**Date:**

**THE MAYOR AND BURGESSES OF THE LONDON BOROUGH OF LEWISHAM (1)**

 **Operator (2)**

**AGREEMENT**

Relating to the installation and operation for commercial purposes of Small Cell units operating on 3G, 4G, 5G and/or future mobile technology frequencies on street furniture in Lewisham

**CONTENTS**

**Clause No.**

[1. INTERPRETATION](#_Toc55845233)

[2. RIGHTS GRANTED](#_Toc55845234)

[3. LANDOWNER’S OBLIGATIONS](#_Toc55845235)

[4. THE OPERATOR’S OBLIGATIONS](#_Toc55845236)

[5. SHARING OF THE EQUIPMENT](#_Toc55845237)

5A. SHARING OF NODES

[6. NODE TERM](#_Toc55845238)

[7. LANDOWNER’S RELOCATION OF NODES](#_Toc55845239)

[8. OPERATOR’S BREAK CLAUSE](#_Toc55845240)

[9. DEFAULT INTEREST](#_Toc55845242)

[10. TERMINATION](#_Toc55845243)

[11. JURISDICTION](#_Toc55845244)

[12. GENERAL](#_Toc55845245)

[13. ASSIGNMENT](#_Toc55845246)

[14. INDEMNITY](#_Toc55845247)

[15. CONFIDENTIALITY](#_Toc55845252)

[SCHEDULE 1 (Commercially Sensitive Information)](#_Toc55845253)

SCHEDULE 1A (Drawings)

SCHEDULE 1B (Solution Design)

SCHEDULE 1C (Installation and End of Agreement Notes)

SCHEDULE 1D (Installation and End of Agreement Chart)

[SCHEDULE 2 (Rights Granted)](#_Toc55845254)

[SCHEDULE 3 (Reservations)](#_Toc55845255)

[SCHEDULE 4 (The Plan)](#_Toc55845256)

[SCHEDULE 5 (Node Term)](#_Toc55845257)

**THIS AGREEMEN**T is made on

**BETWEEN**

(1) **THE MAYOR AND BURGESSES OF THE LONDON BOROUGH OF LEWISHAM** of Town Hall, Catford, London, SE6 4RU (the “**Landowner**”); and

(2) **BRITISH TELECOMMUNICATIONS PLC** whose registered office is at 81 Newgate Street, London EC1A 7AJ (registered with Company No. 08100000) (the “**Operator**”)

together known as the “Parties”

**BACKGROUND**

A. The Landowner is the owner of the Nodes.

B. The Operator is an electronic communications operator to whom a direction applies under section 106(3)(a) of the Act.

C. The Operator has requested the right to install, connect to, inspect, maintain, adjust, alter, repair, remove, replace, upgrade and operate the Equipment on the Nodes.

D. The Landowner has agreed to grant these rights on the terms and conditions in this agreement and the primary purpose of this agreement is the grant of these rights.

**OPERATIVE PROVISIONS**

# 1. INTERPRETATION

## 1.1 In this agreement the following expressions have the following meanings unless inconsistent with the context:

“**the Act**” the Telecommunications Act 1984 as amended by the Communications Act 2003 and the Digital Economy Act 2017 and any other subsequent legislation;

“**Authorised Use**” 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);

“**BACS**” Bank Automated Credit System Clearing House;

“**CDM Regulations**” the Construction (Design and Management) Regulations 2015;

“**CHAPS**” Clearing House Automated Payment System;

“**the Code**” the Code set out in Schedule 3A to the Communications Act 2003 as inserted by Schedule 1 of the Digital Economy Act 2017;

“**Code Operator**” as defined by “**Operator**” in the Act;

“**Code Rights**” the rights set out in paragraph 3 of the Code and replicated in paragraph 1 of Schedule 2 to this agreement;

“**the Companies Act**” the Companies Act 2006;

“**Confidential Information**” any information that has been disclosed to a party pursuant to this agreement that ought to be considered as confidential (however it is conveyed or on whatever media it is stored) including information the disclosure of which would, or would be likely to, prejudice the commercial interests of any person, trade secrets, intellectual property rights and know-how of either party and all personal data and sensitive personal data within the meaning of the Data Protection Act 2018;

