

FINAL TEMPLATE SMALL CELL AGREEMENT

FRAMEWORK AGREEMENT

BETWEEN

[Wokingham Borough Council]

- and -

[SUPPLIER]

Template – Small Cell Framework Agreement

Private: Information that contains a small amount of sensitive data which is essential to communicate with an individual but doesn't require to be sent via secure methods.

FRAMEWORK AGREEMENT

BETWEEN:

- (1) **WOKINGHAM BOROUGH COUNCIL**, a local authority having its principal place of business at Civic Offices Shute End Wokingham Berkshire RG40 1WH (the "**Authority**"); and
- (2) **[COMPANY NAME]**, a company registered in England and Wales with Company Number [] whose registered office is at [] (the "**Supplier**").

BACKGROUND:

- (A) The Authority is the freehold owner of the Asset Property.
- (B) The Supplier is an Electronic Communications Operator to whom a direction applies under section 106(3)(a) of the CA 2003.
- (C) This Agreement is made pursuant to Part 2 of the Code and its primary purpose is for the grant to the Supplier of Code Rights to enable the Supplier to deploy telecoms infrastructure on the Asset Property on the terms and conditions set out in this Agreement.

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 recitals, 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 License**" means the license 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 4;

"**Asset Property**" means the land or property on which the Confirmed Assets are situated listed in the Asset List [shown edged [COLOUR] on [the] Plan[s] [marked [A]] [and registered at HM Land Registry under title numbers:

"**Business Day**" means a day (other than a Saturday, Sunday or a public holiday) when banks in London are open for business;

"**CA 2003**" means the Communications Act 2003;

Code: Electronic Communications Code set out in Schedule 3A to the CA 2003;

"**Code Rights**" means the rights set out in Schedule 1;

“Commencement Date” means the date installation works begin;

“Competent Authority” means any statutory undertaker or any statutory public local or other authority or regulatory body or any court of law or government department or any of them or any of their duly authorised officers;

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

“Confidential Information” means the provisions of this Agreement and any information whether disclosed orally or in writing before or after the date of this Agreement in connection with this Agreement which would be regarded as confidential by a reasonable business person concerning the business, assets, affairs, customers, clients, suppliers, operations, processes, product information, know-how, designs, trade secrets, software of the disclosing party or any information developed by the parties in the course of carrying out this Agreement except as permitted by Clauses 6 and 13;

“Data Protection Law” means 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 the guidance and codes of practice issued by the Information Commissioner or other relevant regulatory authority and applicable to a party];

“Designated Hours” means [TIMES] on [a Business Day OR [DAYS]] [unless otherwise agreed in writing between the parties;]

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

“Equipment” means the telecommunications apparatus, including apparatus required for the Supplier 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 and any telecommunications equipment lawfully substituted for that apparatus pursuant to the Supplier's right to upgrade;

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

“Force Majeure Event” shall mean any event, circumstance, cause beyond the reasonable control of the Supplier or the Authority which does not relate to its fault or negligence. Force Majeure Event includes (without limiting the generality thereof) acts of God, expropriation or confiscation of facilities, civil war, civil commotion or riots, threat of or preparation for war, armed conflict, imposition of sanctions, embargo, or breaking off of diplomatic relations, nuclear, chemical or biological contamination or sonic boom,, terrorist attack, local or national emergency, government action, epidemic or pandemic, sabotage or riots, floods, drought, earthquake, collapse of buildings, fires, explosions or accidents or other natural disaster;

“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;

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"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 business name, utility model, right in computer software, right in design, right in databases, image right, moral right, right to an invention, right to sue for passing off, domain name, right to use and protect the confidentiality of Confidential Information (including know-how and trade secrets), and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of which exist now or which will exist in the future in the United Kingdom, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world;

"Installation Works" means works to be carried out on, over or under the Confirmed Asset to install the Equipment and to reinstate the Confirmed Asset(s) as described in Schedule [6/7];

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

"Necessary Consents" means all consents, licenses, permissions, certificates, authorisations and approvals whether of a public or private nature which shall be required by any Competent Authority for the installation, inspection, maintenance, adjustment, alteration, repair, renewal, connection to, replacement, operation, upgrade and removal of the Equipment on the terms of this Agreement;

