular, Wi-Fi and IoT, and any other equipment ancillary to such apparatus, including any equipment required to provide a Fixed Connection or a Wireless Connection, whether owned or operated by the Supplier or a Nominated Third Party or by a supplier to either of them, and which is used and operated for the Permitted Use;

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

“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" 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;

"Holding Company" has the meaning set out in Section 1159 of the Companies Act 2006;

"Intellectual Property Rights" means any patent, copyright, trade mark, service mark or trade name, utility model, right in software, right in design, right in databases, image right, moral right, right in an invention, right relating to passing off, domain name, right in confidential information (including trade secrets) or right of privacy, and all similar or equivalent rights in each case whether registered or not and including all applications (or rights to apply) for, or renewal or extension of, such rights which exist now or which will exist in the future in the United Kingdom;

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

"Necessary Consents" means all necessary permissions (including but not limited to planning permissions, building warrants and highway consents), licences and approvals required for the Works and /or the use of the Equipment;

"Nominated Third Party" means (i) a third party to whom the Supplier grants a sub-licence to use the Assets for the Permitted Use subject to the terms of this Agreement and to such Nominated Third Party being notified to the Authority, all pursuant to Clauses 2.9 - 2.11;

"Operational Procedures" means the procedures set out in Schedule 2 which will apply when a Party wishes to inspect an Asset for possible use, deploy and install the Equipment on the Asset, undertake Works at an Asset, or anything else which may impact the functioning of the Asset or the Equipment. Any amendment to the Operational Procedures should be agreed by the Parties in writing prior to any Equipment being installed on the Asset(s);

"Party" means either the Supplier or the Authority, and "Parties" means both the Supplier and the Authority;

"Permitted Use" means the deployment of the Equipment by the Supplier or a Nominated Third Party on the Authority's Assets for the reception and transmission of telecommunications signals and data in accordance with the Communications Act 2003;

"Programme Plan" means the Supplier's plan(s) for Works on Confirmed Assets, as outlined in Schedule 2; "Surveys / Structural Tests" as defined in paragraph 4 of Schedule 2;

"Subsidiary" has the meaning set out in Section 1159 Companies Act 2006;

"Wireless Connection" means any wireless connection which the Supplier may deploy or procure to connect an Asset; "Works" means the electrical upgrades and the installation of Equipment; and

"Working Day" means Monday to Friday, excluding bank or public holidays in England and Wales.

1.2. In this Agreement (unless the context requires otherwise):

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;

1.2.2. 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;

1.2.3. references to any party include (where applicable), its lawful successors, permitted assignees and permitted transferees;

1.2.4. references to the singular include the plural and vice versa;

1.2.5. references to any one gender do not exclude other genders;

1.2.6. headings are all for reference only and shall be ignored in construing this Agreement;

1.2.7. if there is any conflict, ambiguity or inconsistency between the parts of this Agreement the Clauses shall take precedence over the Schedules.

## 2. GENERAL

2.1. This Agreement will enable the Supplier to access and use the Assets under an Asset License for the Permitted Use. For the avoidance of doubt, the Authority shall continue to use the Assets 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 the Authority shall not interfere with (i) the use of such Asset or (ii) the operation of the Equipment for the Permitted Use, of or by the Supplier (or the Nominated Third Party, as the case may be), except where the Equipment is affecting the normal operation of the Assets or the Authority is carrying out preventative or reactive maintenance, which

shall be notified to the Supplier where possible. 2.2. Notwithstanding the terms of Clauses 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, where suitable, and where such use does not affect the reasonable functionality of the Assets or other suppliers equipment already installed on the Asset the Authority retaining the right to use any part of the Asset as the Authority thinks fit, or to build on or develop any part of the Asset or any neighbouring property, provided that any such use or works do not unreasonably interfere with, or obstruct, the exercise of the rights of the Supplier provided under this Agreement.

