

DATED

2020

(1) THE MAYOR AND COMMONALTY AND
CITIZENS OF THE CITY OF LONDON
(AS CONSERVATORS OF EPPING FOREST)

and

(2) GIGACLEAR LIMITED

DIGITAL FIXED LINE INFRASTRUCTURE WAYLEAVE AGREEMENT
EPPING FOREST

in respect of the installation of electronic communication apparatus <tba>
Grid Reference <tba>

Ref/

DATE

2020

PARTIES

- (1) THE MAYOR AND COMMONALTY AND CITIZENS OF THE CITY OF LONDON (as Conservators of Epping Forest) of PO Box 270 Guildhall London EC2P 2EJ (the "City"); and
- (2) GIGACLEAR LIMITED (incorporated and registered in England and Wales under company registration number 07476617), the registered office of which is at Building One, Wyndyke Furlong, Abingdon, Oxfordshire, OX14 1UQ (the "Operator");

BACKGROUND

- (A) This Agreement is a code agreement under, and made pursuant to Part 2 of Schedule 3A of the Act (as defined in clause 1) by the City and by the Operator, for purpose of conferring upon the Operator rights for statutory purposes with respect to the Works and certain powers under the Code
- (B) The City is the freeholder of the Property and the Operator wishes to carry out Works being the installation of electronic communications equipment at the Property
- (C) The Operator is an operator as defined in the Code to which the Code has been applied by virtue of a direction under s106 of the Communications Act 2003
- (D) The City acting through the Superintendent grants this Wayleave to the Operator in accordance with the Code and the Epping Forest Act 1878 so far as it lawfully can subject to the terms and conditions set out in this Agreement.

IT IS AGREED AS FOLLOWS:

1. Definitions

Act: The Communications Act 2003, as amended by the Digital Economy Act 2017

Apparatus: Electronic Communications Apparatus as detailed in the attached specification (being Electronic Communications Apparatus as defined by the Code).

Byelaws: The Operator will ensure that the byelaws of Epping Forest are observed at all times except as may be varied by this Agreement.

Code: The Electronic Communications Code as set out in Schedule 3A of the Communications Act 2003 as amended by the Digital Economy Act 2017

Code Rights: means such of the rights granted by the City to the Operator in Clause 2 of this Agreement as are referred to in paragraph 3 of the Code.

Epping Forest Acts: The Epping Forest Act 1878

Insurance: The Operator will provide at its expense adequate proof of public liability insurance to the satisfaction of the City of London upon request.

Period: To continue until determined in accordance with the terms of this Agreement.

Plan: Refer to Schedule 1

Premium: <£TBA>

Property: Epping Forest land at <TBA> as shown on plan No <TBA> with the use of such property not to be exclusive. Excavation and installation shown as red dash line.

Signs: The Operator will not display any signs other than suitable and appropriate warning signs such signs to be to the satisfaction of the Superintendent.

Statutory Consents: The Operator will obtain all such statutory consents and approvals as necessary (and for the avoidance of doubt will include any consent that may be required from Natural England as necessary) and will produce copies of the same at its expense to the City upon request.

Superintendent: the Superintendent of Epping Forest appointed from time to time Tel: 0208 532 1010 email: eppingforest@cityoflondon.gov.uk

Warranty: The City does not warrant the condition of the Property and the Operator agrees to accept the Property in its current condition with use wholly at its risk.

Wayleave Fee: £10,900.00. This is a single one-off payment as detailed in Schedule 2.

Works: means any of the works to the Property necessary for the purposes set out in Clause 2 whether by way of initial installation of the Apparatus, upgrading, other alteration to the Apparatus, repairs or otherwise in accordance with the agreed method statements and other requirements set out in Schedule 1.

