

SAMPLE GREENFIELD LEASE

Greenfield Lease

relating to the communications site
situated at [•] site number [•]

(1) [•] (Landlord)

(2) [•] (Tenant)

IMPORTANT

This draft lease is intended for use in Scotland where a mobile network operator is being granted exclusive possession of a demised area on undeveloped land, and where the primary purpose is to grant rights pursuant to the Electronic Communications Code set out in Schedule 3A to the Communications Act 2003.

This draft lease is provided for use by consenting parties without liability. It does not constitute any form of advice or recommendation and is not intended to be relied upon in making (or refraining from making) any decisions. Each party should seek their own legal and valuation advice.

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

Lease between:	
(1) Landlord	[●] (company number [●]) whose registered office is [●] (the "Landlord") and
(2) Tenant	[●] (company number [●]) whose registered office is [●] (the "Tenant")
In this Lease, unless the context otherwise requires, the following words have the following meanings:	
Access Contact	[INSERT NAME OF LANDLORD CONTACT (AND ADDRESS) THAT THE TENANT SHOULD CONTACT TO ACCESS THE COMMUNICATIONS SITE] or such other reasonable contact as the Landlord shall notify to the Tenant in writing as being the Access Contact from time to time
Tenant Contact	[INSERT TENANT CONTACT DETAILS (E.G. EMAIL ADDRESS) THAT THE LANDLORD MAY CONTACT FOR OPERATIONAL MATTERS IN RELATION TO THE COMMUNICATIONS SITE] (a means of contacting the Tenant for the Landlord's convenience, but for the avoidance of doubt this shall not be a means of serving any notice under or in respect of this Lease, in which case the provisions of paragraph 10.6 shall apply)
<hr/>	
Access Arrangements	[The Tenant shall <i>[Insert any site-specific requirements not already covered in the Lease (See section 4)]</i> or such other reasonable arrangements as the Landlord shall reasonably notify to the Tenant in writing from time to time.]
Communications Site	The communications site forming part of the Landlord's Property being the area shown edged red on the Plan
Compensation	[●] pounds (£[●]) [per annum], as this term is defined in paragraph 25 of the Code, representing (together with the other sums payable by the Tenant pursuant to this Lease, save for Consideration) any loss or damage that has or will be sustained as a result of the exercise of the Rights, as ascertained at the date of this Lease
Consideration	[●] pounds (£[●]) [per annum], as this term is defined in paragraph 24 of the Code, representing the market value of the Landlord's agreement to enter into this Lease
Default Interest Rate	[4%] above the base rate from time to time of the Bank of England
[Electricity Administration Fee]	[an annual fee of £[●] in relation to the administrative burden to the Landlord of administering the Tenant's use of the Landlord's electricity supply (if applicable)]
[Landlord's Break Date]	[the [●] anniversary of the Term Commencement Date][or insert actual date]]
[Landlord's Break Notice]	not less than 18 months' prior written notice to terminate this Lease on the Landlord's Break Date]
Landlord's Property	the Landlord's land known as [●] and as registered at the Register of Scotland under title number [●]
Plan	the Plan annexed and executed as relative to this Lease
Set-Down Area	the area shown [coloured][edged] in [●] [on the Plan][Plan marked ●] or such other reasonably proximate and suitable area designated by the Landlord and approved by the Tenant, both acting reasonably
Site Payment	The combined total of the Compensation and the Consideration
Site Payment	

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Commencement Date	the [Term Commencement Date] <i>[Do not use if Site Payment being paid as one lump sum]</i>
Schedule	The Schedule in [] sections annexed and executed as relative hereto
Site Payment Date[s]	<i>[use if Site Payment being paid as one lump sum]</i> [the Term Commencement Date] <i>[use if Site Payment being paid periodically]</i> [the Site Payment Commencement Date and subsequently each anniversary of the Site Payment Commencement Date]
[Tenant's Break Date]	[the [●] anniversary of the Term Commencement Date][or insert actual date]]
[Tenant's Break Notice]	not less than [●] months' prior written notice to terminate this Lease on the Tenant's Break Date]
Term	From and including the Term Commencement Date to and including [●]
Term	
Commencement Date	[the date of this Lease][●]
Title Matters	the matters referred to at the date of this Lease in the Land Register of Scotland [and [entry][entries] <i>[Insert relevant number]</i> of the charges register] of title number [the title number to the Landlord's Property]

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A Interpreting the Lease

In this Lease, unless the context otherwise requires:

- 1 any section titles and headings are for convenience only and shall not affect the interpretation of this Lease;
- 2 a person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality) and that person's successors or permitted assignees;
- 3 a reference to a company shall include any company, corporation or other body corporate, wherever and however incorporated or established;
- 4 where at any time a party to this Lease comprises more than one person all obligations and liabilities of or with that party are joint and several and references to that party include a reference to each such person;
- 5 a reference to the Term is to the Term and any statutory continuation of this Lease pursuant to the Code;
- 6 references to the Tenant and the Landlord include their lawful assignees and their successors in title;
- 7 references to any rights exercisable by the Tenant shall be construed as being exercisable by the Tenant and all persons properly authorised by them in accordance with the terms of this Lease and the Code;
- 8 words in the singular shall include the plural and vice versa and a reference to one gender shall include a reference to the other genders;
- 9 references to paragraphs and sections are to paragraphs and sections to this Lease. Unless stated otherwise references to paragraphs are to paragraphs of the relevant section. The sections and paragraphs that follow are part of this Lease;
- 10 a reference to a document is a reference to that document as varied or assigned (in each case, other than in breach of the provisions of this Lease) at any time;
- 11 unless expressly stated to the contrary any reference to a statute or statutory provision shall include any subordinate legislation made as at the date of this Lease under that statute or statutory provision and shall include any extension or modification, amendment or re-enactment of that statute and any regulations or orders made under that statute, and any general reference to a statute includes any regulations or orders made under that statute;
- 12 where the consent or approval of any party is required under this Lease, any such consent or approval must be in writing; and
- 13 if there is any conflict between this Lease and the Code the provisions of the Code shall prevail.