2.3. Each Party shall liaise with and provide reasonable advice and assistance to the other in relation to the Permitted Use, including but not limited to the coordination of all activities set out in the Operational Procedures or as otherwise stated in this Agreement.

2.4. The Authority provides no warranty to the Supplier on the suitability of the Assets for the Permitted Use.

2.5. Title to and property in the Equipment shall remain vested in the Supplier (or a Nominated Third Party, as the case may be) 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.

2.7. The Authority grants to the Supplier the permission to undertake Works on Assets, and a licence to maintain the Equipment on those Assets and to use such Equipment for the Permitted Use and to alter, renew and replace such Equipment, all such permissions and licences being granted in accordance with and subject to the terms of this Agreement Provided that such rights or any other rights granted under the Code shall not have any adverse impact on the appearance of the Assets or impose any additional burden on the Authority or any other party with a right to occupy or use the Asset (which includes anything that has an adverse effect on the Authority's or occupier's enjoyment or use of the Asset or that causes loss, damage or expense to the Authority or the occupier the Supplier to give the Authority not less than 20 Business Days' written notice of its intention to carry out Works including any upgrade to the Equipment and the notice shall be accompanied by full details of what is proposed, including drawings, specifications, plans and method statements as appropriate.

2.8. The Supplier when exercising any and all of the rights granted under this Agreement shall do so in a good, proper and workmanlike manner, in accordance with the CDM Regulations, all Necessary Consents, which the Supplier shall obtain before commencing the Works and shall comply with all applicable laws and legislation relating to the exercise of the rights and in accordance with the code of practice published from time to time by Ofcom pursuant to paragraph 103 of the Code.

2.9. The Supplier may grant a sub-licence to Nominated Third Parties to use the Confirmed Assets for the Permitted Use, provided always that the Supplier shall ensure that the Nominated Third Parties comply with the terms of this Agreement and Provided also that such Nominated Third Parties are Electronic Communications Operators and any rights obtained under this Agreement will terminate immediately should such Nominated Third Parties or such other third parties that obtain rights under this Agreement cease to be Electronic Communications Operators and in relation to any sharing of Assets with Nominated Third Parties or any other third parties and such sharing shall not have any adverse impact on the appearance of the Assets or impose any additional burden on the Authority or any other party with a right to occupy or use the Asset (which includes anything that has an adverse

effect on the Authority's or occupier's enjoyment or use of the Asset or that causes loss, damage or expense to the Authority or the occupier.

2.10. Any breach of this Agreement by the Nominated Third Parties or any other third party that obtains an interest in the Assets due to the Supplier sharing the Assets shall be a breach by the Supplier and the Supplier shall be liable for any acts or omissions of the Nominated Third Parties such other third party in contract or delict or otherwise, including negligence.

2.11. 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.

2.12. The Parties shall comply with the provisions of Schedule 3 (Governance).

### 3. FEES AND ASSOCIATED COSTS

3.1. In consideration of the Authority's costs and expenses in negotiating and facilitating this Agreement, the Supplier shall pay the Authority £5,000 (five thousand pounds) (the "Initial Fee"). The Authority shall invoice the Supplier for the Initial Fee on execution of this Agreement by both Parties.

3.2. Where the Supplier needs to inspect the Assets and/or undertake any Surveys or Structural Tests which require attendance by the Authority, a rate of £65.00 (sixty five pounds) per hour plus VAT (the "Inspection Fee") will be payable by the Supplier to the Authority. The Authority shall invoice the Supplier for the Inspection Fee after each inspection or set of inspections.

3.3. The Supplier shall pay to the Authority an annual fee of £300 Pounds plus VAT per Licensed Asset ("Annual Fee") such amount to be increased annually by multiplying the Annual Fee for each Licensed Asset by the index value of the Consumer Prices Index for the month before each annual review. The Supplier shall provide a quarterly statement to the Authority setting out each Licensed Asset on which it installed Equipment in the last quarter, the Asset Licence commencing on the date of such deployment. After verifying this, the Authority shall provide a quarterly invoice for the Annual Fee for those Licensed Asset(s) in line with the Supplier's statement. No pro-rated refunds shall be given by the Authority to the Supplier if an Asset License is terminated in the course of that year, except where the Authority terminates on notice under Clause 8.5 (Force Majeure) or the Supplier terminates under Clause 8.1 (Material Breach). Where the Supplier fails to pay any invoice from the Authority for the Annual Fees within three (3) months, the Authority shall be entitled to remove the Supplier's Equipment from the Licensed Assets.

