

DATED

DAY OF

202x

DUBLIN CITY COUNCIL

AND

XXXXXXXXXXXXXX

COMMERCIAL AGREEMENT

DRAFT

"The Council's Property" means the property situate xxxxxxxxxxxxxxxxxxxx which is shown for identification purposes outlined in red only on the Plan xxxxxxxxxxxxxxxxxxxx at Schedule A hereof;

"The Equipment" means the equipment installed, constructed, or located on the Communications Area being (insert description) in compliance with planning permission (insert planning reference) and as shown on drawing xxxxxxxxxxxxxxxxxxxx. The installation of additional equipment shall be subject to the Council's prior written consent and Planning Permission where applicable;

"Option to Renew" means an agreement between the parties to renew this agreement as provided for in Clause 2.7 of this Agreement;

"Operator(s)" means any public or private operator of a mobile, wireless or other communications network which is licensed by the Commission for Communication Regulation or such equivalent authority that may from time to time have the power to grant such licences;

"Plan" means the plan(s) or drawings attached to this Agreement identifying the Council's Property and the Communications Area and the access thereto;

"Permitted Use" means the provision, erection, construction, installation, replacement, relocation, additions and upgrades, repair, maintenance, management and operation of the Equipment on the Communications Area , and the right of access to and egress from the Communications Area through the Council's Property and the right to place, lay and maintain over, under, along or upon the Council's Property such cables (to include fibre optic cables), wires, ducting, conducting media, and supports as are necessary for the purposes of the receipt, transmission and relay of wireless, voice and data communications signals in accordance with the licences and/or approvals granted to the Provider and/or Operators from time to time by the Commissioner for Communications Regulation (ComReg) or such other body as may be appointed from time to time to adopt the functions of ComReg;

"VAT" means Value Added Tax or any analogous tax in any relevant jurisdiction including but not limited to use, sales and local sales taxes of any kind.

1.2 Save to the extent that the context or the express provisions of this Agreement requires otherwise, in this Agreement:

- (a) words importing any gender shall include all other genders;
- (b) words importing the singular number only shall include the plural number and vice versa;
- (c) words importing persons include corporations and vice versa;

- (d) references to this Agreement or to any other document specified herein shall be construed as reference to this Agreement or to that other document as modified, amended, varied, supplemented, assigned, novated or replaced from time to time;
- (e) reference to the Parties shall be construed as reference to the Parties to this Agreement at that time;
- (f) references to the Council shall be construed as including and so as to bind any successors in title to the Council's Property and references to the Provider shall be construed as including and so as to bind the Provider's permitted assigns and/or lawful successors to the benefit and burden of the within Agreement;
- (g) any reference to a clause is to the relevant Clause of this Agreement;
- (h) any reference to "include" or "including" (or any similar term) is not to be construed as implying any limitation and general words introduced by the word "other" (or any similar term) will not be given a restrictive meaning by reason of the fact that they are preceded by words indicating a particular class of acts, matters or things;
- (i) unless expressly stated to the contrary in this Agreement, reference to any statute or statutory provision (including any subordinate legislation) includes any statute or statutory provision which amends, extends, consolidates or replaces the same, or which has been amended, extended, consolidated or replaced by the same, and shall include any orders, legislation, instruments or other subordinate legislation made under the relevant statute or statutory provision.

2. RIGHTS GRANTED TO THE PROVIDER

In consideration of the payment to the Council of the Fee, the Council **HEREBY GRANTS** to the Provider, its servants, agents, invitees, sharers and contractors the following rights during the Agreement Period:

2.1 Permitted Use

The right to use the Communications Area for the Agreement Period for the Permitted Use.

2.2 Access to the Communications Area

The right to access on twenty four (24) Hours prior written notice during the Agreement Period (out of office hours access shall only be permitted in the event of emergency), with such plant and machinery as is from time to time reasonably necessary, to pass and repass over such areas of the Council's Property as shown on the Plan xxxxxxxxxxxxxx attached hereto and outlined in yellow as are necessary to gain access to and egress from the Communications Area and the Equipment for the purpose of the Permitted Use. If Council personnel are required in order to provide this access, then a call out charge of €150 (one hundred and fifty euro) plus VAT shall be payable on each occasion. The Provider shall supply to the Council an emergency contact name and number that is available at all times, including outside normal working hours.