B The meaning of words and phrases

In this Lease, unless the context otherwise requires, the following words have the following meanings:

Access Route	the route shown coloured brown on the Plan giving access from the public highway across the Landlord's Property to and from the Communications Site and/or the Equipment and/or the Cables or such other materially practicable route for the Tenant that may be agreed by the parties from time to time acting reasonably
Cables	any Lines, cables (including copper and fibre links), ducts and cable trays and ancillary items required for the Permitted Use
CDM Regulations	the Construction (Design and Management) Regulations 2015
Code	the Electronic Communications Code as set out in Schedule 3A to the Communications Act 2003
Drawings and Specification	the drawings and specification annexed and executed as relative to this Lease
Emergency	<p>a situation in which the following has occurred or is reasonably likely to occur without preventative steps being taken:</p> <ul style="list-style-type: none">(a) danger to persons or property; or(b) any service impacting fault resulting in a loss, interruption or degradation in the service provided in accordance with the Permitted Use
Equipment	the Electronic Communications Apparatus (as that term is defined in paragraph 5(1) of the Code) installed or to be installed at the Communications Site pursuant to this Lease
Infrastructure System	has the meaning given to it in the Code
Landlord's Consents	all necessary statutory permissions, licences and approvals required to be obtained by the Landlord in relation to the grant of this Lease
Lease	this Lease and any document expressed to be supplemental to it and entered into pursuant to or in accordance with the terms of this Lease (including any section or attachment to it)
Line(s)	has the meaning given to it in the Code

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Other Operator	a person, other than the Tenant, in whose case the Code is applied by a direction under section 106 of the Communications Act 2003
Permitted Use	The purposes of providing the Tenant's networks or providing an Infrastructure System
Rights	all rights and permissions granted to the Tenant by or as a result of this Lease
Tenant's Consents	all necessary statutory permissions (including but not limited to planning permissions), licences and approvals required for the Works and/or the use of the Communications Site and/or the Equipment excluding any Landlord's Consents
VAT	Value Added Tax chargeable under the Value Added Tax Act 1994 or any like or replacement tax or levy
Works	any works reasonably necessary in the exercise of the Rights or referred to in section 6

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C Granting the Lease

- 1 In consideration of the Consideration the Landlord with absolute warrandice grants the Rights and leases the Communications Site to the Tenant for the Term subject to the Title Matters and reserving the Landlord's rights as set out in section 11 of this Lease.
- 2 The Landlord warrants to the Tenant that it has full legal title to the Landlord's Property, Communications Site and the Access Route to enter into this Lease and that there is nothing in its title which would interfere with the exercise of the Rights.
- 3 The Landlord has obtained any Landlord's Consents to enter into and give full effect to this Lease (save for any Tenant's Consents required to be obtained by the Tenant in accordance with this Lease).
- 4 The Landlord does not warrant that the Communications Site may lawfully be used for the Permitted Use nor gives any warranty as to the state and condition of the Landlord's Property or their fitness for purpose for the Permitted Use.

5

The Landlord and the Tenant consent to registration of this Lease for preservation and execution

IN WITNESS WHEREOF these presents consisting of this and the [] preceding pages [together with the Plan, the Schedules and the Drawings and Specification are executed as follows:

SUBSCRIBED for and on behalf of the said [Insert Landlord name]

by.....

.....
[Director][Company Secretary]
[Authorised Signatory]

at.....

on.....

In the presence of this witness

..... Witness

..... Full Name

..... Address

.....

.....

SUBSCRIBED for and on behalf of the said [Insert Tenant name]

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by.....
[Director][Company Secretary]
[Authorised Signatory]

at.....

on.....

In the presence of this witness

..... Witness
..... Full Name
..... Address
.....
.....

This is the Schedule referred to in the foregoing Lease between [] and []

Section 1

Site Payment, taxes and expenses

Paying the Site Payment, rates and other expenses

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1.1 Site Payment

- 1.1.1 The Tenant shall pay the Site Payment without deduction or set-off in advance on the Site Payment Date[s] and:
- (a) the Site Payment shall be made by electronic payment; or
 - (b) the Site Payment shall be paid in cleared funds into the Landlord's bank account (details of which the Landlord shall have notified to the Tenant in writing); and
 - (c) the first instalment of the Site Payment will be made on the Site Payment Commencement Date and shall be the proportion, calculated on a daily basis, in respect of the period from the Site Payment Commencement Date until the day before the next Site Payment Date. **[DRAFTING NOTE: Do not use if Site Payment being paid as one lump sum.]**

1.2 Interest

- 1.2.1 The Tenant shall pay interest on any unpaid Site Payment or other sum payable under this Lease that has not been paid within 21 days of the date it is due at the Default Interest Rate (both before and after any judgment) on that amount for the period from the date when the payment fell due to and including the date of payment.
- 1.2.2 The Tenant shall not pay interest:
- (a) where the Site Payment has been made in accordance with paragraph 1.1 but has been returned or not accepted in circumstances where the Tenant is not in breach of any of the terms of this Lease; or
 - (b) if the sums payable are anything other than the Site Payment and such sums have not been formally demanded by the Landlord.

1.3 VAT

- 1.3.1 The Tenant shall pay any VAT due on payments under this Lease within 28 days of receiving a valid VAT invoice addressed to the Tenant.

1.4 Rates and Taxes

- 1.4.1 The Tenant shall pay on demand all present and future rates, taxes and similar impositions payable in respect of the Communications Site, the Equipment and any Works carried out, other than:
- (a) any taxes payable by the Landlord in connection with any dealing, transfer or disposition of the Landlord's interest in this; or
 - (b) any taxes, other than VAT, payable by the Landlord by reason of the receipt of any payment due under this Lease.