3.4. All other costs or expenses for additional permits, consents or approvals required for the installation of the Equipment or any associated Works, as further described in paragraph 5.4 of Schedule 2, shall be payable by the Supplier.

3.5. All power costs related to the Equipment shall be paid by the Supplier, based on the ELEXON (UMSUG) code(s) for the installed Equipment.

3.6. The Supplier agrees to pay invoices within thirty (30) days from the end of the month in which the invoice is received. 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 four per cent (4%) 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 minimum period of 10 (ten) years (hereinafter the "Initial Term"). For the avoidance of doubt, the Supplier's Asset Licences shall expire at the end of the Initial Term, regardless of when the Asset Licences commenced.

4.2. If the Supplier wishes to retain its Equipment on the Assets beyond the Initial Term, the Parties shall commence negotiations not more than three (3) years prior to the expiry of the Initial Term and complete their negotiations on the terms of such arrangement no later than one (1) year prior to the expiry of the Initial Term. However, the Authority shall have the right at the expiry of the Initial Term to refuse the Supplier's continued use of the Asset(s), only in the event that such refusal is in accordance with the terms of any relevant regulations.

4.3. If the Supplier does not wish to continue the use of the Assets, the Authority refuses an extension of the Initial Term under Clause 4.2 or the Parties cannot agree the terms of such arrangement, this Agreement shall expire at the end of the Initial Term and the Supplier shall remove the Equipment in accordance with the process set down in the Operational Procedures.

## 5. INTELLECTUAL PROPERTY

5.1. Ownership of all Intellectual Property Rights in any Equipment, design, plan or data, made available as part of the Programme Plan or otherwise generated by or on behalf of the Supplier in connection with this Agreement will remain the property of the Supplier (or a Nominated Third Party, as the case may be).

5.2. Ownership of all Intellectual Property Rights in any Equipment, design, plan or data, made available as part of the Programme Plan or otherwise generated by or on behalf of the Authority in connection with this Agreement will remain the property of the Authority.

## 6. LIMITATION OF LIABILITY AND INSURANCE

6.1. 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, delict (including negligence), breach of statutory duty, indemnity or otherwise.

6.2. 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 Annual Fee payable by the Supplier to the Authority relating to the Equipment installed on the Asset or Assets.

6.3. 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.

6.4. The Supplier shall be liable for and shall indemnify the Authority against, any expense, liability, loss, claim or proceedings howsoever arising under any statute or at common law in respect of any

loss, injury or damage whatsoever arising out of or in the course or caused by the supply of services, the exercise of the rights granted under this Agreement, the use of the Assets, the carrying out of any works in relation to the Assets or the breach of any obligations under and in accordance with this Agreement and/or an Asset License, by the Supplier or by any employee, contractor, agent or invitee of the Supplier, or by any other person who is allowed or permitted by the Supplier to exercise the rights under this Agreement to the extent that the same is due to any negligence, breach of statutory duty, omission or default of the Supplier, his servants or agents except to the extent that the same is due to any negligence on the part of the Authority.

6.5. The Supplier shall be liable for and shall indemnify the Authority against, any expense, liability, loss, claim or proceedings howsoever arising under any statute or at common law, to the extent that it is attributed to any negligence, breach of statutory duty, omission or default of the Supplier or its sub-contractors, except to the extent that the same is due to any negligence on the part of the Authority.

