**Internet of Things**

**Site Sharing Agreement**

# Introduction

## This document sets out the Infralink Internet of Things (IoT) Site Sharing Agreement and instructions on how it should be used.

# Infralink IoT Site Sharing Agreement

## This document can be used to start the negotiations for the use of public sector assets to host IoT gateway equipment. The document contains a number of provisions that may require negotiation/need to be determined on a case-by-case basis.

## An IoT gateway is a physical device or virtual platform that connects sensors, IoT modules, and smart devices to the cloud. IoT gateways can be deployed stand alone for use cases that are centred around a single location or, more usually, can be deployed in groups to cover a large geographic area.

## For more information about IoT please refer to the [Censis](https://censis.org.uk/what-we-do/sensing-imaging-iot/internet-of-things-iot/) website.

Logo

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IoT Master Site Sharing Agreement

Between

[●] (Company)

And

[●] (Authority)

**This Agreement is made between**

**IMPORTANT**

This draft Site Sharing Agreement is intended for use in Scotland.

This draft Site Sharing Agreement 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.

(1) [●] (registered in [●] with Company Number [●]) whose registered office is at [●] (the “**Company**"),

(2) [●] a local authority constituted under the Local Government (Scotland) Act 1994 and having its principal place of business at [●] (the "**Authority** "),

Together "the Parties".

**Whereas**

1. The Company provides wireless Internet of Things (loT) infrastructure and services on an open access basis and seeks to establish points of presence for loT gateways, which is the subject of this Agreement.
2. The Authority offers to provide Sites for the Company to facilitate the delivery and operation of the loT network.
3. The Parties have agreed upon the terms of occupation of the Sites and the grant and exercise of Rights (as defined in this document).

It is agreed between the Parties as follows:

1. **Interpretation**
   1. In this Agreement the following terms shall have the following meanings:

"**Access and Authorisation Process**" means the process more particularly described in and the subject of Part 2 to the Schedule;

"**Agreement**" means this agreement, being a Site sharing agreement, including any Schedule thereof, which Schedule may be varied or modified by agreement between the Parties as herein provided from time to time;

"**Commencement Date**" means [●];

“**Data Protection Law**” means all applicable data protection and privacy legislation in force from time to time in the UK including the General Data Protection Regulation ((EU) 2016/679); the Data Protection Act 2018; the Privacy and Electronic Communications Directive 2002/58/EC (as updated by Directive 2009/136/EC) and the Privacy and Electronic Communications Regulations 2003 (SI 2003 No. 2426) as amended; any other European Union legislation relating to personal data and all other legislation and regulatory requirements in force from time to time which apply to a party relating to the use of Personal Data (including, without limitation, the privacy of electronic communications)

"**Equipment**" means the electronic communications apparatus and any other equipment ancillary to such apparatus owned by the Company and used and operated for the Permitted Use, including any electricity and/or power connections;

“**Rights**” means the rights granted by the Authority as set out in clauses 2 and 6 of this Agreement;

“**Schedule**” means the schedule in [●] parts annexed and signed as relative hereto;

"**Site**" means any of the locations more particularly described in and the subject of Part 1 of the Schedule;

"**Term**" means the period of [●] from the Commencement Date;

