**Small Cell Framework Agreement**

# Introduction

## This document sets out the Infralink Small Cell Framework Agreement and instructions on how it should be used.

1. **Small Cell Framework Agreement**

When using the Infralink Small Cell Framework Agreement please note the following:

* You should check that the party contracting as tenant, or “Supplier” in terms of the Small Cell Framework Agreement, is in fact an operator with the benefit of powers under the Electronic Communications Code (“**the Code**”) known as a Code Operator. Please refer to the [Ofcom](https://www.ofcom.org.uk/phones-telecoms-and-internet/information-for-industry/policy/electronic-comm-code/register-of-persons-with-powers-under-the-electronic-communications-code) website which is regularly updated; and
* You should check that the party contracting as landlord, or “Authority” in terms of the Small Cell Framework Agreement is in fact an occupier within the meaning of [Part 2 of the Code](https://www.legislation.gov.uk/ukpga/2017/30/schedule/1/enacted) (taking legal advice where required).

The Infralink Small Cell Framework Agreement contains a number of provisions square bracketed that may require negotiation/need to be determined on a case-by-case basis. In many instances the choice to be made should be straight forward based upon the situation. However, more detailed guidance on the use of the agreement and these such provisions is set out below. The Riders referred to in the guidance below can be found at the end of the Small Cell Framework Agreement.

For more information about the Code please see the [Infralink Electronic Communications Code FAQs](https://infralink.scottishfuturestrust.org.uk/storage/21/Infralink_ECC_FAQs_Feb21.pdf) on our website.

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| **Provision**  | **Relating to**  | **Guidance**  |
| Definitions and Interpretation Clause 1.1  | Works  | It will be necessary to ensure that any list of equipment is sufficiently wide to cover all equipment that needs to be deployed, for example any ground-based equipment in addition to apparatus deployed on the street furniture itself.  |
| General Clause 2 | Breach 2.10  | It is envisaged that most operators will not agree to be liable for acts, errors or omissions of a third party. For this reason, the wording of clause 2.9 ensures that if the Nominated Third Party places the Supplier in breach of the terms of this Agreement, the Supplier has a remedy again the Nominated Third Party.  |
| Fees & Associated Costs Clause 3 | Authority’s Costs & Expenses 3.1 | This amount is a matter for negotiation between the parties.  |
| Fees & Associated Costs Clause 3 | Inspection Fee 3.2 | This amount is a matter for negotiation between the parties. |
| Fees & Associated Costs Clause 3 | Annual Fee 3.3 | This amount is a matter for negotiation between the parties. |
| Term Clause 4 | Extension of Term 4.2 | A proposed window of between (not more than) 5 and (not less than) 1 year prior to expiry of the Agreement within which to negotiate an extension is considered reasonable. The parties are free to choose a different time scale. |
| Limitation of Liability and Insurance Clause 7 | Limit on Authority’s Liability 7.2 | This amount is a matter for negotiation between the parties. |
| Limitation of Liability and Insurance Clause 7 | Indemnity against Supplier Breach 7.4  | It is envisaged some operators may hold that indemnity should be limited to third party claims, and should not simply apply where the Supplier has done something in breach of the terms of this Agreement, as the remedy for such losses or liabilities is a breach of contract claim.  |
| Termination Clause 8 | Change of Control 8.3 | Changes of ownership of Code Operators happen not infrequently. Consequently, some operators may consider this clause does not seem appropriate, given the importance of connectivity, for a change of control of a Code Operator to trigger the right to terminate.  |
| Termination Clause 8 | Bankruptcy / Wind-Up 8.4 | As this is not a ground for termination under the Code, some operators may seek removal of this clause. In the event of insolvency of a Code Operator (which is are occurrence in any event) an assignment of this Agreement to another Code Operator would allow the Equipment to be operated by another Code Operator, to maintain continued connectivity to people in the area. |
| Assignment & Sub-Contracting Clause 10 | Assignment 10.1 | The Code conveys rights to assign and share that cannot be contracted out of. Reflective of this, alternative clause wording is provided (*in* *italics*) which parties can use if preferred. |
| **SCHEDULE** |
| PART 2 Planning and Demand Para 3 | Online Asset Register 3.1 | If the Local Authority using this template does not have an online asset register, this paragraph will need to be removed. For any Local Authorities that do have an online asset register, details will need to be inserted here. |
| PART 2 Survey and Design Para 4 | Equipment Removal 4.8 | It is envisaged that Code Operators will not agree to their equipment being removed without their agreement and, for health and safety reasons, only technically qualified staff should carry out such removal works. The square bracketed wording (*in italics*) can therefore be removed if preferred by the parties. |
| PART 2 Maintenance and Repair Obligations Para 7 | Equipment Shutdown 7.3 | It is in the interest of both parties to have a clear and detailed procedure relating to requests for the Equipment to be powered down or switched off. An example of a potential form of wording can be found in RIDER1. |
| PART 2 Maintenance and Repair Obligations Para 7 | RTA Procedure 7.4 | Rather than adopt a position whereby the Equipment must be removed following a road traffic accident of any description, the wording is designed to avoid an obligation on the Supplier to remove their equipment in every case. It is possible that a road traffic accident could result in only minimal damage to an Asset that would not necessitate removal. |
| PART 2 Expiry of the Term Para 8 | Equipment Removal 8.1 | This clause wording refers to removal only being required when the Supplier’s right to be there has come to an end. This may be later than the “Initial Term”. This wording sits more easily with Part 6 of the Code. |
| PART 2 Expiry of the Term Para 8 | End of Life 8.2 | It is envisaged that questions may arise over who decides what is deemed to be “at end of life”; also how this is assessed. Further clarification may be required by agreement between the parties on this point. |
| General | Code Rights | It is envisaged that some operators may seek additional wording that reflects statutory rights available to all Code Operators under the Code An example of a potential form of additional wording can be found in RIDER2. |