2.3 Alteration(s) to Communication Area(s)

- (a) Where the exercise of the rights under this Agreement and more particularly, this Clause 2.3, requires a change (increase or decrease) or alteration to the Communications Area, the Provider shall have the right to change or alter the Communications Area during the Agreement Period subject to the written consent of the Council, such consent not to be unreasonably withheld, delayed or conditioned and further subject to Planning Permission where required. The Provider agrees to notify the Council of any material changes or alterations to the Communications Area.
- (b) the Provider may enter into arrangements with Operators for the placing of telecommunications equipment on the Communications Area subject to notifying the Council in writing within 28 days of any such arrangements and subject to payment of the Fee. Such application shall be subject to the Council's prior written consent (such consent shall not be unreasonably withheld or delayed) and further subject to planning permission where required.

2.4 Assignment

The Provider hereby covenants not to assign, transfer, novate or otherwise deal with the rights granted to the Provider herein provided however it is expressly acknowledged that the Provider shall, subject to notifying the Council, at least three months in advance have the right to assign, transfer or novate this Agreement and all rights granted to it pursuant to same to any group company (within the meaning of the Companies Act, 2014), or any person or entity that acquires the Provider's business and assumes all obligations of the Provider under this Agreement subject to such group company or entity being licensed by the Commission for Communication Regulation or such equivalent authority that may from time to time have the power to grant such licences. For the avoidance of doubt any such alienation shall have no impact on the Council's rights or benefits under this Agreement.

2.5 Cabling and Wiring

The right to, place, lay and maintain over, under, along or upon the Council's Property in such locations and along such routes as may be agreed between the Council and the Provider (both Parties acting reasonably) such cables (to include fibre optic cables), wires, ducting, conducting media, and supports as are necessary for the proper functioning and operation of the Equipment together with the right to enter upon the Council's Property with workmen and all necessary machinery for the purpose of exercising this right, the Provider making good any damage thereby occasioned to the Council's Property to the reasonable satisfaction of the Council.

2.6 Electricity Usage

The right, at the Provider's own cost, to enter into an agreement with the ESB or other equivalent provider of electricity for the purpose of obtaining an electricity supply for the operation of the Equipment.

2.7 Option to Renew

The Provider shall have the option to renew, subject to a written application by the Provider to the Council for consent thereto at least twelve months prior to the end of the agreement term. Such Renewal Term shall be for such further period and terms

to be agreed.

3. FEE

Payment of Fee

The Set Up Charge and Documentation Review fee shall be payable on the signing hereof.

The Annual Fee and upgrade fee where applicable (together with any VAT thereon subject to receipt of a valid VAT invoice) shall be payable annually in advance on the 1st day of January, of each year of the Agreement Period ("Payment Date"). On the signing hereof, a proportion of the Fee shall be paid from the date hereof to 31st December 20xx.

Such subsequent Documentation Review, upgrade or other fees as arise shall be paid in accordance with the rate card.