1. **Permitted Use**
   1. With effect from the Commencement Date, the Company will be permitted to install, maintain, upgrade and operate the Equipment for the purposes of relaying loT communications at the Sites on a non-exclusive basis.
2. **Duration**
   1. This Agreement shall commence on the Commencement Date and shall continue for the Term, unless it is terminated earlier by either Party giving not less than six (6) months' notice in writing to the other. If Parties wish to continue the use of Equipment at the Sites beyond the Term they shall negotiate in good faith to agree the terms of such arrangement by no later than three (3) months prior to the expiry of the Term.
   2. If Parties do not wish to continue the use of Equipment at the Sites beyond the Term or the Parties cannot agree the terms of such arrangement, this Agreement shall expire on the expiry of the Term and The Company shall remove the Equipment from each Site within 14 working days from the expiry of the Term.
3. **Charges**
   1. In consideration of the Company installing, maintaining, upgrading and operating Equipment from the Sites under this Agreement, the Company shall pay to the Authority an annual fee of [●] for each Site. This is calculated as a total of [●] for the Term and is payable in advance.
   2. The fee agreed shall not include Value Added Tax (VAT) and where applicable it shall be paid by the Company.
   3. The Company agrees to pay invoices within 30 days from the end of the month in which the invoice is received. In the event of late payment by the Company of any amount payable under this Agreement the Company shall pay to the Authority interest on the outstanding amount at a rate of two per cent per annum above the base rate from time to time of the Bank of Scotland from the due date of payment until the date the outstanding amount is actually received by the Authority.
   4. For the Term, the Authority may use the loT network which is made available through the Equipment at the Sites with the following benefits:
      1. [●]
      2. [●]
4. **The Company Obligations**
   1. The Company shall (at its own cost) provide the following documentation to the Authority which shall be agreed between the Parties prior to installation of the Equipment:
      1. a copy of the risk assessment of the specific Site.
      2. a method statement, which details how and where the Equipment will be installed; and
      3. the specification of the Equipment.
   2. The Company shall (at its own cost) throughout the term of the Agreement
      1. not cause, nor permit any disruption to other users within any Site.
      2. keep and maintain the Equipment and all ancillary items in good repair and condition and safe working order following good industry practice
      3. ensure that the Equipment is fully compliant with the appropriate technical standards and the guidelines issued from time to time by the Radiation Division of the Health Protection Agency and/or ICNIRP (International Commission on Non-ionising Radiation Protection);
      4. provide on request, assistance to identify the cause of any suspected non-compliance with the guidelines in 5.2.3 above.
      5. not cause, nor permit any third party for whom the Company is responsible at law to cause, damage to any Site.
      6. at all times comply with all relevant Health and Safety Regulations.
      7. obtain any necessary statutory consents and permission regarding the operation and use of the Equipment.
      8. ensure that all planning and other consents necessary are obtained in respect of the Equipment and its use and on request provide the Authority with written confirmation thereof prior to exercising any rights under this Agreement.
      9. not tamper with or operate anything on any Site other than the Equipment.
      10. before exercising any rights of access pursuant to the terms of this Agreement, give notice through the Access and Authorisation Process; and
      11. on termination of this Agreement, remove the Equipment within 20 working days from expiry or termination of the Agreement from all Sites and make good any damage to any Site.
5. **Authority Obligations**
   1. The Authority shall, subject to the Access and Authorisation Process (where appropriate):
      1. provide access to each Site.
      2. respond to each request for access in a timely manner.
      3. maintain each Site for safe access and working conditions using appropriate health and safety equipment.
      4. provide adequate power for the Equipment.
      5. maintain controlled access to each Site.
   2. The Authority shall not be liable for any break in electricity supply due to any cause but will use all reasonable endeavours to restore the electricity supply as quickly as reasonably possible.
6. **Service of Notice**
   1. Any notice under this Agreement shall be in writing and shall refer to this Agreement and shall be deemed to be sufficiently served if addressed to the Party and sent by:
      1. first class mail or courier service;
      2. registered post; or
      3. email with a read receipt

to the relevant address here following or such other address as the Party may from time to time designate by written notice to the other:

The Company:

Email address [●]

Address: [●]

The Authority:

Email Address [●]

Address: [●]

* 1. Any notice sent by first class mail, courier service or registered post shall be deemed to have been delivered two Business Days after posting, exclusive of the day of posting. Any notice by electronic media shall be deemed to have been delivered on the day of transmission, unless such transmission is not done on a Business Day or occurs after 1700 hours.