2. Grant of Rights

2.1. In consideration of the covenants given by the Operator in this Agreement and the payment of the Wayleave Fee (receipt of which the City acknowledges) the City hereby agrees that the Operator shall have the right until determination of this Agreement and subject to obtaining all necessary Statutory Consents:

- a) to install the Apparatus on, under or over the Property in accordance with the Method Statement;
- b) to keep installed the Apparatus which is on, under or over the Property;
- c) to inspect, maintain, adjust, repair, operate or upgrade the Apparatus which is on, under or over the Property and to alter the Apparatus within the limits of the existing route, but not outside those limits without the consent of the City and the Superintendent and subject to Clause 2.4;
- d) to carry out Works on the Property for or in connection with the installation of the Apparatus on, under or over the Property in accordance with the Method Statement
- e) to carry out Works on the Property for or in connection with the maintenance, adjustment, alteration (subject to Clauses 2.1 (c) and Clause 2.4 hereof), repair, operation or the upgrading of the Apparatus which is on, under or over the Property;
- f) to enter the Property to inspect, maintain, adjust, alter (subject to Clause 2.4), repair, operate and upgrade the Apparatus which is on, under or over the Property;

- g) to connect the Apparatus to a power supply in accordance with the Method Statement;
- 2.2. The Operator shall give to the City a minimum of seven days prior written notice of the intention to commence the Works and a minimum of two days prior written notice of the intention to commence any maintenance of the Works or exercise of any of other rights granted by Clause 2 or as much notice as is reasonably possible in case of emergency and access will then be permitted to the Property daily from 8am to 6pm excluding Bank Holidays and weekends, except in the case of an emergency. Unless, in the case of initial installation of the Apparatus, the City has approved the specification and the Works involved, the Operator is to provide the City and the Superintendent with full details of the Works for prior approval. The Operator shall provide to the City and Superintendent full details of any completed Works within two months of completion.
- 2.3. For the purposes of Clause 2.1, the Operator and its duly authorised agents may enter the Property at reasonable times, subject to Clause 6.3, with or without vehicles (where appropriate), and with workmen, plant, equipment or machinery as may reasonably be required to carry out the Works.
- 2.4. This Clause 2.4 applies where an alteration is made to the Apparatus or it is relocated:
- 2.4.1 Any alteration is subject to the prior written consent of the Superintendent and the provisions of this Agreement are to continue to apply to the Property and the Apparatus as altered and, so far as applicable, in the new location; and
- 2.4.2 Each party shall promptly sign a memorandum recording the details of the alterations to the Apparatus and, (if applicable) the new location and any consequential adjustment of the terms of this Agreement and retain a copy with its part of this Agreement.
- 2.5. The Operator may use the Apparatus only for the purpose of providing an electronic communications service (as defined by and construed in accordance with the Code) to the Property until this Agreement is terminated under Clause 5, or the Code Rights of the Operator later come to an end.
- 2.6. This Agreement will not apply to any part of the Property which is or (from the date of such adoption) becomes adopted as highway maintainable at the public expense.
- 2.7. This Agreement does not create the relationship of Landlord and Tenant between the City and the Operator in respect of the Property
- 2.8. This Agreement constitutes the entire agreement between the City and the Operator

3. Assignment and Sharing

- 3.1. This Agreement may be assigned only to an operator to whom the Code is applied under section 106 of the Communications Act 2003.
- 3.2. Unless the City agrees to forgo the right to require it, the assignor shall enter into a guarantee agreement guaranteeing the performance by the assignee of the

obligations under this Agreement of the assignee as Operator on terms that the guarantee may:

- 3.2.1 impose on the assignor liability as a sole or principal debtor in respect of the relevant obligations in this Agreement; and
 - 3.2.2 impose on the assignor liabilities as guarantor in respect of the assignee's performance of the relevant obligations which are no more onerous than those to which the assignor would be subject in the event of the assignor being liable as sole or principal debtor in respect of any of the relevant obligations; and
 - 3.2.3 Include incidental or supplementary provisions but may not impose on the assignor a requirement to guarantee in any way the performance of relevant obligations by a person other than the assignee, or any liability, restriction or other requirement of any kind in relation to a time after the relevant obligations cease to be binding on the assignee.
- 3.3 The assignor is not liable, otherwise than under a guarantee agreement in Clause 3.2, for a breach of this Agreement occurring after the assignment if:
- 3.3.1 the City is given notice of the name of the assignee, to whom this Agreement has been assigned, and the assignee's address for service; and
 - 3.3.2 the notice has been given to the City before the occurrence of the breach.
- 3.4 The Operator shall notify the City of the completion of the assignment of this Agreement within 28 days after the date of the assignment and shall provide to it a certified copy of the assignment.
- 3.5 The Operator may share the use of the Apparatus with another operator to whom the Code is applied under section 106 of the Communications Act 2003, and carry out works to the Apparatus (in accordance with the terms of this Agreement) to enable that sharing to take place, subject to meeting the conditions set out under Clause 3.6.
- 3.6 The Operator may only share the Apparatus and exercise the associated rights set out in clause 2.1 if:
- 3.6.1 any changes to the Apparatus as a result of the sharing have no adverse impact, or no more than a minimal adverse impact, on its appearance; and
 - 3.6.2 the sharing does not impose any additional burden on the City, including anything that:
 - (a) has an additional adverse effect on the City's enjoyment of the Property; or
 - (b) causes additional loss, damage or expense to the City.

