

Annex 2: Template Agreement

Date

[(1)]

[(2)]

AGREEMENT

relating to []

THIS AGREEMENT is made on the

20[]

BETWEEN

(1) [] (the “**Landowner**”); and

(2) [] whose registered office is at []
(registered with Company No. []) (the “**Operator**”)

together known as the “**Parties**”

OPERATIVE PROVISIONS

1. INTERPRETATION

1.1 In this agreement:

1.1.1 the following expressions have the following meanings unless inconsistent with the context:

“**the Act**” the Telecommunications Act 1984 as amended by the Communications Act 2003 and the Digital Economy Act 2017 and any other subsequent legislation;

“**Act of Insolvency**”

- (a) the appointment of a receiver or manager or an administrative receiver in relation to any property or income of the Operator; or
- (b) the commencement of a voluntary winding-up in respect of the Operator, except a winding-up for the purpose 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; or
- (c) the making of a petition for a winding-up order or a winding-up order in respect of the Operator; or
- (d) the striking-off of the Operator from the Register of Companies or the making of an application for the Operator or any guarantor to be struck-off;

“**Authorised Use**” the installation, operation and maintenance of the Equipment and upgrading and sharing of it to the extent permitted by the Code;

“**BACS**” Bank Automated Credit System Clearing House;

“**CDM Regulations**” the Construction (Design and Management) Regulations 2015;

“**CHAPS**” Clearing House Automated Payment System;

“**the Code**” the Code set out in Schedule 3A to the Communications Act 2003 as inserted by Schedule 1 of the Digital Economy Act 2017;

“Code Operator” as defined by “Operator” in the Act;

“Code Rights” the rights set out in paragraph 3 of the Code and replicated in paragraph 1 of Schedule 2 to this agreement;

“Communications Site” the site shown [coloured][edged] [red] on the plan attached to this agreement;

“the Companies Act” the Companies Act 2006;

“Consideration” the agreed amount to be paid by the Operator to the Landowner for the agreement to confer Code Rights, being £[] ([] pounds) [per annum – *whether payment is upfront or periodic is subject to agreement in each case*] exclusive of VAT [subject to review in accordance with clause 6]¹;

“Contractual Term” from [the date of this agreement][] to and including []

“Default Interest Rate” 4% per annum above the base rate from time to time of Barclays Bank plc;

“Develop” refurbishment, alteration or improvement to the Communications Site or redevelopment as defined by Section 55 of the Town and Country Planning Act 1990;

“Drawings” the plans, drawings, specifications and other documents mentioned in Schedule 1;

“Equipment” the electronic communications apparatus and such objects and infrastructure as are reasonably required for the Authorised Use;

“Estate” the Landowner’s land and buildings known as [] registered at the Land Registry under title number [];

“Group Company” any company which is for the time being a subsidiary of [the Operator][either of the companies comprising the Operators] or the holding company of [the Operator][either of the companies comprising the Operators] or another subsidiary of the holding company of [the Operator][either of the Operators] in each case within the meaning of section 1159 of the Companies Act as amended or replaced from time to time;

“Necessary Consents” all necessary permissions licences and approvals for the Works granted or given by the relevant public authorities;

¹ Where rent is paid periodically, whether there is a rent review (on an open-market or index-linked basis) or a stepped rental increase(s) will depend on the length of the Contractual Term and be subject to agreement in each case.

["**Operator's Break Date**" [] ;]²

["**Operator's Break Notice**" written notice to terminate this agreement specifying the Operator's Break Date;]

["**Payment Date[s]**" [] [and []] [in each year of the Contractual Term];

["**Permitted Hours**": [to be agreed between the Parties in each case];]³

["**Reservations**" the rights reserved in Schedule 3;

["**Review Date[s]**" [where the Consideration will be paid periodically and the amount will be subject to review] []];]

["**Rights**" the rights granted in Schedule 2;

["**Service Media**" all media for the supply of electricity, gas, water, sewage, energy, telecommunications, data and all other services and utilities;

["**VAT**" value added tax pursuant to the Value Added Tax Act 1994 or any future tax of a similar nature; and

["**Works**" the works described in the Risk Assessment and Method Statement Annexed at Schedule 1 comprising the installation of the Equipment;

- 1.1.2 headings are for convenience only and shall not affect its construction;
- 1.1.3 the singular shall include the plural and vice versa and one gender shall include another;
- 1.1.4 obligations of a party shall be deemed to be joint and several obligations where that party is more than one person;
- 1.1.5 every obligation of either party not to do an act or thing includes an obligation not to allow it to be done;
- 1.1.6 references to clauses and Schedules are to clauses of and Schedules to this agreement;
- 1.1.7 references to the parties include their lawful assigns and their successors in title and those whose title is derived in any way from theirs; and
- 1.1.8 references to any legislation include references to any subsequent legislation directly amending, consolidating, extending, replacing or re-enacting that legislation.

