

SAMPLE ROOFTOP AGREEMENT

Rooftop Agreement

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

- (1) [•] (Site Provider)
- (2) [•] (Operator)

IMPORTANT

This draft agreement is intended for use in Scotland where a mobile network operator is being granted rights to install electronic communications apparatus on an area on a rooftop, 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 agreement 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 agreement. All terms implied by law are excluded.

Agreement between:	
(1) Site Provider	[●] (company number [●]) whose registered office is [●] (the "Site Provider") and
(2) Operator	[●] (company number [●]) whose registered office is [●] (the "Operator")
In this Agreement, unless the context otherwise requires, the following words have the following meanings:	
Access Contact	[INSERT NAME OF SITE PROVIDER CONTACT (AND ADDRESS) THAT THE OPERATOR SHOULD CONTACT TO ACCESS THE COMMUNICATIONS SITE] or such other reasonable contact as the Site Provider shall notify to the Operator in writing as being the Access Contact from time to time
Operator Contact	[INSERT OPERATOR CONTACT DETAILS (E.G. EMAIL ADDRESS) THAT THE SITE PROVIDER MAY CONTACT FOR OPERATIONAL MATTERS IN RELATION TO THE COMMUNICATIONS SITE] (a means of contacting the Operator for the Site Provider's convenience, but for the avoidance of doubt this shall not be a means of serving any notice under or in respect of this Agreement, in which case the provisions of paragraph 10.6 shall apply)
<hr/>	
Access Arrangements	[The Operator shall <i>[Insert any site-specific requirements not already covered in the Agreement (See section 4)]</i> or such other reasonable arrangements as the Site Provider shall reasonably notify to the Operator in writing from time to time.]
Communications Site	The communications site forming part of the Site Provider'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 Operator pursuant to this Agreement, 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 Agreement
Consideration	[●] pounds (£[●]) [per annum], as this term is defined in paragraph 24 of the Code, representing the market value of the Site Provider's agreement to enter into this Agreement
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 Site Provider of administering the Operator's use of the Site Provider's electricity supply (if applicable)]
[Operator's Break Date	[the [●] anniversary of the Term Commencement Date][or insert actual date]]
[Operator's Break Notice	not less than [●] months' prior written notice to terminate this Agreement on the Operator's Break Date]
Plan	the Plan annexed and executed as relative to this Agreement
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 Site Provider and approved by the Operator, both acting reasonably
Site Payment	The combined total of the Compensation and the Consideration
Site Payment Commencement Date	the [Term Commencement Date] <i>[Do not use if Site Payment being paid as one lump sum]</i>
Schedule	The Schedule in [11] sections annexed and executed as relative hereto

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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]
[Site Provider's Break Date]	[the [●] anniversary of the Term Commencement Date][or insert actual date]]
[Site Provider's Break Notice]	not less than 18 months' prior written notice to terminate this Agreement on the Site Provider's Break Date]
Site Provider's Property	the Site Provider's land known as [●] and as registered at the Land Register of Scotland under title number [●]
Term	From and including the Term Commencement Date to and including [●]
Term Commencement Date	[the date of this Agreement][●]
Title Matters	the matters referred to at the date of this Agreement 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 Site Provider's Property]

A Interpreting the Agreement

In this Agreement, unless the context otherwise requires:

- 1 any section titles and headings are for convenience only and shall not affect the interpretation of this Agreement;
- 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 Agreement 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 Agreement pursuant to the Code;
- 6 references to the Operator and the Site Provider include their lawful assignees and their successors in title;
- 7 references to any rights exercisable by the Operator shall be construed as being exercisable by the Operator and all persons properly authorised by them in accordance with the terms of this Agreement 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 Agreement. Unless stated otherwise references to paragraphs are to paragraphs of the relevant section. The sections and paragraphs that follow are part of this Agreement;
- 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 Agreement) 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 Agreement 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 Agreement, any such consent or approval must be in writing; and
- 13 if there is any conflict between this Agreement and the Code the provisions of the Code shall prevail.

