

SCHEDULE 36

Clause 16 Protocol

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1. The Service Provider is required, pursuant to clause 16.2 of this Contract, to take such action as is referred to in this Clause 16 Protocol to obtain Consents from the Owner of a structure or building to which it is proposed a Project Network Part will be attached. In addition, the Service Provider is required pursuant to clause 16.7 of this Contract to use reasonable endeavours to agree with an Owner that a Project Network Part may remain in its original position, or meet with the Authority to discuss an alternative solution, where that Owner has requested the removal of the Project Network Part.
2. **Survey and Design**
 - 2.1 In dealing with the replacement of a Project Network Part, the Service Provider shall comply with its obligations under the Output Specification including in particular (but without limitation) the obligations under the Output Specification including in particular (but without limitation) the obligations under the Appendices to part 1 of the Output Specification and shall where practicable design in such a way so as to avoid the need for a Consent from an Owner.
 - 2.2 Where it is not practicable to design in such a way as to avoid the need for a Consent, then the Service Provider shall comply with its obligations under paragraph 3 of this Clause 16 Protocol prior to the submission of any design requiring a Consent being submitted as a Reviewable A Item in accordance with the Review Procedure.
3. **Obtaining a Consent**
 - 3.1 The Service Provider will make reasonable enquiries to ascertain the identity of the Owner of the relevant structure or building and will make a personal visit to the relevant property to make contact with the Owner in order to request the giving of the Consent for the affixing of the Project Network Part
 - 3.2 Where the Service Provider makes a personal visit to the relevant property and is able to make contact with the Owner, the Service Provider shall request that such Owner agrees to provide the Consent and:

- 3.2.1 if the Owner agrees to the affixing of the Project Network Part to his structure or building, the provisions of paragraph 3.7 of this Clause 16 Protocol shall apply; and
- 3.2.2 if the Owner does not agree to the affixing of the Project Network Part to his structure or building, the Service Provider shall, within five (5) Business Days of such refusal, write (or send by email where practicable) to the Owner using the pro-forma letter attached at Appendix 1 of this Clause 16 Protocol.
- 3.3 Where the Service Provider makes a personal visit to the relevant property and is unable to make contact with the Owner in order to request the giving of the Consent for the affixing of the Project Network Part, the Service Provider shall write (or send by email where practicable) to the Owner within five (5) Business Days of such failed attempt to make contact with the Owner using the pro-forma letter attached at Appendix 2 of this Clause 16 Protocol.
- 3.4 Where a period of [REDACTED] has elapsed since the date of the letter sent by the Service Provider in accordance with paragraph 3.3 and the Service Provider is still unable to make contact with the Owner in order to request the giving of the Consent for the affixing of the Project Network Part, the Service Provider shall make a second personal visit to the relevant property. Where, following the second personal visit, the Owner has refused consent or the Service Provider was again unable to make contact with the Owner in order to request the giving of the Consent, paragraph 3.5 of this Clause 16 Protocol shall apply. Where, following the second personal visit, the Owner gives the Consent for the affixing of the Project Network Part, paragraph 3.7 of this Clause 16 Protocol shall apply.
- 3.5 Where a period of [REDACTED] has elapsed since the date of a letter sent by the Service Provider in accordance with paragraph 3.2.2 of this Clause 16 Protocol or a period of [REDACTED] has elapsed from the date of the second personal visit to the relevant property pursuant to paragraph 3.4 of this Clause 16 Protocol and the Owner has either refused consent to the affixing of the Project Network Part to his structure or does not respond within such period, the Service Provider shall write (or send by email where practicable) to the Owner within a further [REDACTED] using the pro-forma letter attached at Appendix 3A or 3B of this Clause 16 Protocol as appropriate.