² Subject to agreement in each case

³ The starting point is that the Operator will have unlimited access to the Communications Site during the Contractual Term, but this definition is included as there will be some sites where, for security or practical reasons, access will only be permitted during set hours (except, perhaps, in cases of emergency).

2. **RIGHTS GRANTED**

2.1 Subject to receipt of the Consideration the Landowner grants the Rights to the Operator for the Contractual Term but subject to the Reservations.

2.2 The primary purpose of this agreement is to confer Code Rights.

3. **LANDOWNER'S OBLIGATIONS**

The Landowner agrees with the Operator throughout the Contractual Term as follows:

3.1 that the Operator may exercise the Rights throughout the Contractual Term and, in relation to the Code Rights, any statutory period of continuation under the Act;

3.2 to permit the Operator peaceably and quietly to exercise the Rights during the Contractual Term without any interruption or disturbance from or by the Landowner or any persons claiming under or in trust for the Landowner or by title paramount;

3.3 it will not damage or tamper with the Equipment and will take reasonable precautions to prevent anyone from so doing;

3.4 if there is any damage to or destruction of the whole or any part of the Estate or the Communications Site so that the Communications Site is unfit for occupation and use, payment of the Consideration (or a fair proportion of it according to the nature and extent of the damage) shall be suspended until the Estate has been reinstated and made fit for occupation and use;

3.5 to use reasonable endeavours to ensure that any telecommunications equipment which is installed after the date of this agreement does not interfere in any way with the Equipment and in the event of such interference occurring and the Operator demonstrating to the Landowner's reasonable satisfaction that the Equipment is the cause of the interference, to take all reasonable steps to remedy the interference and, if necessary, switch off the offending piece of equipment until the interference is remedied ;

3.6 to give as much notice to the Operator as is reasonably practicable of any proposals which may materially interfere with or cause damage to the Equipment or in any way make the exercise of the Rights substantially more difficult or costly;

3.7 to maintain and keep those parts of the Estate over which the Operators have rights and anything from which the Equipment (or any part thereof) take support in good and substantial repair and condition; and

3.8 if the Operator uses the Landowner's own electricity supply, to ensure a supply of electricity is maintained to the Equipment and the Communications Site at all times which is sufficient for the use of the Communications Site and the Equipment.

4. **THE OPERATOR'S OBLIGATIONS**

The Operator shall throughout the Contractual Term and any statutory period of continuation under the Act:

- 4.1 Allow the Landowner to exercise the Reservations so far as they do not adversely affect the Operator's ability to exercise the Rights;
- 4.2 Obtain all Necessary Consents (if any) and provide the Landowner with a comprehensive method statement to include all necessary health and safety measures and a full schedule of the Works before installing all or any part of the Equipment or carrying out the Works, or any part thereof;
- 4.3 Keep the Landowner indemnified against all liabilities, expenses, costs (including but not limited to any solicitors' or other professionals' costs and expenses), claims, damages and losses (including but not limited to any diminution in the value of the Landowner's interest in the Estate or loss of amenity of the Estate) suffered or incurred by the Landowner arising:
 - 4.3.1 [from an agreement to relocate the Equipment, where reasonably necessary; – *to be agreed between the parties depending on the circumstances*]
 - 4.3.2 out of or in connection with the operation of the Communications Site and/or the Equipment; or
 - 4.3.3 from any breach of any obligations in this agreement; or
 - 4.3.4 from any act or omission of the Operator or any Code Operator sharing the Communications Site and/or the Equipment or their respective workers, contractors or agents or any other person on the Estate with the actual or implied authority of any of them;
- 4.4 To the extent that any Works are carried out (it being acknowledged that the Equipment as detailed in the Drawings may be installed in stages throughout the Contractual Term), to carry out the Works during the Permitted Hours and on reasonable notice in a good and workmanlike manner and in compliance with the Necessary Consents (if any) relevant to the Works and in accordance with the CDM Regulations with as little inconvenience to the Landowner and the other occupiers of the Estate as reasonably practicable making good any damage caused to the Estate solely and directly by the Works to the reasonable satisfaction of the Landowner as soon as is reasonably practicable;
- 4.5 Pay the Consideration by BACS or CHAPS (or such other method as agreed between the parties both acting reasonably) to the Landowner without deduction set-off or counterclaim in advance on the Payment Date[s] [in each year];
- 4.6 In relation to the electricity supply to the Communications Site pay the suppliers for all proper charges for electricity used by the Operator in connection with the Communications Site and the Equipment pursuant to paragraph 2 in Schedule 2 and where the Operator uses the Landowner's electricity supply then the Operator shall pay upon receipt of a valid demand the cost for all electricity used by the Equipment as evidenced by a sub-meter (such sub-meter to be installed at the Operator's cost);
- 4.7 Upon the production of a valid VAT invoice addressed to the Operator, pay any value added tax chargeable on the Consideration or on any other sum payable by the Operator under this

