

**DATED**

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**NON-EXCLUSIVE LICENCE RELATING TO THE USE OF STREET LIGHTING FOR  
OUTDOOR SMALL CELL EQUIPMENT**

**BETWEEN**

**BIRMINGHAM CITY COUNCIL (1)**

**- and -**

**[INSERT COMPANY NAME] (2)**

**BETWEEN:**

- (1) **BIRMINGHAM CITY COUNCIL**, Council House, Victoria Square, Birmingham, B1 1BB (the "**Authority**"); and
- (2) [ ] a private limited company incorporated under the laws of England and Wales with company number [ ] whose registered office is at [ ] (the "**Supplier**").

**BACKGROUND:**

- A. The Supplier is a provider of outdoor small cell (OSC) solutions acting as a neutral host to mobile network operators (MNOs)
- B. The Authority is a Local Council who aims to improve the full fibre broadband and wireless connectivity footprint including 5G connection and the Highway Authority for the purposes of the Highways Act 1980 for the City of Birmingham.
- C. The Authority intends to grant a non-exclusive licence to the Supplier to enable the Supplier to roll out OSC utilising the Authority's Assets pursuant to Section 115E of the Highways Act 1980 subject to the conditions hereinafter specified and the conditions contained in Section 115E of the Highways Act 1980.

**IT IS AGREED:**

**1. DEFINITIONS AND INTERPRETATION**

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

"**Asset(s)**" means all the Authority's lampposts and other street furniture assets owned or controlled by the Authority at the Site as more fully detailed in the Asset List and which the Supplier uses to host the Equipment.

"**Asset List**" means the assets listed in **Schedule 1** or as otherwise agreed by the Parties in writing, and thereafter assumed to form part of **Schedule 1**.

"**Code**" means the Electronic Communications Code as set out in Schedule 3A to the Communications Act 2003 as set out in **Schedule 1** of the Digital Economy Act 2017 (and as may be further amended, modified, replaced, or re-enacted from time to time).

"**Commencement Date**" means the date of this Licence.

"**Confidential Information**" means:

- (i) the provisions of this Licence and all information which is secret or otherwise not publicly available (in both cases either in its entirety or in part) including commercial, financial, marketing, or technical information, know-how, trade secrets or business methods, in all cases whether disclosed orally or in writing before or after the date of this Licence; and
- (ii) any information that ought to be considered as confidential (however it is conveyed or in whatever media it is stored) including information the disclosure of which would or would be likely to prejudice the commercial interests of any person, trade secrets, intellectual property rights and know-how of either party and all personal data and sensitive personal data within the meaning of the Data Protection Act 2018.

"**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) in each case as may be amended or superseded from time to time.

**"EIRs"** means the Environmental Information Regulations 2004 (SI 2004/3391) together with any guidance and/or codes of practice issued by the Information Commissioner or relevant government department in relation to such regulations.

**"Equipment"** means any electronic telecommunications apparatus (as that term is defined in paragraph 5(1) of the Code) owned or operated by the Supplier or a Nominated Third Party including, but not limited to cabling antennas, dishes, equipment, ducts, remote radio units, masthead amplifiers or cabinets and structures and any ancillary apparatus, power communications, cabling, fixings or equipment in each case as required by the Supplier or a Nominated Third Party from time to time and used and operated for the Permitted Use, including any electricity and/or power connections, as more further defined in the Asset List;

**"Exclusion Zone"** means for a given Small Cell Asset, denotes an area within which no other Radio Equipment (or potentially any equipment of any kind) could be deployed (so that the performance of the Supplier equipment is not impeded). This is typically expressed in terms of a distance above or below the Supplier equipment installation which would need to be kept free of other equipment.

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

**"FOIA"** means the Freedom of Information Act 2000 together with any guidance and/or codes of practice issued by the Information Commissioner or relevant government department in relation to such legislation.

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

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

**"Highways Operations Manager"** means the Authority's Highways Operations Manager or such other person undertaking that role from time to time

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

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

**"Licence"** means the terms and conditions of this Licence which include the recitals, the body of this Licence, the attached schedules, together with any expressly incorporated documents.

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

**"Nominated Third Party"** means a third-party customer regulated by the Code to whom the Supplier grants a sub-licence to use the Assets for the Permitted Use subject to the terms of this Licence and to such Nominated Third Party being notified to the Authority, all pursuant to **Clauses 2.9 - 2.12**.

**"Operational Procedures"** means the procedures set out in **Schedule 3** 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 provision and/or operation of electronic communications networks and/or electronic communications services (each within the meaning of Section 32 of the Communications Act 2003).

**"Programme Plan"** means the Supplier's plan for the installation of the Equipment on the Assets.

**"Quarter"** each period, as defined in **Schedule 2**.

**"Request for Information"** means a request for information or an apparent request under the Code of Practice on Access to Government Information, FOIA or the EIRs.

**"Site"** means the site or location of the Asset as described in the Asset List.

**"Surveys / Structural Tests"** as defined in paragraph 4 of **Schedule 3**.

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

**"Works"** means the works to be carried out by the Supplier, its agents, or contractors (including any structural works reasonably required in connection with the Supplier's Permitted Use of the Assets); and

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

1.2 In this Licence (unless the context requires otherwise):

- (b) 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.
- (c) references to this Licence and any other document referred to in this Licence, is a reference to it as validly varied, supplemented and/or novated from time to time.
- (d) references to any party include (where applicable), its lawful successors, permitted assignees and permitted transferees.
- (e) references to the singular include the plural and vice versa.
- (f) references to any one gender do not exclude other genders.
- (g) recitals and headings are all for reference only and shall be ignored in construing this Licence.