6.6. The Supplier shall, throughout the Initial Term and any extension to the Initial Term:

6.6.1. maintain employers' liability insurance in the sum of TEN MILLION POUNDS (£10,000,000)] STERLING in respect of any one event and unlimited in the period;

6.6.2. maintain public liability insurance in the sum of TEN MILLION POUNDS (£10,000,000)] STERLING in respect of any one event and unlimited in the period;

6.6.3. maintain professional indemnity insurance in the sum of FIVE MILLION POUNDS (£5,000,000) STERLING 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.

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

6.8. Any Party seeking to rely on any of the indemnities contained in this Agreement shall:

6.8.1. promptly notify the other Party of any claims and proceedings in relation to which it considers the indemnity applies;

6.8.2. take all reasonable steps to mitigate any liabilities, losses and expenses; and

6.8.3. not compromise or settle any such claim without the prior written consent of the other Party (such consent not to be unreasonably withheld or delayed) and shall permit the Party giving the indemnity (at the cost in all respects of the Party giving the indemnity) to take over the control and conduct of any such claim, action or proceeding in the name of the other.

6.9. The Supplier's liability for damage to any real or personal property shall be limited per incident to:

6.9.1. £1,000,000 (one million pounds) for damage to buildings and contents thereof in respect of any one claim ;

6.9.2. £20,000 (twenty thousand pounds) for damage to lampposts, CCTV columns, traffic lights or any other assets not referred to in Clause 7.9.1 above for any one claim .

6.10. This Clause 6 shall continue in force after the termination or expiry of this Agreement.

## 7. TERMINATION

7.1. 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 thirty (30) working days after receipt of notice from the nonbreaching Party requiring the breach to be remedied.

7.2. The Supplier or the Authority may terminate this Agreement or any Asset License under this Agreement at any time by giving the other party not less than six months' prior written notice. For the avoidance of doubt, where the Supplier wishes to transfer the Equipment from one Asset to another, this shall not be deemed as termination of the Asset Licence and shall be subject to further agreement with the Authority.

7.3. This Agreement may be immediately terminated by the Authority upon giving written notice and without payment of any compensation to the Supplier if there is a change of control of the Supplier, as defined by Section 450 of The 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 (6) 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.

7.4. This Agreement may be immediately terminated by the Authority upon giving notice and without payment of any compensation to the Supplier if the Supplier:

7.4.1. being an individual, or where the Supplier is a partnership, one or more of the partners has a petition presented for a bankruptcy order to be made against him or is adjudged bankrupt or has an administration order made against him or proposes or enters into a composition in satisfaction of his debts or a scheme of arrangement of his affairs, including an individual voluntary arrangement or an order for the sequestration of his estate; or

7.4.2. being a company, shall pass a resolution for the company to be wound up, or if a petition for the winding up of the company is presented to court, or if a receiver or manager of the whole or part of the company's undertaking, assets, rights or revenue is appointed or if any steps are taken by any party to apply to or petition the court for an administration order, or under the Insolvency Act 1986 to appoint an administrator of the company;

7.4.3. ceases to be an Electronic Communications Operator; or 7.4.4. has committed an offence under the Bribery Act 2010.

7.5. If there is a Force Majeure event which continues for more than three (3) months which affects the Assets, the Authority or the Supplier may terminate this Agreement by giving not less than thirty (30) Working Days written notice of termination to the other Party.

7.6. Upon expiry or otherwise termination of this Agreement, the Supplier shall at its own costs:

7.6.1. provide to the Authority any Confidential Information to the Authority 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;

7.6.2. render all reasonable assistance to the Authority, if requested, to the extent necessary to remove the Equipment from the Asset in accordance with the Operational Procedures.

## 8. 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.

## 9. ASSIGNMENT AND SUBCONTRACTING

Neither Party shall be permitted to assign their rights under this Agreement without the prior written consent of the other Party except that the Supplier is permitted to assign this Agreement to any intra group party the Supplier to enter into a guarantee agreement with the Authority which guarantees the assignee's compliance with all the Supplier's obligations under this Agreement should consent be granted or on assignment of this Agreement to any intra group party. This Agreement will be binding on, and inure to the benefit of, the Parties and their successors and permitted assigns.