“**Consideration**” the agreed amount to be paid by the Operator to the Landowner for the agreement to confer Code Rights during each Node Term, being £300 per annum for the 1stMobile Network Operator utilising the Node; £150 per annum for the 2nd Mobile Network Operator utilising the Node; £100 per annum for the 3rd Mobile Network Operator utilising the Node; and £100 per annum for the 4th Mobile Network Operator utilising the Node;; all sums are exclusive of VAT and other taxes. These charges are subject to inflationary increase per year (RPI + 1%);

 “**Contractual Term**” from and including the date of this agreement to and excluding (i) the 12th anniversary of the date on which the Operator first completes the installation of the Equipment on a Node (with a minimum 5 year contract) or (ii) the last date of expiry of the right to use a Node under this Agreement, whichever is the later; or, if earlier, the date of termination of this Agreement;

 “**Default Interest Rate**” 4% per year above the base rate from time to time of Barclays Bank plc;

“**Drawings**” the plans, drawings, specifications and other documents included in Schedule 1 part A or otherwise mentioned in Schedule 1;

“**Equipment**” any electronic communications apparatus (as that term is defined in paragraph 5(1) of the Code) owned or operated by the Operator or another Code Operator being:

1. apparatus designed or adapted for use in connection with the provision of an electronic communications network,
2. apparatus designed or adapted for a use which consists of or includes the sending or receiving of communications or other signals that are transmitted by means of an electronic communications network,

(c) lines, and

(d) other structures or things designed or adapted for use in connection with the provision of an electronic communications network;

 in each case as required by the Operator or another Code Operator from time to time;

 “**Mobile Network Operato**r” such operators as may providing mobile services under the general conditions of entitlement published by the Office of Communications (1 October 2018) or any replacement to it;

“**Necessary Consents**” all necessary permissions, licences and approvals for the Works granted or given by the relevant public authorities and/or any private person);

“**Node”** each individual Landowner owned asset where the parties agree that Equipment is to be deployed, being street lighting columns, cctv columns, illuminated signs, or such other assets as may be agreed; the agreed Nodes as at the date of this Agreement are shown on the plan attached as set out in Schedule 4;

“**Node Term**” means the term of years applicable to the grant of rights (subject to the reservations) for each node as further set out in Clause 6;

“**Operator’s Break Date**” the 5th anniversary of the date on which the Operator first completes the installation of the Equipment on a Node;

“**Operator’s Break Notice**” written notice to terminate this agreement specifying the Operator’s Break Date;

“**Payment Date**” [Date] in [Annual] of the contractual term.

 “**Project Agreement**” the project agreement relating to the provision and maintenance of street lighting and illuminated traffic signage between the Landowner and the Provider dated 19th April 2011;

“**Provider”** Croydon and Lewisham Lighting Services Limited;

“**Reservations**” the rights reserved in Schedule 3;

“**Rights**” the non-exclusive rights granted in Schedule 2;

“**Service Media**” all media for the supply of electricity, gas, water, sewage, energy, telecommunications, data and all other services and utilities;

“**Shared Node**” a Node on which more than one Code Operator deploys its Small Cells;

 “**VAT**” value added tax pursuant to the Value Added Tax Act 1994 or any future tax of a similar nature; and

“**Works**” the works described in Schedule 1 comprising the installation, connection, operation, inspection, repair, maintenance, alterations, connections, renewals/replacements, upgrades, removal of the Equipment.

## 1.2 In this Agreement:

### 1.2.1 headings are for convenience only and shall not affect its construction;

### 1.2.2 the singular shall include the plural and vice versa and one gender shall include another;

### 1.2.3 obligations of a party shall be deemed to be joint and several obligations where that party is more than one person;

### 1.2.4 every obligation of either party not to do an act or thing includes an obligation not to allow it to be done;

### 1.2.5 references to clauses and Schedules are to clauses of and Schedules to this agreement;

### 1.2.6 references to the parties include their lawful assigns and their successors in title and those whose title is derived in any way from theirs; and

### 1.2.7 references to any legislation include references to any subsequent legislation directly amending, consolidating, extending, replacing or re-enacting that legislation.