B The meaning of words and phrases

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

Access Route	(a) the route shown coloured brown on the Plan giving access from the public highway across the Site Provider's Property to and from the Communications Site and/or the Equipment and/or the Cables or such other materially practicable route for the Operator that may be agreed by the parties from time to time acting reasonably (b) access through any Common Parts at the Site Provider's Property designated from time to time by the Site Provider (unless the route has been specified by the Site Provider) to and from the Communications Site and/or the Equipment and/or the Cables
Agreement	this deed and any document expressed to be supplemental to it and entered into pursuant to or in accordance with the terms of this Agreement (including any section or attachment to it)
Building	the building known as [●] and forming part of the Site Provider's Property (which for the avoidance of doubt includes the Common Parts)
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
Common Parts	all fire escapes, entrances, lobbies, passages, lifts, staircases and gantries in or on the Building not demised exclusively to any tenant and which is available for use by the Operator in common with others to the extent necessary to gain access to and from the Communications Site and the Equipment
Drawings and Specification	the drawings and specification annexed and executed as relative to this Agreement
Emergency	a situation in which the following has occurred or is reasonably likely to occur without preventative steps being taken: (a) danger to persons or property; or

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- (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 Agreement
Infrastructure System	has the meaning given to it in the Code
Line(s)	has the meaning given to it in the Code
Operator'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 Site Provider's Consents
Other Operator	a person, other than the Operator, 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 Operator's networks or providing an Infrastructure System
Rights	all rights and permissions granted to the Operator by or as a result of this Agreement
Site Provider's Consents	all necessary statutory permissions, licences and approvals required to be obtained by the Site Provider in relation to the grant of this Agreement
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 Agreement

- 1 In consideration of the Consideration the Site Provider with absolute warrandice grants the Rights in relation to the Communications Site to the Operator for the Term subject to the Title Matters and reserving the Site Provider's rights as set out in section 11 of this Agreement.
- 2 The Site Provider warrants to the Operator that it has full legal title to the Site Provider's Property, Communications Site and the Access Route to enter into this Agreement and that there is nothing in its title which would interfere with the exercise of the Rights.
- 3 The Site Provider has obtained any Site Provider's Consents to enter into and give full effect to this Agreement (save for any Operator's Consents required to be obtained by the Operator in accordance with this Agreement).
- 4 The Site Provider 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 Site Provider's Property or their fitness for purpose for the Permitted Use.

The Site Provider and the Operator consent to registration of this Agreement for preservation and execution: IN WITNESS WHEREOF this Agreement consisting of this and the preceding [] pages together with the Schedule and the Drawings and Specifications are subscribed as follows:

SUBSCRIBED for and on behalf of the said [INSERT SITE PROVIDER]

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 OPERATOR]]

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.....
[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 Agreement between [] and []

Section 1

Site Payment, taxes and expenses

Paying the Site Payment, rates and other expenses

1.1 Site Payment

1.1.1 The Operator 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 Site Provider's bank account (details of which the Site Provider shall have notified to the Operator 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 Operator shall pay interest on any unpaid Site Payment or other sum payable under this Agreement 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 Operator 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 Operator is not in breach of any of the terms of this Agreement; or
- (b) if the sums payable are anything other than the Site Payment and such sums have not been formally demanded by the Site Provider.

1.3 VAT

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

1.4 Rates and Taxes

1.4.1 The Operator 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:

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- (a) any taxes payable by the Site Provider in connection with any dealing, transfer or disposition of the Site Provider's interest in this Agreement; or
- (b) any taxes, other than VAT, payable by the Site Provider by reason of the receipt of any payment due under this Agreement.