- 3.6 If the Service Provider does not receive an approval from the Owner by that date that is [REDACTED] after the date of the letter referred to in paragraph 3.5 of this Clause 16 Protocol, then the Service Provider will within a further [REDACTED] [REDACTED] give written notice to the Authority that it has been unable to obtain the Consent in accordance with the provisions of clause 16.2.3 of this Contract.
- 3.7 Within [REDACTED]s of an Owner giving his approval to the affixing of the Project Network Part to his structure or building, the Service Provider will prepare a written Consent which names the Authority as a co-beneficiary (in a form approved in writing by the Authority, such approval not to be unreasonably withheld or delayed) and will send the same to the Owner for signing accompanied by the pro-forma letter attached at Appendix 4 of this Clause 16 Protocol.
- 3.8 If the Owner does not sign and return to the Service Provider the Consent by the date that is [REDACTED] after the date of the letter referred to in paragraph 3.7 of this Clause 16 Protocol, the Service Provider will within a [REDACTED] [REDACTED] send a follow up letter (or send by email where practicable) containing a further copy of the Consent to the Owner using the pro-forma letter attached at Appendix 5 of this Clause 16 Protocol.
- 3.9 If the Service Provider does not receive a signed copy of the Consent from the Owner by the date that is [REDACTED] after the date of the letter sent in accordance with paragraph 3.8 of this Clause 16 Protocol, then the Service Provider will within a further [REDACTED] give written notice to the Authority that it has been unable to obtain the Consent in accordance with the provisions of clause 16.2.3 of this Contract.
- 3.10 The Service Provider will send to the Authority a signed original counterpart of any Consent within [REDACTED] of receipt of the same by the Service Provider.
- 3.11 Without prejudice to the rights of the Authority pursuant to clause 16.3.1 of this Contract, the Authority acknowledges that failure by the Service Provider to comply with any of the time periods contained within this paragraph 3 of this Clause 16 Protocol shall not be considered to be a breach of this paragraph 3 of this Clause 16 Protocol until a period in excess of [REDACTED] since the prescribed date for completion of the relevant procedure under this paragraph 3 of this Clause 16 Protocol has elapsed. For the avoidance of doubt, this paragraph 3.11 shall not

operate as to permit the Service Provider to act prior to the expiry of any requisite time period.

4. Request for Removal of Project Network Part

- 4.1 Where the Service Provider receives a request from an Owner, either directly or from the Authority on the Owner's behalf, for the permanent removal of Project Network Part from a structure or building as referred to in clause 16.7 then, the Service Provider shall notify the Authority of such request within [REDACTED] of the date on which the Service Provider received the request from the Owner or the Authority.
- 4.2 The Authority shall notify the Service Provider within [REDACTED] of the receipt of the notice issued by the Service Provider pursuant to paragraph 4.1 whether:
- 4.2.1 the Service Provider shall comply with paragraphs 4.3 to 4.8 of this Clause 16 Protocol; or
- 4.2.2 the Authority requires to meet with the Service Provider to discuss an alternative solution in which case the Parties shall comply with paragraphs 4.9 to 4.11 of this Clause 16 Protocol.
- 4.3 Where the Service Provider receives a notice pursuant to paragraph 4.2.1, the Service Provider will make a personal visit to the relevant property to make contact with the Owner within [REDACTED] of such notice (or where the Authority fails to serve a notice in accordance with paragraphs 4.2.1 or 4.2.2 the Service Provider will make a personal visit within [REDACTED] of the receipt of the notice issued by the Service Provider pursuant to paragraph 4.1) in order to obtain the withdrawal of such request.
- 4.4 Where the Service Provider makes a personal visit to the relevant property but is unable to make contact with the Owner, the Service Provider will write (or send by email where practicable) to the Owner within [REDACTED] of such failed attempt to make personal contact with the Owner, seeking the withdrawal of the request using the pro-forma letter attached at Appendix 6 of this Clause 16 Protocol.
- 4.5 Where the Service Provider makes a personal visit to the relevant property and is able to make contact with the Owner, but the Owner refuses to withdraw the request, the

Service Provider will write (or send by email where practicable) to the Owner within [REDACTED] of such refusal to withdraw the request, seeking the withdrawal of the request using the pro-forma letter attached at Appendix 7 of this Clause 16 Protocol.