# 2. RIGHTS GRANTED

## 2.1 Subject to receipt of the Consideration the Landowner grants the Rights to the Operator for each Node for the Node Term but subject to the Reservations.

## 2.2 The primary purpose of this agreement is to confer Code Rights.

## 2.3 No relationship of landlord and tenant is created between the Landowner and the Operator and no easement nor right of exclusive possession is created by this agreement.

# 3. LANDOWNER’S OBLIGATIONS

The Landowner agrees with the Operator throughout the Contractual Term as follows:

## 3.1 that the Operator may exercise the Rights for each Node throughout the Node Term and, in relation to the Code Rights, any statutory period of continuation under the Act;

## 3.2 to permit the Operator peaceably and quietly to exercise the Rights during each Node Term without any interruption or disturbance from or by the Landowner or any persons claiming under or in trust for the Landowner or by title paramount;

## 3.3 it will not damage or tamper with the Equipment or knowingly permit or allow any third party to do so;

## 3.4 if there is any damage to or destruction of the whole or any part of the Node so that the Node is unfit for occupation and use for a period in excess of one month, payment of the Consideration (or a fair proportion of it according to the nature and extent of the damage) shall be suspended until the Node has been reinstated and made fit for occupation and use;

## 3.5 to use reasonable endeavours to ensure that any telecommunications equipment which is installed (other than by the Operator) 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 Operator demonstrating to the Landowner’s reasonable satisfaction that the Equipment is the cause of the interference, to take all reasonable steps to remedy the interference and, if necessary, switch off the offending piece of equipment until the interference is remedied;

## 3.6 to give as much notice to the Operator as is reasonably practicable of any proposals which may materially interfere with or cause damage to the Equipment or in any way make the exercise of the Rights substantially more difficult or costly;

## 3.7 to maintain and keep each Node in good and substantial repair and condition;

## 3.8 to take all reasonable steps (which shall include assisting in any negotiations with any third party and/or entering into any agreement with the relevant service provider where necessary) to enable the Operator to secure any wayleave agreement as may be necessary to give effect to the Rights, provided that the Landowner shall not be required to incur any costs or expenses in taking all reasonable steps.

##

# 4. THE OPERATOR’S OBLIGATIONS

The Operator shall throughout the Contractual Term and any statutory period of continuation under the Act:

## 4.1 allow the Landowner to exercise the Reservations so far as they do not adversely affect the Operator’s ability to exercise the Rights;

## 4.2 obtain all Necessary Consents (if any) and provide the Landowner with a comprehensive method statement to include all necessary health and safety measures and a full schedule of the Works before installing all or any part of the Equipment or carrying out the Works, or any part of it or them;

## 4.3 to the extent that any Works are carried out (it being acknowledged that the Equipment as detailed in the Drawings may be installed in stages throughout the Contractual Term), carry out the Works on reasonable notice in a good and workmanlike manner and in compliance with the Necessary Consents (if any) relevant to the Works and in accordance with the CDM Regulations with as little inconvenience to the Landowner, and users of the roads, footpaths, sewers drains, watercourses or other services that may be affected by the Works as reasonably practicable, making good any damage caused to the Node and/or surrounding land solely and directly by the Works in accordance with the New Road and Street Works Act 1991 and to the reasonable satisfaction of the Landowner as soon as is reasonably practicable;

## 4.4 pay the Consideration by BACS or CHAPS (or such other method as agreed between the parties both acting reasonably) to the Landowner without deduction set-off or counterclaim in advance on the Payment Date in each year (pro rated for the final year of the Node Term). In the first year of the Node Term, and/or if the Consideration changes during the Node Term due to the addition or removal of Mobile Network Operators the Operator shall adjust the payment made on the Payment Date to take account of the changes in the prior year of the Node Term (or part year in the first year of the Node Term);