1.5 Site Provider's costs and expenses

- 1.5.1 The Operator shall pay the reasonable and properly incurred costs and expenses of the Site Provider including any solicitors' or other professionals' costs and expenses incurred (both during and after the end of the Term) in connection with any of the following in relation to this Agreement:
 - (a) the enforcement of the Operator obligations, including (but not limited to) the service of a schedule setting out wants of repair (and associated obligations) pursuant to this Agreement within 6 months of this Agreement coming to an end;
 - (b) the service of any irritancy notice;
 - (c) serving any notice upon any guarantor of the Operator's obligations (including, but without prejudice to the foregoing generality, any rent, service charge or other payment obligations) under this Agreement ;
 - (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 Site Provider's consent made in accordance with paragraph 5.1.3;]
 - (f) serving a notice under paragraph 5.2;
 - (g) serving a notice under paragraph 9.2.1 and any related notice pursuant to paragraph 31 of the Code;
 - (h) complying with the Site Provider's obligations pursuant to paragraph 7.9.1; or
 - (i) serving a Lift & Shift Notice under paragraph 10.1, unless either the Site Provider has already served a Lift & Shift Notice upon the Operator on [X] occasions during the Term, or the Site Provider's Works constitute a redevelopment of any part of the Site Provider's Property.

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Section 2

Insurance

What the Operator will insure and pay

- 2.1** The Operator 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 Operator's use of the Communications Site and will upon the Site Provider's request provide evidence of such insurance (but not more than once a year). The parties acknowledge that the Site Provider shall not maintain insurance in relation to the Equipment.
- 2.2** The Operator shall not knowingly do or omit anything as a result of which the Site Provider's policy of insurance of the Site Provider'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 Operator shall pay to the Site Provider 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 Site Provider can demonstrate to the Operator'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 Agreement.

Section 3

Cables, electricity and wayleaves

Payment and supply

The Operator 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 Operator.

3.1 Electricity supply

3.1.1 The Operator 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

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- (b) Connect into and use the Site Provider's electricity supply in the event that the Operator 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 Site Provider's electricity supply, then the Operator shall reimburse the Site Provider 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 Operator connects into and uses the Site Provider's electricity supply, the Site Provider will use reasonable endeavours to ensure that the supply is maintained and in the event of any interruption the Site Provider will use reasonable endeavours to reinstate the supply as soon as reasonably possible.
- 3.1.3 The Operator shall have the right to bring onto, keep, refuel and operate on the Communications Site [or temporarily in the Set-Down Area] a suitable (taking into account the nature of the Building) power generator together with associated fuel, sockets and Cables to connect the generator to the Equipment in such positions previously approved by the Site Provider (such approval not to be unreasonably withheld or delayed) such generator to be used [on a temporary basis] prior to the installation of the Operator'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 Operator has installed a direct electricity supply, the Operator 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 Operator connects into and uses the Site Provider's existing electricity supply, the Operator shall:
 - (a) install at its own cost an electricity sub-meter; and
 - (b) pay upon receipt of evidence from the electricity supplier to the Site Provider the actual cost of electricity used in connection with the Communications Site and the Equipment as evidenced by the electricity sub-meter [plus the Electricity Administration Fee].

3.3 Cables

- 3.3.1 The Operator (and/or authorised third party suppliers notified by the Operator to the Site Provider) 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 Site Provider's Property leading to and from the Equipment and the Communications Site (the route of such Cables to be approved by the Site Provider, 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 Site Provider.
- 3.3.2 [The Operator (and/or authorised third party suppliers notified by the Operator to the Site Provider) 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 Site

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Provider's Property leading to and from the Equipment and the Communications Site (the route of such Cables to be approved by the Site Provider, 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 Site Provider.]

- 3.3.3 The Operator will compensate the Site Provider for any loss or physical damage reasonably and properly incurred by the Site Provider resulting directly from the Cable installation by the Operator 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 Site Provider's Property, the Site Provider shall use reasonable endeavours to enter into such agreement(s) in relation to a route to be approved by the Site Provider (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

Access

Who can access where and when

4.1 Access for the Site Provider

- 4.1.1 The Site Provider is permitted to access the Communications Site (save for the Equipment) where such access is reasonably required for the purposes of:
- (a) inspecting the Site Provider's Property, including for estate management and pursuant to any contractual obligations owed by the Site Provider to third parties;
 - (b) complying with the Site Provider's obligations under any laws;
 - (c) exercising any right excepted or reserved to the Site Provider under this Agreement;
 - (d) preparing any energy performance certificate and recommendations report for the Site Provider's Property or any part of the Site Provider's Property as defined in the Energy Performance of Buildings (Scotland) Regulations 2008 ; or
 - (e) obtaining data or information necessary for any calculations of the carbon emissions for the Communications Site.