"Nominated Third Party" means (i) a third party customer to whom the Supplier grants a sub-license 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 [6/7] 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;

"Plan[s]" means the plan[s] attached to this Agreement

"Program Plan" means the Supplier's plan(s) for Works on Confirmed Assets, as outlined in Schedule [6/7];

"Reinstatement Works" means such works as are required to reinstate the Confirmed Asset(s) following removal of the Equipment;

"Relocation Works" means such works as are necessary to relocate the Equipment;

"Representatives" means in relation to a Party, its agents, employees, officers, representatives, contractors, subcontractors and advisers;

"Surveys / Structural Tests" as defined in paragraph 4 of Schedule [6/7];

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

"VAT" means value added tax or any equivalent tax chargeable in the UK;

"Wireless Connection" means any wireless connection which the Supplier may deploy or procure to connect an Asset;

"Works" any works carried out by or on behalf of the Supplier to any of the Assets including (but not limited to) Installation Works, Relocation Works, Reinstatement Works and any works carried out to upgrade the 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. recitals and headings are all for reference only and shall be ignored in construing this Agreement;

1.2.7. a person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality);

1.2.8. reference to any party to this Agreement shall include, where appropriate, a reference to that party's employees, contractors, agents and anyone authorised by it;

1.2.9. a reference to the Authority includes a reference to any party bound by this Agreement or who shall become bound by it under the Code;

1.2.10 a reference to the Supplier includes a reference to any party to which this Agreement is assigned pursuant to Clause 11.2 and any party with whom the Equipment is shared pursuant to Clause 11.5; 1.2.11 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 is a framework that 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, 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 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, where suitable, and where such use does not affect the reasonable functionality of the Assets or other suppliers' equipment already installed on the Asset.
- 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 Confirmed 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 the Works on Confirmed Assets, and the license to maintain the Equipment on those Confirmed Assets and to use such Equipment for the Permitted Use and to alter, renew and replace such Equipment, all such permissions and licenses 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 or no more than a minimal 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 the Asset (which includes anything that has an additional adverse effect on the Authority's or occupier's enjoyment of the Asset or that causes additional 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 all necessary consents and shall comply with all applicable laws and legislation relating to the exercise of the rights 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-license to Nominated Third Parties to use Assets for the Permitted Use, provided always that the Supplier shall ensure that the Nominated Third Parties comply with the relevant 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 Confirmed Assets with Nominated Third Parties or any other third parties and such sharing shall not have any adverse impact or no more than a minimal 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 the Confirmed Asset (which includes anything that has an additional adverse effect on the Authority's or occupier's enjoyment of the Confirmed Asset or that causes additional 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 Confirmed Assets due to the Supplier sharing the Confirmed Assets shall be a breach by the Supplier and the Supplier shall be liable for any acts or omissions of

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the Nominated Third Parties or 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 [7/8] (Governance).

3. GRANT AND LICENCE ONLY

3.1 In consideration of the Supplier's Obligations [and the payment of the Initial Fee] the Authority grants to the Electronic Communications Operator the Code Rights.

3.2 The Code Rights are granted:

- (a) subject to the Reserved Rights and any other rights of the Grantor in relation to the Property whether or not referred to in this Agreement; and
- (b) in common with any other persons lawfully entitled to exercise similar rights to the Code Rights or the Reserved Rights in relation to the Assets.

3.3 The parties acknowledge that:

- (a) No relationship of landlord and tenant is created between the Authority and the Supplier by this Agreement;
- (b) The Authority retains control, possession and management of the Assets and the Supplier has no right to exclusive possession nor to exclude the Authority from the Assets; and
- (c) This agreement confers no easement.]

4. FEES AND ASSOCIATED COSTS

4.1. In consideration of the Authority's costs and expenses in negotiating and facilitating this Agreement, the Supplier shall pay the Authority £5000 (the "**Initial Fee**") and on a full indemnity basis all costs, fees, charges and expenses and disbursements of the Authority and its professional advisers incurred in relation to the negotiation and completion of this Agreement plus an amount equivalent to VAT on them except to the extent that the Authority is able to recover that VAT.] on completion of this Agreement. The Authority shall invoice the Supplier for the Initial Fee on execution of this Agreement by both Parties.