FRAMEWORK AGREEMENT

 BETWEEN

 Perth and Kinross Council

 (AUTHORITY)

- and -

 FRESHWAVE FACILITIES LIMITED

**IMPORTANT**

This draft lease is intended for use in Scotland.

This draft lease is provided for use by consenting partieswithout liability. Itdoes not constitute any form of advice or recommendation and is not intended to be relied upon in making (or refraining from making) any decisions. Each party should seek their own legal and valuation advice.

In no event shall Scottish Government, Scottish Futures Trust, or any other party be liable to any party for any direct, indirect or consequential loss, loss of profit, revenue or goodwill arising from use of this lease.  All terms implied by law are excluded.

 (Supplier)

**FRAMEWORK agreement**

BETWEEN:

(1) **PERTH AND KINROSS COUNCIL** a local authority constituted under the Local Government (Scotland) Act 1994 and having its principal place of business at **PERTH AND KINROSS COUNCIL** (the **"Authority"**); and

(2) FRESHWAVE FACILITIES LIMITED (registered in England with Company Number 03636773) whose registered office is at 1st Floor, Independent House Independent Business Park, Imberhorne Lane, East Grinstead, West Sussex, RH19 1TU (the **"Supplier"**).

BACKGROUND:

The Authority and the Supplier wish to set out the basis upon which the Authority will enable the Supplier to deploy telecoms infrastructure on the Authority’s Assets.

IT IS AGREED:

# Definitions and Interpretation

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

1. **"Agreement"** means the terms and conditions of this Agreement which include the recitals, the body of this Agreement, the attached schedules, together with any expressly incorporated documents;
2. **“Asset(s)”** means all the Authority’s lampposts and other street furniture assets as more fully detailed in the Asset List;
3. “**Asset List**” means the assets listed in Part 1 of the Schedule or as otherwise agreed by the Parties in writing, and thereafter assumed to form part of Part 1 of the Schedule;
4. “**Code**” means the Electronic Communications Code as set out in Part 3A to the Communications Act 2003;
5. **“Commencement Date**” means the last date of execution of this Agreement;
6. **"Confidential Information"** means the provisions of this Agreement 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 Agreement;
7. **“Data Protection Law”** means (i) Regulation 2016/679 of the European Parliament and of the Council on the protection of natural persons with regard the processing of personal data and on the free movement of such data as it forms part of the law of England and Wales, Scotland and Northern Ireland by virtue of section 3 of the European Union (Withdrawal) Act 2018; (ii) the EU e-Privacy Directive (Directive 2002/58/EC) as it forms part of the law of England and Wales, Scotland and Northern Ireland by virtue of section 3 of the European Union (Withdrawal) Act 2018; and any and all applicable national data protection laws made under or pursuant to (i) or (ii) (including without limitation the Data Protection Act 2018); in each case as may be amended or superseded from time to time;

**"Equipment"** means the telecommunications apparatus and any other equipment ancillary to such apparatus owned or operated by the Supplier or a Nominated Third Party and used and operated for the Permitted Use, including any electricity and/or power connections, as more further defined in the Asset List;