## 10. NOTICES

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

### 10.1.1. To the Supplier

Post: (            )

Email: (            ) or any alternative address that the Supplier notifies to the Authority.

### 10.1.2. To the Authority

Post: at the Authority's registered office address shown above.

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

## 11. FREEDOM OF INFORMATION

11.1. The Supplier acknowledges that the Authority is subject to the requirements of Freedom of Information Act 2000 (FOIA) and Environmental Information Regulations 2004 (EIRs) and the Supplier shall assist and cooperate with the Authority to enable it to comply with these information disclosure requirements.

11.2. 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 (in accordance with the relevant legislation and codes of practice) 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. DATA PROTECTION

12.1. Both Parties will comply with the applicable requirements of Data Protection Law to the extent they apply to any activities under this Agreement.

12.2. Parties agree that it is their mutual expectation that they will not share personal data with each other under this Agreement.

### 13. LAW AND JURISDICTION

13.1. 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.

13.2. All disputes or claims arising out of or relating to this Agreement shall be subject to the exclusive jurisdiction of the English Courts to which the Parties irrevocably submit.

### 14. MISCELLANEOUS PROVISIONS

14.1. Entire Agreement This Agreement and its Schedules 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

14.2. 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.

14.3. 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.

14.4. 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.

14.5. 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.

14.6. 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.

#### 14.7. Bribery and Corruption

14.7.1 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.

14.7.2 The Supplier shall not commit any offence under the Bribery Act 2010 or give any fee or reward the receipt of which is an offence under Section 117(2) of the Local Government Act 1972.

14.7.3 If the Supplier, its staff or anyone acting on the Supplier's behalf, (with or without the knowledge of the Supplier) engages in conduct prohibited by Clauses 14.7, the Authority may: a) terminate the agreement and recover from the Supplier the amount of any loss suffered by the Authority resulting from the termination; or b) recover in full from the Supplier any other loss sustained by the Authority in consequence of any breach of those clauses.

## 15. COUNTERPARTS

15.1. This Agreement may be signed in any number of counterparts, each of which when signed shall be an original and all of which together evidence the same agreement.

15.2. 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.

15.3. No counterpart shall be effective until each Party has signed and delivered at least one counterpart.

## 16. No Agency, Partnership, Employment or Tenancy

16.1 Nothing in this Agreement shall create or be deemed to create a partnership or the relationship of employer and employee nor any landlord and tenant relationships.

IN WITNESS WHEREOF this Agreement consisting of this and the preceding pages, together with the Schedules, have been executed as follows:

NAME:

JOB TITLE:

SIGNATURE:

DATE:

Executed for and behalf of Reading Borough Council:

NAME:

JOB TITLE:

SIGNATURE:

DATE:

SCHEDULE 1 – ASSET LIST

SCHEDULE 2 – OPERATING PROCEDURES

## 1. PURPOSE OF THIS SCHEDULE

1.1. The purpose of this Schedule is to detail the operational procedures for the installation 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.

## 2. ASSETS

2.1. Suitable Assets in the Authority's streetscape for deployments of the Equipment include, but are not limited to, the following: • Lighting columns • CCTV columns • other columns

## 3. PLANNING AND DEMAND

3.1. The Supplier shall identify the Assets that are in scope.

3.2. The Authority shall provide, where available, details of the Assets to the Supplier, including location, height, type, Asset ID, and power supply ("Asset Data") and such information will form part of the Asset List. 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.

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 ("Network Plan").

3.4. The Supplier shall undertake due diligence to confirm Asset Data as required, which may involve visiting the Assets ("Site Visits") such Site Visits to be agreed in advance by the Authority where access is not from the public highway 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.

3.5. The Supplier shall provide the Authority with a list of Assets it intends to use ("Provisional Demand"). The Authority shall confirm this Provisional Demand. The Supplier acknowledges that it is entirely at the Authority's discretion what Assets may be used and the Authority is entitled to reject any Provisional Demand for the Assets. The Authority shall work with the Supplier to establish any alternative available Assets.