- (h) if there is any conflict, ambiguity, or inconsistency between the parts of this Licence the Clauses shall take precedence over the Schedules.
- (i) obligations of a Party shall be deemed to be joint and several obligations where that Party is more than one person: and
- (j) unless expressly stated to the contrary any reference to a statute or statutory provision shall include any subordinate legislation made at the Commencement Date under that statute or statutory provision and shall include any extension or modification, amendment or re-enactment of that statute and any regulations or orders made under that statute, and any general reference to a statute includes any regulations or orders made under that statute.

## 2. GENERAL

- 2.1 This Licence grants the Supplier a non-exclusive licence to use the Assets on the agreed Asset List for the Permitted Use subject to the Authority's right to continue to use the Asset(s) for its own purposes, including retaining control, possession, and management of the Asset, and such use shall take precedence over the Supplier's use and the Supplier's Equipment shall not affect the normal operation of the Assets.
- 2.2 Where an Asset hosts deployed Equipment, then the Authority shall not interfere with (i) the use of such Asset or (ii) the operation of the Equipment for the Permitted Use, of or by the Supplier (or the Nominated Third Party, as the case may be), except where the Equipment is affecting the normal operation of the Assets or the Authority is carrying out preventative or reactive maintenance or in an emergency, which shall be notified to the Supplier as soon as reasonably practicable.
- 2.3 The Supplier has the right to request the provision of further Assets from the Authority in addition to those on the Asset List. The Authority, acting reasonably shall consider these requests and will manage the provision of these Assets to the Supplier for the Permitted Use, if appropriate, in accordance with the Operational Procedures.
- 2.4 Notwithstanding the terms of **Clause 2.3**, this Licence is non-exclusive. The Supplier acknowledges that the Authority may enter into similar agreements or licences with other person(s) and companies, including the use of the same Assets, where suitable, and where such use does not affect the functionality of the Assets or other suppliers' equipment already installed on the Asset.
- 2.5 Each Party shall liaise with and provide all 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 Licence.
- 2.6 The Authority provides no warranty to the Supplier on the suitability of the Assets for the Permitted Use.
- 2.7 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.
- 2.8 Title to the Assets shall remain vested in the Authority at all times.
- 2.9 The Authority is providing the Assets to the Supplier for the Permitted Use but is not responsible for the Supplier's or Nominated Third Parties' provision of services to its customers.

- 2.10 The Authority grants to the Supplier a licence to install, occupy, alter, inspect, maintain, upgrade, renew and replace Equipment on the Assets for the Permitted Use in accordance with the terms of this Licence.
- 2.11 The Supplier agrees not to use or allow the Asset to be used other than for the Permitted Use, to ensure that the Asset is kept clean, tidy, and clear of rubbish and ensure there is no obstruction of the highway.
- 2.12 The Supplier may grant a sub-licence to Nominated Third Parties to use the Assets for the Permitted Use, subject to notifying the Authority of the sub-licence and the Nominated Third Parties being notified of the relevant terms of this Licence.
- 2.13 Any breach of this Licence by the Nominated Third Parties shall be a breach by the Supplier and the Supplier shall be liable for any acts or omissions of the Nominated Third Parties in contract or delict or otherwise, including but not limited to negligence.
- 2.14 The references to the Supplier in respect of provisions requiring performance and adherence to the Supplier's obligations under this Licence shall be deemed to include Nominated Third Parties.
- 2.15 The Parties shall comply with the provisions of **Schedules 1- 4**.

### **3. FEES AND ASSOCIATED COSTS**

- 3.1 In consideration of the Authority's costs and expenses in negotiating and facilitating this Licence, the Supplier shall pay the Authority Five Thousand Pounds (£5,000) (the "**Initial Fee**"), plus VAT if applicable. The Authority shall invoice the Supplier for the Initial Fee following the Commencement Date of this Licence.
- 3.2 Where the Supplier requires to inspect the Assets and/or undertake any Surveys, Structural Tests or upgrades to the Asset which requires attendance by the Authority, a fee depending on the location of the Asset, the extent of the involvement of the Authority and the use of any Authority personnel or third-party sub-contractors for any works. (the "**Inspection Fee**") will be payable by the Supplier to the Authority. The Authority shall invoice the Supplier for the Inspection Fee after each inspection or set of inspections.
- 3.3 The Supplier shall pay to the Authority an annual fee plus VAT per Asset ("**Annual Fee**") as identified in **Schedule 2** for the Permitted Use of the Equipment on the Assets under this Licence.
- 3.4 The Supplier shall provide a quarterly statement to the Authority of each Asset Site in use, and which has been deployed or will be deployed during that Quarter (the "**Supplier's Statement**"). This statement shall be provided 3 weeks prior to the end of the Quarter.
- 3.5 The Authority shall provide an invoice twice a year, at the end of the 2nd Quarter (September) of the Financial Year and at the end of the 4th Quarter of the Financial Year (March), which will cover the annual fee for those assets in existence for the previous 6 months which includes those Assets reaching the annual anniversary of their deployment (as illustrated in schedule 2). No pro-rated refunds shall be given by the Authority to the Supplier if the Licence is terminated (either in respect of an Asset or as a whole) in the course of that year for any reason under **Clause 9**, except where the Authority terminates on notice under **Clause 9.1**, or the Supplier terminates under **Clause 9.2**. 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.

