

Dated 28th September 2020

VEHICLE ACTIVATED SIGNAGE

INSTALLATION AGREEMENT

between

NORTH YORKSHIRE COUNTY COUNCIL

and

KIRKBYMOORSIDE TOWN COUNCIL

THIS AGREEMENT is dated the 28th day of September 2020

BETWEEN

- (1) **NORTH YORKSHIRE COUNTY COUNCIL** of County Hall, Racecourse Lane, Northallerton, North Yorkshire, DL7 8AD (the '**Authority**'); and
- (2) **KIRKBYMOORSIDE TOWN COUNCIL** of KIRKBYMOORSIDE (the '**Town Council**').

Each a "**Party**" and together the "**Parties**".

IN CONSIDERATION of the mutual obligations contained within this Agreement, the Parties have agreed as follows:

1. INTERPRETATION

1.1 The definitions and rules of interpretation in this clause apply in this Agreement.

"**Agreement**" means this agreement and any schedules hereto attached;

"**Commencement Date**" the date of Installation of the Equipment;

"**Deployment Schedule**" the schedule attached to this Agreement which sets out the details for the deployment of the Equipment, plan of the Site, specification and any applicable payment;

"**Equipment**" means the vehicle activated sign with attached pole and attached solar power source, all substitutions, replacements or renewals of such equipment and all related accessories, manuals and instructions provided for it;

"**Installation**" means the completion of the physical instalment of the Equipment at the Site;

"**Site**" 2No locations on A170 – one solar powered, one mains powered;

"**Supplier**" means the manufacturer of the Equipment (subject to approval by the Authority);

"**Term**" shall have the meaning given in clause 3.1.

"**Working Day**" any day except a Saturday, Sunday, 27 - 31 December inclusive or any public holidays in England.

1.2 Clause, schedule and paragraph headings shall not affect the interpretation of this Agreement.

1.3 A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).

1.4 The schedules form part of this Agreement and shall have effect as if set out in full in the body of this Agreement and any reference to this Agreement includes the schedules.

- 1.5 Unless the context otherwise requires, words in the singular shall include the plural and vice versa.
- 1.6 Unless the context otherwise requires, a reference to one gender shall include a reference to the other genders.
- 1.7 A reference to a statute or statutory provision is a reference to it as it is in force for the time being, taking account of any amendment, extension or re-enactment, and includes any subordinate legislation for the time being in force made under it.
- 1.8 A reference to **writing** or **written** does not include fax or email.
- 1.9 References to clauses and schedules are to the clauses and schedules of this Agreement. References to paragraphs are to paragraphs of the relevant schedule.
- 1.10 Any words following the terms including, include, in particular or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.

2. EQUIPMENT AND CONSENT

- 2.1 The Town Council shall purchase the Equipment from the Supplier for use at the Site during the Term subject to the terms and conditions of this Agreement. The Authority, in its capacity as the local highway authority for the purposes of Section 1(2) of the Highways Act 1980, hereby gives its consent to the Town Council to place the Equipment in the highway.
- 2.2 The Town Council shall keep the Equipment clean, free of faults and in good working condition during the Term of this Agreement.
- 2.3 The Authority shall not, other than in the exercise of its rights under this Agreement or applicable law, interfere with the Equipment.

3. DURATION

- 3.1 This Agreement starts on the Commencement Date and shall continue until this Agreement is terminated earlier in accordance with clause 10.
- 3.2 During the Term, the Equipment shall be rotated as per the Deployment Schedule. All dates in the Deployment Schedule are subject to change.

4. PAYMENTS

- 4.1 The Town Council shall pay all required charges to the Authority in the event separate equipment is required to be installed by the Authority.
- 4.2 Any such payment under clause 4.1 above shall be exclusive of VAT and any other applicable taxes and duties or similar charges which shall be payable by the Town Council at the rate and in the manner from time to time prescribed by law. The

Authority shall invoice the Town Council in respect of any applicable charges and the Town Council shall pay any undisputed invoice within 30 days of receipt.

5. DELIVERY AND INSTALLATION

5.1 Delivery and Installation of the Equipment shall be made by the Supplier, who shall effect delivery and install the Equipment by the date and time agreed between the Supplier and the Town Council.

6. TITLE & RISK

6.1 The Equipment shall at all times remain the property of the Town Council.

6.2 The risk of loss, theft, damage or destruction of the Equipment shall at all times remain with the Town Council who shall take out adequate insurance to protect against such risks.

7. TOWN COUNCIL'S RESPONSIBILITIES

7.1 The Town Council shall during the term of this Agreement:

- (a) not use the Equipment for any unlawful purpose;
- (b) not do or permit to be done anything which could invalidate the insurances referred to in clause 6.