1. **Indemnity**
   1. The Company shall make good any damage caused to any property or person by reason of any act of omission or default by the Company, or any third party for whom the Company is responsible at law arising out of the Company's use of any Site or the Rights under this Agreement.
   2. The Company shall indemnify the Authority on demand against all costs, expenses, charges, damages, actions claim and demands relating to any property or person by reason of any act of omission or default by the Company, or any third party for whom the Company is responsible at law.
   3. The Company shall maintain insurance against employers and public liability to a minimum of ten million Pounds (£10,000,000) Sterling in respect of any incident or series of related incidents.
2. **Limitation of Liability**
   1. Subject to clause 9.2, the Company shall not be liable to the Authority under this Agreement for a breach of this Agreement to the extent that any such breach results from any negligence, willful act, default or omission of the Authority or the Authority's employees, contractors, agents or anyone else within the Authority's reasonable control.
   2. Nothing in this Agreement shall limit or exclude a Party's liability for:
      1. Death or personal injury caused by its negligence, or that of its employees, agents or subcontractors or anyone within its reasonable control; or
      2. Fraudulent misrepresentation or fraudulent concealment.
      3. Any willful actions, defaults, omissions or misconduct of that Party or its employees, agents or subcontractors or anyone within its reasonable control
      4. Any liability which cannot by law be limited or excluded
   3. Notwithstanding the provisions of clause 8 and this clause 9 the Authority accept no liability for the Equipment.
3. **Data Protection**
   1. Both Parties will comply with the applicable requirements of Data Protection Law to the extent they apply to any activities under this Agreement.
   2. The Parties agree that it is their mutual expectation that they will not share personal data with each other under this Agreement. In the event that, contrary to this mutual expectation, personal data is shared then the following provisions of this Clause shall apply in the event that the parties do not agree in writing any express provisions regulating such processing.
   3. To the extent that either Party discloses personal data to the other Party it will ensure that such disclosure is fair, lawful and transparent in the context of the purposes for which the personal data is to be processed by the receiving Party and otherwise complies with the requirements of Data Protection Law.
   4. Without prejudice to Clause 10.2, if either Party ("Processor") acts as a processor of personal data for the other Party ("Controller") in relation to any activities under this Agreement then:
      1. the Processor shall process such personal data only for the purposes of this Agreement and subject to any express written instructions of the Controller from time to time, and otherwise on such terms relating to the processing as the Controller may reasonably specify in writing.
      2. the Processor shall assist the Controller in complying with its obligations under Data Protection Law and in demonstrating such compliance, including by documenting and agreeing in writing any particular aspects of the processing and providing such information in relation to the processing, to the extent required to do so by the Controller; and
      3. the provisions of Articles 28.2, 28.3 (a) to (h) and 28.4 of the General Data Protection Regulation (EU 2016/679) shall be incorporated into this Agreement mutatis mutandis by way of direct contractual obligation on the part of the Processor to the Controller.
   5. In this Clause:
      1. "Data Protection Law" means Law relating to data protection, the processing of personal data and privacy from time to time.
      2. "Law" means any statute, directive, other legislation, law or regulation in whatever form, delegated act (under any of the foregoing), rule, order of any court having valid jurisdiction or other binding restriction, decision or guidance in force from time to time; and
      3. words and expressions defined in Data Protection Law shall have the same meanings when used in this Clause.
4. **Confidentiality**
   1. Each Party undertakes to the other that it shall treat and procure that its directors, officers, employees, and contractors treat as confidential information relating to the business of the other Parties of which it becomes aware as a result of this Agreement other than information which is generally available and in the public domain or which comes into the public domain other than by breach of this clause or where disclosure is required for compliance with any statutory obligation or for the purposes of legal proceedings.
5. **Freedom of Information**
   1. The Company acknowledges that the Authority is subject to the requirements of Freedom of Information (Scotland) Act 2002 (FOl(S)A) and Environmental Information (Scotland)Regulations 2004 (ElRs) and The Company shall assist and cooperate with the Authority to enable it to comply with these information disclosure requirements.
   2. The Company acknowledges that the Authority may be required under the FOl(S)A and EIRs to disclose Information (including Commercially Sensitive Information) without consulting or obtaining consent from The Company. The Authority shall take reasonable steps to notify The Company of a Request For Information (in accordance with the Scottish Ministers' Code of Practice on the discharge of functions by Scottish Public Authorities under section 60 of Part 6 of the FOl(S)A and regulation 18 of EIRs) to the extent that it is permissible and reasonably practical for it to do so but (notwithstanding any other provision in this Agreement) the Authority shall be responsible for determining in its absolute discretion whether any Commercially Sensitive Information and/or any other information is exempt from disclosure in accordance with the FOl(S)A and/or the ElRs.
6. **Novation**
   1. The Company shall not assign, novate or otherwise dispose of or create any trust in relation to any or all of its rights, obligations or liabilities under this Agreement without the prior written consent of the Authority.
   2. The Authority may at its discretion assign, novate or otherwise dispose of any or all of its rights, obligations and liabilities under this Agreement and/or any associated licenses to anybody (including any private sector body) which performs any of the functions that previously had been performed by the Authority, provided that any such assignment, novation or disposal shall not increase the burden on The Company of the obligations accepted by The Company under this Agreement.
   3. The Company shall, at the Authority's request, enter into a novation agreement in such form as the Authority shall reasonably specify in order to enable the Authority to exercise its rights pursuant to this clause 13.2.
7. **Third Party Rights**
   1. A person who is not a party to this Agreement has no right under the Contract (Third Party Rights) (Scotland) Act 2017 to enforce or to enjoy the benefit of any term of this Agreement. Nothing in this Agreement, whether express or implied, is intended or shall be construed to confer, directly or indirectly, upon or give to any person, other than the Parties hereto, any right, remedy or claim under or in respect of this Agreement or any undertaking, condition or other provision contained herein.
8. **Entire Agreement**
   1. This Agreement constitutes the entire agreement and understanding of the Parties and supersedes all prior oral or written agreements, understanding or arrangements between them relating to the subject matter of this Agreement. Neither Party shall be entitled to rely on any prior agreement understanding or arrangement which is not expressly contained in this Agreement.
9. **Severability**
   1. Each provision in this Agreement shall be construed separately and (save as otherwise expressly provided herein) none of the provisions hereof shall limit or govern the extent, application or construction of any of them and notwithstanding that any provision of this Agreement may prove to be illegal or unenforceable the remaining provisions of this Agreement shall remain in full force and effect.
10. **Variation**
    1. No variation of this Agreement shall be binding on any Party unless and to the extent that it is recorded in a written document executed by the Parties.
11. **Jurisdiction**
    1. This Agreement and the relationship between the Parties hereunder shall be interpreted in accordance with the laws of Scotland and for these purposes the Parties submit to the exclusive jurisdiction of the Scottish Courts.