- 3.6 Notwithstanding the payment of the Initial Fee, 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 5.3 of **Schedule 3**, shall be payable by the Supplier in addition to the Initial Fee. The Authority acknowledges and agrees that there are no other permits or consents or approvals necessary from the Authority (other than already specified in this Licence as further described in paragraph 5.3 of **Schedule 3** (e.g., planning permission) that require payment of costs or expenses by the Supplier to the Authority save for any permits or consents or approvals necessarily required by changes to all applicable laws.
- 3.7 All power costs related to the Equipment shall be paid by the Supplier, based on the UMSUG code for the Installed Small Cell system configuration.
- 3.8 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 Licence, the Supplier shall pay to the Authority interest on the outstanding amount at a rate of four (4) per cent 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 received by the Authority.

#### **4. TERM**

- 4.1 This Licence shall come into force on and including the Commencement Date and shall continue for a period of TEN (10) years (hereinafter the "**Initial Term**") unless terminated earlier pursuant to **Clause 9**). For the avoidance of doubt, the Supplier's right to have its Equipment on the Assets shall expire at the end of the Initial Term, regardless of when the Supplier installed its Equipment on each Asset.
- 4.2 If the Supplier wishes to retain its Equipment on the Assets beyond the Initial Term, the Parties shall negotiate in good faith to agree the terms of such arrangement for up to another seven (7) years (hereinafter the "**Extended Term**") with such negotiations to begin no later than three (3) years prior to the expiry of the Initial Term and endeavour to complete their negotiations on the terms of such arrangement and document the agreement to the extension no later than one (1) year prior to the expiry of the Initial Term, but the Parties acknowledge that there is no obligation on either Party to enter into an agreement to extend the Initial Term. However, the Authority shall have the right at the expiry of the Initial Term to refuse the Supplier's continued use of the Asset(s), only in the event that such refusal is in accordance with the terms of any relevant regulations.
- 4.3 If the Supplier does not wish to continue the use of the Assets, the Authority refuses an extension of the Initial Term under Clause 4.2 or the Parties cannot agree the terms of such arrangement, this Licence shall expire at the end of the Initial Term and the Supplier shall remove the Equipment in accordance with the process set down in the Operational Procedures.

#### **5. INTELLECTUAL PROPERTY**

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

#### **6. CONFIDENTIALITY**

- 6.1 Subject always to **Clause 13**, each Party shall:

- (a) keep in confidence any Confidential Information of the other Party (or any Group to which the other belongs) obtained under this Licence; and
- (b) not disclose the Confidential Information of the other Party to any person (other than their employees or professional advisers) without the written consent of the other Party.

6.2 This **Clause 6** shall not apply to any Confidential Information that the Party that wishes to disclose can show:

- (c) has been published other than through a breach of this Licence.
- (d) is lawfully in the possession of the receiving Party before the disclosure of the Confidential Information under this Licence took place.
- (e) was obtained from a third party who is free to disclose it, and
- (f) is required to be disclosed under any applicable law or by order or a court or governmental body. In such event, the Party shall notify the other Party in writing of such disclosure.

6.3 No Party shall use any other Party's Confidential Information for any purpose other than to exercise its rights and perform its obligations under or in connection with this Licence.

6.4 The obligations created by this **Clause 6** are continuing, separate and independent from other obligations under this Licence and survive the expiry of termination of this Licence.

## **7. DAMAGE TO HIGHWAY**

7.1 The Supplier shall ensure that all interim and permanent restorations to excavations for the replacement of street furniture and any subsequent maintenance repair or other works shall be to the satisfaction of the Highways Operations Manager throughout the term (including the Extended Term)

7.2 The Supplier shall reinstate any damage to the highway structure or furniture caused by the Supplier their agents or representative including the nominated Third Parties during the work of installation maintenance or repair of the street furniture and Equipment and if the Supplier shall fail to reinstate any damage to the highway or any highway structure or furniture the Authority will carry out the necessary works and the costs of such works may be recovered from the Supplier as a debt recoverable by action.

7.3 If any damage or injury shall happen to any of the highways over which the Small Cell Equipment is erected by reason of such Equipment or of any accidents to such Equipment or any defect or want of repair in such Equipment, such damage or injury shall as soon as practicable be made good by the Authority and the proper and reasonable cost and expense of such making good shall be paid by the Supplier to the Authority within 14 days of the amount being notified in writing to the Supplier by the Highways Operations Manager.

7.4 The Supplier shall notify and report any damages to the highway as a result of carrying out any Works permitted by this Licence as soon as practicable at the earliest opportunity without delay.