1. “**Exclusion Zone**” means a distance of 75cms surrounding the Equipment;
2. **“Fixed Connection”** means any fibre or other fixed line connection which the Supplier may deploy or procure to connect an Asset;
3. “**Force Majeure**” shall mean an event beyond the reasonable control of the Supplier or the Authority which does not relate to its fault or negligence. Force Majeure includes (without limiting the generality thereof) acts of God, expropriation or confiscation of facilities, war hostilities, rebellion, terrorist activity, local or national emergency, government action, national pandemic, sabotage or riots, floods, fires and explosions or other catastrophes;
4. **"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;
5. **"Holding Company"** has the meaning set out in Section 1159 of the Companies Act 2006;
6. **"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;
7. **"Nominated Third Party"** means a third party customer to whom the Supplier grants a sub-licence to use the Assets for the Permitted Use subject to the terms of this Agreement and to such Nominated Third Parry being notified to the Authority, all pursuant to Clauses 2.9 - 2.11;
8. **"Operational Procedures"** means the procedures set out in Part 2 of the Schedule 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);
9. **"Party"** means either the Supplier or the Authority and **"**Parties**"** means both the Supplier and the Authority;

## **“Permitted Use**” means the deployment of the Equipment by the Supplier or a Nominated Third Party on the Authority’s Assets for the reception and transmission of electronic communications signals and data;

1. **"Programme Plan"** means the Supplier’s plan for the installation of the Equipment on the Assets;
2. “**Schedule**” means the schedule in 3 parts annexed and signed as relative to this Agreement;
3. **“Surveys and Structural Tests”** as defined in paragraph 4 of Part 2 of the Schedule;
4. **"Subsidiary"** has the meaning set out in Section 1159 Companies Act 2006;
5. “**Works**” means the works to be carried out by the Supplier, its agents or contractors in connection with the Supplier’s permitted use of the Assets; and
6. **"Working Day"** means Monday to Friday, excluding bank or public holidays in the City of Glasgow.

## In this Agreement (unless the context requires otherwise):

### the words **"including"**, **"include"**, **"for example"**, **"in particular"** and words of similar effect shall be construed so that they do not limit the general effect of the words which precede them, and so that any examples that are given are not to be exclusive or limiting examples of the matters in question;

### references to this Agreement and any other document referred to in this Agreement, is a reference to it as validly varied, supplemented and/or novated from time to time;

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

### references to the singular include the plural and vice versa;

### references to any one gender do not exclude other genders;

### recitals and headings are all for reference only and shall be ignored in construing this Agreement;

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

# GENERAL

## This Agreement is a framework that will enable the Supplier to access the Assets on the agreed Asset List for the Permitted Use. For the avoidance of doubt, the Authority shall continue to use the Asset(s) for its own purposes and the Supplier’s Equipment shall not affect the normal operation of the Assets. In the case where an Asset hosts deployed Equipment, then 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 our preventative, reactive or emergency maintenance, which shall be notified to the Supplier as soon as reasonably practicable.

## 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 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. The Authority will act reasonably in considering all such requests to reflect the underlying commercial purpose of this Agreement to exploit the Assets for the benefit of both Parties and the community, but the decision by the Authority shall always be at its sole discretion. .

## This Agreement is non-exclusive. The Supplier acknowledges that the Authority may enter into similar agreements 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, provided that the Authority will not allow third parties to deploy equipment within the Exclusion Zone. For the avoidance of doubt the Exclusion Zone will not apply to any Authority equipment or equipment belonging to the Authority’s sub-contractors carrying out services to the Authority for the normal or occasional function of the street lighting, including but not limited to festive or event lighting.

## 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 Agreement.

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

## 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.

## The Authority is providing the Assets to the Supplier for the Permitted Use but is not responsible for the Supplier’s provision of services to its customers.

## The Authority grants to the Supplier a licence to install, keep installed, inspect, maintain, adjust, occupy, alter, repair, upgrade, operate, renew and replace Equipment on the Assets for the Permitted Use in accordance with the terms of this Agreement.

## The Supplier may grant a sub-licence to Nominated Third Parties to use the Assets for the Permitted Use, subject to such sub-licence to any Nominated Third Parties containing an obligation on the Nominated Third Partiers not to do anything which would place the Supplier in breach of the terms of this Agreement.

## Any breach of this Agreement 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 negligence.

## The references to the Supplier in respect of provisions requiring performance of the Supplier's obligations under this Agreement shall be deemed to include Nominated Third Parties.

## The Parties shall comply with the provisions of Part 3 of the Schedule.

# FEES AND ASSOCIATED COSTS

## In consideration of the Authority’s costs and expenses in negotiating and facilitating this Agreement, the Supplier shall pay the Authority Perth and Kinross Council Pounds (£5000.00) (the **“Initial Fee**”), plus VAT if applicable. Where any additional fees are required due to the Authority facilitating this Agreement, the Parties will negotiate such fees in good faith. The Authority shall invoice the Supplier for the Initial Fee on execution of this Agreement by both Parties.