1.5 Landlord's costs and expenses

- 1.5.1 The Tenant shall pay the reasonable and properly incurred costs and expenses of the Landlord including any solicitors' or other professionals'

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costs and expenses incurred (both during and after the end of the Term) in connection with any of the following in relation to this Lease:

- (a) the enforcement of the Tenant obligations, including (but not limited to) the service of a schedule of dilapidations within 6 months of this Lease coming to an end;
- (b) the service of any irritancy notice;
- (c) serving any notice upon any guarantor of the tenant's obligations (including, but without prejudice to the foregoing generality, any rent, service charge or other payment obligations) under this Lease;
- (d) entering into a wayleave agreement or other agreement with the relevant third party supplier(s) pursuant to paragraph 3.4;
- (e) [any request for the Landlord's consent made in accordance with paragraph 5.1.3;]
- (f) serving a notice under paragraph 5.2;
- (g) ;
- (h) serving a notice under paragraph 9.2.1 and any related notice pursuant to paragraph 31 of the Code;
- (i) complying with the Landlord's obligations pursuant to paragraph 7.9.1; or
- (j) serving a Lift & Shift Notice under paragraph 10.1, unless either the Landlord has already served a Lift & Shift Notice upon the Tenant on [X] occasions during the Term, or the Landlord's Works constitute a redevelopment of any part of the Landlord's Property.

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Section 2

Insurance

What the Tenant will insure and pay

- 2.1** The Tenant shall maintain insurance to a minimum of [one million/five million/ten million pounds] (£[insert numeric figure for clarity]) for each insurance year against public liability and other third party liability in connection with any injury, loss or damage to any persons or property arising out of the Tenant's use of the Communications Site and will upon the Landlord's request provide evidence of such insurance (but not more than once a year). The parties acknowledge that the Landlord shall not maintain insurance in relation to the Equipment.
- 2.2** The Tenant shall not knowingly do or omit anything as a result of which the Landlord's policy of insurance of the Landlord's Property may become void or voidable and the proper exercise of the Rights shall not constitute a breach of this paragraph.
- 2.3** The Tenant shall pay to the Landlord within 28 days of written demand compensation for any increased or additional premium for the insurance of the Communications Site to the extent that the Landlord can demonstrate to the Tenant's reasonable satisfaction that such increase is a result of the Works and/or the Rights and/or the Permitted Use and/or the existence of the Lease.

Section 3

Cables, electricity and wayleaves

Payment and supply

The Tenant will require a connection to an electricity supply and to Cables. In some cases these will belong to a third party utility supplier and in others they will belong to the Tenant.

3.1 Electricity supply

3.1.1 The Tenant has the right to:

- (a) Procure at its own cost the installation of its own electricity supply to the Communications Site (including the installation of an associated electricity meter cabinet) either directly or via the regional electricity company on a route to be agreed between the parties acting reasonably; or
- (b) Connect into and use the Landlord's electricity supply in the event that the Tenant is not able to reasonably procure the installation of its own electricity supply on a route to be agreed by the parties acting reasonably, provided that if such use reasonably requires an upgrade to the Landlord's electricity supply, then the Tenant shall reimburse the Landlord for any associated costs, such costs to be agreed between the parties before any upgrade works are undertaken, if possible.

3.1.2 Where the Tenant connects into and uses the Landlord's electricity supply, the Landlord will use reasonable endeavours to ensure that the supply is maintained and in the event of any interruption the Landlord will use reasonable endeavours to reinstate the supply as soon as reasonably possible.

3.1.3 The Tenant shall have the right to bring onto, keep, refuel and operate on the Communications Site a power generator together with associated fuel, sockets and Cables to connect the generator to the Equipment such generator to be used prior to the installation of the Tenant's permanent electricity supply pursuant to paragraph 3.1.1, and/or during any period when the electrical supply to the Communications Site or the Equipment fails.

3.2 Paying for electricity

3.2.1 Where the Tenant has installed a direct electricity supply, the Tenant will ensure that this supply has an independent meter and shall pay all costs in connection with that supply; or

3.2.2 Where the Tenant connects into and uses the Landlord's existing electricity supply, the Tenant shall:

- (a) install at its own cost an electricity sub-meter; and
- (b) pay upon receipt of evidence from the electricity supplier to the Landlord the actual cost of electricity used in connection with the Communications Site

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and the Equipment as evidenced by the electricity sub-meter [plus the Electricity Administration Fee].

3.3 Cables

- 3.3.1 The Tenant (and/or authorised third party suppliers notified by the Tenant to the Landlord) shall have the right (in accordance with relevant industry standards) to install, keep installed, inspect, maintain, adjust, alter, repair, upgrade and operate the Cables over, under or through the Landlord's Property leading to and from the Equipment and the Communications Site (the route of such Cables to be approved by the Landlord, such approval not to be unreasonably withheld or delayed), making good any damage as soon as reasonably practicable and to the reasonable satisfaction of the Landlord.
- 3.3.2 [The Tenant (and/or authorised third party suppliers notified by the Tenant to the Landlord) shall have the right (in accordance with relevant industry standards) to use, add to, retain, renew, replace, substitute, decommission or remove the Cables over, under or through the Landlord's Property leading to and from the Equipment and the Communications Site (the route of such Cables to be approved by the Landlord, such approval not to be unreasonably withheld or delayed), making good any damage as soon as reasonably practicable and to the reasonable satisfaction of the Landlord.]
- 3.3.3 The Tenant will compensate the Landlord for any loss or physical damage reasonably and properly incurred by the Landlord resulting directly from the Cable installation by the Tenant or the exercise of the other rights at paragraph[s 3.3.1 and 3.3.2][3.3.1] above.

3.4 Wayleaves and/or Code Agreements

- 3.4.1 If any wayleaves or other agreements are required for Cables over, under or through the Landlord's Property, the Landlord shall use reasonable endeavours to enter into such agreement(s) in relation to a route to be approved by the Landlord (such approval not to be unreasonably withheld or delayed) on reasonable terms with the relevant third party supplier(s) within [X] months of receipt of the draft wayleave or agreement and proposed plan.