## **8. LIMITATION OF LIABILITY AND INSURANCE**



- 8.1 Nothing in this Licence shall limit or exclude a Party's liability for death or personal injury caused by its negligence, or that of its employees, agents or subcontractors or anyone within its reasonable control. Neither Party shall be liable to the other Party under or in connection with this Licence 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.
- 8.2 The Authority accepts no liability for any damage to the Equipment, except where any damage occurs as a result of a negligent or deliberate act of the Authority. In that case the Authority's liability will be limited to the replacement value of the relevant Equipment and its installation of the Asset or Assets.
- 8.3 The Supplier shall make good any damage caused to any Assets by reason of any act or omission or default by the Supplier, or any third party for whom the Supplier is responsible at law, including the Nominated Third Party, arising out of the Supplier's Permitted Use or any other use of the Assets.
- 8.4 The Supplier shall be liable for and shall indemnify the Authority against, any damages, costs, expenses, liability, loss, claim, demands, actions, 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 the Services in accordance with this Licence, 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.
- 8.5 The Supplier shall be liable for and shall indemnify the Authority against, any expense, liability, loss, claim or proceedings howsoever arising under any statute or at common law, to the extent that it is attributed to any negligence, breach of statutory duty, omission or default of the Supplier or its sub-contractors, except to the extent that the same is due to any negligence on the part of the Authority.
- 8.6 The Supplier shall, throughout the Initial Term and any extension to the Initial Term:
- 8.6.1 maintain employers' liability insurance in the sum of TEN MILLION POUNDS (£10,000,000) STERLING in respect of any one event and unlimited in the period.
- 8.6.2 maintain public liability insurance in the sum of TEN MILLION POUNDS (£10,000,000) STERLING in respect of any one event and unlimited in the period.
- 8.6.3 maintain professional indemnity insurance in the sum of FIVE MILLION POUNDS (£5,000,000) STERLING
- and shall when reasonably requested to do so by the Authority and at least annually, produce for inspection of its operator's insurance certificates to show that the above detailed insurance cover is being maintained.
- 8.7 All insurances must be with an insurance company registered with the Financial Conduct Authority (FCA) in the UK, or equivalent body.
- 8.8 Any Party seeking to rely on any of the indemnities contained in this Licence shall:
- 8.8.1 promptly notify the other Party of any claims and proceedings in relation to which it considers the indemnity applies.

- 8.8.2 take all reasonable steps to mitigate any liabilities, losses, and expenses; and
- 8.8.3 not compromise or settle any such claim without the prior written consent of the other Party (such consent not to be unreasonably withheld or delayed) and shall permit the Party giving the indemnity (at the cost in all respects of the Party giving the indemnity) to take over the control and conduct of any such claim, action or proceeding in the name of the other.
- 8.9 The Supplier's liability for damage to any real or personal property shall be limited per incident or series of connected incidents to:
- 8.9.1 ONE MILLION POUNDS (£1,000,000) STERLING for damage to buildings and contents thereof in respect of any one claim or series of connected claims and shall be limited in aggregate per year to TWO MILLION POUNDS (£2,000,000) STERLING.
- 8.9.2 TWENTY THOUSAND POUNDS (£20,000) STERLING for damage to lampposts, CCTV columns, traffic lights or any other assets not referred to in **Clause 8.9.1** above for any one claim or series of connected claims and shall be limited in aggregate per year to TWO HUNDRED THOUSANDING POUNDS (£200,000) STERLING.
- 8.10 The Supplier's liability for all other losses, damages, costs and expenses not covered by clause 8.9 above, howsoever arising in connection with this License, including but not limited to breach of contract, tort (including negligence), misrepresentation, breach of statutory duty or otherwise shall be limited to FIVE MILLION POUNDS (£5,000,000) STERLING per claim or series of connected claims and limited to TEN MILLION POUNDS (£10,000,000) STERLING in aggregate per insurance year unless it involves the death or personal injury caused by negligence of the Supplier or those for whom it is vicariously responsible.
- 8.11 This **Clause 8** shall continue in force after the termination or expiry of this Licence.

## 9 TERMINATION

- 9.1 The Authority may terminate this Licence in respect of an individual Asset on the Asset List by giving as much notice as is reasonably practicable given the circumstances, but not less than six (6) months' notice (unless otherwise agreed by the Parties) to the Supplier where the relevant Asset is to be removed, redeveloped, or moved due to highways or other development. For the avoidance of doubt, where the Supplier wishes to transfer the Equipment from one Asset to another, this shall not be deemed as termination of this Licence and shall be subject to further agreement with the Authority.
- 9.2 The Supplier may terminate this Licence in respect of an individual Asset on the Asset List by giving six (6) months' notice (unless otherwise agreed by the Parties) to the Authority. For the avoidance of doubt, the termination of one Asset or group of Assets, which is not all of the Assets covered by the terms of this Licence, shall not be deemed to be termination of the entire Licence.
- 9.3 Either Party may terminate this Licence by giving not less than twelve (12) months' notice to the other Party. For the avoidance of doubt, where the Supplier wishes to transfer the Equipment from one Asset to another, this shall not be deemed as termination of this Licence and shall be subject to this **Clause 9.1** or **9.2**, whichever shall apply.

- 9.4 Where the Authority is prevented from continuing to provide the Supplier or its Nominated Third Party with the use of an Asset due to damage to an Asset outside of the Authority's control, then the Authority may terminate this Licence in respect of the relevant Asset and on service of the notice the Supplier or its Nominated Third Party's use of the Asset shall terminate. The Authority and the Supplier shall cooperate in good faith to find an alternative suitable Asset and/or the Authority shall undertake a repair of the damaged Asset as soon as is reasonably practicable.
- 9.5 This Licence may be terminated at any time by either Party if the other Party commits a material breach of the terms of this Licence which is not capable of remedy, or if capable of remedy, is not remedied within thirty (30) working days after receipt of notice from the non-breaching Party requiring the breach to be remedied.
- 9.6 This Licence 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, except where the change of control is as a result of inter group reorganisation, of the Supplier, as defined by Section 450 of the Corporation Tax Act 2010, where it may be reasonably anticipated that it will have a material effect on the Supplier's ability to perform its obligations under this Licence, 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.
- 9.7 This Licence may be immediately terminated by the Authority upon giving notice and without payment of any compensation to the Supplier if the Supplier:
- 9.7.1 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
- 9.7.2 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.
- 9.8 Neither Party shall be liable to the other for any delay or non-performance of its obligations contained in this Licence arising from an event of Force Majeure. The Party claiming Force Majeure will promptly notify the other in writing of the reasons for the delay or stoppage and the likely duration and will take all reasonable steps to overcome the delay or the stoppage. 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 Licence by giving not less than thirty (30) Working Days written notice of termination to the other Party.
- 9.9 Upon expiry or otherwise termination of this Licence, 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 Where the Supplier fails to carry out any installation works in respect of the Assets within twelve (12) months of the Commencement Date then the Authority may terminate this Licence immediately with such notice to be given in writing.