4.2. Where the Supplier needs to inspect the Assets and/or undertake any Surveys or Structural Tests which require attendance by the Authority, a day rate of £250 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.

4.3. The Supplier shall pay to the Authority an annual fee of £300 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 Asset on which it installed Equipment in the last quarter, the Asset License 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 11.9 (Force Majeure Event) or the Supplier terminates under Clause 11.4 (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 Assets.

4.4. 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.

4.5. All power costs related to the Equipment shall be paid by the Supplier, based on the ELEXON

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(UMSUG) code(s) for the installed Equipment.

- 4.6. 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.
- 4.7 All sums payable by the Supplier under this Agreement are exclusive of any VAT that may be chargeable. Subject to Clause 4.9 the Supplier shall pay VAT in respect of all taxable supplies made to it in connection with this Agreement on the due date for making any payment or, if earlier, the date on which that supply is made for VAT purposes.
- 4.8 Every obligation on the Supplier, under or in connection with this Agreement, to pay the Authority any sum by way of a contribution, refund or indemnity, shall include an obligation to pay an amount equal to any VAT incurred on that sum by the Authority except to the extent that the Authority obtains credit for such VAT under the Value Added Tax Act 1994.
- 4.9 The Supplier shall not be required to make any payment of VAT unless and until it is provided with a valid VAT invoice addressed to the Supplier.

5 TERM

- 5.1 This Agreement shall come into force on the Commencement Date and shall continue for a minimum period of 10 years with a 5-year break clause. For the avoidance of doubt, the Supplier's Asset Licenses shall expire at the end of the Initial Term, regardless of when the Asset Licenses commenced.
- 5.2 If the Supplier wishes to retain its Equipment on the Confirmed 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 Confirmed Asset(s), only in the event that such refusal is in accordance with the terms set out in Clause 9.
- 5.3 If the Supplier does not wish to continue the use of the Confirmed Assets, the Authority refuses an extension of the Initial Term under Clause 5.2 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.

6 INTELLECTUAL PROPERTY

6.1 Ownership of all Intellectual Property Rights in any Equipment, design, plan or data, made available as part of the Program 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).

7. CONFIDENTIALITY

7.1 Subject always to Clause 12, each Party shall [at any time OR at any time during this Agreement and for a period of [two (2)] years after termination or expiry of this Agreement:

7.1.1 keep any Confidential Information of the other Party obtained under this Agreement secret and confidential; and

7.1.2 not disclose the Confidential Information of the other Party to any person (other than its Representatives) without the written consent of the other Party except as permitted by clause 7.2.

7.2 This Clause 7 shall not apply to any Confidential Information that:

7.2.1 is or becomes available to the public other than as a result of its disclosure by the receiving party or its Representatives in breach of this clause;

7.2.2 was available to the receiving party on a non-confidential basis before disclosure by the disclosing party;

7.2.3 was, or becomes available to the receiving party on a non-confidential basis from a person who, to the receiving party's knowledge, is not bound by a confidentiality agreement with the disclosing party or otherwise prohibited from disclosing the information to the receiving party; and

7.2.4 is required to be disclosed under any applicable law, a court of competent jurisdiction or any governmental or regulatory body. In such event, the Party shall notify the other Party in writing of such disclosure.

8 LIMITATION OF LIABILITY AND INSURANCE

8.1 Subject to Clause 8.2, the Authority is not liable for:

- (a) The death of, or injury to the Supplier, its Representatives or invitees to the Asset Property;
- (b) damage to any property of the Supplier or that of the Supplier's Representatives or invitees to the Confirmed Asset(s); or
- (c) any liabilities, costs, expenses, damages and losses incurred by the Supplier or the Supplier's Representatives or invitees to the Asset Property in the exercise or purported exercise of the Code Rights.

8.2 Nothing in Clause 8.1 shall limit or exclude a Party's liability for death or personal injury or damage to property [or any matter in respect of which it would be unlawful for a Party to exclude or restrict liability] caused by its negligence, or that of its Representatives. 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.