4.6 Where a period of [REDACTED] has elapsed since the date of a letter sent by the Service Provider in accordance with paragraph 4.4 of this Clause 16 Protocol and the Service Provider is still unable to make contact with the Owner in order to obtain the withdrawal of such request, the Service Provider shall make a second personal visit to the relevant property. Where, following the second personal visit, the Owner has refused to withdraw the request or the Service Provider was again unable to make contact with the Owner, paragraph 4.7 of this Clause 16 Protocol shall apply.

4.7 Where a period of [REDACTED] has elapsed since the date of a letter sent by the Service Provider in accordance with paragraph 4.5 of this Clause 16 Protocol or a period of [REDACTED] has elapsed since the date of the second personal visit to the relevant property pursuant to paragraph 4.6 of this Clause 16 Protocol and the Owner has either refused to withdraw the request or has not responded to such letter, the Service Provider will write (or send by email where practicable) to the Owner within a further [REDACTED] seeking the withdrawal of the request using the pro-forma letter attached at Appendix 8 of this Clause 16 Protocol.

4.8 If the withdrawal of a removal request is not obtained within fifteen (15) Business Days of the date of the letter sent in accordance with paragraph 4.7 of this Clause 16 Protocol, then the Service Provider will within a further [REDACTED] give written notice to the Authority that it has been unable to obtain the withdrawal of the request to permanently remove the Project Network Part from the Owners building in accordance with the provisions of clause 16.2.3 of this Contract.

4.9 If paragraph 4.2.2 applies, the Parties shall meet no later than [REDACTED] Days from the date of notification by the Authority pursuant to paragraph 4.2.2 to discuss the means by which the failure to obtain the Consent to affix the Project Network Part to structures or building can be overcome and the continued performance of this Contract can be facilitated. Such steps may include the Authority seeking to obtain the Consent and/or the Authority agreeing to a departure from a

Highway Standard and/or the Project Network Part being affixed in an alternative location as directed by the Authority.

4.10 From the earlier of the date on which the period referred to in paragraph 4.9 expires and the date on which is [REDACTED] after the date on which the Authority first meets with the Service Provider pursuant to paragraph 4.9, until the earlier of:

4.10.1 the Parties agree (acting reasonably) that the requested removal of the Project Network Part may occur without the Service Provider being in breach of its obligations under this Contract;

4.10.2 the Service Provider issues a Design Variation Request pursuant to the Design Variation Procedure;

4.10.3 the Project Network Part is installed in another location in accordance with the Output Specification;

4.10.4 the relevant Project Network Part is De-Accrued in accordance with schedule 19 (*Accrual and De-Accrual of Project Network Parts*); or

4.10.5 an Authority Change is implemented in accordance with schedule 18 (*Change Protocol*),

any removal of a relevant Project Network Part from a structure or building (other than another Project Network Part) shall constitute an Excusing Cause.

4.11 The Parties shall take all actions required of them to implement the alternative solution identified pursuant to paragraph 4.9 and shall use all reasonable endeavours to implement such alternative solution as soon as reasonably practicable.

4.12 Without prejudice to the rights of the Authority pursuant to clause 16.3.1 of this Contract, the Authority acknowledges that failure by the Service Provider to comply with any of the time periods contained within this paragraph 4 of this Clause 16 Protocol shall not be considered to be a breach of this paragraph 4 of this Clause 16 Protocol until a period in excess of [REDACTED] since the prescribed date for completion of the relevant procedure under this paragraph 4 of this Clause 16 Protocol has elapsed. For the avoidance of doubt, this paragraph 4.12 shall not operate as to permit the Service Provider to act prior to the expiry of any requisite time period.

APPENDIX 1

[A letter substantially in the form set out below or as otherwise agreed between the Parties]

[To be produced on Service Provider or Sub-Contractor headed notepaper]

:

[address of the Owner]

[Date]

Dear sir/madam

Request for consent to attach [insert item description] to [details of property] ("property")

On behalf of Birmingham City Council, for whom we maintain, manage and operate the highway network in your area, we visited your property on [insert date] and asked if you would consent to our attaching [insert item description] to it.