9.11 Termination of this license shall not affect the right of either party in connection with any breach of any obligation under this License which existed at or before the date of termination.

## **10 VARIATION**

10.1 This Licence 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**

2.1 Neither Party shall be permitted to assign their rights under this Licence, without the prior written consent of the other Party except that the Supplier is permitted: (a) to assign this Licence to any intra Group party; and/or (b) to sub contract the performance of any of its obligations under this Licence to a suitably qualified third party (provided that the Supplier shall at all times remain liable to the Authority for performance of such obligations), in each case without the prior consent of the Authority.

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

## **12. NOTICES**

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

### **12.1.1 To the Supplier**

Post: at the Supplier's registered office and marked for the attention of the company secretary and a copy of such notice shall be sent to the Special Projects Manager at the Supplier's registered office.

Email: [TBC]

### **12.1.2 To the Authority**

Post: Highways Electrical Asset Manager, Street Services Division, Highways and Infrastructure, City Operations, Birmingham City Council

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

12.2 Any notice served pursuant to the Code shall be served in accordance with the Code.

## **13. FREEDOM OF INFORMATION**

13.1 The Supplier acknowledges that the Authority is subject to the requirements of the FOIA and the EIRs. 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 Licence that it receives as soon as practicable and in any event within 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 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.

13.2 The Supplier acknowledges that the Authority may be required under the FOIA and EIRs to disclose Information (including commercially sensitive information) without consulting or obtaining consent from the Supplier. The Authority shall take reasonable steps to notify the Supplier of a Request For 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 Licence) the Authority shall be responsible for determining in its absolute discretion whether any commercially sensitive information and/or any other information is exempt from disclosure in accordance with the FOIA and/or the EIRs.

13.3 Notwithstanding any other term of this Licence, the Supplier consents to the publication of this Licence in its entirety (including variations), subject only to the redaction of information that is exempt from disclosure in accordance with the provisions of the FOIA and EIRs.

13.4 The Authority shall, prior to publication, consult with the Supplier on the manner and format of publication and to inform its decision regarding any redactions but shall have the final decisions in its absolute discretion. The Supplier shall assist and co-operate with the Authority to enable the Authority to publish this Licence.

## **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 Licence.

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

## **15 LAW AND JURISDICTION**

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

## **16.2 Acknowledgement**

The Parties acknowledge that this Licence 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 Licence. All warranties, conditions, terms, and representations not set out in this Licence 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 Licence, no failure to exercise, or delay in exercising, any right, power, or privilege set forth in this Licence will operate as a waiver of any right, power, or privilege. Any waiver of any breach of this Licence shall be in writing. The waiver by either party of any breach of this Licence 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 of this Licence is held to be invalid or unenforceable, the Parties shall negotiate in good faith to amend such provision, so that, as amended, it is legal, valid, and enforceable, and, to the greatest extent possible, achieves the intended commercial result of the original provision. If such modification is not possible, such provision will be severed from this License, the remaining provisions will remain 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 Licence, will survive termination or expiration of this Licence.

## **16.6 Rights of Third Parties**

No person other than the Authority or the Supplier shall have any rights under this Licence and accordingly the Contracts (Rights or Third Parties) Act 1999 shall not apply.

## **16.7 Publicity**

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

## **16.8 Bribery Act**

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

## **16.9 Consent**

Nothing herein shall be deemed to be consent or approval of the Authority in any capacity other than as Highway Authority for the Sites

**17. COUNTERPARTS**

- 17.1. This Licence 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. Transmission of a signed counterpart of this Licence (for the avoidance of doubt not just a signature page) by email (in PDF, JPEG, or other agreed format) shall take effect as delivery of an executed counterpart of this Licence.
- 17.3. No counterpart shall be effective until each Party has signed and delivered at least one counterpart.

**18. NO PARTNERSHIP OR AGENCY**

- 18.1. Nothing in this Licence is intended to, or shall be deemed to, establish any partnership or joint venture between any of the parties, constitute any party the agent of another party, or authorise any party to make or enter into any commitments for or on behalf of any other party.
- 18.2. Each party confirms it is acting on its own behalf and not for the benefit of any other person.

IN WITNESS WHEREOF this Licence consisting of this and the preceding 15 pages, together with the Schedules, have been executed as follows:

<b>Executed for and on Behalf of</b>	<b>BIRMINGHAM CITY COUNCIL</b>	<b>INSERT COMPANY NAME</b>
<b>Signature</b>		
<b>Name (Print)</b>		
<b>Job Title (Print)</b>		
<b>Date of Signature (Print)</b>		
Before this witness		
<b>Witness Signature</b>		
<b>Witness Name (Print)</b>		
<b>Witness Address (Print)</b>		





**These are the four schedules referred to in the foregoing agreement between  
Birmingham City Council and [insert company name]**

**SCHEDULE 1 – ASSET LIST**

Asset List to be agreed between the Parties and the Supplier, as amended, and updated from time to time, and shall be deemed to form this **Schedule 1**.