## 4.5 in relation to the electricity supply to the Node, pay the suppliers for all proper charges for electricity used by the Operator in connection with the Node and the Equipment pursuant to paragraph 2 in Schedule 2;

## 4.6 upon the production of a valid VAT invoice addressed to the Operator, pay any value added tax chargeable on the Consideration or on any other sum payable by the Operator under this agreement and (save to the extent that the Landowner can reclaim it) on any payment made by the Landowner which the Operator is obliged to reimburse;

## 4.7 pay any rates taxes or outgoings levied in respect of the Equipment and the exercise of the Rights during the Contractual Term (except any tax assessed (other than VAT) on the Landowner in respect of its ownership or income from or any dealing with its reversionary interest);

## 4.8 keep the Equipment in a good state of repair throughout the Contractual Term;

## 4.9 at the end of the Contractual Term (however determined) remove the Equipment and any ancillary works and make good to the reasonable satisfaction of the Landowner any damage whatsoever caused by its removal;

## 4.10 use the Node only for the Authorised Use and the exercise of the Rights;

## 4.11 remedy any breach of the Operator’s obligations under this agreement within a reasonable time after service of a written notice by the Landowner specifying such breach;

## 4.12 not cause do suffer or permit any act or thing which may be an actionable legal nuisance to the Landowner or any other person entitled to rights over the Node or entitled to exercise Code Rights (it being acknowledged that proper exercise of the Rights shall not be construed as a breach of this clause);

## 4.13 comply with all Acts of Parliament (and instruments orders regulations permissions and directions deriving validity from them) from time to time affecting the Equipment or its use or operation and the exercise of the Rights;

## 4.14 comply with any reasonable regulations imposed by the Landowner from time to time and notified to the Operator in writing provided that such regulations do not affect the Operator’s ability to exercise the Rights;

## 4.15 maintain insurance to a minimum sum of:

## 4.15.1 £10,000,000 (ten million pounds) against employer’s liability for claims arising from a single event or series of related events;

## 4.15.2 £5,000,000 (five million pounds) against third party public liability for claims arising from a single event or series of related events; and

4.15.3 £5,000,000 (five million pounds) in respect of professional indemnity for claims arising from a single event or series of related events;

## arising out of the exercise by the Operator, its employees, agents or contractors of the Rights granted by this agreement;

## 4.16 if any maintenance of or repair or improvement to the Node cannot be carried out without interrupting the Operator's use of the Equipment and subject to the Operator being given not less than six weeks’ prior 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), at the Landowner’s cost allow (and give reasonable cooperation to facilitate) temporary interruption to the use of the Equipment (including, where reasonably required, a complete shutdown or relocation of the Equipment) so as to allow the Landowner (or those authorised by the Landowner) to carry out necessary maintenance and repair to the Node, provided that:

### 4.16.1 if a shutdown of the Equipment is necessary, the Landowner shall use reasonable endeavours to ensure that such period of shutdown shall be kept as short as reasonably possible; and

### 4.16.2 if a complete shutdown of the Equipment is required, the Landowner shall reimburse the Operator the Consideration paid for the duration of the shutdown period on a pro rata basis;

## 4.17 not interfere in any way with any other equipment on the Node as at the date of execution of this Agreement or at any time and in the event of such interference occurring and the Landowner demonstrating to the Operator’s reasonable satisfaction that the Equipment is the cause of the interference then the Operator shall immediately take all reasonable steps to remedy the interference and, if necessary, switch off the Equipment or offending piece of Equipment until the interference is remedied;

## 4.18 ensure that any Equipment which it installs does not interfere in any way with telecommunications equipment already installed at that date and in the event of such interference occurring and the Landowner demonstrating to the Operator’s reasonable satisfaction that the Equipment is the cause of the interference, to take all reasonable steps to remedy the interference and, if necessary, switch off the offending piece of equipment until the interference is remedied;

## 4.19 ensure that the Equipment complies with and is operated in accordance with the recommendations from time to time in force of the International Commission on Non-Ionizing Radiation Protection or such other recognised organisation having the same or similar function that may replace it from time to time; and provide the Landowner within 28 days of reasonable written request evidence of such compliance provided that:

