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|  | **DATED 10 June** | **2021** |  |
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|  | **THE SECRETARY OF STATE FOR DEFENCE**  **AND**  **AQ Ltd** | | **(1)**  **(2)** |
|  | **Relating to**  rooftop of building/location of greenfield site at RAF Leeming, Northallerton,  DL7 9NJ | |  |

**THIS** is made on 10 June 2021

**BETWEEN:**

1. **The Secretary of State for Defence** c/o Defence Infrastructure Organisation Land Management Services, Room F16, Leyburn Road, Piave Lines, Catterick, DL9 3LR (“**the Grantor**”); and
2. **AQ Ltd** (incorporated and registered in England and Wales under company registration number 03663860 the registered office of which is 13-15 Hunslet Road, Leeds, LS10 1JQ. (“**the Company**”); and

**RECITALS**

1. This agreement is made pursuant to Part 2 of the Code (as defined in clause 1).
2. The Company benefits from powers under the Code.

**IT IS AGREED AS FOLLOWS:**

1. **Definitions and Interpretations**
   1. In this agreement (unless the context otherwise requires) the following words have the following meanings:
2. “**Act**” means the Communications Act 2003;
3. “**Code**” means the Electronic Communications Code contained in Schedule 3A to the Act;
4. “**Customers**” means any tenant and/or undertenant(s) and/or lawful occupiers of the Property which have a contract for any Electronic Communications Service with the Company and/or with any Group Company;
5. **“Contractual Period”** means two years from the date of this Agreement;
6. “**Electronic Communications Apparatus**” has the meaning given to it by Paragraph 5 of Part 1 of the Code;
7. “**Electronic Communications Service**” means an electronic communications service as defined in section 32 of the Act;
8. “**Group Company**” means any company that is a member of the same group as the Company within the meaning of section 42 of the Landlord and Tenant Act 1954;
9. “**Operational Land**” means the part of the Property which comprises a strip one metre or thereabouts in width running over and to either side of the Permitted Apparatus;
10. “**Operator**” means any person in whose case the Code is applied by a direction under section 106 of the Act;
11. “**Permitted Apparatus**” means the copper and/or fibre cables and ancillary apparatus as more particular described in Schedule 2 being Electronic Communications Apparatus and which is to be supplied by the Company for use in the supply of an Electronic Communications Service to the Customer and if applicable includes such apparatus as altered adjusted added to or substituted pursuant to clause 2.1 or relocated pursuant to clause 4 or upgraded pursuant to clause 8;
12. **“Permitted Use”** means the research and development trial and provision of Electronic Communications Service to the Property for the benefit of the Customers;
13. “**Plan(s)**” means the plans drawings and specifications referred to and annexed in Schedule 2;
14. “**Property**” means the property described in Part 1 of Schedule 1 and includes each and every part of it;
15. “**Requirements**” means the minimum requirements of the Permitted Apparatus as more particularly detailed at Schedule 4;
16. “**Service Levels**” means the service levels set out at Schedule 5;
17. “**Service Specification**” means the specification of the Permitted Apparatus set out at Schedule 3 which shall at all times be in compliance with the Requirements.
18. **“Value Added Tax”** includes any tax of a similar nature replacing or additional to the same;
19. “**Works**” means any works to the Property necessary to install, use, keep, operate, maintain, repair, substitute renew, adjust, alter and remove the Permitted Apparatus, including any works to upgrade under clause 8 or works under any other provision of this agreement and including any works of alteration, adjustment or addition made to the Permitted Apparatus which fall within upgrade substitution or maintenance works.
    1. Reference to any statute statutory provision or other legislation includes a reference to the statute statutory provision or other legislation as from time to time amended, extended or re-enacted.
    2. Reference to a clause, paragraph or schedule is to a clause or paragraph of or a schedule to this agreement and a reference to this agreement includes its schedules.
    3. Any words following the terms “include” and “including” or any similar expression shall be interpreted as illustrative and shall not limit the sense of the words preceding those terms.
    4. Obligations owed by or to more than one person are owed by or to them jointly and severally.
    5. Words in the singular include the plural and vice versa.
    6. Words importing the masculine gender only shall include the feminine and neuter genders and words denoting natural persons shall include companies and corporations and vice versa.
20. **Rights of the Company**
    1. It is agreed by the Grantor that subject as hereinafter provided the Company, and its duly authorised agents will be entitled:
    2. for the purpose of the Permitted Use only, to install, use, keep, operate, and where reasonably necessary inspect, maintain, repair, substitute, renew and (by way of substitution or on a like for like basis) adjust and alter and upgrade under clause 8 and remove the Permitted Apparatus in, on, under or over the Property;
    3. for the purpose of clause 2.1 where reasonably necessary to enter into and upon the Property at reasonable times giving the Grantor prior reasonable notice which shall be no less than seven days (except in the case of emergency where as much notice as is reasonably practicable shall be given) with or without workmen, vehicles (where appropriate), plant equipment or machinery to carry out any Works subject to the Company complying with the Grantor’s reasonable terms and arrangements (including any reasonable charges for vetting personnel, administration, supervision, accompaniment and attendance) from time to time applicable to the Company’s access to the Property (“the Access Policy”) to comply with:
       1. The Grantor’s own objectives on operations;
       2. Any programme of works on the Property;
       3. safety and security;

it being acknowledged that the Grantor will regularly set and review its Access Policy and reserves the right to make reasonable alterations to the Access Policy from time to time by notice to the Company and references to the Access Policy mean the Access Policy as so varied or supplemented from time to time; and

* 1. to use the Permitted Apparatus for the purpose of the Permitted Use only,

for a period continuing until this agreement is terminated pursuant to clause 6.