The “lighting and inventory” document provides the full list (accessed separately)

**NOTE:** Exceptions to specific location approval include but are not limited to protection of historic or conservation sites and avoidance of locations causing public inconvenience or objection. In addition, the ability to hold numerous devices or attachments may prohibit access to an individual site. A review will be held with the supplier in collaboration with the Birmingham Council to agree suitability for access to a specific location.

## SCHEDULE 2 – RATES, PRICES AND INVOICING

### The annual charge for each Small Cell

Type of Cell	Price
1 <sup>st</sup> small cell	£350.00
2 <sup>nd</sup> small cell	£175.00
3 <sup>rd</sup> small cell	£120.00
4 <sup>th</sup> small cell	£120.00

**NOTE:** The annual price is fixed until end March 2025. For existing and new contracts with asset deployments approved during 25/26FY, (specifically from April 2025) the annual charge will increase in line with inflation (using the RPI+1%) for that FY. The annual charge increase will be cumulative each year there is an increase, from and including 25/26FY.

**NOTE:** The annual charge will apply for the FULL Financial year that the small cell is deployed within, regardless of the deployment duration within that financial year.

### The Payment and invoicing timetable

SMALL CELL INVOICING AND PAYMENT PROCESS	Financial Year												
	Apr	May	June	July	Aug	Sep	Oct	Nov	Dec	Jan	Feb	Mar	Apr
Small Cell deployment period	Q 1			Q2			Q3			Q4			
Licencee statement on deployments													
BCC Digital team update data base													
Birmingham City Council invoice send													
Licencee payment (< 30 days from invoice)													

#### Key steps shown in the payment and invoicing timetable process above:

The start of the financial year is April and runs through to March the following year as defined by the HMRC tax year. Quarters Q1, Q2, Q3 and Q4 split the tax year evenly in to 3-month time periods.

The deployment statement issued by the Supplier will be received by the Authority 3 weeks before the end of each Quarter.

Invoicing will be issued to the Supplier in the last week of each half of the Financial Year. The first half of the Financial Year is defined as Q1+Q2. The second half of the financial year is defined as Q3+Q4. All assets deployed in the half year plus annual renewals in that period will be invoiced.

Payment will be received by the Authority within 30 days of the invoice being issued.

## SCHEDULE 3 – OPERATING PROCEDURES

### 1.0 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:

- (a) Lighting columns
- (b) other columns (subject to entry to SCHEDULE 1)

- 2.2 This list is not definitive and other assets may be included if suitable and agreed by both Parties, subject to technical and other constraints.

### 3 PLANNING AND DEMAND

- 3.1 The Supplier shall identify the Assets that are in scope via the Authority asset register which will be issued directly to the Supplier.

- 3.2 The Authority shall provide, where available, details of the Assets to the Supplier, including location data (Easting and Northing), 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.

- 3.2 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**"). There may be several iterations of the Network Plan reflecting mobile network operators' updates, changes, and requirements.

- 3.3 The Supplier shall undertake due diligence to confirm Asset Data as required, which may involve visiting the Assets ("**Site Visits**") and the Authority shall, where required, attend these visits which will incur the Inspection Fee. The Authority grants no warranty to the Supplier for the accuracy of the Asset Data.

- 3.4 The Supplier shall provide the Authority with a list of Assets it intends to use ("**Provisional Demand**"). The Authority shall confirm this Provisional Demand in accordance with the process for the use of Street Lights set out in Appendix 1 to this Schedule. In the event the Assets are not streetlights, the Authority shall provide the relevant process map for the type of Asset. The Supplier acknowledges that it is entirely at the Authority's discretion what Assets may be used but where Assets are not to be used the Authority shall, acting reasonably, provide reasonable written justification for its decisions (which may include, inter alia, where the Asset is already committed to an alternative supplier or its customer). 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 Assets (which will be carried out in accordance with BSEN40 and with the guidance from the Institution of Lighting Professionals Guidance Note 22 (GN22) as amended from time to time) to establish the suitability of the 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 design information 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
- Make and model number of all Equipment
  - Size and weight of Equipment
  - Mounting height for the Equipment
  - Power consumption and Elexon Code (UMSUG)
  - Confirmation that the Supplier has and will comply fully with all planning and regulatory obligations (where applicable)
  - A detailed Programme Plan, including all activities, timeline, any Authority Dependencies and Risk and Method Statement (RAMS). Detail on all contractors and co-ordinate with power and backhaul providers accordingly, and all necessary system testing

The design information may be common to a number of relevant Assets, and where there are no changes to the design information between Assets, the Supplier may reference common design information.

- 4.3 The Supplier shall ensure that all Works are completed by appropriately qualified and trained personnel, in a good and workmanlike manner and ensure that the Equipment is securely and safely fixed and at all times, complies with all applicable health and safety legislation and regulations and will ensure:
- 4.3.1 that all Equipment deployed shall be ICNIRP compliant.
  - 4.3.2 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.
  - 4.3.3 that Electrical Test and Completion certificates are issued as required under BS7671 for each Site.
  - 4.3.4 compliance with the Construction (Design and Management) Regulations 2015.
  - 4.3.5 compliance at all times with the requirements of the Health and Safety at Work etc Act 1974, as amended.
  - 4.3.6 that all lighting Assets are tested to the relevant British Standards: BS EN 40 Standard before installation or change to hardware; and
  - 4.3.7 that structural testing and analysis shall comply with Institution of Lighting Professionals Guidance Note 22 (GN22), where required.