### 4.19.1 the Operator shall not be liable for any breach of or non-compliance with this clause that results from any matter beyond its control; and

### 4.19.2 the performance by the Operator of the provisions contained within this clause shall be deemed to include the performance by the Operator of all other provisions of this agreement that may in any way relate to electromagnetic fields

and in the event that the Equipment does not comply the Operator shall switch off the Equipment;

## 4.20 provide on-site safety signage and exclusion zone markings on or around the Equipment and such other health and safety signage and information as required by law;

## 4.21 pay the Landowner’s reasonable and proper professional costs (including but not limited to legal and surveyor’s fees) arising from any application for consent by the Operator and in respect of any enforcement or remedying of the breach of the Operator’s obligations under this agreement

## 4.22 not increase the Equipment beyond what is shown in the definition of Equipment in this agreement without the consent of the Landowner

## 4.23 ensure that the Equipment is regularly inspected at reasonable intervals by an appropriately qualified and experienced person and that any recommendations to carry out any works or remedy any defects that are necessary to put and keep the Equipment safe and in good condition are carried out as soon as reasonably practicable;

## 4.24 carry out any Works and/or exercise any Rights and/or any other rights under this Agreement in accordance with Schedule 1. Pursuant to the Project Agreement the Landowner has granted to the Provider the exclusive right to conduct works on the Nodes. The Operator shall liaise with and instruct the Provider in relation to any works on the Node which the Operator would otherwise carry out pursuant to this agreement. The Operator shall ensure that its agreement with the Provider requires the Provider to carry out its obligations under that agreement in such a way that the Landowner does not breach the Project Agreement.

# 5. SHARING THE EQUIPMENT

## 5.1 The Operator may share:

### 5.1.1 the Equipment and the exercise of the Rights with another Code Operator in accordance with Part 3 of the Code; and

### 5.1.2 occupation of the Node in accordance with this Agreement, the Equipment and the benefit of the Rights with a Code Operator.

 **5A. SHARING OF NODES**

5A.1 This Agreement is based on an open access arrangement for the sharing of Nodes by Code Operators. Where Equipment has not been previously installed on a Node, the Operator shall demonstrate to the Landowner that other Code Operators can share the same asset, specifying capacity limitations and highlighting potential interoperability issues.

5A.2 When Equipment has been previously installed on a Node, the existing Code Operator will be consulted to avoid any interoperability issues with its legacy infrastructure.

5A.3 Where more than one Code Operator requests access to the same Node the Landowner will assess both requirements in parallel, giving the priority for the deployment on the Node to the Code Operator that successfully demonstrates that:

5A.3.1 Its deployment approach has been approved by the Landowner’s planning team, highways team and the Provider;

5A.3.2 Its deployment approach will benefit the second Code Operator (for example. by deploying shareable infrastructure, by having reduced times of deployment, by taking less space or capacity from the Node);

5A.3.3 allows the Landowner to implement smarter services or can benefit a wider part of the community,

# 6. NODE TERM

## 6.1 The Node Term for each Node shall be agreed between the Parties in the form of Schedule 5 and set out in an annex to this agreement. Each Node Term shall run from the date of completion of the installation Equipment upon the Node (as evidenced by Operators as built/handover documentation).

## 6.2 This Agreement shall continue to apply with full force and effect in respect of any Node Term that continues beyond the date set out in limb (i) of the definition of the Contractual Term.

# 7. LANDOWNER’S RELOCATION OF NODES

## 7.1 If the Landowner requires a Node to be relocated or removed, the Landowner shall give as much notice to the Operator as reasonably practicable, being at least 3 months’ notice, and the Parties shall use all reasonable endeavours to agree an alternative Node on which the Operator may install the Equipment. The Operator shall at the Landowner’s cost allow (and give reasonable co-operation to facilitate) relocation of the Equipment, provided that:

### 7.1.1 the Landowner shall use reasonable endeavours to ensure that the period of shutdown of the Equipment shall be kept as short as reasonably possible; and

### 7.1.2 the Landowner shall reimburse the Operator the Consideration paid for the duration of the shutdown period on a pro rata basis.