IN WITNESS WHEREOF this Agreement consisting of this and the preceding [●] pages, together with Schedule have been executed as follows:

Executed for and on behalf of [●] (Company)

Signature

Name (Print)

Job Title (Print)

Date of Signature (Print)

Before this witness

Witness Signature

Witness Name (Print)

Witness Address (Print)

Executed for and on behalf of [●] (Authority)

Signature

Name (Print)

Job Title (Print)

Before this witness

Witness Signature

Witness Name (Print)

Witness Address (Print)

**THIS IS THE SCHEDULE REFERRED TO IN THE FOREGOING AGREEMENT BETWEEN [●] AND [●]**

PART 1 - SITE

|  |  |  |
| --- | --- | --- |
| Site Number | Site Name | Site Address |
| 1 |  |  |
| 2 |  |  |
| 3 |  |  |
| 4 |  |  |
| 5 |  |  |
| 6 |  |  |
| 7 |  |  |

PART 2 – ACCESS AND AUTHORISATION PROCESS

1. The Company shall submit a request to [●] Company providing a minimum of 20 working days' notice to the Authority prior to requiring access to the Site.

2. The request shall detail the following:

a) date and time access is required;

b) description of works or maintenance to be carried out;

c) contact details for the individuals that will attend at the Site; and

d) the required method statement and risk assessment for the proposed works.

3. The Authority shall respond to the request from the Company within 10 working days of receipt advising if the request can be accommodated or proposing an alternative date and time.