- 4.4 The Supplier shall maintain the standard of cleanliness of the Site as it is found at the time of the installation of the Equipment and ensure the responsible removal and disposal of all packaging and casing used.
- 4.5 The area surrounding the Asset on the Site shall be left in no worse a condition than when the Supplier commenced the works, and a clean and tidy condition.
- 4.6 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. 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. 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.
- 4.7 Where an Asset fails any Structural Test, the Supplier may propose to the Authority to replace the Asset at the Supplier's expense and subject 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. Supplier will request a quote from the Authority for:
- Procurement of the new columns
  - Removal of existing column
  - Installation and certification of new columns and the power aspects
  - Certification and acceptance into the Authority Asset List, and
  - Authority management of the above activity

The new Asset 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 case 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 an exclusive basis (save where such exclusivity is prohibited under any relevant legislation) for the remaining 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 then prepare a plan setting out the activities which it will need to perform during the build phase ("**Programme Plan**") and identifying those 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. There may be several iterations of the Programme Plan reflecting mobile network operators' updates, changes, and requirements.

The activities and/or Dependencies may be common to a number of relevant Assets, and where there are no changes to the activities and/or Dependencies between Assets, the Supplier may reference common activities and/or Dependencies in its Programme Plan.

- 5.2 The Supplier or the Authority, as appropriate, shall undertake electrical upgrades as required, if such upgrades are consented to in writing by the Authority (such consent not to be unreasonably withheld or delayed) and agreed with all appropriate Parties and the Authority shall be reimbursed for any reasonable and proper costs or expenses.
- 5.3 The Supplier shall undertake other preparatory activities for the Works to be undertaken at each 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 Necessary Consents and carrying out the Works in accordance with such Necessary Consents.
- 5.4 The Supplier shall then install the Equipment on the Assets in accordance with any agreed Programme Plan, method statement and Equipment specifications. Any changes to the Programme Plan must be agreed in advance with the Authority.
- 5.5 If the Supplier (or the Nominated Third Party as the case may be) needs to install a Fixed Connection to an Asset it will obtain all Necessary Consents to undertake the Works, and it will undertake any restoration works, at its own cost, that may be required.
- 5.6 The Supplier will then commission the Equipment and update any Site Designs as appropriate ("**As built**"), providing a copy to the Authority. The Authority will then update its Asset Data accordingly.
- 5.7 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.
- 5.8 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.
- 5.9 The Supplier shall ensure that any Equipment is deployed on the Asset within six (6) months of final Authority approval and completion of appropriate Works. Where the Supplier fails to deploy within six (6) months it shall provide the Authority with written reasons which the Authority shall consider, and if the Authority decides that the reasons are insufficient or not justified then it may terminate the Supplier's (or its Nominated Third Party's) use of the relevant Asset by giving one (1) month's written notice to the Supplier. The Supplier may make representations to the Authority regarding any recovery plan and the Authority may in its discretion withdraw its written termination notice.
- 5.10 The Authority shall promptly update the Authority's asset catalogue and lighting management system to include details of the Suppliers use of the Asset and the Authority shall not provide approvals, permits or consents to another supplier during the Supplier's deployment of Equipment onto the Asset, subject to para 5.9 above. The Authority shall be entitled after the Supplier's deployment of their Equipment onto the Asset to grant approval, permits or consents to another third-party supplier to use the Asset outside of the Exclusion Zone, except

where this use by another third-party supplier would diminish the normal use of the Asset or the operation of the Supplier's Equipment (or the nominated Third Party as the case may be).

- 5.11 The Supplier will provide the Authority with details of the Exclusion Zone requirements for their Equipment and update this specification in the event that it changes with small cell upgrades from time to time.
- 5.12 Where the Authority is proposing to provide its permission to another third party supplier to use the Asset outside of the Exclusion Zone then it shall liaise with the Supplier and provide, inter alia, the proposed location, height, equipment emission frequencies and power to enable the Supplier to review whether there is likely to be a diminishing of the normal use of the Asset or the operation of the Supplier's equipment (of the Third Parties equipment as the case may be).
- 5.13 The Authority shall use reasonable endeavours to ensure that any telecommunications equipment which is installed (other than by the Supplier) after the date of this Licence does not interfere in any way with the Equipment and in the event of such interference occurring and the Supplier demonstrating to the Authority's reasonable satisfaction that the third-party equipment is the cause of the interference, to take all reasonable steps to remedy (or procure the remedy of) the interference and, if necessary, switch off the offending piece of equipment until the interference is remedied.

## **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 all reasonable endeavours to restore the electricity supply as quickly as reasonably possible.
- 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. SUPPLIER AND AUTHORITY POST INSTALLATION OBLIGATIONS – MAINTENANCE AND REPAIR**

- 7.1 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 any extended term, and the Supplier will manage any incidents arising with the Equipment, from initial contact through to resolution.
- 7.2 The Supplier shall inspect the Equipment on an annual basis, and will include the following:
  - 7.2.1 Visual inspection of the Asset, the Equipment, cables, connectors, and electrical installation.
  - 7.2.2 Check for leaks / water ingress on cable entry to the Asset.
  - 7.2.3 Check for impact damage to the Asset or the Equipment.
  - 7.2.4 Remedial mechanical works, including but not limited to, tightening of connectors where applicable.
  - 7.2.5 Inspection of the electrical supply to the Equipment.
  - 7.2.6 Remedial works related to the electrical supply.

