

**Standard Lease**

**Rural - Building**

**Please note that the guidance set out in this document is provided for information only and does not constitute advice by Scottish Futures Trust to any public authority or other person. In addition, this document is not intended to provide an exhaustive statement of the matters that will require consideration by public authorities in connection with granting rights to use land or buildings by mobile operators. Scottish Futures Trust does not take any responsibility for any decisions made by a public authority or any other person based upon the contents of this document. It will be important that the organisation obtains specific professional advice in relation to any proposed transaction.**

**February 2021**

# Introduction

## This document sets out the Infralink Standard Lease in a rural area for buildings and instructions on how it should be used.

# The Infralink Standard Leases

## The Infralink Standard Leases should be used when a site owner is approached by a mobile operator to put a mobile telecoms mast on their asset. Four standard leases have been developed according to the type of asset (land or building) and the location of the asset (urban or rural) that the mast is going to be put on.

## The Infralink Standard Leases build off the mediated Greater London Authority template that was developed against the backdrop of the Electronic Communications Code[[1]](#footnote-1). Infralink has taken this further based on a national desire to promote the proliferation of the mobile communication network[[2]](#footnote-2) and the practical realities for public sector landowners across the length and breadth of Scotland.

## Used with the Infralink Payment Guidance, the Infralink Standard Leases will offer a credible option to current practice by establishing a balanced and transparent starting point for discussions between potential landlords and tenants. For both sides this will make negotiations and deployment more efficient and can result in improved connectivity in an area.

## Use of the Infralink Standard Leases is voluntary and does not take account of every situation that may be encountered. It should be considered a starting point for the transaction in question and adapted accordingly.

## For answer to some frequently asked questions about the Electronic Communications Code please refer to the [Infralink ECC FAQ document.](https://infralink.scottishfuturestrust.org.uk/storage/21/Infralink_ECC_FAQs_Feb21.pdf)

# Which Standard Lease should you use?

## Selecting which Standard Lease to use should be based on the location of the asset (urban or rural) [[3]](#footnote-3) and the type of asset (land or building). For the full set of Infralink Standard Leases please refer to the [Infralink](http://infralink.scottishfuturestrust.org.uk/) website.

## The Standard Leases acknowledge that in an urban environment there are likely to be more sensitivities, which might necessitate more restrictive provisions than in a rural environment where the sites are more likely to be in a remote area where the same considerations do not apply. The location of the asset will impact the tenant’s rights for putting equipment on the mast and the sharing of the mast. Below is a comparison table that summarises the differences between the Standard Leases.

## Table Description automatically generated with medium confidence

# Drafting Notes

## You should check that the party contracting as (a) "Tenant" is in fact an operator with the benefit of Code powers (using the relevant link above); and (b) "Landlord" is in fact an occupier within the meaning of Part 2 of the Code (taking legal advice).

## The Standard Lease contains a number of provisions in square brackets, which may require negotiation/ need to be determined on a case-by-case basis. In many instances the choice to be made is readily apparent. However, more detailed guidance on the use of the Standard Leases is set out below.