# 8. OPERATOR’S BREAK CLAUSE

## 8.1 The Operator shall have the right to serve notice on the Landowner to terminate this agreement with immediate effect in the event that it loses its statutory authority to operate a communications network or run an infrastructure system, operator's licence, UK spectrum licence or authorisation granted pursuant to the Act.

## 8.2 Without prejudice to clause 8.1, in the event of any interference as described in clause 3.5 continuing for at least 30 days after notification by the Operator to the Council, the Operator may terminate this agreement in respect of that Node upon not less than three months’ written notice (without prejudice to the liability of either party for a subsisting breach of the terms of this agreement).

## 8.3 Without prejudice to clause 8.1, the Operator may terminate this agreement by serving an Operator’s Break Notice on the Landowner at least six months before the Operator’s Break Date.

## 8.4 Any termination under this clause 8 shall be without prejudice to the liability of either party for a subsisting breach of the terms of this agreement.

## 8.5 In respect of a termination pursuant to this clause 8, the Landowner shall reimburse to the Operator within 28 days of this agreement coming to an end an amount equal to the portion of the Consideration (plus VAT) paid by or on behalf of the Operator which is attributable to any period after the date of termination of this agreement.

#  9. DEFAULT INTEREST

If any sum due to the Landowner under this agreement is not paid within 14 days of the date such sum becomes due, the Operator shall pay interest on such sum at the Default Interest Rate from the date such sum became due until payment of it.

# 10. TERMINATION

## 10.1 The Operator expressly acknowledges and accepts that the Landowner is entitled to require the removal of the Equipment from the Node upon the determination of this agreement (however arising) in accordance with Part 6 of the Code.

## 10.2 If the Operator wishes to continue to retain any of the Equipment on a Node after the Node Term it shall give notice to the Landowner at least 6 (six) months before the end of the Node Term and the Landowner may at its option agree to extend this Agreement on agreement that the Operator will continue to pay the Consideration.

## 10.3 Without limiting the Parties’ other rights and obligations on termination, each Party shall comply with the end of Agreement requirements set out in Schedule 1.

# 11. JURISDICTION

The Parties irrevocably agree that the courts and tribunals of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with this Agreement or its subject matter or formation (including non-contractual disputes or claims).

# 12. GENERAL

## 12.1 For the purposes of the Contracts (Rights of Third Parties) Act 1999, none of the terms of this Agreement shall be enforceable by any person other than the Parties respectively and any persons sharing pursuant to clause 5.1 of this agreement;

## 12.2 The Equipment shall at all times remain the property of the Operator;

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

## 12.4 Any other notice served under or in respect of this Agreement may be served by:

### 12.4.1 sending it by prepaid registered or recorded delivery (in which case it shall be deemed to have been served on the first working day after it was posted); or

### 12.4.2 delivering it by hand and obtaining a signed receipt as proof of delivery (in which case it shall be deemed to have been served on the day of delivery if delivered before 4.00 pm or otherwise on the next working day following delivery);

to the other party’s registered office and, in the case of the Operator, addressed to the Company Secretary and a copy shall be sent to the Special Projects Manager at the Operator's registered office address.

## 12.5 If any provision of this agreement is held by any court or other competent authority to be invalid or unenforceable in whole or in part the validity of the other provisions of this agreement and the remainder of the provision in question shall not be affected.

## 12.6 No waiver by either party shall (a) be effective unless made in writing or (b) constitute a waiver of rights in relation to any subsequent breach of this agreement.

## 12.7 In this agreement, references to “interference” shall include but not be limited to electrical electromagnetic or mechanical interference.

## 12.8 Any provisions for termination or prior determination of this agreement shall be without prejudice to the rights of either party in respect of any prior breach of this agreement.

12.9 This Agreement may be executed in any number of counterparts, each of which when executed and delivered shall constitute an original of this Agreement, but all the counterparts shall together constitute the same Agreement. No counterpart shall be effective until each Party has executed at least one counterpart.