## 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 day rate of (£271.66 ) plus VAT (the “**Inspection Fee**”) will be payable by the Supplier to the Authority. The Authority shall invoice the Supplier for the Inspection Fee after each inspection or set of inspections. The Authority may, where possible and convenient to the Authority, take reasonable steps to combine inspections to mitigate the number of inspections where required.

## The Supplier shall pay to the Authority an annual fee of Pounds (£250.00) plus VAT per Asset (“**Annual Fee”**) for installing, inspecting, maintaining, adjusting, occupying, altering, repairing, renewing, replacing, upgrading and operating the Equipment on the Assets under this Agreement. The Supplier shall provide a quarterly statement to the Authority of each Asset which has been deployed in the last quarter and the Authority shall provide a quarterly invoice for the Annual Fee for those Assets in line with the Supplier’s statement. No pro-rated refunds shall be given by the Authority to the Supplier if the Agreement is terminated in the course of that year for any reason under Clause 8, except where the Authority terminates on notice under Clause 8.1 or the Supplier terminates under Clause 8.2.

## The Supplier shall be responsible for obtaining, at its own cost, the permits, consents and approvals referred to in paragraph 5.3 of Part 2 of the Schedule. 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 Agreement as further described in paragraph 5.3 of Part 2 of the Schedule (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.

## 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.

## The Supplier agrees to pay invoices within thirty (30) days from the end of the month in which the invoice is received. In the event of late payment by the Supplier of any amount payable under this Agreement, the Supplier shall pay to the Authority interest on the outstanding amount at a rate of two (2%) per cent per annum above the base rate from time to time of the Bank of Scotland, from the due date of payment until the date the outstanding amount is actually received by the Authority.

# Term

## 4.1 This Agreement shall come into force on the Commencement Date and shall continue for a minimum period of fifteen (15) years (hereinafter the **"Initial Term"**). 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.

## If the Supplier wishes to retain its Equipment on the Assets beyond the Initial Term, the Parties shall commence negotiations not more than five (5) years prior to the expiry of the Initial Term and endeavour to complete their negotiations on the terms of such arrangement 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.

## If the Supplier does not wish to continue the use of the Assets, the Authority refuses an extension of the Initial Term under Clause 4.2 or the Parties cannot agree the terms of such arrangement, this Agreement shall expire at the end of the Initial Term and the Supplier shall remove the Equipment in accordance with the process set down in the Operational Procedures, but the Authority shall use reasonable endeavours to enable any Equipment deployed on Asserts to remain at their current location (or alternative locations where possible and available) under alternative arrangements.

# Intellectual Property

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

# Confidentiality

## Subject always to Clause 12, each Party shall:

### keep in confidence any Confidential Information of the other Party obtained under this Agreement; and

### 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.

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

### has been published other than through a breach of this Agreement;

### is lawfully in the possession of the receiving Party before the disclosure of the Confidential Information under this Agreement took place;

### was obtained from a third party who is free to disclose it; and

### 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.

# Limitation of Liability and Insurance

## Nothing in this Agreement shall limit or exclude a Party’s liability for death or personal injury caused by its negligence, or that of its employees, agents or subcontractors or anyone within its reasonable control. Neither Party shall be liable to the other Party under or in connection with this Agreement for any loss of income, loss of actual or anticipated profits, loss of contracts, loss of goodwill or reputation, loss of business, loss of anticipated savings, loss of, damage to or corruption of data, or for any indirect or consequential loss or damage of any kind, in each case howsoever arising, whether such loss or damage was foreseeable or in the contemplation of the Parties and whether arising in or for breach of contract, delict (including negligence), breach of statutory duty, indemnity or otherwise.

## 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 £250.00 [the Annual Fee].

## The Supplier shall make good any damage caused to any Assets by reason of any act or omission or default by the Supplier, or any third party for whom the Supplier is responsible at law arising out of the Supplier’s Permitted Use or any other use of the Assets by the Supplier.

## The Supplier shall be liable for and shall indemnify the Authority against, any expense, liability, loss, claim or proceedings howsoever arising under any statute or at common law in respect of any loss, injury or damage whatsoever arising out of or in the course or caused by the supply of the Services in accordance with this Framework Agreement and/or an Order, 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.

## The Supplier shall indemnify the Authority against all claims arising directly from any negligent act or omission by the Supplier or its sub-contractors in the exercise of the rights granted to it by this Agreement and/or the negligent use of the Asset and/or the Equipment, except to the extent that the same is due to any negligence on the part of the Authority.