4. INDEMNITY AND INSURANCE

- 4.1** The Provider shall indemnify and keep the Council indemnified from and against all vouched and substantiated direct loss, actions, proceedings, claims, damages costs, expenses and demands (save to the extent that same arise due to the act, neglect or default of the Council its servants or agents) incurred by the Council and arising directly from any negligent acts or omissions of the Provider or its contractors, subcontractors, servants or agents in the exercise by the Provider of any of the Provider's rights granted in Clause 2 of this Agreement or arising directly as a result of breach of the terms of this Agreement. Provided always that the Council shall take all reasonable steps to discharge its duty to mitigate any such actions, proceedings, claims, costs, damages, expenses and demands; shall promptly notify the Provider in writing of any such action, proceedings, claims, costs, damages and demands. Provided however that failure to notify the Provider shall not invalidate the indemnity contained herein.
- 4.2** The total liability of the Provider (including any Operator or other party exercising rights granted under or pursuant to this Agreement) under or in connection with this Agreement and whether in contract, tort (including negligence) or otherwise in relation to any one occurrence or all occurrences of a series arising out of one original cause shall not exceed Six Million, Five Hundred Thousand Euro (€6,500,000). Such limitation shall not apply to any claim involving death or personal injury to any person.
- 4.3** Neither party shall be liable to the other party for economic or consequential loss, including but not limited to loss of revenue or profit and/or loss of goodwill whether in contract, tort (including negligence) under or in connection with this Agreement.
- 4.4** Prior to entering onto the Communications Area, the Provider will procure and maintain public and products liability insurance in the sum of €6,500,000.00 and employer's liability insurance in the sum of €13,000,000.00 covering the legal liability of the Provider in respect of death, bodily injury or disease and/or accidental loss of or damage to property arising out of the Permitted Use and shall produce on the request of the Council) certification of such insurance.

5 THE PROVIDER'S UNDERTAKINGS

The Provider hereby undertakes and agrees with the Council as follows:

- (a) To use the Communications Area for the permitted Use;
- (b) To pay the Fee on the Payment Date;
- (c) To comply with the provisions of all Acts of the Oireachtas and Statutory Instruments or Regulations made under such Acts or Statutory Instruments including but not limited to the Safety, Health and Welfare at Work Act, 1989 to 2005; the Safety, Health and Welfare at Work (Construction) Regulations, 2001 to 2006, the Local Government (Planning and Development) Acts, 1963 to 2000, the Planning and Development Act 2000 to 2022 and the Building Control Acts 1990 and 2014 and all Regulations made under such Acts in so far as same are relevant to the Equipment;
- (d) To install the Equipment in a good and workmanlike manner and to keep same adequately safe and secure;
- (e) To keep the Equipment in good repair, order and condition and to keep the Communications Area clean and tidy and free from any refuse;
- (f) To ensure that, in exercising its rights and obligations, as little damage, disruption and inconvenience as is possible is caused to the Council's Property and to the Council and/or any tenants and occupiers of the Council's Property;
- (g) To comply with the standards provided by the International Commission of Non-Ionising Radiation Protection (ICNIRP) in so far as same are relevant to the operation of the Equipment;
- (h) To pay (or to procure payment of) any rates or other local authority charges that may be levied against the Equipment as directly assessed by the relevant local authority as required under the global rates valuation legislation;
- (i) To pay all stamp duty and VAT incidental to the preparation and granting of this Agreement;
- (j) To ensure that its employees, agents, contractors and subcontractors comply with all relevant terms and conditions of this Agreement;
- (k) To pay and discharge all charges in respect of electricity and other required utilities used or consumed by the Provider on the Communications Area in connection with the Permitted Use;
- (l) To remove the Equipment from the Communications Area on the termination of this Agreement and to yield up the Communications Area to the Council in good order, repair and condition (normal wear and tear excepted) PROVIDED HOWEVER that the Provider is under no obligation to put the Communications Area in any better state of order repair or condition than exists at the date of construction. Any required reinstatement works shall be carried out to the written satisfaction of the Council (acting reasonably) and at the Provider's own cost. In the event of the Provider failing to remove all of the said Equipment within 60 days of the determination of this Agreement the Council shall be entitled to remove the Equipment from the Communications Area and any costs incurred by the Council in removing the Equipment shall be borne by the

Provider;

(m) **Structural surveys**

That the Provider shall prior to installation of the equipment, undertake and provide to the Council for their consideration and approval, surveys and structural capacity testing of the Communications Area to establish the suitability of the Communications Area for the Equipment.

- (n) The Provider shall undertake and provide to the Council an annual survey and structural report recording the condition of the Communications Area and the Equipment. Such report shall be provided on the anniversary of the commencement date throughout the term, but not more than once in any calendar year and it is acknowledged that the Provider shall not be responsible for any Documentation Review fee in connection with such survey or report.