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- 4.1.2 The Site Provider must give reasonable prior written notice to the Operator prior to exercising its rights under paragraph 4.1.1 and the parties shall agree a mutually convenient time and the Site Provider shall be accompanied at all times by a representative of the Operator (except in the case of an emergency when all reasonable efforts shall be made by the Site Provider to contact the Operator to arrange supervised access but in the event that a representative of the Operator is not available within a reasonable time the Site Provider may access the Communications Site unaccompanied and without reasonable prior written notice). The Site Provider shall make good any damage caused to the Communications Site as a result of the access or any act or omission of the Site Provider during such access as soon as reasonably practicable and to the reasonable satisfaction of the Operator, subject to paragraph 6.2.3.
- 4.1.3 In exercising the rights of access under paragraph 4.1 the Site Provider will be sensitive to the nature of the Equipment and observe any health and safety recommendations and security measures made by the Operator.

4.2 Access for the Operator

- 4.2.1 The Operator 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 Operator:
- (i) reporting any known damage caused in the exercise of this right to the Site Provider 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 Site Provider 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
 - (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 Operator is already permitted in this Agreement) to access other parts of the Site Provider's Property adjoining the Communications Site or Access Route as may be reasonably required in order to exercise any right granted in this Agreement (other than the rights contained in paragraphs 4.2.1(a) and 4.2.1(b)) with or without vehicles subject to:
- (i) the Operator giving the Access Contact not less than 14 days' prior written notice, save in the case of Emergency, in which case the Operator shall give as much written notice as is reasonably practicable to the Access Contact;
 - (ii) the Operator providing to the Site Provider full details of the Operator's requirements for access including vehicles and machinery to be used, parking arrangements, estimated duration of

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access and contact information for the person responsible for managing any works; and

- (iii) the approval of the Site Provider (such approval not to be unreasonably withheld or delayed).

4.2.2 The Operator shall comply with the Access Arrangements.

Section 5

Equipment

What the Operator can and cannot do with the Equipment

5.1 Permission for the Operator

5.1.1 The Operator 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).

5.1.2 The initial complement of Equipment that the Operator 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 Operator shall be permitted to upgrade the Equipment in accordance with paragraph 17 of the Code.]

[DRAFTING NOTE: OPTION B: The Operator 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 Operator shall be permitted to carry out other upgrades to the Equipment subject to the Operator first providing the Site Provider with drawings and a specification showing any such upgrade, and subject to receiving the Site Provider's prior written consent (such consent not to be unreasonably withheld or delayed).]

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

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

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

5.2 Interference

- 5.2.1 If the Site Provider can demonstrate to the reasonable satisfaction of the Operator that the Equipment is causing interference with the operation of other equipment installed on the Site Provider's Property as at the date of this Agreement the Site Provider may serve written notice on the Operator (such notice to be accompanied with evidence of such interference) (the "**Interference Notice**").
- 5.2.2 Following receipt of the Interference Notice the Operator 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 Operator 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 Operator 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 Operator is unable to resolve the interference specified in the Interference Notice then the Operator may terminate this Agreement at any time by giving the Site Provider 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.

Section 6

Works, repairs and maintenance

Making changes and keeping in good condition

6.1 Works

- 6.1.1 The Operator shall:
- (a) obtain all Operator'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 Operator's Consents;
 - (c) comply with its obligations under the CDM Regulations and other laws and where reasonably requested by the Site Provider to provide the Site Provider (which may be supplied by its contractors) with details of its safe working practices;

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- (d) carry out the Works with as little inconvenience to the Site Provider, other occupiers of the Site Provider's Property, and occupiers of any adjoining land as is reasonably practicable;
- (e) make good any physical damage caused by the Works as soon as reasonably practicable and to the reasonable satisfaction of the Site Provider; and
- (f) not carry out any works which adversely affect the energy rating, efficiency, environmental performance or sustainability characteristics of the Building, including the energy performance certificate (as defined in the Energy Performance of Buildings (Scotland) Regulations 2008 rating).