Section 4

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Access

Who can access where and when

4.1 Access for the Landlord

- 4.1.1 The Landlord is permitted to access the Communications Site (save for the Equipment) where such access is reasonably required for the purposes of:
- (a) inspecting the Communications Site and/or Landlord's Property, including for estate management and pursuant to any contractual obligations owed by the Landlord to third parties;
 - (b) complying with the Landlord's obligations under any laws; or
 - (c) exercising any right excepted or reserved to the Landlord under this Lease.
- 4.1.2 The Landlord must give reasonable prior written notice to the Tenant prior to exercising its rights under paragraph 4.1.1 and the parties shall agree a mutually convenient time and the Landlord shall be accompanied at all times by a representative of the Tenant (except in the case of an emergency when all reasonable efforts shall be made by the Landlord to contact the Tenant to arrange supervised access but in the event that a representative of the Tenant is not available within a reasonable time the Landlord may access the Communications Site unaccompanied and without reasonable prior written notice). The Landlord shall make good any damage caused to the Communications Site as a result of the access or any act or omission of the Landlord during such access as soon as reasonably practicable and to the reasonable satisfaction of the Tenant, subject to paragraph 6.2.3.
- 4.1.3 In exercising the rights of access under paragraph 4.1 the Landlord will be sensitive to the nature of the Equipment and observe any health and safety recommendations and security measures made by the Tenant.

4.2 Access for the Tenant

- 4.2.1 The Tenant is granted a right:
- (a) of full and free access at all times and for all purposes both with and without vehicles (where appropriate) plant and machinery over and along the Access Route, subject to the Tenant:
 - (i) reporting any known damage caused in the exercise of this right to the Landlord as soon as reasonably practicable after becoming aware of the damage and making good within a reasonable timeframe and to the reasonable satisfaction of the Landlord any damage caused in the exercise of this right;
 - (ii) in the case of an Emergency giving as much prior written notice as is reasonably practicable to the Access Contact; and

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- (iii) in all other cases, giving not less than three working days' prior written notice to the Access Contact.
- (b) to use the Set-Down Area on a temporary basis (and for no longer than reasonably necessary) for storing machinery and parking and turning vehicles and machinery in order to access the Communications Site and/or the Equipment and for undertaking and/or managing any Works;
- (c) (save where the Tenant is already permitted in this Lease) to access other parts of the Landlord's Property adjoining the Communications Site or Access Route as may be reasonably required in order to exercise any right granted in this Lease (other than the rights contained in paragraphs 4.2.1(a) and 4.2.1(b)) with or without vehicles subject to:
 - (i) the Tenant giving the Access Contact not less than 14 days' prior written notice, save in the case of Emergency, in which case the Tenant shall give as much written notice as is reasonably practicable to the Access Contact;
 - (ii) the Tenant providing to the Landlord full details of the Tenant's requirements for access including vehicles and machinery to be used, parking arrangements, estimated duration of access and contact information for the person responsible for managing any works; and
 - (iii) the approval of the Landlord (such approval not to be unreasonably withheld or delayed).

4.2.2 The Tenant shall comply with the Access Arrangements.

Section 5

Equipment

What the Tenant can and cannot do with the Equipment

5.1 Permission for the Tenant

- 5.1.1 The Tenant shall be permitted to install, keep installed, inspect, maintain, adjust, alter, repair and operate the Equipment on / from (as applicable) the Communications Site (it being acknowledged that any Equipment may be installed in stages throughout the Term).

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5.1.2 The initial complement of Equipment that the Tenant shall be permitted to install and keep installed at the Communications Site is as shown on the Drawings and Specification.

5.1.3 **[DRAFTING NOTE: OPTION A:** The Tenant shall be permitted to upgrade the Equipment in accordance with paragraph 17 of the Code.]

[DRAFTING NOTE: OPTION B: The Tenant shall be permitted to upgrade the Equipment in accordance with paragraph 17 of the Code but, where the conditions at paragraph 17 of the Code are not met, the Tenant shall be permitted to carry out other upgrades to the Equipment subject to the Tenant first providing the Landlord with drawings and a specification showing any such upgrade, and subject to receiving the Landlord's prior written consent (such consent not to be unreasonably withheld or delayed).]

[DRAFTING NOTE: OPTION C: The Tenant shall be permitted to upgrade the Equipment.]

[DRAFTING NOTE: This is an important point for Landlords. Please see Guidance Note.]

5.1.4 [The Tenant shall be permitted to erect, use, add to, retain, renew, replace, substitute, decommission or remove the Equipment on / from (as applicable) the Communications Site.]

5.1.5 The Tenant shall be permitted to erect, maintain, alter and renew a fence or barrier on or around the perimeter of the Communications Site and/or around the Equipment for the protection of the Equipment and the safeguarding of the health and safety of third parties.

5.2 Interference

5.2.1 If the Landlord can demonstrate to the reasonable satisfaction of the Tenant that the Equipment is causing interference with the operation of other equipment installed on the Landlord's Property as at the date of this Lease the Landlord may serve written notice on the Tenant (such notice to be accompanied with evidence of such interference) (the "**Interference Notice**").

5.2.2 Following receipt of the Interference Notice the Tenant shall use reasonable endeavours to resolve the specified interference as soon as reasonably practicable and the parties will enter discussions (where reasonable) for the relocation of the Equipment in order to resolve such interference.

5.2.3 If the Tenant is unable to resolve the interference specified in the Interference Notice within a reasonable period or within 48 hours in the case of emergency the Tenant shall switch off the Equipment (or such interfering part) and will not switch it on again until such interference has been resolved.

5.2.4 In the event that the Tenant is unable to resolve the interference specified in the Interference Notice then the Tenant may terminate this Lease at any time by giving the Landlord not less than [3 months'] prior written notice.

5.2.5 Any termination under paragraph 5.2.4 shall be without prejudice to any rights either party may have against the other in relation to any antecedent breach.