# 13. ASSIGNMENT

## 13.1 The Operator shall not assign this agreement except to a party that is a Code Operator and, if required by the Landowner, shall first enter into a guarantee agreement with the Landowner which:

### 13.1.1 is in respect of all the Operator's obligations in this agreement;

### 13.1.2 is in respect of the period beginning with the date the assignee becomes bound by those obligations and ending on the date when the assignee is released from those obligations; and

### 13.1.3 is otherwise in a form reasonably required by the Landowner

###  14. Indemnity

14.1. The Operator shall indemnify the Landowner and keep it indemnified against all liabilities, costs (including but not limited to any solicitors' or other professionals' costs and expenses), claims, expenses, damages, losses (including but not limited to any diminution in the value of the Landowner's interest in each Node or loss of use of each Node), charges and or fees payable, arising out of or in connection with the operation of the Equipment or from any breach of any of the Operator's obligations under this agreement.

14.2 Subject to clause 14.3, the Landowner is not liable for:

14.1.1. the death of, or injury to the Operator’s employees, contractors or agents;

14.1.2. damage to any property of the Operator or that of the Operator's employees, contractors or agents, save in respect of any loss or damage to the Equipment for which the Landowner is expressly liable under this agreement; or

14.1.3. any liabilities, costs, expenses, damages and losses incurred by the Operator or the Operator's employees, contractors or agents in the exercise or purported exercise of the Code Rights.

14.3 Nothing in clause 14.2 shall limit or exclude the Landowner’s liability for:

14.3.1 death or personal injury caused by negligence on the part of the Landowner or its employees or agents; or

14.3.2 any limitation of liability which would be unlawful.

##

## 14.4 The Landowner shall:

### 14.4.1 shall take all steps reasonably necessary to mitigate any action, claims, damages, costs, expenses and losses subject to the indemnity in clause 14.1;

### 14.4.2 shall promptly notify the Operator of any claim, damage, costs, expense or loss being threatened brought made or lodged against the Landowner in respect of such matters; and

### 14.4.3 not compound, settle or admit the same without the prior written consent of the Operator (such consent not to be unreasonably withheld or delayed) except by an order of a court of competent jurisdiction, and shall permit the Operator to defend the same in the name of the Landowner at the Operator's expense.

# 15. CONFIDENTIALITY

## 15.1 Each party undertakes that it shall not at any time disclose to any person any Confidential Information of the other party or of any member of the group of companies to which the other party belongs, except as permitted by the provisions of clause 15.2.

### 15.2 Each party may disclose the other party's Confidential Information:

### 15.2.1 to its employees, officers, representatives or advisers who need to know such information for the purposes of exercising the party's rights or carrying out its obligations under or in connection with this agreement. Each party shall ensure that its employees, officers, representatives or advisers to whom it discloses the other party's Confidential Information comply with this clause 15; and

### 15.2.2 as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.

## 15.3 Neither party shall use the other party's Confidential Information for any purpose other than to exercise its rights and perform its obligations under or in connection with this agreement.

## 15.4 The Operator acknowledges that, as a public authority, the Landowner may receive requests for information relating to this Agreement which, but for any right to claim commercial confidentiality or any other applicable exemption, the Landowner will be obliged to disclose under the Freedom of Information Act 2000 and/or the Environmental Information Regulations 2004 (the "2000 Act"). The Landowner shall consult with the Operator over any such request and the Operator shall respond promptly with its opinion as to whether the material should not be disclosed on the grounds of confidentiality or otherwise (provided that any decision to disclose shall be at the sole discretion of the Landowner) and provide such other reasonable assistance as may be required to enable the Landowner to comply with its obligations in the 2000 Act.

## 15.5 The obligations created by this clause 15 are continuing, separate and independent from other obligations under this agreement and survive the expiry or termination of this agreement.

The common seal of The Mayor and Burgesses of the London Borough of Lewisham was hereunto authorised in the presence of:

…………………………………………………

By Order

The common seal of

[Supplier]

……………………………………………. acting by one director

In the presence of:

Witness signature: …………………………

Name: ………………………………………..

Address: ……………………………………..

…………………………………………………

Occupation: ………………………………….