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

7.6.1 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;

* + 1. maintain public liability insurance in the sum of FIVE MILLION POUNDS (£5,000,000) STERLING in respect of any one event and unlimited in the period;
		2. maintain professional indemnity insurance in the sum of FIVE MILLION POUNDS (£5,000,000) STERLING

and shall when reasonably requested to do so by the Authority and at least annually, produce for inspection insurance certificates to show that the above detailed insurance cover is being maintained.

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

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

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

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

7.8.3 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.

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

7.9.1 £1,000,000 (one million pounds) 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 £2,000,000 (two million pounds);

7.9.2 £20,000 (twenty thousand pounds) for damage to lampposts, CCTV columns, traffic lights or any other assets not referred to in 7.9.1 above for any one claim or series of connected claims and shall be limited in aggregate per year to £200,000 (two hundred thousand pounds).

## This Clause 7 shall continue in force after the termination or expiry of this Agreement.

# 8 Termination

## 8.1 The Authority may terminate this Agreement in respect of an individual Asset 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 Agreement and shall be subject to further agreement with the Authority. The Supplier may terminate this Agreement 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 subject to the terms of this Agreement, shall not be deemed to be termination of the entire Agreement.

8.1.2 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 Agreement 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 effect a repair of the damaged Asset as soon as is reasonably practicable.

## 8.2 This Agreement may be terminated at any time by either Party if the other Party commits a material breach of the terms of this Agreement which is not capable of remedy, or if capable of remedy, is not remedied within thirty (30) working days after receipt of notice from the non-breaching Party requiring the breach to be remedied.

8.3 This Agreement may be immediately terminated by the Authority upon giving written notice and without payment of any compensation to the Supplier if there is a change of control, 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 Agreement, save that the Authority shall not be permitted to exercise the foregoing right of termination after the expiration of six (6) months after the later of the concurrence of each such change of control or becoming aware of each such change of control (the Supplier being under an obligation to so notify), and shall not be permitted to exercise such right where the Authority has agreed in advance to the particular change of control and such change of control takes place as proposed.

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

* + 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
		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.

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

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

8.6.1 provide to the Authority any Confidential Information to the Authority which is in the Supplier's possession, power or control, either in its then current format or in a format reasonably nominated by the Authority, together with all other related documentation, and any other information and all copies thereof owned by the Authority;

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

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# 9 Variation

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

# Assignment and subcontracting

## 10.1 Neither Party shall be permitted to assign their rights under this Agreement, without the prior written consent of the other Party except that the Supplier is permitted: (a) to assign this Agreement to any intra group party; and/or (b) to sub contract the performance of any of its obligations under this Agreement 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.

## 10.2 The Supplier shall have the right to share:

## 10.2.1 the Equipment and the Rights with another Nominated Third Party or Code operator in accordance with Part 3 of the Code:

## 10.2.2 occupation of the Site, the Asset, the Equipment, and the benefit of the Rights with a Group Company.

## 10.3 The Supplier or any Nominated Third Party or Code operator shall have the right to upgrade the Equipment as provided in paragraphs 3(c) and 17 of the Code.

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

# Notices

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

### **To the Supplier**

Post: Freshwave, 50 Cowcross St, London, England, EC1M 3HP.

Email: nick.wiggin@freshwavegroup.com or any alternative address that the Supplier notifies to the Authority.

### 11.1.2 **To the Authority**

Post: Perth & Kinross Council, Pullar House, 35 Kinnoull Street, Perth, Scotland PH1 5GD

Email: adobson@pkc.gov.uk or any alternative address that the Authority notifies to the Supplier.

12. **FREEDOM OF INFORMATION**

12.1 The Supplier acknowledges that the Authority is subject to the requirements of Freedom of Information (Scotland) Act 2002 (FOI(S)A) and Environmental Information (Scotland) Regulations 2004 (EIRs) and the Supplier shall assist and cooperate with the Authority to enable it to comply with these information disclosure requirements.

12.2 The Supplier acknowledges that the Authority may be required under the FOI(S)A and EIRs to disclose information without consulting or obtaining consent from the Supplier. The Authority shall take reasonable steps to notify the Supplier of any requests for information (in accordance with the Scottish Ministers’ Code of Practice on the discharge of functions by Scottish Public Authorities under section 60 of Part 6 of the FOI(S)A and regulation 18 of EIRs) to the extent that it is permissible and reasonably practical for it to do so but (notwithstanding any other provision in this Agreement) the Authority shall be responsible for determining in its absolute discretion whether any information is exempt from disclosure in accordance with the FOI(S)A and/or the EIRs. Where the Authority is unable to provide the Supplier with advance notice prior to disclosing information, the Authority shall draw the disclosure to the Supplier’s attention after any such disclosure.