agreement and (save to the extent that the Landowner can reclaim it) on any payment made by the Landowner which the Operator is obliged to reimburse;

- 4.8 Pay any rates taxes or outgoings levied in respect of the Equipment and the exercise of the Rights during the Contractual Term (except any tax assessed (other than VAT) on the Landowner in respect of its ownership or income from or any dealing with its reversionary interest);
- 4.9 Keep the Communications Site and the Equipment in a good state of repair throughout the Contractual Term;
- 4.10 At the end of the Contractual Term (howsoever determined) remove the Equipment and make good to the reasonable satisfaction of the Landowner any damage whatsoever caused by its removal;
- 4.11 Use the Communications Site only for the Authorised Use and the exercise of the Rights;
- 4.12 Remedy any breach of the Operator's obligations under this agreement within a reasonable time after service of a written notice by the Landowner specifying such breach;
- 4.13 Not cause do suffer or permit any act or thing which may be an actionable legal nuisance to the Landowner or the occupiers of the Estate (it being acknowledged that proper exercise of the Rights shall not be construed as a breach of this clause);
- 4.14 Comply with all Acts of Parliament (and instruments orders regulations permissions and directions deriving validity therefrom) from time to time affecting the Equipment or its use or operation and the exercise of the Rights;
- 4.15 Comply with any reasonable regulations imposed by the Landowner from time to time and notified to the Operator in writing provided that such regulations do not affect the Operator's ability to exercise the Rights;
- 4.16 Maintain insurance to a minimum sum of £[],000,000 ([] million pounds) against employer's and third party public liability in connection with any injury (including death) loss or damage to any persons or property belonging to any third party arising out of the exercise by the Operator, its employees, agents or contractors of the Rights granted by this agreement;
- 4.17 In the event that any maintenance of or repair or improvement to the Estate cannot be carried out without interrupting the Operator's use of the Equipment and/or the Communications Site and SUBJECT ALWAYS TO the Operator being given not less than four months' prior notice of such maintenance and repair or improvement (save in the case of emergency where as much notice as is reasonably possible shall be given), the Operator will at the Landowner's cost allow (and give reasonable cooperation to facilitate) temporary interruption to the use of the Equipment/Communications Site (including, where reasonably required, a complete shutdown or relocation of the Equipment/Communications Site) so as to allow the Landowner (or those authorised by the Landowner) to carry out necessary maintenance and repair to the Estate, provided that:

- 4.17.1 if a shutdown of the Equipment/Communications Site is necessary, the Landowner shall use reasonable endeavours to ensure that such period of shutdown shall be kept as short as reasonably possible; and
 - 4.17.2 in the event that a complete shutdown of the Equipment/Communications Site is required, the Landowner shall reimburse the Operator the Consideration paid for the duration of the shutdown period on a pro rata basis;
- 4.18 Not interfere in any way with any other equipment on the Estate as at the date hereof or at any time and in the event of such interference occurring and the Landowner demonstrating to the Operator's reasonable satisfaction that the Equipment is the cause of the interference then the Operator shall immediately take all reasonable steps to remedy the interference and, if necessary, switch off the Equipment or offending piece of Equipment until the interference is remedied.
- 4.19 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 and provide the Landowner within 28 days of reasonable written request evidence of such compliance provided that:

4.19.1 the Operator shall not be liable for any breach of or non-compliance with this clause that results from any matter beyond its control; and

4.19.2 the performance by the Operator of the provisions contained within this clause shall be deemed to include the performance by the Operator of all other provisions of this agreement that may in any way relate to electromagnetic fields

and in the event that the Equipment does not comply the Operator shall switch off the Equipment.

- 4.20 To provide on-site safety signage and exclusion zone markings on or around the Equipment and such other health and safety signage and information as required by law.
- 4.21 To pay the Landowner's reasonable and proper professional costs (including but not limited to legal and surveyor's fees) arising from any application for consent by the Operator and in respect of any enforcement or remedying of the breach of the Operator's obligations under this agreement.
- 4.22 Not to increase the Equipment beyond what is shown in the definition of Equipment in this agreement without the consent of the Landowner.