8. WARRANTY

The Town Council shall be entitled only to such warranty or other benefit received from the Supplier and the Authority excludes all warranties (to the extent permitted by law) in respect of the Equipment.

9. LIABILITY

9.1 Nothing in this Agreement shall exclude or in any way limit:

- (a) either party's liability for death or personal injury caused by its own negligence;
- (b) either party's liability for fraud or fraudulent misrepresentation; or
- (c) liability for any breach of the terms implied by section 8 of the Supply of Goods (Implied Terms) Act 1973 or any other liability which cannot be excluded by law.

9.2 This Agreement sets forth the full extent of the Authority's obligations and liabilities in respect of the Equipment and its purchase by the Town Council. In particular, there are no conditions, warranties or other terms, express or implied, including as to quality, fitness for a particular purpose or any other kind whatsoever, that are binding on the Authority except as specifically stated in this Agreement. Any condition, warranty or other term concerning the Equipment which might otherwise be implied into or incorporated within this Agreement, whether by statute, common law or otherwise, is expressly excluded.

9.3 The Town Council shall take out and maintain for the duration of this Agreement public liability insurance cover for a minimum sum of £5,000,000.

10. TERMINATION

10.1 Without affecting any other right or remedy available to it, either party may terminate this Agreement on giving not less than 1 (one) months' prior written notice to the other party.

11. FORCE MAJEURE

Neither party shall be in breach of this Agreement nor liable for delay in performing, or failure to perform, any of its obligations under this Agreement if such delay or failure result from events, circumstances or causes beyond its reasonable control.

12. CONFIDENTIAL INFORMATION

12.1 Neither party shall, during and after termination of this Agreement, without the prior written consent of the other party, use or disclose to any other person any information of the other party which is identified as confidential or which is confidential by its nature other than in accordance with the Freedom of Information Act 2000, the Environmental Information Regulations 2004 or any other lawful demand for disclosure.

13. ASSIGNMENT AND SUBCONTRACTING

13.1 The Town Council shall not, without the prior written consent of the Authority, assign, transfer, or deal in any other manner with this Agreement.

13.2 The Authority may sub-contract its obligations under this contract to anybody without the consent of the Town Council.

14. ENTIRE AGREEMENT AND VARIATION

14.1 This Agreement constitutes the whole Agreement between the parties and supersedes all previous agreements between the parties relating to its subject matter.

14.2 Each party acknowledges that, in entering into this Agreement, it has not relied on, and shall have no right or remedy in respect of, any statement, representation, assurance or warranty (whether made negligently or innocently) other than as expressly set out in this Agreement. Each party agrees that its only liability in respect of those representations and warranties that are set out in this Agreement (whether made innocently or negligently) shall be for breach of contract.

14.3 Nothing in this clause shall limit or exclude any liability for fraud or for fraudulent misrepresentation.

14.4 No variation of this Agreement shall be effective unless it is in writing and signed by the parties (or their authorised representatives).

15. CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999

- 15.1 A person who is not a party to this Agreement shall not have any rights under or in connection with it by virtue of the Contracts (Rights of Third Parties) Act 1999

16. NOTICES

- 16.1 Any notice or other communication required to be given under this Agreement, shall be in writing and shall be delivered personally, or sent by pre-paid post or recorded delivery or by commercial courier, to each party required to receive the notice or communication.

- 16.2 Any notice or other communication shall be deemed to have been duly received:

- (a) if delivered personally, when left at the address and for the contact referred to in this clause;
- (b) if sent by commercial courier, on the date and at the time of signature of the courier's delivery receipt; or
- (c) if sent by pre-paid post or recorded delivery, 9.00 am on the second Working Day after posting.

17. NO WAIVER

No failure or delay by a party to exercise any right or remedy provided under this Agreement or by law shall constitute a waiver of that or any other right or remedy, nor shall it preclude or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall preclude or restrict the further exercise of that or any other right or remedy.

18. SEVERANCE

- 18.1 If any court or competent authority finds that any provision of this Agreement (or part of any provision) is invalid, illegal or unenforceable, that provision or part-provision shall, to the extent required, be deemed to be deleted, and the validity and enforceability of the other provisions of this Agreement shall not be affected.

19. GOVERNING LAW AND JURISDICTION

- 19.1 This Agreement and any dispute or claim arising out of or in connection with it or its subject matter shall be governed by and construed in accordance with the law of England and Wales and each party hereby submits to the exclusive jurisdiction of the courts of England and Wales.

This Agreement has been entered into on the date stated at the beginning of it.