|  |  |  |
| --- | --- | --- |
|  | | |
| **Provision** | **Relating to** | **Guidance** |
| Access Contact definition / para. 4.2 / para. 10.6 | Access Contact | The parties may agree (where appropriate) that it is unnecessary for access notices to be formally served in hard copy. The parties may wish to provide an email address for the landlord's Access Contact, to facilitate access for the tenant and ensure that access notices are seen promptly by the landlord. If so, it is important to ensure that necessary changes are made to the access provisions at paragraph 4.2 and notice provisions at paragraph 10.6. |
| Access Arrangements definition / para. 4.2 | Access Arrangements | It is envisaged that the arrangements for accessing a particular site must necessarily be determined on a site-by-site basis, and would therefore either be set out in the definition of Access Arrangements. Clearly the requirements are likely to be different for greenfield and rooftop sites. It is for the parties to consider issues such as:-   * the provision of any access codes / keys by the landlord to the tenant; * any health & safety requirements / security procedures; * any limitations on the time of access (e.g. for residential buildings); * whether supervised access would be necessary (e.g. for sensitive / secure buildings); * the circumstances in which the tenant may be required to provide a Risk Assessment and Method Statement; * whether any particular gates (e.g. marked X on the Plan) must be kept locked at all times when not in use;   It is important to ensure that any site specific access arrangements are not inconsistent with the tenant's access rights at paragraph 4.2 (and if necessary consider amending those accordingly). |
| Electricity Administration Fee definition / para. 3.2.2(b) |  | If the site's electricity supply is provided via the landlord's supply, which is administered and re-charged by / on behalf of the landlord, then the parties may consider whether it would be appropriate for the tenant to pay a sum in respect of that administrative burden. |
| Group Company definition / para 8.3 | Group Company sharing | The lease contains a provision allowing for certain Group Company dealings in recognition of the fact that this is a requirement for many operators in line with their operating structure. |
| Tenant's Break Date / Tenant's Break Notice definitions / para. 9.1.3 / para. 9.1.4 | Tenant's Break | It is a matter of negotiation between the parties whether the tenant should have a break right, and if so when this can be exercised and the period of notice the tenant is required to give. The same applies to any right for the tenant to determine the lease if it loses its contract to provide a service to its customers. |
| Landlord's Break Date / Landlord's Break Notice definitions / Para. 9.2.2 | Landlord's Break | Similarly, it is a matter of negotiation between the parties whether the landlord should have a break right, and if so when this can be exercised.  The recommendation of the Scottish Futures Trust is that, taking into account the CAPEX investment required on the part of the tenants for this type of site, the landlord should have no right to break prior to the fifth anniversary of the date of the lease.  The proposed notice period has been chosen to run concurrently with the 18 months' notice required pursuant to paragraph 31(3)(a) of the Code, on the basis that there is little point in agreeing a shorter notice period for any contractual landlord's break clause. |
| Landlord's Property definition | Landlord's Property | You should consider carefully the extent of this definition and how it is used in the lease. For example, it may not be appropriate for this to be the entirety of the land in the landlord's ownership. |
| Access Route definition / para. 4.2.1 | Access Route | The parties should agree an appropriate route, bearing in mind the access rights at paragraph 4.2.1, particularly paragraph 4.2.1(c). |
| Para. 3.4 | Wayleaves | Wayleaves granted to third parties are often essential for the operation of a site, and it is recognised that a delay often arises at this stage. It is for the parties to consider a target period within which landlords should complete any such wayleaves, and it is considered that this paragraph contains sufficient protection for a landlord e.g. if the terms being proposed are unreasonable / the obligation is merely to use reasonable endeavours. |
| Para. 5.1.1 | Code rights in respect of the Equipment | The wording in this paragraph reflects the Code rights contained within paragraphs 3(a) to 3(c) of the Code. The wording acknowledges that with rooftop sites some of the equipment (eg antennas and dishes) is not installed within the let subjects, but rather on other areas of the rooftop. |