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Section 6

Works, repairs and maintenance

Making changes and keeping in good condition

6.1 Works

6.1.1 The Tenant shall:

- (a) obtain all Tenant's Consents before installing all or any part of the Equipment or carrying out the Works;
- (b) carry out the Works in a good and workmanlike manner and in compliance with the Tenant's Consents;
- (c) comply with its obligations under the CDM Regulations and other laws and where reasonably requested by the Landlord to provide the Landlord (which may be supplied by its contractors) with details of its safe working practices;
- (d) carry out the Works with as little inconvenience to the Landlord, other occupiers of the Landlord's Property, and occupiers of any adjoining land as is reasonably practicable; and
- (e) make good any physical damage caused by the Works as soon as reasonably practicable and to the reasonable satisfaction of the Landlord.

6.2 Repair and Maintenance

- 6.2.1 The Tenant will keep the Communications Site, the Equipment and any boundary fencing clean and tidy and in good and tenantable repair and condition throughout the Term.
- 6.2.2 If the Landlord gives the Tenant notice of any breach of paragraph 6.2.1, then the Tenant will carry out any works needed to remedy that breach as soon as is reasonably practicable following receipt of such notice.
- 6.2.3 It is acknowledged by the parties that in order to ensure safe working practices are followed (given the Permitted Use) the Landlord cannot in any circumstances carry out works to, or which may affect, the Equipment in the event of the Tenant's failure to do so.

6.3 Access Route and Landlord's Obligation to Repair

- 6.3.1 The Landlord is to keep those parts of the Landlord's Property over which the Tenant has rights in sufficient repair and in a safe and passable condition for the Tenant to exercise the Rights having regard to the location of the Communications Site and all health and safety legislation applicable from time to time.

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- 6.3.2 The Landlord is entitled to erect any gates, stiles or other structures but not so as to prevent access to the Communications Site and Equipment.
- 6.3.3 The Landlord is entitled to alter or close any access routes, in which case the Landlord is to provide suitable alternative access route(s) to the Communications Site and Equipment.
- 6.3.4 The Landlord shall not be liable for any breach of or non-compliance with the Landlord's obligations in this paragraph 6.3 that results from any matter beyond the Landlord's reasonable control.

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Section 7

General obligations

Responsibilities and requirements that apply to this Lease

General obligations on the Tenant

7.1 Use

7.1.1 The Tenant shall not:

- (a) use the Communications Site otherwise than for the Permitted Use;
- (b) cause any actionable nuisance to the Landlord or any occupiers of the Landlord's Property, and occupiers of any adjoining land (the proper exercise of the Rights shall not be a breach of this paragraph); or
- (c) obstruct the Access Route or deposit any waste, rubbish or soil on any part of the Landlord's Property.

7.2 Compliance with legislation

7.2.1 The Tenant shall maintain all Tenant's Consents and comply with all laws from time to time relating to:

- (a) the Communications Site and the occupation and use of the Communications Site by the Tenant;
- (b) the carrying out of any Works; and
- (c) the Equipment.

7.2.2 If the Tenant is in breach of its obligations under paragraph 7.2.1 and has not taken steps to remedy any breach within a reasonable period of the Tenant becoming aware of such breach, then the Landlord may do what it reasonably considers necessary to remedy the breach, subject to paragraph 6.2.3 and the Tenant shall within 14 days of written demand pay to the Landlord all reasonable and proper costs, charges and expenses which the Landlord so incurs.

7.2.3 Each party shall inform the other in writing as soon as practicable of any written notice or claim received by it relating to the Communications Site and provide a copy of it to the other party.

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7.3 Health and Safety

- 7.3.1 The Tenant will 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.
- 7.3.2 The Tenant shall not be liable for any breach of or non-compliance with paragraph 7.3.1 that results from any matter beyond its reasonable control.
- 7.3.3 The Tenant will comply with all legislation relating to on-site safety signs and exclusion zones in relation to the Equipment.

7.4 Tree lopping

- 7.4.1 In the event that any trees or other vegetation on the Landlord's Property obstruct or interfere or may obstruct and interfere with the operation of the Equipment (including obstructing the line of sight of the Equipment) the Tenant shall (having first given reasonable prior written notice to the Landlord except in the case of an Emergency) have the right at its own cost to access the necessary parts of the Landlord's Property in order to trim and/or cut back such trees or other vegetation to the extent necessary to remove such obstruction or interference and in order to prevent any re-occurrence of such interference or obstruction.
- 7.4.2 All cut timber and trimmings are to remain the property of the Landlord unless the Landlord notifies the Tenant otherwise.
- 7.4.3 The Tenant will compensate the Landlord for any loss reasonably and properly incurred by the Landlord resulting from the cutting or removal of any such trees or other vegetation by the Tenant.

7.5 Indemnity

- 7.5.1 The Tenant shall indemnify the Landlord in respect of all claims and proceedings brought or threatened against the Landlord in relation to the Communications Site (including associated liabilities, demands, damages, penalties, fines, losses, costs and expenses (including but not limited to any solicitors' or other professionals' costs and expenses) reasonably and properly incurred by the Landlord) ("**Proceedings**") arising out of or in connection with [any breach, non-performance or non-observance of the Tenant's obligations under this Lease,] any [negligent or] unlawful act or omission by the Tenant in the exercise of the Rights and/or use of the Communications Site and/or the Equipment provided that:
 - (a) the Landlord shall promptly notify the Tenant of any Proceedings and the Landlord will not compound, settle or admit those Proceedings without the prior written consent of the Tenant (such consent not to be unreasonably withheld or delayed) except by an order of a court or tribunal of competent jurisdiction; and
 - (b) the Tenant shall be entitled at its own cost to defend or settle any Proceedings subject to the Landlord's prior written consent (such consent not to be unreasonably withheld or delayed).
- 7.5.2 The indemnity at paragraph 7.5.1 does not extend to:

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- (a) [any Proceedings to the extent that they are in respect of consequential loss beyond loss of rent due to damage to the Landlord's Property];
 - (b) any Proceedings to the extent that they result from any negligence, wilful act, default or omission of the Landlord, its employees, servants, contractors, agents or tenants or any other person outside the Tenant's control; and
 - (c) any Proceedings to the extent that the Landlord has failed to take any action that it ought reasonably and properly to have taken to mitigate any liabilities, costs and expenses that it may suffer.
- 7.5.3 Claims under the above-mentioned indemnity shall be capped at a level of [one million/five million/ten million] pounds (£[insert numeric figure for clarity]) whether in respect of a single claim or a series of claims arising from the same incident (except in the event of death or personal injury where there shall be no limit).
- 7.5.4 Nothing in this Lease shall restrict or interfere with the Tenant's rights against the Landlord or any other person in respect of contributory negligence.