We understand that you declined to provide consent on that occasion, however we are subsequently experiencing issues relocating this [insert item description] elsewhere on the highway network. In the interest of public safety, we would therefore like to ask if you would kindly re-consider your position on this matter.

We would be grateful if you could provide such consent by completing the enclosed form and returning it in the pre-paid envelope.

Please do not hesitate to contact us on (number) if you have any queries.

Thank you for your support in this matter.

Yours faithfully

[SPV/ALG]

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APPENDIX 2

**[A letter substantially in the form set out below or as otherwise agreed between the Parties]
[To be produced on Service Provider or Sub-Contractor headed notepaper]**

[address of the Owner]

[Date]

Dear sir/madam

Request for consent to attach *[insert item description]* to *[details of property]* ("property")

On behalf of Birmingham City Council, for whom we maintain, manage and operate the highway network in your area, we are seeking consent to attach *[insert item description]* to your property and understand that you are the owner.

We endeavoured to make contact with you at your property on *[insert date]* but unfortunately were unable to do so.

Could you kindly please either provide your consent by completing the enclosed form or, if you are not the property owner, supply the property owner's details within seven days of the date of this letter so we can continue in this process. A prepaid envelope is supplied for your convenience. If you would like to discuss this matter prior to giving such consent, please contact *[insert name]* either in writing at *[insert address or email address]* or by phone on *[insert telephone number]*.

Yours faithfully

[SPV/ALG]

APPENDIX 3A

[A letter substantially in the form set out below or as otherwise agreed between the Parties]

[To be produced on Service Provider or Sub-Contractor headed notepaper]

[address of the Owner]

[Date]

Dear sir/madam

Request for consent to attach [insert item description] to [details of property] ("property")

Further to our letter to you of [insert date of letter] requesting your consent to allow us to attach [insert item description] to the property, we note that to date we have not yet received this consent.

This may be an unintentional oversight, however if you were to withhold your consent, in exceptional circumstances Birmingham City Council may decide to make an application to the Court pursuant to section 45(2) of the Public Health Act 1961. As a result, the Court may grant us the power to attach the [insert item description] to the property without the need to obtain your consent.

We would appreciate it if you could provide us with your consent within seven days of the date of this letter by contacting [insert name] either in writing at [insert address or email address] or by phone on [insert telephone number].

Please do not hesitate to contact us on the above number if you have any queries.

Yours faithfully

[SPV/ALG]

APPENDIX 3B

**[A letter substantially in the form set out below or as otherwise agreed between the Parties]
[To be produced on Service Provider or Sub-Contractor headed notepaper]**

[address of the Owner]

[Date]

Dear sir/madam

Request for consent to attach [insert item description] to [details of property] ("property")

Further to our letter to you of [insert date of letter] requesting your consent to allow us to attach [insert item description] to the property, we note that you have subsequently refused to provide this consent.

We understand you may have reservations over this activity so, if you would like to discuss this prior to providing your consent, please contact (insert name and contact details) who will be happy to discuss this further.

If you were to withhold your consent, in exceptional circumstances Birmingham City Council may decide to make an application to the Court pursuant to section 45(2) of the Public Health Act 1961. As a result, the Court may grant us the power to attach the [insert item description] to the property without the need to obtain your consent.

We would appreciate it if you could reconsider your decision and provide us with your consent within seven days of the date of this letter by contacting [insert name] either in writing at [insert address or email address] or by phone on [insert telephone number].

Please do not hesitate to contact us on the above number if you have any queries.

Yours faithfully

[SPV/ALG]

APPENDIX 4

[A letter substantially in the form set out below or as otherwise agreed between the Parties]

[To be produced on Service Provider or Sub-Contractor headed notepaper]

[address of the Owner]

[Date]

Dear sir/madam

Request for consent to attach [insert item description] to [details of property] ("property")

On behalf of Birmingham City Council, for whom we maintain, manage and operate the highways network in your area, thank you for consenting to allow us to attach [insert item description] to your property.

In order to progress this, could you please sign and return the enclosed formal consent form in the pre-paid envelope within seven days of the date of this letter.