6.2 Repair and Maintenance

- 6.2.1 The Operator will keep the Communications Site, the Equipment and any boundary fencing clean and tidy and in good and tenable repair and condition throughout the Term.
- 6.2.2 If the Site Provider gives the Operator notice of any breach of paragraph 6.2.1, then the Operator 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 Site Provider cannot in any circumstances carry out works to, or which may affect, the Equipment in the event of the Operator's failure to do so.

6.3 Access Route and Site Provider's Obligation to Repair

- 6.3.1 The Site Provider is to keep those parts of the Site Provider's Property over which the Operator has rights in sufficient repair and in a safe and passable condition for the Operator to exercise the Rights having regard to the location of the Communications Site and all health and safety legislation applicable from time to time.
- 6.3.2 The Site Provider is entitled to alter or close any access routes, in which case the Site Provider is to provide suitable alternative access route(s) to the Communications Site and Equipment.
- 6.3.3 The Site Provider shall not be liable for any breach of or non-compliance with the Site Provider's obligations in this paragraph 6.3 that results from any matter beyond the Site Provider's reasonable control.

Section 7

General obligations

Responsibilities and requirements that apply to this Agreement

General obligations on the Operator

7.1 Use

7.1.1 The Operator shall not:

- (a) use the Communications Site otherwise than for the Permitted Use;
- (b) cause any actionable nuisance to the Site Provider or any occupiers of the Site Provider'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 Site Provider's Property.

7.2 Compliance with legislation

7.2.1 The Operator shall maintain all Operator'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 Operator;
- (b) the carrying out of any Works; and
- (c) the Equipment.

7.2.2 If the Operator 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 Operator becoming aware of such breach, then the Site Provider may do what it reasonably considers necessary to remedy the breach, subject to paragraph 6.2.3 and the Operator shall within 14 days of written demand pay to the Site Provider all reasonable and proper costs, charges and expenses which the Site Provider 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 Operator 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 Operator 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 Operator 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 Site Provider'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 Operator shall (having first given reasonable prior written notice to the Site Provider except in the case of an Emergency) have the right at its own cost to access the necessary parts of the Site Provider'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 Site Provider unless the Site Provider notifies the Operator otherwise.
- 7.4.3 The Operator will compensate the Site Provider for any loss reasonably and properly incurred by the Site Provider resulting from the cutting or removal of any such trees or other vegetation by the Operator.

7.5 Indemnity

- 7.5.1 The Operator shall indemnify the Site Provider in respect of all claims and proceedings brought or threatened against the Site Provider 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 Site Provider) ("**Proceedings**") arising out of or in connection with [any breach, non-performance or non-observance of the Operator's obligations under this Agreement,] any [negligent or] unlawful act or omission by the Operator in the exercise of the Rights and/or use of the Communications Site and/or the Equipment provided that:
- (a) the Site Provider shall promptly notify the Operator of any Proceedings and the Site Provider will not compound, settle or admit those Proceedings without the prior written consent of the Operator (such consent not to be unreasonably withheld or delayed) except by an order of a court or tribunal of competent jurisdiction; and
- (b) the Operator shall be entitled at its own cost to defend or settle any Proceedings subject to the Site Provider'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 Site Provider's Property];
 - (b) any Proceedings to the extent that they result from any negligence, wilful act, default or omission of the Site Provider, its employees, servants, contractors, agents or tenants or any other person outside the Operator's control; and
 - (c) any Proceedings to the extent that the Site Provider 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 Agreement shall restrict or interfere with the Operator's rights against the Site Provider or any other person in respect of contributory negligence.

General obligations on the Site Provider

7.6 Quiet enjoyment

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

7.7 Non-interference

- 7.7.1 The Site Provider 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 Operator'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 Site Provider shall not be liable for any breach of or non-compliance with the Site Provider's obligations in this paragraph 7.7 that results from any matter beyond the Site Provider's reasonable control.