4. Damage

All damage as may be caused to the Property resulting from the Works is to be rectified to the satisfaction of the Superintendent of Epping Forest at the cost of the Operator failing which the City of London will undertake such rectification and recover the costs thereof from the Operator.

5. Redevelopment and termination

- 5.1.1 If the City intends to redevelop all or part of the Property and could not reasonably do so unless the Apparatus is removed, the City must provide the Operator with notice

in writing as set out in Clause 5.6 below. If the City proposes a suitable alternative position for the Apparatus on its land, the Operator will endeavour within a reasonable period after receipt of the notice and proposed new route, to alter the Apparatus to the new route at no cost to the City or to negotiate an alternative route.

- 5.1.2 If the City requires an alteration of the Apparatus or part thereof to enable the Property or any part of it to be repaired, renewed, refurbished, altered, improved, added to or to permit plant and machinery serving the Property to be installed or renewed or replaced, and provides a suitable alternative position for the Apparatus on its land, the Operator agrees to alter the Apparatus to the new route in a timely manner after receipt of the notice and proposed new route at no cost to the City in and upon not less than six months' prior written notice from the City pursuant to clause 5.2 below.
- 5.2 Following service of a notice under clause 5.1.2 the City will consult with the Operator to find a suitable alternative location for the Apparatus within the Property reasonably satisfactory to both parties and taking into account the Operator's reasonable requirements to secure the uninterrupted service provided by the Apparatus.
- 5.3 If the Apparatus is relocated, the provisions of this Agreement will continue to apply to the Property and the Apparatus in the altered location and the Operator acknowledges that nothing in this Agreement is intended to prevent or restrict the right of the City to repair or redevelop the Property or any other buildings property or land.
- 5.4 If the parties are unable to agree an alternative location for the Apparatus by a time at least one month before expiry of the notice given by the City either the City or the Operator may refer the matter for determination under Clause 13. The Operator acknowledges that nothing in this Agreement is intended to prevent or restrict the right of the City to repair or redevelop the Property or any other buildings property or land.
- 5.5 The Operator may end this Agreement by giving six months' notice in writing. This agreement will also end if the Operator permanently removes all Apparatus from the Property.
- 5.6 The City may end this Agreement by giving the Operator not less than 18 months' prior written notice under paragraph 31 of the Code if the City intends to repair or redevelop all or part of the Property and could not reasonably do so unless this Agreement is ended and an alteration under Clause 5.1.1 and 5.1.2 is not possible.
- 5.7 The City may end this Agreement by giving the Operator 18 months' written notice under paragraph 31 of the Code if:
 - a) this Agreement ought to come to an end as a result of substantial breaches by the Operator of its obligations under this Agreement;
 - b) the Operator has persistently delayed making payments due under the terms of this Agreement;
 - c) the prejudice caused to the City by the continuation of this Agreement is incapable of being adequately compensated by money and the public benefit

likely to result from the continuation of the Agreement does not outweigh the prejudice to the City.

5.8 This Agreement will terminate immediately if:

- 5.8.1 the Operator ceases permanently to provide the electronic communications service to which this Agreement relates whether or not it removes the Apparatus;
- 5.8.2 the Operator ceases to be a person to whom the Code is applied; or
- 5.8.3 the Apparatus is no longer being used, nor likely to be used, at the Property, or is removed by the Operator otherwise than temporarily for repair or replacement.