**SCHEDULE 1
Rights Granted**

Rights Granted

1. The following rights consistent with those set out in the Code:

1.1 to install the Equipment on the Nodes;

1.2 to keep the Equipment installed on the Nodes;

1.3 to inspect, maintain, adjust, alter, repair, upgrade or operate the Equipment;

1.4 to carry out works on the Nodes for the installation of the Equipment on the Nodes;

1.5 to carry out works on the Nodes for or in connection with the maintenance, adjustment, alteration, repair, upgrading or operation of the Equipment on the Nodes;

1.6 to connect to a power supply;

1.7 to lop or cut back vegetation that may or will interfere with the Equipment and

1.8 to an exclusion zone of 75 cm around the Equipment within which the Landowner will not permit another operator to install communications equipment.

2. At reasonable times, the right of access to the Node and the Equipment for all purposes in connection with the installation of the Equipment, and the exercise of the Rights, subject to the Operator (a) making good to the reasonable satisfaction of the Landowner as soon as reasonably practicable all damage thereby caused and (b) the persons exercising such right complying with reasonable security procedures required by the Landowner and previously notified in writing to the Operator.

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 Node to the Equipment (the route of such supply to be as reasonably specified by the Landowner) provided that in the case of any initial installation of a separately metered electricity supply then the Operator shall obtain the Landowner’s written consent, such consent not to 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 fibre and communications connections on, over, under or through the Node and connect them to the Equipment (the route of such supply to be as reasonably specified by the Operator and approved in writing by the Landowner acting reasonably and expeditiously).

6. The right, during (i) the initial installation (ii) maintenance periods; and (iii) removal of the Equipment, to store materials and equipment related to such installation, maintenance or removal such location as is agreed with the Landowner acting reasonably.

**SCHEDULE 2
Reservations**

The Landowner shall be entitled on not less than 48 hours’ previous written notice (save in the case of emergency where no notice shall be required) to access the Equipment accompanied by a duly authorised representative of the Operator for the purpose of inspection or for any other purpose connected with this agreement, the Landowner complying with the Operator’s reasonable health and safety procedures, causing as little interference as is reasonably practicable to the Equipment and making good any damage caused to the Operator’s reasonable satisfaction.

**SCHEDULE 3
Node Term**

Site Licence number [insert individual site number for each site here]

Between Operator and The Mayor And Burgesses Of The London Borough Of Lewisham

|  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- |
| **SHOULD YOU WISH TO CONTACT [Operator]**

|  |  |  |  |
| --- | --- | --- | --- |
|  |  | **Telephone** | **Email** |
| **Delivery and Operations** | [Network Operations] | [ ] | [ ] |
| **Accounting queries** | [Accounts Team] | [ ] | [ ] |
| **Your account manager** | [Sales and Service] | [ ] | [ ] |

 |
|  |
| **NODE DETAILS (WHERE SMALL CELL IS BEING DEPLOYED)**

|  |  |
| --- | --- |
| **Asset Address & Postcode:** |  |
| **Asset ID** |  |
| **Electricity Supply** | Provided through Supplier |
| **Licence Fee for this Site** | [£ ],  |
| **Payment terms** | Annual charge to be pre-paid annually in advance – billing period set to 1st of April (estimated pro rata) |
| **Terms and Conditions** | The licence terms and conditions contained in the principal Agreement apply |
| **Term of the licence**  | [12] years |
| **Starting date** |  | **Closing date** |  |

 |
|  |

|  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- |
| **Site Licence authorisation**

|  |
| --- |
| We are authorised to enter into this Site Licence in accordance with the principal Agreement: |
| **For and on behalf of:** | [ ]  |
| **Signed By:** |  |  |  | **Printed Name:** |  |
|  |  |  |  |  |  |
| **Date:** |  |  |  | **Title/Position:** |  |

 |

|  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- |
|

|  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- |
| **For and on behalf of:** |  |  |  |  |  |
| **Signed By:** |  |  |  | **Printed Name:** |  |
|  |  |  |  |  |  |
| **Date:** |  |  |  | **Title/Position:** |  |

 |