7.8 Notification of build works to Site Provider's Property

- 7.8.1 The Site Provider shall notify the Operator in writing as soon as reasonably practicable after the Site Provider 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 Site Provider and Operator 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 Operator's application to register this Agreement at the Land Register of Scotland (if applicable), the Site Provider shall promptly assist the Operator with any requisitions raised by Registers of Scotland to enable the Operator's application to be completed by Registers of Scotland as soon as practicable.

Section 8

Assigning, charging, sharing and subletting

What the Operator may and may not do

- 8.1 Otherwise than as permitted below the Operator 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 Operator may:
- 8.2.1 assign this Agreement to any Other Operator. The Operator shall provide the Site Provider 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 Agreement

How the Operator and the Site Provider can end this Agreement and what happens afterwards

9.1 Operator Termination

- 9.1.1 The Operator shall have the right to terminate this Agreement in the event that the Operator ceases to be a person to whom the Code is applied by serving not less than [3 months'] prior written notice on the Site Provider.
- 9.1.2 The Operator may terminate this Agreement in the event that any of the circumstances referred to at paragraph 10.3.1 of this Agreement exist for a continuous period of [12 months] by serving not less than [3 months'] prior

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written notice on the Site Provider. **[DRAFTING NOTE: Will require amendment if Site Payment is to be paid as a lump sum.]**

9.1.3 [The Operator may terminate this Agreement [at any time on or after][on] the Operator's Break Date by serving the Operator's Break Notice upon the Site Provider.]

9.1.4 [The Operator may terminate this Agreement in the event of termination or expiration of the Operator'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 Site Provider.]

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 Site Provider Termination

9.2.1 The Site Provider may terminate this Agreement by serving not less than [3 months'] prior written notice on the Operator in the event that:

- (a) the Operator ceases to be a person to whom the Code is applied;
- (b) the electronic communications service to which this Agreement relates permanently ceases to be provided, whether or not the Operator removes the Equipment; or
- (c) the Equipment is no longer being used, nor likely to be used, at the Site Provider's Property, or is permanently removed by the Operator.

9.2.2 [The Site Provider may terminate this Agreement [at any time on or after][on] the Site Provider's Break Date by serving the Site Provider's Break Notice upon the Operator.]

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.

9.3 Irritancy

9.3.1 The Site Provider may re-enter the Communications Site (or any part of it in the name of the whole) and thereby terminate this Agreement (subject to paragraph 30(2) of the Code) without prejudice to any right or remedy of the Site Provider in respect of any breach of obligation by the Operator:

- (a) by giving the Operator 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 Site Provider; or
 - (ii) the Operator is in substantial breach of its obligations under this Agreement 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 Site Provider; 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 Operator;
- (ii) the making of an administration order in relation to the Operator;
- (iii) the Operator 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 Operator;
- (iv) the appointment of a receiver or manager or an administrative receiver in relation to any property or income of the Operator;
- (v) the commencement of a voluntary winding-up in respect of the Operator (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 Operator;
- (vii) the Operator is struck off from the Register of Companies; or
- (viii) the Operator otherwise ceases to exist.

9.4 [Reimbursement on Termination]

- 9.4.1 The Site Provider shall reimburse to the Operator within 28 days of this Agreement coming to an end and the Operator 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 Operator which is attributable to the period after the date of termination, provided that this Agreement 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.]

9.5 Vacating the Communications Site

- 9.5.1 The Operator 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 Site Provider any damage whatsoever caused by such removal or reinstatement, and yield up the Communications Site to the Site Provider with vacant possession of the Equipment and Cables on termination of this Agreement in accordance with the Code.
- 9.5.2 Unless the Site Provider serves a notice upon the Operator requiring otherwise, prior to this Agreement coming to an end in accordance with the Code the Operator 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 Agreement, and shall provide a copy of such notice to the Site Provider. The Operator shall use reasonable endeavours to procure the removal of such Equipment by any such third party suppliers prior to termination of this Agreement.