General obligations on the Landlord

7.6 Quiet enjoyment

- 7.6.1 So long as the Tenant pays the Site Payment and materially complies with the Tenant's obligations in this Lease, the Tenant shall have quiet enjoyment of the Communications Site.

7.7 Non-interference

- 7.7.1 The Landlord agrees not to knowingly interfere with, tamper with or obstruct the Communications Site, the Equipment and the supply of electricity to the Communications Site and the Equipment nor do anything or authorise anything to be done that may cause interference with the operation of the Equipment (including obstructing the line of sight of the Equipment) without the Tenant's prior written consent (not to be unreasonably withheld or delayed), and agrees to take reasonable precautions and steps necessary to ensure that no person shall interfere with, tamper with or obstruct the same and shall use reasonable endeavours to resolve or procure the resolution of the specified interference, tampering or obstruction as soon as reasonably practicable.
- 7.7.2 The Landlord shall not be liable for any breach of or non-compliance with the Landlord's obligations in this paragraph 7.7 that results from any matter beyond the Landlord's reasonable control.

7.8 Notification of build works to Landlord's Property

- 7.8.1 The Landlord shall notify the Tenant in writing as soon as reasonably practicable after the Landlord has a settled intention to undertake building, redevelopment or repair works in the vicinity of the Communications Site and which is likely to affect the Communications Site or the Equipment, in which case the Landlord and Tenant shall each use reasonable endeavours to co-operate with the other party to minimise disruption for both parties and to preserve health and safety.

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7.9 Land Register requirements

- 7.9.1 In connection with the Tenant's application to register this Lease at the Land Register of Scotland (if applicable), the Landlord shall promptly assist the Tenant with any requisitions raised by the Registers of Scotland to enable the Tenant's application to be completed by the Registers of Scotland as soon as practicable.

Section 8

Assigning, charging, sharing and subletting

What the Tenant may and may not do

- 8.1** Otherwise than as permitted below the Tenant is not permitted to assign, sublet, transfer, charge, share possession or occupation of (in whole or in part) the Communications Site.

- 8.2** The parties acknowledge that in accordance with the Code the Tenant may:

- 8.2.1 assign this Lease to any Other Operator The Tenant shall provide the Landlord with written notice containing reasonable details of any such assignment within 21 days; and
- 8.2.2 share the use of the Equipment with any Other Operator.

Section 9

Ending this Lease

How the Tenant and the Landlord can end this Lease and what happens afterwards

9.1 Tenant Termination

- 9.1.1 The Tenant shall have the right to terminate this Lease in the event that the Tenant ceases to be a person to whom the Code is applied by serving not less than [3 months'] prior written notice on the Landlord.

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- 9.1.2 The Tenant may terminate this Lease in the event that any of the circumstances referred to at paragraph 10.3.1 of this Lease exist for a continuous period of [12 months] by serving not less than [3 months'] prior written notice on the Landlord. **[DRAFTING NOTE: Will require amendment if Site Payment is to be paid as a lump sum.]**
- 9.1.3 [The Tenant may terminate this Lease [at any time on or after][on] the Tenant's Break Date by serving the Tenant's Break Notice upon the Landlord.]
- 9.1.4 [The Tenant may terminate this Lease in the event of termination or expiration of the Tenant's contract to provide a service to its customers in the county, region or area in which the Communications Site is located by serving not less than [3 months'] prior written notice on the Landlord.]
- 9.1.5 Any termination under paragraph 9.1 shall be without prejudice to any rights either party may have against the other in relation to any antecedent breach.

9.2 Landlord Termination

- 9.2.1 The Landlord may terminate this Lease by serving not less than [3 months'] prior written notice on the Tenant in the event that:
- (a) the Tenant ceases to be a person to whom the Code is applied;
 - (b) the electronic communications service to which this Lease relates permanently ceases to be provided, whether or not the Tenant removes the Equipment; or
 - (c) the Equipment is no longer being used, nor likely to be used, at the Landlord's Property, or is permanently removed by the Tenant.
- 9.2.2 [The Landlord may terminate this Lease [at any time on or after][on] the Landlord's Break Date by serving the Landlord's Break Notice upon the Tenant.]
- 9.2.3 Any termination under paragraph 9.2 shall be without prejudice to any rights either party may have against the other in relation to any antecedent breach.
- 9.2.4 **Irritancy** The Landlord may re-enter the Communications Site (or any part of it in the name of the whole) and thereby terminate this Lease (subject to paragraph 30(2) of the Code) without prejudice to any right or remedy of the Landlord in respect of any breach of obligation by the Tenant:
- (a) by giving the Tenant not less than 18 months' prior written notice where:
 - (i) any Site Payment is unpaid for 28 days after becoming payable having been formally demanded by the Landlord; or
 - (ii) the Tenant is in substantial breach of its obligations under this Lease and it has not remedied the breach within a reasonable time (being a period of no less than one month) having been given prior written notice of such breach by the Landlord; or
 - (b) where one or more of the following acts of insolvency have occurred:

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- (i) the taking of any step in connection with any voluntary arrangement or any other compromise or arrangement for the benefit of any creditors of the Tenant;
- (ii) the making of an administration order in relation to the Tenant;
- (iii) the Tenant gives any notice of intention to appoint an administrator, or the filing at court of the prescribed documents in connection with the appointment of an administrator, or the appointment of an administrator, in any case in relation to the Tenant;
- (iv) the appointment of a receiver or manager or an administrative receiver in relation to any property or income of the Tenant;
- (v) the commencement of a voluntary winding-up in respect of the Tenant (except where such actions are for the purposes of amalgamation or reconstruction of a solvent company in respect of which a statutory declaration of solvency has been filed with the Registrar of Companies);
- (vi) the making of a winding-up order in respect of the Tenant;
- (vii) the Tenant is struck off from the Register of Companies; or
- (viii) the Tenant otherwise ceases to exist.