| Para. 5.1.2 | Rights to upgrade and add to | Paragraph 17 of the Code confers an automatic statutory right on an operator who has obtained an agreement conferring Code rights to upgrade that Equipment without needing the consent of the landlord or having to pay in order to do so, providing that the conditions at paragraph 17(2) and (3) of the Code are met. Case law under the Code in 2020 confirmed that these rights are the "floor" and that it is open to the parties to agree wider rights than those contained in paragraph 17.  Paragraph 5.1.2 provides a right for the tenant to upgrade the Equipment (in addition to the automatic paragraph 17 rights) and to add to the Equipment provided that the amount of Equipment detailed in the Specification is not exceeded. Where those limits are exceeded the Landlord's consent would be required (such consent not to be unreasonably withheld or delayed) |
| Para. 5.1.2 | Notice of upgrade | The parties may agree the inclusion of a requirement for the tenant to give notice of certain types of upgrade, such as: "*If an upgrade results in any changes to externally visible Equipment, then the Tenant shall provide the Landlord with written notice containing reasonable details of any such upgrade within [28] days of completion of the upgrade.*"  Note that making a requirement for notice a pre-condition for upgrades would be void under the Code. |
| Para. 7.5 | Indemnity | It is recognised that indemnity clauses are often hotly-contested and so, whilst paragraph 7.5 sets out a proposal, this may in fact be negotiated between the parties on a case-by-case basis. The points shown in square brackets may need to be discussed in more detail, although this is not necessarily exhaustive.  A wider indemnity (in relation to damages etc. arising from any cause associated with the Rights / Communications Site / Equipment) was considered, but was not considered appropriate. This was primarily on the basis that compensation (for loss or damage as a result of exercising the Code rights) would be assessed at the outset of the lease. However, in any event this does not preclude the tenant's liability (albeit in damages) for any breaches of their obligations contained in the lease. |
| Para. 7.7 | Non-interference by Landlord | You should take advice on the possibility of the non-interference clause having an impact upon any potential redevelopment.  Some operators may require a more comprehensive provision, with a right to serve notice upon a landlord requiring the resolution of interference / the ability to determine the lease. |
| Para. 8.1 | Alienation | Some operators may require more flexible alienation rights (e.g. the ability to charge). This would be a matter of negotiation between the parties. |
| Para. 8.2 / 8.3 | Sharing | Operators have an automatic sharing right at paragraph 17 of the Code (which is subject to the conditions at paragraph 17(2) and (3) of the Code).  The wording of the lease allows for wider sharing rights than the 'floor' contained in paragraph 17 of the Code to facilitate sharing of communications sites (for example in relation to the Shared Rural Network), although sharing is restricted to other Code operators and Group Companies. |
| Para 8.2 / 8.3 | Notice of sharing | The parties may agree the inclusion of a requirement for the tenant to give notice of certain types of sharing arrangement, such as: "*If a sharing arrangement provides a right to physical access for any Other Operator, their employees, agents or contractors, then the Tenant shall provide the Landlord with written notice containing reasonable details of any such sharing of the use of the Equipment within [28] days of entering into the sharing arrangement.*"  Note that making a requirement for notice a pre-condition for sharing would be void under the Code. |
| Para 10.1 | Switching off the Equipment | This clause allows the landlord to request the switching off or powering down of the Equipment in certain circumstances and subject to certain caveats, in recognition of the fact that in the case of rooftop sites this type of clause could be required in order to allow the landlord to carry out works in the vicinity of the Equipment. Any disruption to the service provided by the operators is problematic (especially in the context of the provision of the Emergency Services Network), so the clause needs to contain suitable controls, and this clause seeks to provide an appropriate balance between the interests of both parties. |
| Para. 10.5 | Notices | Consider the interaction between this provision, the Access Arrangements (e.g. if it is agreed that the Access Contact may be contacted by email), and paragraph 4.2. |