## 4. SURVEY AND DESIGN

4.1. The Supplier shall undertake surveys and structural capacity testing of the relevant Assets (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 ("Surveys and Structural Tests").

4.2. The Supplier shall produce a design for each relevant Asset ("Site Design(s)"). This should include a detailed specification of the Equipment that the Supplier intends to deploy. This should include but not be limited to:

4.2.1. Make and model number of all Equipment;

4.2.2. Size and weight of Equipment including copies of the structural test results to confirm the Asset is suitable for the additional loading of the Equipment that need to be undertaken by the Supplier;

4.2.3. Mounting height for the Equipment;

4.2.4. Power consumption and Elexon Code (UMSUG);

4.2.5. Confirmation that the Supplier has and will comply fully with all planning and regulatory obligations (where applicable);

4.3. The Supplier shall produce a Programme Plan setting out the activities which it will need to perform during the Design and Build phase. The Supplier will identify any activities where it is dependent on the Authority (“Dependencies”). 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, if agreed by them, shall be incorporated into the Programme Plan.

4.4. The Authority agrees and acknowledges that the Supplier shall be free to determine the methodology for the due diligence and Surveys and Structural Tests in its absolute discretion.

4.5. The Authority consents to the Supplier undertaking the Site Visits, Surveys and the Structural Tests and authorises the Supplier to access the relevant Assets for the purpose of conducting Site Visits, Surveys and Structural Tests PROVIDED that access to the Assets is from the publically adopted highway otherwise consent of the Authority or any other relevant third party is required. The Supplier shall be responsible for all and any costs to repair any damage to the Assets, or reduction in use of any Assets by the Authority whether accidental, negligent or otherwise, whilst carrying out the Site Visits, Surveys and Structural Tests.

4.6. Where an Asset fails any Structural Test, the Supplier may propose that the Authority replaces the Asset. The cost of the replacement shall be paid for by the Supplier unless the Structural Test identifies that the Asset needs to be replaced in any event, in which case the replacement shall be paid for by the Authority. The replacement shall be to the Authority’s specification (acting reasonably). The Supplier may propose that the Asset is replaced by a stronger double door column, suitable for the Equipment, in which case the Supplier will request a quote from the Authority for:

4.6.1. Procurement of the new columns;

4.6.2. Removal of existing column;

4.6.3. Installation and certification of new columns and the power aspects;

4.6.4. Certification and acceptance into the Authority Asset List; and

4.6.5. Authority management of the above activity.

4.7. Any new Assets will remain the property of the Authority (including the maintenance of the Asset) except where the Supplier has proposed a replacement Asset which requires non-standard maintenance, in which the Supplier may be asked by the Authority to contribute towards the costs of the additional maintenance. The Supplier will have the right to deploy Equipment on the new Asset (without undertaking further structural tests) on a non-exclusive basis for the remainder of the Initial Term. Where the Authority wishes to deploy banner, baskets, signs or other attachments it will consider the structural test aspects, and the Authority will take all reasonable steps to ensure that the Equipment is not removed without agreement with the Supplier. If there is a road traffic accident then normal process applies i.e. (i) if the Equipment is written off and the Asset has to be replaced, then the Supplier will go through the normal process of assessment and design for a new site and (ii) if there is a requirement for a new lighting design 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.

## 5. ACCESS AND BUILD

5.1. The Supplier shall confirm the Asset(s) which it intends to use ("Confirmed Asset(s)").

5.2. The Supplier shall then prepare a plan setting out the activities which it will need to perform during the build phase ("Programme Plan") and the contractor(s) that it will use, identifying any activities where it is dependent on the Authority ("Dependencies"). 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, if agreed by them, shall be incorporated into the Programme Plan.

5.3. The Supplier shall undertake electrical upgrades as required. The Supplier shall use the Authority's contractor or such other contractor as is acceptable to the Authority.