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

Section 10

General Conditions

Other matters relating to this Agreement

10.1 Lift & Shift

- 10.1.1 In the event that the Site Provider intends to carry out works of repair, redevelopment, refurbishment, maintenance, improvement or alteration of any part of the Site Provider's Property (the "**Site Provider's Works**") and the Site Provider's Works cannot reasonably be carried out with the Equipment and/or Cables in place the Site Provider is entitled to require the Operator to relocate the Equipment and/or Cables within the Site Provider's Property or temporarily remove the Equipment and/or Cables by giving to the Operator 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 Site Provider's Works, the date the Site Provider requires the Operator to turn off the Equipment and an estimated timetable for the duration of the Site Provider's Works; and
 - (b) if the Site Provider 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 Operator's approval the alternative location within the Site Provider's Property to which the Operator is to relocate the Equipment and/or Cables, in which case the Operator shall as soon as reasonably practicable consider and either (acting reasonably) approve the alternative location or enter into discussions with the Site Provider 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 Agreement.
- 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 Operator 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 Site Provider's Property by the relocation and reinstating the Site Provider's Property to the Site Provider's reasonable satisfaction.

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10.1.3 Following completion of the Site Provider's Works if the Lift & Shift Notice required the relocation to be temporary the Operator shall at its own expense (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 Site Provider serves a Lift & Shift Notice upon the Operator on more than [X] occasions during the Term, or in any event if the Site Provider's Works constitute a redevelopment of any part of the Site Provider's Property, the Site Provider shall pay to the Operator within 28 days of written demand the Operator's reasonable and properly incurred costs (including proper and reasonable professional costs) in subsequently complying with the Operator's obligations under this paragraph 10.1.

10.2 Switching off the Equipment

10.2.1 In the event that the Site Provider intends to carry out the Site Provider's Works or inspections and reasonably requires the Operator to switch off or power down the Equipment in order to ensure safe access to the Site Provider's Property and the Site Provider's Works or inspection cannot be reasonably undertaken without doing so then the Operator 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 Site Provider gives the Operator at least [X] [days'/weeks'/months'] prior written notice to switch off or power down and uses reasonable endeavours to minimise disruption to the Operator 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 Operator's control (whether or not the Site Provider has effected insurance to cover such occurrence of damage);
- (b) the Operator 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 Site Provider;
- (c) the Operator has, at the Site Provider's request, switched off or disconnected the Equipment (save where the Operator has switched off the Equipment at the request of the Site Provider 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 Site Provider as described in paragraph 7.7;
- (e) the Site Provider 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 Site Provider'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 Agreement 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 Agreement will in all respects be governed by and construed in accordance with Scots law and the Site Provider and the Operator 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 Agreement 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 Operator to its registered office; and
 - (ii) in the case of the Site Provider to its registered office or last known place of address;

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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

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

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

(ii) in the case of the Site Provider 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.

10.6.4 **Contract (Third Party Rights) (Scotland) Act 2017**

10.6.5 This Agreement 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 Agreement.

10.6.6

10.6.7 **Entire agreement**

10.6.8 This Agreement constitutes the entire agreement between the Site Provider and Operator and supersedes all previous discussions, negotiations, and correspondence between them relating to its subject matter.

10.7 Misrepresentations

10.7.1 Each party acknowledges and agrees that in entering into this Agreement 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 Site Provider's solicitors made prior to the date of this Agreement in response to written enquiries from the Operator's solicitors.

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

10.8 Servitude Rights and Privileges

10.8.1 For the avoidance of doubt, the Operator shall not have the benefit of any servitude right or privilege over any other parts of the Site Provider's Property or any adjoining or neighbouring property of the Site Provider and shall benefit only from those rights granted pursuant to this Agreement and/or the Code.

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10.9 Severance

10.9.1 If any provision or part-provision of this Agreement 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 Agreement.

Section 11

Rights for the Site Provider's Property and ownership

11.1 Rights for the benefit of the Site Provider's Property

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

- (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 Site Provider's Property to the extent provided at the date of this Agreement; and
- (d) the right to develop or use, or permit the development or use of, any part of the Site Provider'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 Operator.

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**[ANNEX PLANS]
[ANNEX DRAWINGS AND SPECIFICATION]**

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