5.9 This Agreement will remain in force until the Apparatus is no longer required unless terminated in accordance with the above.

6. The Operator's Obligations

6.1. The Operator undertakes with the City to observe and perform the obligations in the following provisions of this clause 6;

6.2. Before commencing any Works:

- a) to obtain the Statutory Consents, licences, permissions, approvals and authorisations as are required, necessary for the commencement, execution and retention of the Works;
- b) to provide to the City written details of the Works and the Statements for its approval; and

6.3. To carry out and complete the Works:

- a) in accordance with the Plans and Statements annexed at Schedule 1 and in a proper, safe and workmanlike manner;
- b) in compliance with applicable statutory requirements and international standards, and in accordance with health and safety regulations;
- c) in accordance with the reasonable guidelines of the City of which the Operator has been notified;
- d) taking all proper precautions:
 - 6.3.d.1. to avoid unnecessary or undue obstruction or interference with the access or use of the Property, or any neighbouring property; and
 - 6.3.d.2. so as not to cause unnecessary or undue damage, nuisance or inconvenience,
 - 6.3.d.3. in such a way as to keep noise and dust to a minimum and in a manner, that will not inconvenience or endanger the City's staff or the public and other users of the Property and Epping Forest; and
- e) in compliance with the reasonable security and access requirements of the City as notified to the Operator.

- f) No plant or equipment or material may be deposited or dismantled or erected or demolished on Epping Forest except upon the Property and only then in accordance with the written agreement of the Superintendent.
- g) Adequate measures are to be taken to prevent subsidence of surrounding ground into all excavations undertaken by the Operator.
- h) Any disturbance of the surrounding soil must be made good according to the Soil Reinstatement provisions and to the absolute satisfaction of the Superintendent whose decision shall be final.
- i) On termination of this Agreement the Operator will at its own cost remove the Apparatus and reinstate the Property as directed by and to the reasonable satisfaction of the Superintendent.
- j) The Operator will undertake such other Works as may be reasonably required and directed by the Superintendent to ensure that the safety and integrity of the Property and Epping Forest is not prejudiced.
- k) The Operator shall keep the Apparatus identifiably labelled with the name of the Operator.
- l) The Operator shall keep the Apparatus in good repair and condition and so as not to be a danger to the City and its employees or property, or to the tenants and occupiers of, or visitors to, the Property, and to use and operate the Apparatus in accordance with applicable legislation and recommended guidelines.
- m) The Operator is to maintain third party and public liability insurance cover in respect of the exercise of the Operator's rights and the performance of the Operator's obligations under this Agreement, whether by the Operator, its employees, agents or persons under its control or by a related company with a reputable insurance company for not less than £10,000,000 for each insurance year during the course of this Agreement and then for each insurance year until the Operator is no longer actually or contingently liable in respect of matters arising from actions and omissions on its part, or for those for whom it would be vicariously liable, during the course of this Agreement and against injury or death and loss caused to persons and damage or destruction caused to property, and to provide to the City details of the insurance and evidence that cover is in force upon reasonable request, but no more than once in any insurance year applicable to the policy unless in the meantime there is a change of insurer, policy conditions or cover.
- n) The Operator shall comply with the byelaws of Epping Forest in force from time to time save as varied by this Agreement.
- o) In addition to the foregoing and for the avoidance of doubt the Operator shall not use Forest land for storage either during installation of the Works or thereafter without the prior written consent of City in the form of a compound licence upon such terms (including the payment of a reasonable fee) as City may request.

7. Statements

The Operator will provide at its expense for Superintendent's prior approval and to the City's satisfaction each of the following as separate documents in respect of the Works and as and when necessary in respect of the maintenance and repair of the Works.

- (a) Health & Safety Statement.
- (b) Risk Assessment.
- (c) Installation and Method Statement.
- (d) Drawings and Specifications.

8. Removal of the Apparatus

On termination of this Agreement, the Operator will as soon as reasonably practicable remove the Apparatus from the Property and make good any damage to the Property caused by its removal to the reasonable satisfaction of the Superintendent. If the Operator shall default in carrying out works of removal and reinstatement of the Apparatus to the reasonable satisfaction of the Superintendent within 90 days of the date of termination of this Wayleave, the City may (but shall not be obliged to) remove the Apparatus reinstate and make good the Property at the expense of the Operator and all reasonable and proper costs and expenses properly incurred by the City shall be repaid by the Operator on written demand on an indemnity basis and recoverable as a debt due from the Operator.