5.4. The Supplier shall undertake 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, and the Supplier shall be responsible for obtaining any permits, consents and approvals.

5.5. The Supplier shall provide the Risk and Method Statement(s) ("RAMS").

5.6. The Supplier shall install the Equipment on the Assets in accordance with the Programme Plan, RAMS and Equipment specifications subject to not less than 10 working days' notice being given to the Authority and not before all necessary permits, consents and approvals have been obtained.

5.7. If the Supplier, or a Nominated Third Party as the case may be, 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, as may be required.

5.8. The Supplier will then commission the Equipment and update the Site Design(s) as appropriate, providing a copy of the final Site Design ("As built") to the Authority. The Authority will then update its Asset Data and Asset List accordingly.

5.9. 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, only where the Equipment is not complying with the Permitted Use and further only after the Supplier (or its Nominated Third Party as the case may be) has been given reasonable opportunity to resolve any issues identified by such inspection, at the Supplier's cost.

5.10. The Supplier shall identify any required changes to fixing of other equipment (e.g. signage) on the Asset and shall discuss such required changes with the Authority who shall act reasonably and promptly in accommodating such changes.

5.11. The Supplier shall ensure that Equipment is deployed on a Confirmed Asset within six (6) months. The Authority shall update the Authority's asset catalogue to include the Suppliers use of the Asset.

5.12. Notwithstanding Paragraph 5.11, the Supplier may specify an alternate timescale for the deployment of Equipment on an Asset where this may reasonably be required, provided always that the right to install Equipment on an individual Asset cannot be reserved to the exclusion of other suppliers or customers for more than 12 months.

## 6. POWER SUPPLY

6.1 The Authority shall provide adequate electricity supply for the operation of the Equipment.

6.2 The Authority shall not be liable for any break in electricity supply due to any cause, but will use reasonable endeavours to restore the electricity supply as quickly as reasonably possible the Supplier accepting that where the supply is provided by the relevant Distribution Network Operator (NO) and any restoration of the supply will be subject to the timescale set by the DNO the Authority not to have any liability for the DNO's failure to restore the electricity supply.

6.3 The Supplier shall arrange payment of third-party charges such as non-domestic rates which directly relate to the installation of the Equipment, and all electricity charges.

## 7. WORKS

7.1. The Supplier shall ensure that all Works are completed by appropriately qualified and trained personnel, in a good and workmanlike manner, and that the Equipment is securely and safely fixed and at all times, and that the Equipment complies with all applicable health and safety legislation and regulations. The Supplier will ensure:

7.1.1. that all Equipment deployed shall be ICNIRP compliant;

7.1.2. 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;

7.1.3. that Electrical Test and Completion certificates are issued (with appropriate copies provided to the Authority) as required under BS7671 for each Site;

7.1.4. compliance with the Construction (Design and Management) Regulations 2015;

7.1.5. compliance at all times with the requirements of the Health and Safety at Work etc. Act 1974, as amended;

7.1.6. all lighting Assets to the relevant British Standards: BS EN 40 Standard before installation or change to hardware; and

7.1.7. that structural testing and analysis shall comply with Institution of Lighting Professionals Guidance Note 22 (GN22), where required.

7.2. The Supplier shall maintain the standard of cleanliness of the site locations and ensure the responsible removal and disposal of all packaging and casing used.

7.3. The area surrounding the Asset shall be left in a safe, clean and tidy condition.

## 8. SUPPLIER AND AUTHORITY POST INSTALLATION OBLIGATIONS – MAINTENANCE AND REPAIR

8.1. The Supplier (and/or the relevant nominated Third Party as the case may be) will maintain the Equipment in safe repair and condition throughout the Initial Term and the Supplier will manage any incidents arising with the Equipment, from initial contact through to resolution.