8.3 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.

8.4 The Supplier shall make good [to the reasonable satisfaction of the Authority

any damage caused to any Confirmed 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 Confirmed Assets.

8.5 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 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 Confirmed Assets, the carrying out of any Works in relation to the Confirmed 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.

8.6 The Authority shall not be liable to the Supplier for any failure of the Authority to [comply with the Authority's Obligations contained in Schedule 3 unless and until the Supplier has given the Authority notice of the facts that give rise to the failure and the Supplier has not remedied the failure within a reasonable time. 8.7 The Supplier shall before the Commencement Date and until such time as the Code Rights granted by this Agreement are terminated:

8.7.1 maintain fully comprehensive employers liability insurance in the sum of [TEN MILLION POUNDS (£10,000,000)] STERLING in respect of any one claim and unlimited in the period;

8.7.2 maintain fully comprehensive public liability insurance in the sum of [FIVE MILLION POUNDS (£5,000,000)] STERLING in respect of any one claim and unlimited in the period;

8.7.3 maintain fully comprehensive 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 satisfactory evidence including insurance certificates to show that the above detailed insurance cover is valid, being maintained and all premiums due have been properly paid.

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

8.8 The Supplier shall ensure that:

- (a) [a copy of this Agreement has been produced to and acknowledged by the insurers];
- (b) [the interest of the Authority has been noted on the policy;]
- (c) all current premiums are paid and up to date and
- (d) the Supplier complies in all respects with the terms of the insurances and does not allow them to lapse.

8.9 The Supplier shall reimburse the Authority [on demand OR within [five] Business Days of demand] the whole of any increased or additional premiums incurred by reason of the exercise by the Supplier of the Code Rights or the carrying out by the Supplier of any Works (whether payable for the insurance of buildings, contents, consequential loss, third party or public liability relating to or connected with the Assets or otherwise).]

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

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

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

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8.9.3 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.

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

8.10.1 [£1,000,000 (one million pounds)] for damage to buildings and contents thereof in respect of any one claim;

8.10.2 [£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.

8.11 This Clause 8 shall continue in force after the termination or expiry of this Agreement.

9 TERMINATION

9.1 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) Business Days after receipt of notice from the non-breaching Party requiring the breach to be remedied.

9.2 [For the purposes of clause 9.1 material breach means:
(a) a breach of any of the obligations set out in the relevant clauses; or
(b) a breach that has a serious effect on the benefit the terminating party would otherwise derive from this Agreement

9.3 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 (6) months' prior written notice. For the avoidance of doubt, where the Supplier wishes to transfer the Equipment from one Confirmed Asset to another, this shall not be deemed as termination of the Asset License and shall be subject to further agreement with the Authority.

9.4 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 1124 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.

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

9.5.1 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

9.5.2 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 [or commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with any of its creditors other than (being a company) for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party or applies to court for, or obtains, a moratorium under Part A1 of the Insolvency Act 1986]; or

9.5.3 ceases to be an Electronic Communications Operator.

9.6 Neither party shall be in breach of this Agreement or otherwise liable for any failure or delay in the performance of its obligations if such delay or failure results from a Force Majeure Event.

9.7 The affected party shall:

- (a) as soon as reasonably practicable after the start of the Force Majeure Event [but no later than five (5) Business Days from its start], notify the other party [in writing] of the Force Majeure Event, the date on which it started, its likely or potential duration, and the effect of the Force Majeure Event on its ability to perform any of its obligations under the agreement; and
- (b) use all reasonable endeavours to mitigate the effect of the Force Majeure Event on the performance of its obligations.

9.8 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) Business Days written notice of termination to the other Party.

9.9 Upon expiry or otherwise termination of this Agreement, the Supplier shall:

- 9.9.1 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;
- 9.9.2 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.

9.10 For the avoidance of doubt, the termination provisions contained in this Clause 9 do not affect any statutory rights of the Supplier relating to the exercise of the Code Rights.

10 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.