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

- 7.3 The 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. 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.
- 7.4 In the event that any maintenance of or repair or improvement to the Asset cannot be carried out without interrupting the Supplier's (or the Nominated Third Party's, as the case may be) use of the equipment and/or the Asset and subject always to the Supplier being given not less than four months' notice of such maintenance and repair or improvement (save in the case of emergency where as much notice as is reasonably possible shall be given), the Supplier will allow (and give reasonable cooperation to facilitate) temporary interruption to the use of the Asset (including, where reasonably required, a complete shutdown or relocation of the Equipment) so as to allow the Authority (or those authorised by the Authority) to carry out necessary maintenance and repair to the Asset, provided that:
- 7.4.1 if a shut down of the Equipment is necessary, the Authority shall use reasonable endeavours to ensure that such period of shutdown shall be kept as short as reasonable possible; and
- 7.4.2 in the event that a complete shutdown of the Equipment is required, the Authority shall reimburse the Supplier the annual fee for that asset deployed, as compensation for the disruption. The Authority will cooperate to find a suitable alternative site. The Supplier will move the Asset at it's own expense.
- 7.5 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 collision ('RTC'). The Supplier will provide 48 hours' notice to the Authority, except in an operational emergency where notice of access shall be given as soon as reasonably practicable after such access has occurred. In the event of a road traffic accident RTC, the Supplier or its contractors will attend the Asset, 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 Party 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.
- 7.6 The Supplier will comply with a reasonable relocation request for the Equipment from the Authority, subject to provision of at least three (3) months' notice where possible from the Authority and the reasonable cost of the relocation being covered by the Authority.
- 7.7 The Supplier will respond to incidents which affect the Asset (such as a road traffic accident) at the request of the Authority.
- 7.8 The Authority shall retain maintenance obligations for Assets and for any Authority equipment affixed to the Assets.
- 7.9 The Authority will ensure throughout the Initial Term and any Extended Term that the Assets are kept in good structural, working, and decorative order.
- 7.10 Following it being aware of an RTA (or any other incident or damage) affecting an Asset, the Authority will notify the Supplier by the next Working Day of such incident. Further, the Authority will keep the Supplier updated (on no less frequent a basis that weekly) regarding progress for resolution of such incidents to repair/replace or otherwise reinstate the affected Asset.



**8. EXPIRY OF THE TERM OR TERMINATION OF THIS LICENCE**

- 8.1 The Supplier shall remove at its own cost any and all Equipment from an Asset at the expiry of the Initial Term (if not extended) or the termination of this Licence under **Clause 8** within twenty (20) Working Days.
- 8.2 The Supplier shall remove all of the Equipment within twenty (20) Working Days where it is deemed to be at end of life.

## **SCHEDULE 4 – GOVERNANCE**

### **1. PURPOSE OF THIS SCHEDULE**

- 1.1. The purpose of this Schedule is to detail the operational procedures for the governance of this Licence 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 this Licence and to discuss, but not limited to any issues arising in respect of:

- The Assets, access, or operation
- The Asset List or Asset Data
- Approvals, consents or permits required from the Authority
- Financial performance
- Supplier and Nominated Third Party demand
- Processes for pre- or post- deployment of Equipment on Assets
- Incidents
- Escalated issues

### **3. DISPUTE RESOLUTION**

- 3.1 If at any time any question, dispute or difference of opinion shall arise between the Supplier on the one hand and the Authority on the other hand as to any matter or thing of whatever nature arising under or in connection with this Licence (a “Dispute”) then the Supplier or the Authority may give to the other notice in writing as to such Dispute (a “Dispute Notice”) and upon receipt of such notice the appropriate representatives of the Parties shall use their reasonable endeavours to resolve such Dispute in good faith in accordance with the provisions of this Schedule.
- 3.2 Representatives from each Party shall meet as soon as practicable after receipt of the Dispute Notice and in any event within five (5) Working Days of delivery of such notice with a view to resolving the Dispute. Initially such Dispute will be discussed among the Level 1 representatives of the Supplier and the Authority described below.
- 3.3 The Level 1 and Level 2 representatives shall discuss the Dispute for a period of ten (10) Working Days after which, unless resolved, the Dispute shall be notified to the next level of representatives for resolution, provided that the level of representatives discussing a Dispute may agree to extend the period for resolution by a further five (5) Working Days or to refer such Dispute to the next level of representatives immediately.

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

3.5 If the unresolved Dispute is having a material adverse effect on the business of either the Supplier (or its Nominated Third Party, as the case may be) or the Authority, the Dispute shall be referred immediately to Level 3.

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

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

<b>Escalation Level</b>	<b>Delivery / Operations/ Technical</b>	<b>Commercial</b>
Level 1		
Level 2		
Level 3		

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

<b>Escalation Level</b>	<b>Delivery / Operations/ Technical</b>	<b>Commercial</b>
Level 1	Highways Operations Manager	Highways Operations Manager
Level 2	Head of Digital Projects	Head of Digital Projects
Level 3	Director of Strategy	Director of Strategy