9. Indemnity

9.1. The Operator will indemnify the City in respect of all liabilities costs expenses claims damages disturbance injuries liabilities losses and proceedings suffered or incurred by the City of London or any third party arising from any breach of the terms of this Agreement or any negligent act or omission by the Operator in the exercise of the rights granted by this Agreement ("Breach") provided that:

- a) the City as soon as reasonably practicable notifies the Operator of any actions proceedings claims or demands brought or made against the City ("Proceedings") concerning any alleged Breach and the City will not compound settle or admit those Proceedings without the consent of the Operator (not to be unreasonably withheld or delayed) except by order of a court of competent jurisdiction; and
- b) this indemnity shall exclude:
- c) any loss that has arisen out of any negligence contributory negligence wilful act default or omission of the City its employees servants contractors agents or; and
- d) any loss to the extent that the City has failed to take any action that it ought reasonably and properly to have taken to mitigate any loss or damage it may suffer; and

9.2. The liabilities of the Operator under or in connection with this Wayleave Agreement shall be limited to £10,000,000.00 whether in respect of a single claim or a series of claims arising from the same incident in the annual aggregate except in the event of death or personal injury where there shall be no limit; and

9.3. nothing in this Wayleave Agreement shall restrict or interfere with the Operator's rights against the City of London or any other person in respect of contributory negligence.

10. The City's Obligations to the Operator

10.1 The City undertakes with the Operator to observe and perform the obligations in this clause 10.1:

10.1.1 to use reasonable endeavours:

(a) to prevent damage, or anything likely to cause damage to be done, to the Apparatus; and

(b) not to interfere or tamper with the Apparatus and its operation.

10.1.2 to give reasonable notice of any activity, by way of power outages or otherwise, that it intends to carry out, that would or might affect the continuous operation of the Apparatus or otherwise limit the ability of Operator to provide electronic communications services to the Property.

11. Ownership of the Apparatus

The Apparatus shall remain the absolute property of the Operator at all times.

12. Soil and Soil Reinstatement

General

12.1. The quality of all works herein are to be to the reasonable satisfaction of the City of London (and Natural England where appropriate) whose decision shall be final in all respects.

12.2. The general soil works detailed herein are subject to there being no overriding requirements for dealing with sensitive sites or sites subject to statutory protection where additional provisions may be required.

12.3. Turf and topsoil and subsoil must not be stored on top of existing grassland (unaffected by the works).

Prohibition

12.4. Grass seed and fertiliser must not be used

12.5. Soil must not be imported onto Epping Forest. All soil utilised in reinstatement must come from Epping Forest.

Timing

12.6. Soil and turf reinstatement must be undertaken as soon as each trench section construction is completed.

Soil

12.7. All finished soil surfaces should be laid level or to no steeper gradient than 1:100 between the boundaries of the soil fill area.

12.8. Soil is to be replaced in the location from where it was excavated.

- 12.9. Subsoil is to be used to make up ground to a level of 150mm beneath the finished grass level and must be free draining and capable of compaction manually or by lightweight machinery.
- 12.10. Subsoil layers exceeding 150 mm are to be firmed to build up levels to produce a stable soil structure
- 12.11. Subsoil must be laid to smooth flowing contours to achieve the required finished levels for topsoil.
- 12.12. Subsoil must not be liable to future subsidence and must be free of contaminants.
- 12.13. Prior to topsoil spreading all stones exceeding 50 mm diameter and any other debris (bricks branches litter etc) are to be removed from the surface.
- 12.14. Topsoil layer is required to an even and minimum depth of 150mm except around the base and root areas of trees where the finish levels must remain unaltered and around adjoining paving manholes or kerbs where the finish level is to be 30mm higher than those installations and otherwise where the topsoil must be levelled to match that of adjoining soil.
- 12.15. Topsoil to be handled in the driest condition possible and should not be handled during or after heavy rainfall or when it is wetter than the plastic limit defined in BS3882 Annex N2.
- 12.16. Inclining of the topsoil to contour the site is to be carried out when the topsoil is reasonably dry and workable.
- 12.17. The topsoil is to be laid to create smooth flowing contours which are suitable for tractor mowing.
- 12.18. The topsoil must not be compacted
- 12.19. The topsoil should be levelled to remove minor hollows and ridges
- 12.20. Utilise such machinery to cause minimise disturbance trafficking and topsoil compaction
- 12.21. Preserve a friable texture of separate visible crumbs