11 ASSIGNMENT AND SUBCONTRACTING

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

11.2 The Supplier shall not be liable for any breach of this Agreement occurring on or after the date of the permitted assignment, save for any liability under a guarantee agreement, provided that:
(a) the Supplier is given written notice of the assignee's identity and address for the purposes of [Clause 14](#); and
(b) the notice was given prior to the breach occurring.

- 11.3 The Supplier may share the use of the Equipment situated on the Assets with another Electronic Communications Operator provided that:
- (a) any changes as a result of sharing use of the Equipment have no adverse impact or no more than a minimal adverse impact on its appearance; and
 - (b) the sharing imposes no additional burden on the Authority (which includes anything that has an additional adverse effect on the Authority's enjoyment of the Assets or that causes additional loss, damage or expense to the Authority).
- 11.4 Except as expressly permitted by this agreement, the Supplier shall not assign, charge or directly or indirectly share use of the Equipment and the rights granted by this agreement with another Electronic Communications Operator or any other person.
- 11.5 If the Authority so requests, the Supplier shall promptly supply the Authority with full details of anyone sharing the use of the Equipment.

12 NOTICES

- 12.1 All notices given under this Agreement shall be in writing and for the purposes of this clause an email is not in writing, sent by prepaid post or personal delivery to the addresses below.
- 12.1.1 To the Supplier
- Post: at the Supplier's registered office address shown above
- 12.1.2 To the Authority
- Post: at the Authority's registered office address shown above.
- 12.2 Any change of the details in Clause 12.1.1 and/or 12.1.2 specified in accordance with that clause shall take effect for the party notified of the change at [9.00 am] on the later of:
- (i) the date, if any, specified in the notice as the effective date for the change; or
 - (ii) the date [five (5)] Working Days after deemed receipt of the notice.
- 12.3 If a notice complies with the criteria in Clause 12.1, whether or not this agreement requires that notice to be in writing, it shall be deemed to have been received:
- (a) if delivered by hand, at the time the notice is left at the proper address; or
 - (b) if sent by a registered post service or by recorded delivery, on the [second (2nd)] Working Day after posting.
- 12.4 Each Party agrees that the address set out in Clause 12.1 (as it may subsequently be amended under Clause 12.2 shall also constitute its address for service under paragraph 91(2)(a) of the Code.
- 12.5 This Clause 12 does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.

13 FREEDOM OF INFORMATION

- 13.1 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.
- 13.2 The Supplier shall:
- (a) 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 EIRs;

- (b) transfer to the Authority all Requests for Information relating to this Agreement that it receives as soon as practicable and in any event within two (2) Working Days of receipt;
- (c) provide the Authority with a copy of all Information belonging to the Authority requested in the Request For Information which is in its possession or control in the form that the Authority requires within five (5) Working Days (or such other period as the Authority may reasonably specify) of the Authority's request for such Information; and
- (d) not respond directly to a Request for Information unless authorised in writing to do so by the Authority.

13.3 The Supplier acknowledges that the Authority may be required under the FOIA and EIRs to disclose Confidential Information (including Commercially Sensitive Information) without consulting or obtaining consent from the Supplier. The Authority shall take reasonable steps to notify the Supplier of any requests for Confidential Information (in accordance with the Cabinet Office's Freedom of Information Code of Practice issued under section 45 of the FOIA) 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.

13.4 For the purposes of this clause 13:

13.4.1 "Information" has the meaning given under section 84 of the Freedom of Information Act 2000;

13.4.2 "Commercially Sensitive Information" information of a commercially sensitive nature relating to the Supplier, its intellectual property rights or its business or which the Supplier has indicated to the Authority that, if disclosed by the Authority, would cause the Supplier significant commercial disadvantage or material financial loss.

14 DATA PROTECTION

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

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

15 LAW AND JURISDICTION

15.1 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.

15.2 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.

16 MISCELLANEOUS PROVISIONS

16.1 Entire Agreement

This Agreement and its Schedules contain the entire agreement between the Parties with respect to its subject matter and supersedes all previous and contemporaneous written or oral agreements, promises, assurances arrangements, understandings or agreements between the Parties in relation to such subject matter

16.2 Acknowledgement

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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.