# DATA PROTECTION

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

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

# LAW AND JURISDICTION

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

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

# MISCELLANEOUS PROVISIONS

## **Entire Agreement**

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

## **Acknowledgement**

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

## **No Waiver**

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

## **Severance**

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

## **Survival of Obligations**

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

## **Rights of Third Parties**

1. A person who is not a party to this Agreement has no right under the Contracts (Rights of Third Parties) (Scotland) Act 2017 to enforce any term of this Agreement, but this does not affect any right or remedy of a third party that exists or is available apart from that Act.

**15.7 Publicity**

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

* 1. **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.

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

|  |  |  |
| --- | --- | --- |
| * 1. **Executed for and on Behalf of**
 | **The Authority** | **The Supplier** |
| * 1. **Signature**
 |  | * 1.
 |
| * 1. **Name (Print)**
 | * 1.
 | * 1.
 |
| * 1. **Job Title (Print)**
 | * 1.
 | * 1.
 |
| * 1. **Date of Signature (Print)**
 | * 1.
 | * 1.
 |
| * 1. **Location of Signature (Print)**
 |  | * 1.
 |

|  |
| --- |
| Before this witness |

|  |  |  |
| --- | --- | --- |
| * 1. **Witness Signature**
 |  |  |
| * 1. **Witness Name (Print)**
 | * 1.
 | * 1.
 |
| * 1. **Witness Address (Print)**
 | * 1.
	2.
 | * 1.
	2.
 |

**This is the Schedule referred to in the foregoing agreement between Perth and Kinross Council and Freshwave Facilities Limited**

**PART 1 – ASSET LIST**

**[insert asset list table]**

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

**NOTE**

Asset list to be provided as a spreadsheet.

Asset list provided by the Sitenna platform

**PART 2 – OPERATING PROCEDURES**

1. **PURPOSE OF THIS SCHEDULE**

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

1. **ASSETS**

2.1 Suitable Assets in the Authority’s streetscape for deployments of the Equipment include, but are not limited to, the following:

* Lighting columns
* CCTV columns
* other columns
* bus shelters
* advertising hoardings
* building mounted assets

2.2 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 [**https://sitenna.com**](https://sitenna.com) and the associated online form link.

3.2 The Authority shall provide, where available, details of the Assets to the Supplier, including location, height, type, Asset ID and power supply (“**Asset Data**”) and such information will form part of the Asset List. The Authority shall use its reasonable endeavours to provide further asset information where requested by the Supplier, for example, pre-existing conflicting plans for the Assets.

## 3.2 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 and agreed by the Authority, 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 street lights, 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 may , 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 a 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 a 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 Dependencies (as defined in paragraph 5.1 of this part of the Schedule) and Risk and Method Statement (RAMS). Detail on all contractors and co-ordinate with power and backhaul providers accordingly, and all necessary system testing.

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 locations and ensure the responsible removal and disposal of all packaging and casing used.

4.5 The area surrounding the Asset shall be left in a safe, 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.

## 4.7 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.

4.8 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 whom may either provide the quote or instruct the Supplier to provide a quote:

## • 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 the Supplier meets the costs of the additional maintenance. The Supplier may request the Authority’s permission for 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.

# ACCESS AND BUILD

## 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 Network Plan reflecting mobile network operators’ updates, changes and requirements.

## The Authority shall undertake electrical upgrades as required by the Supplier where these have been confirmed as agreed with the Supplier. The Authority shall be reimbursed for any costs or expenses by the Supplier for such upgrades as agreed in Clause 3.2.

## 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 permits, consents and approvals.

## 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.

## 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 and permissions to undertake the Works, and it will undertake any restoration works, at its own cost, that may be required.

## 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.

## 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.

## 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.

* 1. The Supplier shall ensure that any Equipment is deployed on the Asset within nine (9) months of final Authority approval to install on the relevant Asset and completion of appropriate Works. 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.
	2. 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 Agreement 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.

## The Authority shall not be liable for any break in electricity supply due to any cause, save where the Authority has deliberately interrupted the supply to the Equipment in contravention of the terms of this Agreement but will use all reasonable endeavours to restore the electricity supply as quickly as reasonably possible after the break in electricity supply occurs.

* 1. 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 that directly relate to the installation and operation of the Equipment.

## 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 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;

7.25 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 planned 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 The Supplier shall manage all incidents relating to the Equipment at the Asset including Equipment failures following major incidents such as an impact caused by a road traffic accident (‘RTA’). The Supplier will provide not less than 48 hours’ notice to the Authority of access being required to an Asset, except in an operational emergency where notice of access shall be given as soon as reasonably practicable after such access has occurred. In the event of an RTA causing damage to an Asset rendering the continued presence and use of the Equipment on the Asset unviable, the Supplier’s contractors will attend the Asset and remove the Equipment and arrange temporary storage. Following an incident where an Asset is damaged beyond repair, the Supplier will coordinate with the Authority and the Nominated Third Party (as applicable) and agree either to re-install the Equipment on a new replacement Asset built at the relevant location; or to relocate the Equipment to an alternative Asset nearby.