13. Mediation of Disputes and Dispute Resolution

13.1 Either the City or the Operator may refer a dispute in connection with this Agreement to the respective nominated managers of each for resolution, both of whom are to use their reasonable endeavours to resolve the dispute in the first instance as soon as reasonably practicable. A nominated manager must be a senior representative empowered to make executive decisions on behalf of the party he or she represents.

13.2 If the dispute is not so resolved within twenty-eight (28) days after referral in accordance with clause 13.1, either party may request by notice given to the other (“dispute notice”) that the dispute is referred to mediation for resolution. In that event:

13.2.1 the parties shall appoint a single mediator to perform the mediation;

13.2.2 where the parties are unable to agree on the appointment of a mediator within twenty-eight (28) days of the dispute notice, the mediator is to be appointed by the

Centre for Effective Dispute Resolution, or its successor or replacement body, on the application of either party; and

13.2.3 the mediation is to be conducted in England pursuant to a procedure established by the mediator in his or her absolute discretion.

13.3 A dispute or difference between the parties (other than one in relation to the Code), that is not resolved by mediation under this clause 13, is to be referred to a single arbitrator, if the parties can agree on one, but otherwise to an arbitrator appointed by the President of the Royal Institution of Chartered Surveyors at the request of either party.

13.4 The Arbitration Act 1996 is to apply to the reference.

13.5 The parties acknowledge the power of the arbitrator, under section 37 of the Arbitration Act 1996, to appoint experts or legal advisers, or technical assessors to assist on technical matters.

13.6 Disputes relating to the Code are to be resolved through the courts of England and Wales.

14. Severance

Each provision of this Agreement will be construed as a separate provision and if one or more of them is considered illegal, invalid or unenforceable then that provision will be deemed deleted but the enforceability of the remainder of this Agreement will not be affected.

15. Notices

15.1 A notice or notification given under or in connection with this Agreement must be given in writing and signed by or on behalf of the party giving it.

15.2 A notice given under the Code must comply with the provisions of Part 15 of the Code.

15.3 A notice given under or in connection with this Agreement will be validly given if personally delivered, or if sent by a registered post service (within the meaning of the Postal Services Act 2000), or by first class recorded delivery or first class ordinary post, and (in each case) addressed to:

- a) the Superintendent of Epping Forest The Warren Nursery Road Loughton Essex IG10 4RW
- b) the Operator at Building One, Wyndyke Furlong, Abingdon, OX14 1UQ;
- c) but in case of change of address, at such other location as has been notified to the other parties.

15.4 Notices under or in connection with this Agreement may not be given by email or other electronic media except in case of notice of required access to the Property.

16. Exclusion of Third Party Rights

Nothing in this Agreement is intended to create rights in favour of a third party under section 1(1)(b) of the Contracts (Rights of Third Parties) Act 1999

Signed by SUPERINTENDENT

Name

a duly authorised signatory for and on behalf of

THE MAYOR AND COMMONALTY AND CITIZENS OF THE CITY OF LONDON (AS
CONSERVATORS OF EPPING FOREST)

Signed by a duly

authorised signatory for and

on behalf of Gigaclear Limited

SCHEDULE 1

Reference <TBA> ATTACH PLANS/SPECIFICATIONS/STATEMENTS etc

SCHEDULE 2

Payment Calculated at £3.90 per metre and £468 per chamber / cabinet for network serving third parties.

Total Meterage:9,223 meters

Meterage serving third parties: 2,218 meters

Meterage payment: £8,650

Total number of cabinets:5

Number of cabinets / chambers on network serving third parties:5

Cabinet/ chamber payment: £2,340

Total one off payment: £10,990 (ten thousand nine hundred and ninety)