16.3 **No Waiver**

Except as otherwise specifically provided in this Agreement, no failure to exercise, delay in exercising, or the single or partial exercise of any right or remedy shall not operate as a waiver of any right or remedy. Any waiver of any breach, right or remedy shall only be effective if given [and shall not be deemed a waiver of any subsequent right or remedy] 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.

16.4 **Severance**

If any provision or part-provision of this Agreement is or becomes invalid, illegal or unenforceable, it will be deemed deleted from this Agreement, the remaining provisions will remain valid in full force and effect and the Parties will promptly negotiate a replacement.

16.5 **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.

16.6 **Rights of Third Parties**

A person who is not a party to this Agreement has no rights 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.

16.7 **Publicity**

Except with the prior written consent of the Authority, the Supplier shall not make any press announcements or publicise this Agreement or its contents in any way or use the Authority's name or logo in any promotion or marketing or announcement of orders except as required by law, any government or regulatory authority, any court or other authority of competent jurisdiction.

16.8 **Prevention of Bribery**

16.8.1 The following constitute Prohibited Acts:

- (a) to directly or indirectly offer, promise or give any person working for or engaged by the Authority a financial or other advantage as an inducement or reward for any improper performance of a relevant function of activity;
- (b) to directly or indirectly request, agree to receive or accept any financial or other advantage as an inducement or a reward for improper performance of a relevant function or activity in connection with this agreement;
- (c) committing any offence: (i) under the Bribery Act 2010; (ii) under legislation or common law concerning fraudulent acts; or (iii) of defrauding, attempting to defraud or conspiring to defraud the Authority;
- (d) any activity, practice or conduct which would constitute one of the offences listed under (c) above, if such activity, practice or conduct had been carried out in the UK.

16.8.2 The Supplier represents and warrants that neither it, nor any of its Representatives:

- (a) has committed a Prohibited Act;

(b) to the best of its knowledge has been or is subject to an investigation, inquiry or enforcement proceedings by a governmental, administrative or regulatory body regarding any Prohibited Act or alleged Prohibited Act; or

(c) has been listed by any government department or agency as being debarred, suspended, proposed for suspension or debarment, or otherwise ineligible for participation in government procurement programmes or contracts on the grounds of a Prohibited Act.

16.8.3 The Supplier shall promptly notify the Authority if, at any time during the Term, its circumstances, knowledge or awareness changes such that it would not be able to repeat the warranties set out in [Clause 16.13.2](#) at the relevant time.

16.8.4 The Relevant Requirements means all applicable law relating to bribery, corruption and fraud, including the Bribery Act 2010 and any guidance issued by the Secretary of State for Justice pursuant to section 9 of the Bribery Act 2010.

16.8.5 The Supplier shall (and shall procure that its Representatives shall) during the Term:

(a) not commit a Prohibited Act;

(b) not do or omit to do anything that would cause the Authority or any of the Authority's Representatives to contravene any of the Relevant Requirements or otherwise incur any liability in relation to the Relevant Requirements;

(c) [comply with the Authority's Anti-bribery and Anti-Corruption Policy as updated from time to time and set out in the [Schedule](#) OR have and maintain in place its own policies and procedures to ensure compliance with the Relevant Requirements and prevent occurrence of a Prohibited Act;]

(d) notify the Authority (in writing) if it becomes aware of any breach of [Clause 16.8.5 \(a\)](#) or [Clause 16.8.5\(b\)](#), or has reason to believe that it or any person associated with it has received a request or demand for any undue financial or other advantage [in connection with performance of this agreement].

16.8.6 The Supplier shall maintain appropriate and up to date records showing all payments made by the Supplier in connection with this agreement and the steps taken to comply with its obligations under [Clause 16.8.5](#).

16.8.7 [The Supplier shall allow the Authority and its third-party representatives to audit any of the Supplier's records and any other relevant documentation].

16.8.8 If the Supplier is in default under this [Clause](#) 16.8 the Authority may by notice:

(a) require the Supplier to remove from performance of this agreement any Supplier Personnel whose acts or omissions have caused the default; or

(b) immediately terminate this agreement.