6 THE COUNCIL'S UNDERTAKINGS

The Council hereby warrants, undertakes and agrees with the Provider that:

- (a) the Council is the legal and beneficial owner of the Property and has good, sufficient and marketable title together with irrevocable authority to enter into this Agreement without any third party consent. The Council shall indemnify and keep the Provider indemnified from and against all actions, proceedings, costs, damages, expenses, claims and demands directly arising out of any breach of this warranty;
- (b) the Provider shall have the right to access the Communications Area Monday to Friday (Bank & National Holidays excepted) from 9am to 5pm on 24 hours' notice during the Agreement Period. Out of hours access shall only be permitted in the event of emergency and if Council personnel are required in order to provide this access, then a call out charge of €150 (one hundred and fifty euro) plus VAT shall be payable on each such occasion. The Provider shall supply to Dublin City Council an emergency contact name and number that is available at all times, including outside normal working hours;
- (c) the Provider shall peacefully enjoy the Communication Area including access thereto during the Agreement Period on the terms and conditions of this Agreement;
- (d) the Council shall co-operate with all reasonable requests by the Provider (including any person exercising rights granted pursuant to Clause 2) insofar as any such requests do not adversely impact on the Provider or the the Council's property for the delivery, provision and operation of the Equipment on the Council's Property and in connection with the permitted Use;
- (e) the Council shall (if requested by the Provider and subject to the Provider discharging the reasonable costs incurred by the Council) enter into an agreement with the ESB to grant the ESB the right to provide the Communications Area and the Equipment with a separate electricity supply;
- (f) the Council shall in the event that the electricity supply to the Equipment fails as a result of the actions of the Council and/or its servants agents and employees, take all reasonable steps to re-instate the electricity supply as soon as is reasonably possible;

- (g) the Council shall not during the Agreement Period, interfere with or cause to interfere with the Permitted Use, the Equipment or the Communications Area;
- (h) the Council shall not use the Council's Property in any way which materially interferes with the Equipment and/or the Permitted Use;
- (i) the Council shall not install or permit any third party to install any equipment on the Council's Property which causes interference to the Equipment and shall take all agreed actions to remedy any interference to the Equipment from other users of the Council's Property immediately after being notified by the Provider provided always that the Council shall not be obliged to remove any equipment on the Communications Area as exists at the date hereof; For avoidance of doubt this does not preclude the installation of equipment that does not cause such interference;
- (j) the Council shall as soon as practicable notify the Provider of any interference or suspected interference with the Equipment or the Communications Area;
- (k) the Council shall not, nor allow or cause to allow any third party to prevent, restrict, obstruct or impair the Permitted Use and the Provider's (including any person exercising rights granted pursuant to Clause 2) access to and egress from the Communications Area and/or the operation of the Equipment. The Provider shall not be obliged to pay the Fee for such period that it cannot access the Equipment under such circumstances as set out in this clause;
- (l) the Council shall co-operate with the Provider (including any person exercising rights granted pursuant to Clause 2) in all respects insofar as possible to give effect to the rights granted under this Agreement. The rights granted under this clause may be subject to the capacity to route any such cables, wires, conducting media, fibre optic cables (including third party fibre optic cables), and supports through existing or new cable ducts on the Council's property and further subject to any permission that may be required from the management company (if any) (acting reasonably) (such permissions not to be unreasonably withheld conditioned or delayed);
- (m) the Council agrees to keep the terms of this Agreement confidential and not to release or disclose the terms to any third party, without the prior written consent of the Provider such consent not to be unreasonably withheld, save where the disclosure is required under Clause 9.1.
 - (i) Nothing in this clause shall prohibit or restrict either Party disclosing the terms of this Agreement to the extent to which the same is required to be disclosed by law, regulation or pursuant to an order of a competent authority, or to a professional adviser, provided the recipient provides, in the case of disclosure by law, regulation or order, the disclosing party with reasonable written notice prior to any such disclosure and in the case of disclosure to a professional advisor that the professional advisor undertakes to treat such information as confidential (in terms materially the same as this clause);
 - (ii) On termination of this Agreement for whatever reason the recipient party shall return to the disclosing party (or, at the discretion of the disclosing party, destroy) all copies of any confidential information of the other party which it has in its possession.