9.3 [Reimbursement on Termination]

- 9.3.1 The Landlord shall reimburse to the Tenant within 28 days of this Lease coming to an end and the Tenant having vacated the Communications Site an amount equal to the portion of the Site Payment (plus VAT if applicable) that has been paid by or on behalf of the Tenant which is attributable to the period after the date of termination, provided that this Lease has not been terminated in accordance with paragraph 9.3.] **[DRAFTING NOTE: Not to be used if Site Payment is to be paid as a lump sum.]**

9.4 Vacating the Communications Site

- 9.4.1 The Tenant shall remove the Equipment and Cables and reinstate any alterations and/or additions to the Communications Site or Equipment and make good to the reasonable satisfaction of the Landlord any damage whatsoever caused by such removal or reinstatement, and yield up the Communications Site to the Landlord with vacant possession of the Equipment and Cables on termination of this Lease in accordance with the Code.
- 9.4.2 Unless the Landlord serves a notice upon the Tenant requiring otherwise, prior to this Lease coming to an end in accordance with the Code the Tenant shall serve notice on any third party suppliers supplying Equipment to the Communications Site requiring them to remove such Equipment prior to termination of this Lease, and shall provide a copy of such notice to the Landlord. The Tenant shall use reasonable endeavours to procure the removal of such Equipment by any such third party suppliers prior to termination of this Lease.

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- 9.4.3 The Tenant shall not be liable for any breach of paragraph 9.5.2 that results from any matter beyond the Tenant's reasonable control.

Section 10

General Conditions

Other matters relating to this Lease

10.1 Lift & Shift

- 10.1.1 In the event that the Landlord intends to carry out works of repair, redevelopment, refurbishment, maintenance, improvement or alteration of any part of the Landlord's Property (the "**Landlord's Works**") and the Landlord's Works cannot reasonably be carried out with the Equipment and/or Cables in place the Landlord is entitled to require the Tenant to relocate the Equipment and/or Cables within the Landlord's Property or temporarily remove the Equipment and/or Cables by giving to the Tenant not less than [X] months' prior written notice (save in the case of an Emergency in which case as much notice as is reasonably practicable shall be given) to that effect (the "**Lift & Shift Notice**");
- (a) specifying the date of commencement of the Landlord's Works, the date the Landlord requires the Tenant to turn off the Equipment and an estimated timetable for the duration of the Landlord's Works; and
- (b) if the Landlord requires the relocation of the Equipment and/or Cables:
- (i) specifying whether any such relocation is to be temporary or permanent; and
- (ii) identifying for the Tenant's approval the alternative location within the Landlord's Property to which the Tenant is to relocate the Equipment and/or Cables, in which case the Tenant shall as soon as reasonably practicable consider and either (acting reasonably) approve the alternative location or enter into discussions with the Landlord to agree an alternative location and in the event that an alternative location cannot be agreed between the parties within two months of the service of the Lift & Shift Notice the matter may be referred by either party to an Alternative Dispute Resolution (ADR) procedure for settlement pursuant to paragraph 10.4 of this Lease.
- 10.1.2 On the date specified in the Lift & Shift Notice for doing so (or on an alternative date if agreed by the parties), the Tenant shall at its own expense (subject to paragraph 10.1.4) relocate the Equipment and/or Cables to the alternative location agreed pursuant to paragraph 10.1.1(b)(ii), making good any damage caused to the Landlord's Property by the relocation and reinstating the Landlord's Property to the Landlord's reasonable satisfaction.
- 10.1.3 Following completion of the Landlord's Works if the Lift & Shift Notice required the relocation to be temporary the Tenant shall at its own expense

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(subject to paragraph 10.1.4) remove the Equipment and/or Cables from the alternative location and return it to the previous site unless the parties agree otherwise in writing.

- 10.1.4 In the event that the Landlord serves a Lift & Shift Notice upon the Tenant on more than [X] occasions during the Term, or in any event if the Landlord's Works constitute a redevelopment of any part of the Landlord's Property, the Landlord shall pay to the Tenant within 28 days of written demand the Tenant's reasonable and properly incurred costs (including proper and reasonable professional costs) in subsequently complying with the Tenant's obligations under this paragraph 10.1.

10.2 Switching off the Equipment

- 10.2.1 In the event that the Landlord intends to carry out the Landlord's Works or inspections and reasonably requires the Tenant to switch off or power down the Equipment in order to ensure safe access to the Landlord's Property and the Landlord's Works or inspection cannot be reasonably undertaken without doing so then the Tenant shall switch off or power down the Equipment for as long as is reasonably necessary provided (save in case of Emergency in which case as much notice as is reasonably practicable shall be given) the Landlord gives the Tenant at least [X] [days'/weeks'/months'] prior written notice to switch off or power down and uses reasonable endeavours to minimise disruption to the Tenant and the period for which the Equipment is switched off or powered down.