## 7.5 The Supplier will comply with a reasonable request from the Authority for the Equipment to be removed from one Asset and relocated to a replacement Asset, subject to provision of at least **6** months’ notice where possible from the Authority and the reasonable cost of the relocation being covered by the Authority.

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

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

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

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

8.1 The Supplier shall remove at its own cost any and all Equipment from an Asset at the expiry of the Initial Term or the termination of this Agreement within twenty (20) Working Days of when the Supplier’s right to retain their Equipment at the Asset has come to an end.

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.

**PART 3 – GOVERNANCE**

**1. PURPOSE OF THIS SCHEDULE**

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

**2. OPERATIONAL REVIEW MEETING (ORM)**

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

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

# 3. DISPUTE RESOLUTION

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

## 3.2 Representatives from each Party shall meet as soon as practicable after receipt of the Dispute Notice and in any event within five (5) Business Days of delivery of such notice with a view to resolving the Dispute. Initially such Dispute will be discussed among the Level 1 representatives of the Supplier and the Authority described below.

## 3.3 The Level 1 representatives shall discuss the Dispute for a period of ten (10) Business Days after which, unless resolved, the Dispute shall be notified to the Level 2 representatives for resolution, and the Level 2 representatives shall discuss the Dispute for a period of ten (10) Business Days after which, unless resolved, the Dispute shall be notified to the Level 3 representatives for resolution, provided that the level of representatives discussing a Dispute may agree to extend the period for resolution by a further five (5) Business Days or to refer such Dispute to the next level of representatives immediately.

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

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

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

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

|  |  |  |
| --- | --- | --- |
| **Escalation Level** | **Delivery / Operations/ Technical** | **Commercial** |
| Level 1 |   |   |
| Level 2 |  |   |
| Level 3 |   |   |

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

|  |  |  |
| --- | --- | --- |
| **Escalation Level** | **Delivery / Operations/ Technical** | **Commercial** |
| Level 1 |  |  |
| Level 2 |  |  |
| Level 3 |  |  |

3.7 Nothing in this Dispute Resolution Procedure shall prevent either party applying to court of competent jurisdiction for injunctive relief.

**RIDER 1**

**ACCESS FOR DESIGNATED ASSET MAINTENANCE**

1 In the event that the Authority reasonably requires to carry out temporary repair maintenance or improvement works to the Assets (“the Works”) which cannot reasonably be carried out with the Equipment remaining switched on or in its current location, the Supplier shall upon not less than thirty (30) days’ notice from the Authority (except in the case of emergency where such notice as is reasonable in the circumstances will be acceptable) switch off the relevant part or parts of the Equipment and if so required by the Authority relocate the Equipment to another Authority Asset as specified by the Authority. The Authority will pay such reasonably and properly incurred fees incurred by the Supplier in complying with this clause.

2 Notwithstanding the following provisions of this Rider 1, the Authority shall use all reasonable endeavours to undertake any works which are necessary in respect of the Assets without requiring the Supplier to switch off or power down the Equipment.

3 The Authority shall provide notice to the Supplier, in line with the notice periods prescribed below, before undertaking any work on the Asset in respect of which the Supplier shall be required to switch off or power down the Equipment, and in such event shall comply with the process set out in Part 4 of this Schedule when conducting such work:

|  |  |
| --- | --- |
| **Event** | **Notice period required** |
| Planned maintenance | Not less than 1 months' notice |
| Routine or Reactive maintenance | Reasonable endeavours required to provide the Supplier with notice |
| Emergency maintenance or works required, such as Damage having occurred or to meet health and safety requirements | Reasonable endeavours required to provide the Supplier with notice |

4 Any notice provided to the Supplier pursuant to paragraph 3 above shall state the date on which the relevant planned works shall commence ("**Works Start Date**"), and shall provide confirmation of the likely duration of such works.

5 Following service of the notice by the Authority in accordance with this Rider 1, the Supplier shall consider whether it will be necessary to either switch off completely or just to power down the Equipment in order for the relevant planned works to proceed safely.

6 The Supplier shall ensure that the Equipment is switched off or powered down, as appropriate, prior to the Works Start Date, and the Equipment shall remain switched off or powered down until the Authority has finished such planned works.