|  |  |  |
| --- | --- | --- |
|  | Logo  Description automatically generated with low confidence  Lease – Rural - Building |  |
| 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 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 lease is provided for use by consenting partieswithout liability. Itdoes 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** | **[●]** [incorporated and registered in [England and Wales][Scotland] with company number [●] whose registered office is at] [of] [●] / [●] Council, incorporated under the Local Government etc (Scotland) Act 1994 and having its principal offices at [●]; and |
| **(2) Tenant** | **[●]** incorporated and registered in England and Wales with company number [●] whose registered office is at [●]; |

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) |
| **Access Arrangements** | [The Tenant shall [*Insert any site-specific requirements not already covered in the Lease (See section 4)*] |
| 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 fifth 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 Commencement Date** | the [Term Commencement Date] *[Do not use if Site Payment being paid as one lump sum]* |
| **Schedule** | the Schedule in [11] sections annexed and executed as relative hereto |
| **Site Payment Date[s]** | [*use if Site Payment being paid as one lump sum*][the Term Commencement Date] [*use if Site Payment being paid periodically]* [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] *[Insert relevant number*] of the charges register] of title number [the title number to the Landlord's Property] |

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 | * + - 1. 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; and       2. access through any Common Parts at the Landlord’s Property (unless a specific route has been specified by the Landlord) to and from the Communications Site and/or the Equipment and/or the Cables |
| Building | the building known as [●] and forming part of the Landlord'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 Tenant in common with others to the extent necessary to gain access to and from the Communications Site and the Equipment |
| 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  (b) any service impacting fault resulting in a loss, interruption or degradation in the service provided in accordance with the Permitted Use; and  (c) substantial loss to the Tenant;  and any other works which it is reasonable (in all the circumstances) to carry out with those works |
| 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 |
| Group Company | any company which is for the time being a subsidiary of the Tenant and/or any company of which the Tenant is a subsidiary from time to time (the holding company) and/or any other subsidiary of the holding company of the Tenant where “subsidiary”has the same meaning as "subsidiary undertaking" pursuant to section 1162 of the Companies Act 2006, save that in section 1162 (2)(a) the words "a majority" shall be replaced by the words "twenty five percent” |
| 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 |
| 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 and any reference to Other Operators shall be construed accordingly |
| 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 |
| Specification | [One stub mast not exceeding [x]m tower in height and foundations]  Up to [x] antennas and supporting steelwork  Up to [x] dishes and supporting steelwork  Up to [x] equipment cabins/cabinets and the equipment contained therein, including any supporting concrete and steel supports.  DC and fibre systems as required  Remote Radio Units as required  Mast Head Amplifiers as required  Routers as required  Combiners as required  Earthing systems as required  Cable trays, feeder cables, RET cables, power cables as required  and all other additional associated and ancillary equipment (including, but not limited, to GPS nodes) |
| 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 |

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 this Lease consisting of this and the preceding [            ] pages together with the Plan and the Schedule are subscribed 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] | | |
| 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 [ ]**

|  |
| --- |
|  |
| **Site Payment, taxes and expenses** |
| **Paying the Site Payment, rates and other expenses** |

* 1. **Site Payment**
     1. The Tenant shall pay the Site Payment without deduction or set-off in advance on the Site Payment Date[s] and:
        1. the Site Payment shall be made by electronic payment; or
        2. 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
        3. 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.]**
  2. **Interest** 
     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.
     2. The Tenant shall not pay interest:
        1. 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
        2. if the sums payable are anything other than the Site Payment and such sums have not been formally demanded by the Landlord.
  3. **VAT**

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. **Rates and Taxes**

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:

* + 1. any taxes payable by the Landlord in connection with any dealing, transfer or disposition of the Landlord's interest in this Lease; or
    2. any taxes, other than VAT, payable by the Landlord by reason of the receipt of any payment due under this Lease.
  1. **Landlord’s costs and expenses**
     1. The Tenant shall pay the reasonable and properly incurred costs and expenses of the Landlord 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 Lease:
        1. 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;
        2. the service of any irritancy notice;
        3. 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;
        4. entering into a wayleave agreement or other agreement with the relevant third party supplier(s) pursuant to paragraph 3.4;
        5. [any request for the Landlord's consent made in accordance with paragraph 5.1.3;]

|  |
| --- |
|  |
| **Insurance** |
| **What the Tenant will insure and pay** |

* 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. 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.

|  |
| --- |
|  |
| **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. |

* 1. **Electricity supply**
     1. The Tenant has the right to:
        1. 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
        2. 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.
     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. The Tenant shall have the right to bring onto, keep, refuel and operate on the Communications Site [or on the Set-Down Area] or in such positions previously approved by the Landlord (such approval not to be unreasonably withheld or delayed) 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 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.
     4. The Tenant shall have the right to bring onto, keep, remove and operate on the Communications Site [or on the Set Down Area] or in such positions previously approved by the Landlord (such approval not to be unreasonably withheld or delayed) a back-up battery power supply together with associated sockets and Ca bles to connect the back-up battery power supply to the Equipment such back-up battery power supply 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.
  2. **Paying for electricity**
     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
     2. Where the Tenant connects into and uses the Landlord’s existing electricity supply, the Tenant shall:
        1. install at its own cost an electricity sub-meter; and
        2. pay upon receipt of evidence from the electricity supplier to the Landlord 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. **Cables**
     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 [use, add to, retain, renew, replace, substitute, decommission, remove] 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.
     2. 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] above.
  4. **Wayleaves and/or Code Agreements**