The provisions of this clause shall survive the termination or expiry of this Agreement for a period of five (5) years

7 CONSENT TO PLANNING

The Council shall not unreasonably withhold its consent to any planning application made by the Provider for the Equipment and/or the Permitted Use on the Communications Area during the Period and shall, if required by the Provider, provide a separate letter to the local planning authority (and if necessary, An Bord Pleanála) confirming this consent, such letter to be provided at no cost to the Provider and without undue delay.

8 ALIENATION BY THE COUNCIL

Subject to the Fee being paid in the manner prescribed herein in the event the Council transfers or otherwise disposes of its interest in the Council's Property by sale or otherwise the Council hereby undertakes to notify any potential purchaser(s) of the Council's Property of the existence of this Agreement and that the Fee has been paid in advance.

9 TERMINATION

9.1 The Provider in its absolute discretion is entitled to terminate this Agreement at any time during the Agreement Period by serving six (6) months prior written notice on the Council.

9.2 The Provider is entitled to immediately terminate this Agreement in the event that:

- a) the Provider's licence from the Commission for Communications Regulation is revoked and/or ceases to have effect for any reason; or
- b) the local planning authority (or An Bord Pleanála) refuses to grant a planning permission(s) for the Equipment and/or if appropriate the Permitted Use or if any grant of planning permission(s) contains conditions which are in the opinion of the Provider (at its absolute discretion) unacceptable or onerous; or
- c) the Provider is unable to obtain, maintain or otherwise forfeits or cancels any licence, permit, or other statutory approval necessary for the installation and/or operation of the Equipment on the Communications Area or the conduct of the Provider's business; or
- d) the Provider discovers or has reason to believe that there is any hazardous or contaminated waste in or about the Licensed Area or the Property; or
- e) due to the dilapidation of the Property it becomes hazardous for the Provider or any person exercising rights granted pursuant to this Agreement; or
- f) no Operators locate Equipment on the Communications Area within six months of the Commencement Date.

9.3 In the event that the Fee remains unpaid for a period of twenty eight (28) days from the Payment Date and provided that the Council has served a written demand on the Provider requesting such payment, then, and in that event, the Council shall be entitled to terminate this Agreement by serving twenty eight (28) days written notice

on the Provider.

- 9.4** In the event that the Provider is in material breach of the covenants and conditions on its part contained in this Agreement and fails to remedy the breach within a reasonable period of time, after being notified in writing by the Council (which notice must detail the material breach), then, and in that event, the Council shall be entitled to terminate this Agreement by serving twenty eight (28) days written notice on the Provider, but without prejudice to any remedy the Council has in respect of any antecedent breach of any of the covenants of this Agreement.
- 9.5** Upon ninety days written notice by the Provider if the Equipment or Communications Area are/ or become(s) unacceptable for the conduct of the Provider's business thereon.
- 9.6** If the Provider becomes insolvent, becomes bankrupt, enters into examinership, is wound up, commences winding up, has a receiving order made against it, makes any arrangement with its creditors generally or takes or suffers any similar action as a result of debt, or an event having an equivalent effect the Council shall be entitled to immediately terminate this Agreement.
- 9.7** In the event that this Agreement is terminated pursuant to this Clause 9, the Council shall reimburse the Provider on a pro rata basis the amount of the Fee for the period following the date of termination until the next Payment Date subject compliance with clause 5(l).

10 DATA PROTECTION

The Council agrees to comply and have adequate measures in place to ensure that its staff and contractors comply at all times with the provisions and obligations contained in the Data Protection Acts, 1988 to 2018. Any information and data provided by the Provider to the Council and used by the Provider directly or indirectly in the performance of this agreement shall remain the property of the Provider and shall only be used for the purposes of this agreement and shall not be further processed or disclosed without the consent of the Provider. The Council shall take all reasonable precautions to preserve the integrity and prevent any corruption or loss, damage or destruction of the Providers data and information. In the event of termination of this agreement the Council shall when requested to do so by the Provider erase all information and data provided by the Provider and all copies of any part of the information and data provided by the Provider from the Councils record systems.