5. DEALINGS WITH THE COMMUNICATIONS SITE AND SHARING OF THE EQUIPMENT & THE COMMUNICATIONS SITE

5.1 The Operator may share:

- 5.1.1 the Equipment and the Rights with another Code Operator in accordance with Part 3 of the Code; and

5.1.2 occupation of the Communications Site, the Equipment and the benefit of the Rights with a Group Company.

5.2 The Operator shall notify the Landowner in writing within one month of:

5.2.1 any assignment, sub-letting, or charging of the Communications Site; and

5.2.2 any sharing of the Equipment and the Rights.

6. **[REVIEW OF THE CONSIDERATION**

To be agreed between the Parties in each case.]⁴

7. **LANDOWNER'S TERMINATION PROVISIONS**

7.1 The Landowner may terminate this agreement pursuant to Part 6 of the Code at any time after [] 20[] on not less than 18 months' prior written notice to the Operator when the Landowner wishes to carry out a redevelopment or refurbishment of the Estate (not conditional on the provision of a planning application/permission) or of any neighbouring land belonging to the Landowner and could not reasonably do so without the termination of the agreement and on the expiration of such notice this agreement shall terminate.

7.2 Any termination under this clause 7 shall be without prejudice to the liability of either party for a subsisting breach of the terms of this agreement.

7.3 If the agreement is terminated pursuant to clause 7 of this agreement the Landowner shall within 14 days of this agreement coming to an end reimburse to the Operator an amount equal to the portion of the Consideration that has been paid by or on behalf of the Operator which relates to any period after the agreement has come to an end.

8. **OPERATOR'S BREAK CLAUSE**

8.1 The Operator shall have the right to serve notice on the Landowner to terminate this agreement with immediate effect in the event that it loses its statutory authority to operate a communications network or run an infrastructure system, operator's licence, UK spectrum licence or authorisation granted pursuant to the Act.

8.2 Without prejudice to clause 8.1, in the event of any interference as described in clause 3.5 not being remedied within 30 days the Operator may terminate this agreement upon not less than three months' written notice (without prejudice to the liability of either party for a subsisting breach of the terms of this agreement).

8.3 Without prejudice to clause 8.1, the Operator may terminate this agreement by serving an Operator's Break Notice on the Landowner at least six months before the Operator's Break Date.

8.4 A Operator's Break Notice shall be invalid and of no effect if at the Operator's Break Date[:]

⁴ Please see footnote 1.

- 8.4.1 [The][the] Operator is not up-to-date with any Consideration due under this agreement [.][]; and
- 8.4.2 The Operator has not vacated and yielded up the Communications Site in accordance with the terms of this agreement.]⁵
- 8.5 Subject to clause 8.48.4, following service of an Operator's Break Notice this agreement shall terminate on the Operator's Break Date.
- 8.6 Any termination under this clause 8 shall be without prejudice to the liability of either party for a subsisting breach of the terms of this agreement.
- 8.7 The Landowner shall reimburse to the Operator within 28 days of this agreement coming to an end an amount equal to the portion of the Consideration (plus VAT) paid by or on behalf of the Operator which is attributable to any period after the date of termination of this agreement.

9. **DEFAULT INTEREST**

If any sum due to the Landowner under this agreement is not paid within seven days of the date such sum becomes due, the Operator shall pay interest on such sum at the Default Interest Rate from the date such sum became due until payment thereof.

10. **THE CODE**

The Operator hereby expressly acknowledges and accepts that the Landowner is entitled to require the removal of the Equipment from the Communications Site upon the determination of this agreement (howsoever arising) in accordance with Part 6 of the Code.

11. **JURISDICTION**

The Parties irrevocably agree that the courts and tribunals of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with this agreement or its subject matter or formation (including non-contractual disputes or claims).

12. **GENERAL**

It is further agreed between the Parties as follows:

- 12.1 For the purposes of the Contracts (Rights of Third Parties) Act 1999 they confirm that they do not intend any of the terms of this agreement to be enforceable by any person other than the Parties respectively and any persons sharing pursuant to clause 5.1 of this agreement;
- 12.2 [The Equipment shall at all times remain the property of the Operator;]
- 12.3 Any notice served under or in respect of this agreement may be served by:

⁵ Whether the break right is to be subject to one, two or any conditions at all will be subject to agreement in each case.