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] weeks of receipt of the draft wayleave or agreement and proposed plan.

|  |
| --- |
|  |
| **Access** |
| **Who can access where and when** |

* 1. **Access for the Landlord**
     1. The Landlord is permitted to access the Communications Site (save for the Equipment) where such access is reasonably required for the purposes of:
        1. inspecting the Landlord’s Property, including for estate management and pursuant to any contractual obligations owed by the Landlord to third parties;
        2. complying with the Landlord’s obligations under any laws;
        3. exercising any right excepted or reserved to the Landlord under this Lease;
     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.
     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.
  2. **Access for the Tenant**
     1. The Tenant is granted a right:
        1. 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:
           1. 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;
           2. in the case of an Emergency giving as much prior notice (which need not be in writing) as is reasonably practicable to the Access Contact; and
           3. in all other cases, giving not less than three working days’ prior written notice to the Access Contact.
        2. 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;
        3. (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:
           1. the Tenant giving the Access Contact not less than 14 days’ prior written notice, save in the case of Emergency, in which case the notice need not be in writing and the Tenant shall give as much notice as is reasonably practicable to the Access Contact;
           2. 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
           3. the approval of the Landlord (such approval not to be unreasonably withheld or delayed) save in the case of Emergency where no approval shall be required.
     2. The Tenant shall comply with the Access Arrangements, save in those cases of Emergency where it is not appropriate to comply with the Access Arrangements due to the nature of the Emergency.

|  |
| --- |
|  |
| **Equipment** |
| **What the Tenant can and cannot do with the Equipment** |

* 1. **Permission for the Tenant**
     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 and/or in the locations outside of the Communications Site shown (for identification purposes only) on the Plan and in such other locations as shall from time to time be approved by the Landlord (such approval not to be unreasonably withheld or delayed) (it being acknowledged that any Equipment may be installed in stages throughout the Term).
     2. The Tenant shall be permitted to erect, use, upgrade, add to, retain, renew, replace, substitute, decommission or remove the Equipment on / from (as applicable) the Communications Site and/or in the locations outside of the Communications Site shown (for identification purposes only) on the Plan and in such other locations as shall from time to time be approved by the Landlord (such approval not to be unreasonably withheld or delayed) PROVIDED THAT the Tenant shall not install Equipment which exceeds the limit set out in the Specification without first obtaining the written consent of the Landlord (such consent not to be unreasonably withheld or delayed).
     3. The Tenant shall not in carrying out any Works overload any part of the Building, and shall take all reasonable steps to ensure that it does not make the Building or any plant or machinery on the Building unsafe.
     4. The Tenant shall be permitted to erect, maintain, alter and renew a fence or barrier on or around the Communications Site and the Equipment for the protection of the Equipment and the safeguarding of the health and safety of third parties.
  2. **Interference**
     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**").
     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.
     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.
     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. 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.

|  |
| --- |
|  |
| **Works, repairs and maintenance** |
| **Making changes and keeping in good condition** |

* 1. **Works** 
     1. The Tenant shall:
        1. obtain all Tenant's Consents before installing all or any part of the Equipment or carrying out the Works;
        2. carry out the Works in a good and workmanlike manner and in compliance with the Tenant's Consents;
        3. 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;
        4. 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;
        5. make good any physical damage caused by the Works as soon as reasonably practicable and to the reasonable satisfaction of the Landlord; and
  2. **Repair and Maintenance**
     1. The Tenant will keep the Communications Site, the Equipment and any fence or safety barriers clean and tidy and in good and tenantable repair and condition throughout the Term.
     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.
     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.
  3. **Access Route and Landlord’s Obligation to Repair**
     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.
     2. 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.
     3. The Landlord shall not be liable for any breach of or non-compliance with the Landlord's obligations in paragraph 6.3.1 that results from any matter beyond the Landlord's reasonable control.