11 GENERAL

- 11.1** Save as expressly stated herein, this Agreement constitutes the entire understanding between the Parties relating to the subject of this Agreement and supersedes all previous agreements, understandings and commitments between the Parties, representations made by either party, whether oral or written with respect to the subject of this Agreement.
- 11.2** All notices, requests, demands and other communication under this Agreement shall be in writing and shall be deemed given if personally delivered (which shall include delivery by courier) or posted by registered post to the following addresses or such other address as the Council shall notify the Provider of or the Provider may notify the

Council of, in writing:

If to the Council to:
Strategic Asset Manager, Telecoms Unit,
Planning & Property Development Department
Dublin City Council
4 Exchange Place Docklands
Dublin 1
D01 PY82
seamus.storan@dublincity.ie

If to the Provider to:

(Insert providers details)

All notices given in accordance with this Clause shall be deemed to be received within two working days after the date of dispatch.

- 11.3** If at any time any one or more of the provisions of this Agreement or any part of this Agreement is or becomes invalid, illegal or unenforceable in any respect under any law, the validity, legality and enforceability of the remaining provisions of this Agreement shall not in any way be affected or impaired thereby.
- 11.4** If the Agreement hereby created should at the expiry of the Agreement period continue beyond the Period (to include the Renewal Term set out at Clause 2.7) specified in this Agreement, it shall, in the absence of a new agreement, renew on a month by month basis, terminable by either Party to the other upon one month's written notice subject to the covenants and conditions on the part of the Council and the Provider as contained in this Agreement.
- 11.5** This construction, validity and performance of this Agreement shall be governed in all respects by the laws of Ireland and the regulations, where applicable, and the Parties hereto submit to the exclusive jurisdiction of the Irish courts.

12 Disputes:

In the event of any dispute arising out of or relating to this Agreement (the "Dispute"), the Parties shall first seek settlement of the Dispute as set out below.

- A. The Dispute shall be referred as soon as practicable to the (Insert provider contact) within the Provider and to xxxxxxxxxxxxxxxx within the Council respectively.
- B. If the Dispute has not been resolved within fifteen (15) Business Days (or such longer period as may be agreed in writing by the Parties) of being referred to the nominated representatives, then either Party may refer the Dispute for arbitration by a sole arbitrator. The arbitration shall be held in Dublin and shall be governed by the provisions of the Arbitration Acts 2010. The arbitrator shall be appointed by agreement between the Parties or, in default thereof, upon application to the Society of Chartered Surveyors Ireland. If the arbitrator shall relinquish his appointment or die, a substitute arbitrator shall be appointed in his place in the manner hereinbefore provided.

- 12.1** Each party shall be responsible for its own costs, including legal costs, in relation to the preparation of this Agreement.
- 12.2** It is hereby further agreed and accepted that the within Agreement incorporates the full and final agreement between the Parties hereto and that same has not been entered into in reliance wholly or partly on any statement or representation made by or on behalf of the Provider.
- 12.3** Neither party shall be liable in damages or have the right to terminate this Agreement for any delay or default in performing hereunder if such delay or default is caused by conditions beyond its control including, but not limited to Acts of God, Government restrictions (including the denial or cancellation of any export or other necessary license), wars, insurrections and/or any other cause beyond the reasonable control of the party whose performance is affected.

IN WITNESS whereof this Agreement the Parties to this Agreement have executed this Agreement in the manner following and on the day and year first above **WRITTEN**.

PRESENT when the Corporate
Seal of **Dublin City Council**
was affixed hereto:

City Council Official,
Wood Quay,
Dublin 8.

Chief Executive of Dublin City Council Civic Offices,

PRESENT when the Corporate
Seal of **the Provider**
was affixed hereto:

**SCHEDULE A
PLANS**

XXXXXXXXXXXXXXXXXXXX

XXXXXXXXXXXXXXXXXXXX

SCHEDULE B THE FEES

(Insert the Extract from the rate card)

DATED DAY OF 2023

DUBLIN CITY COUNCIL

AND

XXXXXXXXXXXXXXXXXXXXXXX

COMMERCIAL AGREEMENT