- 12.3.1 sending it by prepaid registered or recorded delivery (in which case it shall be deemed to have been served on the first working day after it was posted); or
- 12.3.2 delivering it by hand and obtaining a signed receipt as proof of delivery (in which case it shall be deemed to have been served on the day of delivery if delivered before 4.00 pm or otherwise on the next working day following delivery);

to the other party's registered office and in the case of the Operator addressed to the Company Secretary.

The corporate seal of)
[])
hereunto affixed is authenticated by:)

.....
Authorised by the Secretary of State

Signed as a Deed on behalf of)
[])
acting by one director)

In the presence of:

Witness signature:

Name:

Address:

.....

Occupation:

SCHEDULE 1
The Equipment and Works

SCHEDULE 2
Rights Granted

1. The following rights set out in the Code:
 - 1.1 to install the Equipment on, under or over the Communications Site;
 - 1.2 to keep the Equipment installed on, under or over the Communications Site;
 - 1.3 to inspect, maintain, adjust, alter, repair, upgrade or operate the Equipment;
 - 1.4 to carry out works on the Communications Site for or in connection with the installation of the Equipment on the Communications Site or elsewhere;
 - 1.5 to carry out works on the Communications Site for or in connection with the maintenance, adjustment, alteration, repair, upgrading or operation of the Equipment on the Communications Site or elsewhere;
 - 1.6 to enter the Communications Site to inspect, maintain, adjust, alter, repair, upgrade or operate any Equipment which is on the Communications Site or elsewhere;
 - 1.7 to connect to a power supply;
 - 1.8 to interfere with or obstruct an access to or from the Communication Site; and
 - 1.9 to lop or cut back vegetation that may or will interfere with the Equipment.
2. [At reasonable times during the Permitted Hours, the][The] right of access on foot (where appropriate) or with or without vehicles plant and machinery over the Estate along such route as shall be reasonably determined by the Landowner from time to time to the Communications Site and the Equipment for all purposes in connection with the installation of the Works, and the exercise of the Rights, subject to the Operator (a) making good to the reasonable satisfaction of the Landowner as soon as reasonably practicable all damage thereby caused to the Estate and (b) the persons exercising such right complying with reasonable security procedures required by the Landowner and previously notified in writing to the Operator [but provided that the Operator shall have the right to access the Communications Site outside the Permitted Hours without being required to give notice to the Landowner in the event of emergency including, but not limited to, fire, flood, lightning and any act of terrorism or any other event or circumstance or set of events or circumstances resulting in the level or quality of service which the Operator is able to provide to its customers being reduced or impaired].
3. The right to run, maintain, repair, renew, upgrade, install and use a separately metered electricity supply from the local electricity supplier on, over, under or through the Estate to the Equipment (the route of such supply to be as reasonably specified by the Landowner) or the right to connect into the Landowner's electricity supply such right to be subject to clause 4.6 provided that in the case of any initial installation of a separately metered electricity supply then the Operator shall obtain the Landowner's written consent, such consent not to be unreasonably withheld or delayed.
4. The right to the passage of services through the Service Media.
5. The right to connect into, run, maintain, repair, renew and use communications connections on, over, under or through the Estate to the Communications Site and the Equipment (the

route of such supply to be as reasonably specified by the Operator and approved in writing by the Landowner acting reasonably and expeditiously).

6. The right, during (i) the initial installation (ii) maintenance periods; and (iii) removal of the Equipment, to store materials and equipment related to such installation, maintenance or removal such location as is agreed with the Landowner acting reasonably.
7. Where reasonably required and only for as long as is reasonably necessary, the right to bring on to and keep and to operate on the Estate a back-up power generator, together with any associated sockets and cables of a type and in such position as is agreed between the Landowner and the Operator acting reasonably (provided that such generator does not cause an undue amount of noise or vibration).
8. The right of support and shelter and all other easements and rights now or hereafter belonging to or enjoyed by the other parts of the Estate and/or any adjoining or neighbouring land or buildings thereon belonging to the Landowner at any time during the term.
9. [The right to erect, maintain, alter and renew a fence on the Communications Site for the protection of the Equipment and the safeguarding of the health and safety of third parties.]

SCHEDULE 3

Reservations

The Landowner shall be entitled on not less than 48 hours' previous notice (save in the case of emergency where no notice shall be required) to access the Equipment accompanied by a duly authorised representative of the Operator for the purpose of inspection or for any other purpose connected with this agreement, the Landowner complying with the Operator's reasonable health and safety procedures, causing no interference to the Equipment and making good any damage caused to the Operator's reasonable satisfaction.