7 The Authority shall use all reasonable endeavours to keep the period of such switching off or powering down as short as possible, and the Authority shall contact the Supplier immediately to confirm that the relevant planned works have been completed so that the Supplier may again switch on or repower the Equipment.

8 Nothing in this Rider 1 shall oblige the Supplier to switch off or power down the Equipment unless the continued operation of the Equipment could either cause harm to any person carrying out the relevant works or prevent the relevant works from being carried out at all.

**PART 4 – SWITCH-OFF / POWERING DOWN PROCEDURE**

For the purposes of this Part 4 of the Schedule, references to "Owner" mean "the Authority" and references to "the Operator" mean "the Supplier". The Parties agree that where the Owner is able to provide notice to the Supplier of any switch-off or powering down procedure, it will do so, as soon as reasonably practicable.

Owner advises all their engineers of the fact that some items of Designated Assets are in use by the Operator for electronic communications purposes

Owner's engineer visits the Licensor's Land and observes label inside structure advising it that the Designated Assets contains the Operators Equipment

Engineer contacts the Operator's Service Centre, quoting circuit reference as per notice inside door, to advise of work and likely outage duration

Engineer returns to the Authority's land after the appropriate period of notice has been given and completes his maintenance activity

Engineer / Owner contact advises the Operator work is complete and lamppost back in service

The Operator switches back on or repowers the Equipment

Will the engineer need to enter radio exclusion zone – i.e. work above label at the top of the installation e.g. below luminaire?

NO

Engineer completes activity as normal – i.e. no requirement to switch off or power-down

**PART 5 – RIGHTS GRANTED**

For the avoidance of doubt, the Rights granted and described in this Part 5 of the Schedule are granted by the Authority, subject always to the Supplier adhering to its responsibilities and obligations set down in Part 2 of the Schedule.

1. The following rights set out in the Code:
	1. To install the Equipment on, under or over the Asset;
	2. To keep the Equipment installed on, under or over the Asset;
	3. To inspect, maintain, adjust, alter, repair, upgrade or operate the Equipment;
	4. To carry out works on the Asset for or in connection with the installation of the Equipment on the Asset or elsewhere;
	5. To carry out works on the Asset for or in connection with the maintenance, adjustment, alteration, repair, upgrading or operation of the Equipment on the Asset or elsewhere;
	6. To enter the Site to inspect, maintain, adjust, alter, repair, upgrade, or operate any Equipment which is on the Asset or elsewhere;
	7. To connect to a power supply;
	8. To not interfere with or obstruct an access to or from the Asset; and
	9. To lop or cut back vegetation that may or will interfere with the Equipment
2. The right of access on foot (where appropriate) or with or without vehicles plant and machinery over the Site along such route as shall be reasonably determined by the Authority from time to time to the Asset and the Equipment for all purposes in connection with the installation of the Works, and the exercise of the Rights, subject to the Supplier (a) making good to the reasonable satisfaction of the Authority as soon as reasonably practicable all damage thereby caused to the Site; and (b) the persons exercising such right complying with reasonable security procedures required by the Authority and previously notified in writing to the Supplier.
3. The right to run, maintain, repair, renew, upgrade, install and use a separately metered electricity supply from the local electricity supplier on, over, under or through the Site to the Equipment (the route of such supply to be as reasonably specified by the Authority) or the right to connect into the Authority’s electricity supply (subject to adherence with clause 3.7 of the Agreement) provided that in the case of any initial installation of a separately metered electricity supply then the Supplier shall obtain the Authority’s written consent, such consent not be unreasonably withheld or delayed.
4. The right to the passage of services through the Service Media.
5. The right to connect into, run, maintain, repair, renew and use communications connections on, over, under or through the Site to the Asset and the Equipment (the route of such supply to be as reasonably specified by the Supplier and approved in writing by the Authority acting reasonably and expeditiously).
6. The right during (i) the initial installation; (ii) maintenance period; and (iii) removal of the Equipment, to store materials and equipment related to such installation, maintenance or removal; at such location as is agreed with the Authority acting reasonably.
7. Where reasonably required and only for as long as is reasonably necessary, the right to bring on to and keep and to operate on the Site a back-up power generator , together with any associated sockets and cables of a type and in such position as is agreed between the Authority and the Supplier acting reasonably (provided that such generator does not cause an undue amount of noise or vibration).
8. The right of support and shelter and all other easements and rights now or hereafter belonging to or enjoyed by the other parts of the Site and/or any adjoining or neighbouring land or buildings thereon belonging to the Authority at any time during the term.
9. Only where appropriate and agreed with the Authority (both parties acting reasonably) the right to erect, maintain, alter and renew a fence on the Site for the protection of the Equipment and the safeguarding of the health and safety of third parties.