8.2. The Supplier shall inspect the Equipment on an annual basis, and will include the following:

8.2.1. Visual inspection of the Asset, the Equipment, cables, connectors and electrical installation;

8.2.2. Check for leaks / water ingress on cable entry to the Asset;

8.2.3. Check for impact damage to the Asset or the Equipment;

8.2.4. Remedial mechanical works, including but not limited to, tightening of connectors where applicable;

8.2.5. Inspection of the electrical supply to the Equipment;

8.2.6. Remedial works related to the electrical supply. A copy of all inspections and remedial works reports should be sent to the Authority.

8.3. The Supplier will arrange the shut-down of Equipment to enable the Authority to carry out any essential maintenance or repair work to the Asset, as necessary such arrangements to be carried out by the Supplier without delay and to be completed no later than within 5 working days from receipt of notice from the Authority. The Supplier should provide safe practices and procedures for working near their apparatus. This should include the process for the shut-down of the apparatus where necessary.

8.4. The Supplier shall manage all incidents relating to the Equipment at the Asset including Equipment failures to major incidents such as an impact caused by a road traffic accident ("RTA"). The Supplier will provide 48 hours' notice to the Authority, except in an operational emergency where notice of access shall be given as soon as reasonably practicable after such access has occurred. In the event of an RTA, the Supplier's contractors will attend the Asset and remove the Equipment and arrange temporary storage. In the event of an emergency, the Supplier will arrange for the Equipment to be switched off remotely either by the Supplier or by the Nominated Third Part as the case may be. Following an incident where an Asset is damaged beyond repair, the Supplier will coordinate with the Authority and the Nominated Third Party (as applicable) to determine a replacement and re-build decision.

8.5. The Supplier will comply with a reasonable relocation request for the Equipment from the Authority such request can be made at any time and on more than one occasion and will be reasonable should the Authority require works of redevelopment, repair, maintenance or development of the Assets to be carried out or to comply with laws or to comply with any obligations owed to any tenant or occupier of the Assets, subject to provision of at least three (3) months' notice where possible (save in the case of an emergency where notice given shall have immediate effect) from the Authority and the reasonable cost of the relocation being covered by the Supplier, the Supplier to carry out the relocation in a proper and workmanlike manner and in accordance with the provisions of Error! Reference source not found. to this Agreement and such works to be completed within a reasonable period of time.

8.6. The Supplier will respond incidents which affect the Asset (such as a road traffic accident) at the request of the Authority.

8.7. The Authority shall retain maintenance obligations for Assets and for any Authority equipment affixed to the Assets.

8.8. The Authority will ensure throughout the Initial Term that the Assets are kept in good structural, working and decorative order.

## 9. EXPIRY OF THE TERM OR TERMINATION OF THIS AGREEMENT

9.1. The Supplier shall remove at its own cost any and all Equipment from an Asset at the expiry of the Asset Licence, the Initial Term or the termination of this Agreement under Clause 8 within twenty (20) Working Days.

9.2. The Supplier shall remove all of the Equipment within twenty (20) Working Days where it is deemed to be at end of life.

## SCHEDULE 3 – GOVERNANCE

### 1. PURPOSE OF THIS SCHEDULE

1.1. 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: • The Assets, access or operation; • The Asset List or Asset Data; • Approvals, consents or permits required from the Authority; • Financial performance; • Supplier and Nominated Third Party demand; • Processes for pre- or post- deployment of Equipment on Assets; • Incidents; • 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 (5) 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 (10) 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 (5) 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 its Nominated Third Party, as the case may be) 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	Delivery / Operations / Technical	Commercial
Level 1	Supplier Small Cells Project Manager or Supplier Service Level Manager	Supplier Portfolio Manager

Level 2	Supplier Head of Small Cells Delivery	Supplier Head of Portfolio
Level 3	Supplier Director, Customer Infrastructure Projects	Supplier Director, Estates and Infrastructure

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

Escalation Level	Delivery / Operations / Technical	Commercial
Level 1	Technical Delivery Manager	Head of Delivery
Level 2	Head of Acquisition and Contracts	Head of Acquisition and Contracts