16.8.8 Any notice served by the Authority under [Clause 16.8.8](#) shall specify the nature of the Prohibited Act, the identity of the Party who the Authority believes has committed the Prohibited Act and the action that the Authority has elected to take (including, where relevant, the date on which this agreement shall terminate).

17 COUNTERPARTS

17.1 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.

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

17.3 Contract value/signature requirements:

- 17.3.1 Up to £100k/must be signed by one officer on the "List of Authorised Officers" for the relevant service area.
- 17.3.2 £100k-£500k/must be sealed as a Deed or signed by two officers - any solicitor or barrister employed by [insert Local Authority] and one from the "List of Authorised Officers" for the relevant service area.
- 17.3.3 >£500k/must be sealed as a Deed.

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

Executed for and on Behalf of	[Local Authority]	[Supplier]
Signature		
Name (Print)		
Job Title (Print)		
Date of Signature (Print)		
Location of Signature (Print)		
Before this witness		
Witness Signature		
Witness Name (Print)		
Witness Address (Print)		

SCHEDULE 1 – CODE RIGHTS

The rights, for the Supplier and those authorised by it [during the Designated Hours [save in the case of emergency] OR [at all times] [and in common with the Authority and other persons having the same or similar rights] to enter the Asset [on foot OR with or without vehicles] and with plant and equipment to:

- 1.1 install the Equipment and make good the Property in accordance with the Operating Procedures and afterwards to inspect, maintain, adjust, alter, repair, remove, replace and operate the Equipment ensuring that on each occasion that the Asset Property is reinstated in accordance with the Operating Procedures and otherwise left in a neat and tidy condition; [and; OR ;]
- 1.2 Upgrade the Equipment, provided that:
 - (a) any changes as a result of the upgrading to the Equipment have no adverse impact or no more than a minimal adverse impact on its appearance; and
 - (b) the upgrading imposes no additional burden on the Authority (which includes anything that has an additional adverse effect on the Authority's enjoyment of the Asset Property or that causes additional loss, damage or expense to the Grantor); [and; OR;]
- 1.3 [Fell, trim or lop any trees, bushes and other vegetation on the Asset Property which obstruct or interfere with the exercise of the rights in accordance with the Operating Procedures, provided that the Supplier removes from the Asset Property all timber, wood and vegetation so cut or otherwise deals with it as the Authority direct[s] and leaves the Asset Property properly reinstated in accordance with the Operating Procedures and otherwise in a neat and tidy condition[; and OR.]]
- 1.4 [Connect to a power supply [; and OR.]]
- 1.5 To obtain access to any adjoining land over which the Supplier has similar rights to the Code Rights.

PROVIDED THAT:

- 1.6 Access shall only be permitted under this Paragraph 1 to [those parts of the Asset Property as is it is reasonably necessary to access to carry out the above purposes OR [IDENTIFY PARTS OF THE PROPERTY THAT THE SUPPLIER WILL BE PERMITTED TO ACCESS]].
- 1.7 Any such access to the Asset Property shall be at the Supplier's expense and shall be exercised in a good and workmanlike manner; and
- 1.8 The Supplier promptly notifies the Authority of any upgrading of the Equipment carried out under this Paragraph 1 and promptly provides such further information as the Authority reasonably requires.

SCHEDULE 2 – SUPPLIER'S OBLIGATIONS

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1. STATUTORY REQUIREMENTS

When exercising any and all of the Code Rights and using and operating the Equipment, the Supplier shall do so in a good, proper and workmanlike manner, in accordance with all Necessary Consents and shall comply with all applicable laws and legislation relating to the exercise of the Code Rights and with the code of practice published from time to time by Ofcom pursuant to paragraph 103 of the Code.

2. DAMAGE

The Supplier shall:

2.1 [Use all reasonable endeavours] not [to] cause any damage to the Asset Property, or to any property of the owners or occupiers of the Asset Property, through the exercise of the Code Rights, the carrying out of any Works, or otherwise; and

2.2 [Immediately OR as soon as possible] make good any such damage caused and reinstate the Asset Property to the Authority's reasonable satisfaction in accordance with the reinstatement provisions in the Operating Procedure in Schedule 2 and shall pay full compensation to the Authority in respect of any damage caused that is not made good and any loss caused to the Authority due to that damage.