Please do not hesitate to contact us on [insert relevant number] if you have any queries.

Yours faithfully

[SPV/AIS]

APPENDIX 5

**[A letter substantially in the form set out below or as otherwise agreed between the Parties]
[To be produced on Service Provider or Sub-Contractor headed notepaper]**

[address of the Owner]

[Date]

Dear sir/madam

Request for consent to attach *[insert item description]* to *[details of property]* ("property")

Further to our letter of *[insert date of letter]* concerning your permission to attach *[insert item description]* to your property, we note that we have not yet received your signed formal consent form.

We appreciate this may be an oversight so have enclosed a further consent form and prepaid envelope and would be grateful for its return within seven days of the date of this letter.

If you have any queries or would like to discuss this matter further, please do not hesitate to contact *[insert contact details and/or name]*.

Thank you for your prompt attention to this matter.

Yours faithfully

[SPV/ALG]

APPENDIX 6

[A letter substantially in the form set out below or as otherwise agreed between the Parties]

[To be produced on Service Provider or Sub-Contractor headed notepaper]

[address of the Owner]

[Date]

Dear sir/madam

Request for the withdrawal of your notice to remove *[insert item description]* attached to *[details of property]* ("property")

On behalf of Birmingham City Council, for whom we maintain, manage and operate the highway network in your area, we understand that you have given notice requesting that the *[insert item description]* attached to your property be removed.

We endeavoured to make contact with you at your property on *[insert date]* to discuss your request but were unable to do so.

Having considered your request, we understand your position but we would ask you to reconsider for the following reasons:

[Include reasons]

In light of the above reasons, we would appreciate a withdrawal of your request and would be grateful if you could do so within seven days of the date of this letter by contacting *[insert name]* either in writing at *[insert address or email address]* or by phone on *[insert telephone number]*.

To help understand our reasons for asking for this withdrawal, we would be happy to meet with you at a mutually convenient time to discuss this matter. To arrange this, please contact *[insert contact name/details]*.

Please do not hesitate to contact us on the above number if you have any queries.

Yours faithfully

[SPV/ALG]

APPENDIX 7

**[A letter substantially in the form set out below or as otherwise agreed between the Parties]
[To be produced on Service Provider or Sub-Contractor headed notepaper]**

[address of the Owner]

[Date]

Dear sir/madam

Request for the withdrawal of your notice to remove [insert item description] attached to [details of property] ("property")

Further to the visit by our representative on [insert date] regarding your request to remove [insert item description] from your property, we would like to request that you reconsider your notice.

Whilst we fully appreciate your position, we believe our reasons laid out below should be considered strongly in your decisions.

[Include reasons]

We understand that you did not agree with these at the time of our representative's visit and therefore this letter is a further request that you reconsider your notice to remove the [insert item description].

We would be grateful if you would withdraw your request within seven days of the date of this letter by contacting [insert name] either in writing at [insert address or email address] or by phone on [insert telephone number].

Please do not hesitate to contact us on [number] if you have any queries.

Yours faithfully

[SPV/ALG]

APPENDIX 8

[A letter substantially in the form set out below or as otherwise agreed between the Parties]

[To be produced on Service Provider or Sub-Contractor headed notepaper]

[address of the Owner]

[Date]

Dear sir/madam

Request for the withdrawal of your notice to remove *[insert item description]* attached to *[details of property]* ("property")

Further to our letter to you of *[date of letter]* requesting that you withdraw your notice to remove the *[insert item description]* attached to your property, we note that you have not yet done so.

We would like to draw to your attention that if you were to withhold your consent, in exceptional circumstances Birmingham City Council may decide to make an application to the Court pursuant to section 45(3) of the Public Health Act 1961. As a result, the Court may annul your notice to remove the *[insert item description]* attached to the property.

Please could you withdraw your notice within seven days of the date of this letter by contacting *[insert name]* either in writing at *[insert address or email address]* or by phone on *[insert telephone number]*, so as to avoid the need for Birmingham City Council to make this application.

Please do not hesitate to contact us on the above number if you have any queries.

Yours faithfully

[SPV/ALG]