10.3 [Site Payment suspension

- 10.3.1 The Site Payment shall cease to be payable in respect of any period to the extent that:
- (a) the Communications Site is unfit for occupation and use for the Permitted Use following damage caused by any reason outside of the Tenant's control (whether or not the Landlord has effected insurance to cover such occurrence of damage);
 - (b) the Tenant is prevented from gaining access to the Communications Site or the Equipment in accordance with paragraph 4.2 due to any reason or cause within the reasonable control of the Landlord;
 - (c) the Tenant has, at the Landlord's request, switched off or disconnected the Equipment (save where the Tenant has switched off the Equipment at the request of the Landlord pursuant to paragraph 5.2) including pursuant to a Lift & Shift Notice;
 - (d) the Equipment is not operational or its operation is significantly impaired due to any interference or any tampering by the Landlord as described in paragraph 7.7;
 - (e) the Landlord has not entered into any wayleave or other similar agreement in breach of its obligations pursuant to paragraph 3.4; or
 - (f) the Communications Site is not able to be used for the Permitted Use due to obstructions on the Landlord's Property.] **[DRAFTING NOTE: Will require amendment if Site Payment is to be paid as a lump sum.]**

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10.4 Dispute Resolution

- 10.4.1 The parties shall use reasonable endeavours to attempt to resolve any dispute arising out of or relating to this Lease through negotiations between senior members of both parties who have authority to settle disputes.
- 10.4.2 If a dispute is not resolved by negotiation within 30 days of receipt of a written invitation from one party to the other to negotiate a dispute the parties will use reasonable endeavours to attempt to resolve the dispute in good faith through an agreed Alternative Dispute Resolution (ADR) procedure, or, in default of agreement, through an ADR procedure as recommended to the parties by the President for the time being of the Royal Institution of Chartered Surveyors, on the application of either party.
- 10.4.3 If the matter has not been resolved by an ADR procedure within 60 days of the initiation of the procedure set out in paragraph 10.4.2 above, or if any party will not participate in an ADR procedure, the dispute may be referred to arbitration by any party. The seat of the arbitration shall be Scotland. The arbitration shall be governed by both the Arbitration (Scotland) Act 2011 and the rules of arbitration as may be agreed between the parties. Should the parties be unable to agree on an arbitrator or arbitrators, or be unable to agree on the rules for arbitration, any party may, upon giving prior written notice to the other party, apply to the President for the time being of the Royal Institution of Chartered Surveyors for the appointment of an arbitrator or arbitrators (with experience relevant to the dispute) and for any decision on rules that may be necessary.
- 10.4.4 Nothing in this paragraph shall be construed as limiting any party's other rights and remedies, including for the avoidance of doubt any application to court or tribunal.

10.5 Jurisdiction

- 10.5.1 This Lease will in all respects be governed by and construed in accordance with Scots law and the Landlord and the Tenant irrevocably submit to the exclusive jurisdiction of the courts and tribunals of Scotland.

10.6 Notices

- 10.6.1 Any notice served pursuant to the Code shall be served in accordance with the Code.
- 10.6.2 Any other notice served under or in respect of this Lease shall be in writing and signed by or on behalf of the party serving it. Any such notices shall be served by:
- (a) delivering it by hand:
- (i) in the case of the Tenant to its registered office; and
 - (ii) in the case of the Landlord to its registered office or last known place of address;

in which case it shall be deemed to have been served on the day of delivery if delivered before 4:00pm or otherwise on the next working day following delivery; or

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(b) sending it by special delivery post, registered post or recorded delivery post addressed:

(i) in the case of the Tenant to its registered office; and

(ii) in the case of the Landlord to its registered office or last known place of address;

in which case it shall be deemed to have been served on the first working day after it was posted.

10.6.3 No notice served by either party by email or facsimile shall be valid.

10.7 Contract (Third Party Rights) (Scotland) Act 2017

10.8 This Lease does not create any rights in favour of third parties under the Contract (Third Party Rights) (Scotland) Act 2017 to enforce or otherwise invoke any provision of this Lease.

10.9 Entire agreement

10.9.1 This Lease constitutes the entire agreement between the Landlord and Tenant and supersedes all previous discussions, negotiations, and correspondence between them relating to its subject matter.

10.10 Misrepresentations

10.10.1 Each party acknowledges and agrees that in entering into this Lease it does not rely upon, and shall have no remedies in respect of, any representation or warranty, whether written or oral, save any written statements of the Landlord's solicitors made prior to the date of this Lease in response to written enquiries from the Tenant's solicitors.

10.10.2 Nothing in this paragraph shall limit or exclude any liability for fraud.

10.10.3 **Servitude Rights and Privileges** For the avoidance of doubt, the Tenant shall not have the benefit of any servitude right or privilege over any other parts of the Landlord's Property or any adjoining or neighbouring property of the Landlord other than those granted pursuant to this Lease and/or the Code.

10.11 Severance

10.11.1 If any provision or part-provision of this Lease is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this paragraph shall not affect the validity and enforceability of the rest of this Lease.

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Section 11

Rights for the Landlord's Property and ownership

11.1 Rights for the benefit of the Landlord's Property

11.1.1 The following rights are excepted and reserved to the Landlord and to all others authorised from time to time by the Landlord:

- (a) the free and uninterrupted passage and running of substances, energy and information through any conduit or service media (but for the avoidance of doubt not the Equipment or the Cables) on, under or through the Communications Site provided that it does not interfere with the operation and use of the Equipment;
- (b) the right to enter the Communications Site (strictly subject to the provisions at paragraph 4.1) in order to inspect, survey, clean, repair, maintain, renew, remove, divert or make connections to any conduit or service media or to install any new conduit or service media but for the avoidance of doubt this does not extend to the Cables;
- (c) shelter, support and protection afforded by the Communications Site for the remainder of the Landlord's Property to the extent provided at the date of this Lease; and
- (d) the right to develop or use, or permit the development or use of, any part of the Landlord's Property (other than the Communications Site) provided always that such development or use does not obstruct the line of sight to the Equipment nor affect the structural integrity of the Communications Site.

11.2 Ownership

11.2.1 The Equipment shall remain the absolute property of the Tenant.

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[Annex Plans]
[Annex Drawings and Specifications]

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