3. NUISANCE

[The Supplier shall not cause any nuisance, annoyance or disturbance to the Authority or other occupiers of the Asset Property, or of any neighbouring land, or to any other person entitled to rights over the Asset Property or entitled to exercise the Code Rights in common with the Supplier.

OR

The Supplier shall cause as little nuisance, annoyance and disturbance as possible to the Authority or other occupiers of the Asset Property, any neighbouring land, or to any other person entitled to rights over the Asset Property or to those entitled to exercise the Code Rights in common with the Supplier.]

4. INTERFERENCE

In exercising the Code Rights the Supplier shall take all reasonable precautions to avoid any interference with the use of any part of the Asset Property or any road, footpath, sewer, drain, watercourse or other services that may be affected by any of the Works.

5. SAFETY

The Supplier shall ensure that:

5.1 All proper safety precautions are taken during any Works and thereafter that safety devices in, on or relating to the Equipment function properly at all times;

5.2 All Necessary Consents are in place before any Works are carried out;

5.3 The Equipment is maintained and kept in good repair and condition so as not to cause a danger to the Authority or any other tenants and occupiers of the Asset Property or neighbouring property;

5.4 The Equipment is regularly inspected at proper intervals by an appropriately qualified and experienced person and that any recommendations given by such a person to carry out works or remedy any defects are immediately carried out; and

5.5 The Equipment and every part of it is kept identifiably labelled with the name of the Supplier [and the address of the Asset Property].

6. NOTICE OF ENTRY

6.1 Except in the case of emergency (when [the Supplier shall give as much notice as is practical in the circumstances OR no notice is necessary]) and subject to Paragraph 6.2, the Supplier shall give the Authority not less than [five (5)] Working Days ' written notice of its intention to enter the Asset Property to install, inspect, maintain, adjust, alter, repair, remove, replace and operate the Equipment.

6.2 The Supplier shall give the Authority not less than [twenty (20)] Working Days' written notice of its intention to enter the Asset Property to upgrade the Equipment and the notice shall be accompanied by full details of what is proposed, including drawings, specifications, plans and method statements as appropriate.

7. RATES AND CHARGES

7.1 The Supplier shall pay and indemnify the Authority against all rates and charges that may be or become payable in relation to the Equipment or the exercise of the Code Rights.

8. REMOVAL OF REDUNDANT APPARATUS

The Supplier shall remove any part of the Equipment that is replaced or otherwise becomes redundant while this Agreement remains in place and shall [immediately OR as soon as practicable after that removal] reinstate and make good to the reasonable satisfaction of the Authority any damage to the Asset Property (or any neighbouring property) that is caused by such removal.

[SCHEDULE 3 – AUTHORITY'S OBLIGATIONS] OPTIONAL CLAUSES

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1. INTERFERENCE WITH APPARATUS

The Authority shall use reasonable endeavours:

- 1.1 [Not do anything or allow anything to be done on the Asset Property that may interfere with or damage the Equipment or interfere with, impede or obstruct the Supplier's access to the Equipment; and]
- 1.2 [To give reasonable notice to the Supplier of any activity or work it intends to carry out at the Asset Property that will or may affect the continuous operation of the Equipment.]]

2. PROHIBITED ACTIVITY

The Authority shall not:

- 2.1[Raise the level of the surface, ground cover or composition of the ground beneath the Asset Property.]

SCHEDULE 4/5 – 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
- bus shelters
- advertising hoardings
- building mounted assets

2.2.

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

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(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 publicly 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 ("**Program 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 Program 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 Program Plan, RAMS and Equipment specifications subject to not less than ten (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 (DNO) 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.

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- 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 five (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 forty-eight (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 Schedule 2 to this Agreement and such works to be completed within a reasonable period of time.
- 8.6. The Supplier will respond to 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

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- 9.1. The Supplier shall remove at its own cost any and all Equipment from an Asset at the expiry of the Asset License, 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 6/7 – 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.