|  |
| --- |
|  |
| **General obligations** |
| **Responsibilities and requirements that apply to this Lease** |

**General obligations on the Tenant**

* 1. **Use**

The Tenant shall not:

* + 1. use the Communications Site otherwise than for the Permitted Use;
    2. 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
    3. obstruct the Access Route or deposit any waste, rubbish or soil on any part of the Landlord's Property.
  1. **Compliance with legislation** 
     1. The Tenant shall maintain all Tenant's Consents and comply with all laws from time to time relating to:
        1. the Communications Site and the occupation and use of the Communications Site by the Tenant;
        2. the carrying out of any Works; and
        3. the Equipment.
     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.
     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.
     4. Where the Landlord is required by legislation to (a) provide an energy performance certificate in respect of the Landlord’s Property or any part of the Landlord’s Property as defined in the Energy Performance of Buildings (Scotland) Regulations 2008 or (b) to calculate the carbon emissions for the Communications Site, the Tenant shall respond to any reasonable request for information which the Landlord requires from the Tenant in order to comply with such legislation within 28 days of receipt of such request from the Landlord.
  2. **Health and Safety**
     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.
     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.
  3. **Tree lopping**
     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.
     2. All cut timber and trimmings are to remain the property of the Landlord unless the Landlord notifies the Tenant otherwise.
     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.
  4. **Indemnity**
     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 [negligent or] unlawful use of the Communications Site and/or the Equipment provided that:
        1. 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
        2. 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).
     2. The indemnity at paragraph 7.5.1 does not extend to:
        1. [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];
        2. any Proceedings to the extent that they are in respect of pure economic loss
        3. 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
        4. 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.
     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).
     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**

* 1. **Quiet enjoyment**

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.

* 1. **Non-interference**
     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.
     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.
  2. **Notification of build works to Landlord's Property**

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.

* 1. **Land Register requirements**

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 Registers of Scotland to enable the Tenant's application to be completed by Registers of Scotland as soon as practicable.

|  |
| --- |
|  |
| **Assigning, charging, sharing and subletting** |
| **What the Tenant may and may not do** |

* 1. Save as permitted below the Tenant is not permitted to assign, transfer, sublet, share possession or occupation of (in whole or in part) the Communications Site.
  2. The Tenant may without the Landlord's consent:
     1. assign or transfer the whole or part of the Equipment, the Rights, and/or the Communications Site and/or this Lease to any Other Operator(s);
     2. sublet the whole or part of the Communications Site and/or this Lease to a maximum of two Other Operators;
     3. shareoccupation or possession of the Communications Site with a maximum of two Other Operators;
     4. share the use of the Equipment with Other Operators;
     5. permit the exercise of the Rights by Other Operators; and
     6. grant a licence in respect of the Communications Site and the exercise of the Rights to a maximum of two Other Operators.
  3. The Tenant may without the Landlord's consent:
     1. assign or transfer the whole or part of the Equipment, the Rights, and/or the Communications Site and/or this Lease to any Group Company;
     2. sublet the whole or part of the Communications Site and/or this Lease to any Group Company;
     3. shareoccupation or possession of the Communications Site and/or share the use of the Equipment with any Group Company;
     4. permit the exercise of the Rights by any Group Company; and
     5. grant a licence in respect of the Communications Site and the exercise of the Rights to any Group Company.

|  |
| --- |
|  |
| **Ending this Lease** |
| **How the Tenant and the Landlord can end this Lease and what happens afterwards** |

* 1. **Tenant Termination**
     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.
     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.]**
     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.]
     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.]
     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.
  2. **Landlord Termination**
     1. The Landlord may terminate this Lease by serving not less than [3 months'] prior written notice on the Tenant in the event that:
        1. the Tenant ceases to be a person to whom the Code is applied;
        2. the electronic communications service to which this Lease relates permanently ceases to be provided, whether or not the Tenant removes the Equipment; or
        3. the Equipment is no longer being used, nor likely to be used, at the Landlord's Property, or is permanently removed by the Tenant.
     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.]
     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.
  3. **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 by giving the Tenant not less than 18 months’ prior written notice where:

* + - 1. there are persistent delays by the Tenant in making payments to the Landlord under this Lease PROVIDED THAT in respect of any payments (other than the Site Payment) the nature of the payment has been notified to the Tenant and the amount of the payment has been formally demanded by the Landlord and has remained unpaid for a period of 28 days or more; or
      2. 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
  1. **Vacating the Communications Site**
     1. The Tenant shall remove the Equipment and those Cables which belong to the Tenant on termination of this Lease and shall 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 free of the Equipment and those Cables which belong to the Tenant on termination of this Lease in accordance with the Code.
     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.
     3. The Tenant shall not be liable for any breach of paragraph 9.4.2 that results from any matter beyond the Tenant's reasonable control.

|  |
| --- |
|  |
| **General Conditions** |
| **Other matters relating to this Lease** |

* 1. **Switching off the Equipment**

In the event that the Landlord intends to carry out works of repair, inspection, or maintenance on any part of the Landlord’s Property (the "**Landlord’s Works**”) 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 where the Landlord's Works 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 the Landlord gives the Tenant at least [X] [days’/weeks’/months’] prior written notice (save in case of Emergency in which case as much notice as is reasonably practicable shall be given) to switch off or power down the Equipment and uses all reasonable endeavours to minimise disruption to the Tenant and the period for which the Equipment is switched off or powered down.

* 1. **[Site Payment suspension**
     1. The Site Payment shall cease to be payable in respect of any period to the extent that:
        1. the Communications Site is unfit for occupation and use for the Permitted Use following damage caused by any reason within the reasonable control of the Landlord (whether or not the Landlord has effected insurance to cover such occurrence of damage);
        2. 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;
        3. 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;
        4. 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;
        5. the Landlord has not entered into any wayleave or other similar agreement in breach of its obligations pursuant to paragraph 3.4; or
        6. 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.]**
  2. **Dispute Resolution** 
     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.
     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.
     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 2010 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.
     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.
  3. **Jurisdiction**

This Lease will in all respects be governed by and construed in accordance with Scots law and (without prejudice to the provisions of paragraph 10.[2]) the Landlord and the Tenant irrevocably submit to the exclusive jurisdiction of the courts and tribunals of Scotland.

* 1. **Notices**
     1. Any notice served pursuant to the Code shall be served in accordance with the Code.
     2. Any other notice served under or in respect of this Lease shall (save where such notice relates to the Tenant exercising a right of access in an Emergency) be in writing and signed by or on behalf of the party serving it. Any such notices shall be served by:
        1. delivering it by hand:
           1. in the case of the Tenant to its registered office; and
           2. 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

* + - 1. sending it by special delivery post, registered post or recorded delivery post addressed:
         1. in the case of the Tenant to its registered office; and
         2. 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.

* + 1. No notice served by either party by email or facsimile shall be valid.
  1. **Contract (Third Party Rights) (Scotland) Act 2017**

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.

* 1. **Entire agreement**

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.

* 1. **Misrepresentations**
     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.
     2. Nothing in this paragraph shall limit or exclude any liability for fraud.
  2. **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.

* 1. **Severance**

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.

|  |
| --- |
|  |
| **Rights for the Landlord's Property and ownership** |

* 1. **Rights for the benefit of the Landlord's Property**

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

* + 1. 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;
    2. 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;
    3. 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
    4. 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 nor affect the Tenant's use of the Communications Site for the Permitted Use.
  1. **Ownership**

The Equipment shall not become the property of the Landlord at any time.

**[Annex Plans]**

1. Schedule 3A to the Communications Act 2003 [↑](#footnote-ref-1)
2. Forging our Digital Future with 5G: A Strategy for Scotland (2019) <https://www.gov.scot/publications/forging-digital-future-5g-strategy-scotland/> [↑](#footnote-ref-2)
3. Whether a site is in an urban or rural area should be based upon whether the site is in a settlement or not. [↑](#footnote-ref-3)