1. **The Company’s Obligations**

The Company undertakes with the Grantor to:

* 1. pay the Grantor a sum of £1, the receipt of which is acknowledged by the Grantor;
  2. ensure that the Permitted Apparatus meets the Service Specification at all times;
  3. ensure that the Permitted Apparatus meets the Requirements at all times;
  4. maintain the Service Levels during the Contractual Period;
  5. carry out the Works in accordance with the Plans in a proper and workmanlike manner to the Grantor’s reasonable satisfaction taking all reasonable precautions to avoid obstructions to or interference with the use of the Property or any adjoining property and damage or injury to the Property or any structures thereon or drains or other services thereunder and so as to cause as little physical damage or legal nuisance as reasonably possible to the Grantor, any tenants sub tenants or occupiers of the Property (including any Customers) or to their respective employees or property and any adjoining property and so as not at any time to interfere with or obstruct any access to or from the Property in any way which does or may materially affect the Grantor’s operations without the Grantor’s prior consent in writing;
  6. carry out and complete the Works and use and operate the Permitted Apparatus in accordance in all respects with all relevant legislation (including Public Health England’s guidance and the International Commission for Non-Ionizing Radiation Protection’s guidelines in relation to Electronic Communications Apparatus, or equivalent guidance or guidelines provided by respective successor agencies);
  7. install the Permitted Apparatus so as not to interfere with any normal foreseeable use of the Property as at the date of installation;
  8. use best endeavours not to use any part of the Property other than the Operational Land for the carrying out of the Works save where it would be impossible not to use some part of the Property in addition to the Operational Land and for which the Grantor’s prior approval has been obtained (such approval not to be unreasonably withheld or delayed);
  9. as soon as reasonably possible make good to the reasonable satisfaction of the Grantor all physical damage caused to the Property or any adjoining property arising as a result of the carrying out of the Works or any related works to which the Grantor has consented pursuant to this agreement;
  10. ensure that any underground cables are laid at least 600mm below ground level;
  11. comply with the Access Policy;
  12. maintain and keep the Permitted Apparatus identifiably labelled with the Company’s name and/or other Operator’s name and in good repair and condition and so as not to be a danger to the Grantor, or tenants or sub tenants or other occupiers of the Property or to their respective employees or property;
  13. give to the Grantor not less than seven days’ prior written notice (except in case of emergency works (as defined in paragraph 51(1) of the Code) where as much notice as is reasonably practicable shall be given) of its intention to enter into and upon the Property to exercise the rights granted by clause 2;
  14. prior to carrying out the Works obtain from the Grantor a “permit to work” or equivalent permission or authority to carry out works and to comply with any access regulations notified in writing by the Grantor to the Company;
  15. to provide Customers at the Property an 5G phone service with the characteristics and standards set out in Schedule 3;
  16. to exercise the rights in clause 2 for the purpose of the Permitted Use only;
  17. maintain insurance with a reputable insurance company for not less than TEN MILLION POUNDS (£10,000,000) in respect of each claim (and without limit as to the number of incidents covered) against public liability and other third party liability in connection with any injury, death, loss or damage to any persons or property belonging to any third party arising out of the exercise by the Company, its employees, agents or any person under its control of the rights hereby granted, and to provide sufficient details of such insurance to the Grantor upon request and evidence that it is in force.

1. **Relocation of Permitted Apparatus**

The Grantor and the Company agree as follows:

* 1. Without prejudice to the provision of clauses 6.1 and 6.2 and the provisions of the Code, if the Grantor reasonably requires the relocation of the Permitted Apparatus to enable the Property or any part of them to be repaired, renewed, redeveloped, refurbished, excavated, demolished, altered, improved, added to or the use of it changed or to permit plant and machinery serving the Property to be installed or renewed or replaced, the Company will relocate the Permitted Apparatus at the Company’s sole cost and within a reasonable period after receipt of the Grantor’s written notice.
  2. Following service of a notice under clause 4.1, the Grantor shall consult with the Company and use reasonable endeavours to find an alternative location for the Permitted Apparatus reasonably satisfactory to both parties and the Company’s reasonable requirements, which do not unduly hinder, prevent or impede or materially increase the cost of the works referred to in clause 4.1.
  3. The Company shall relocate the Permitted Apparatus in a timely manner in accordance with this agreement and as soon as reasonably practicable after an alternative location for the Permitted Apparatus has been agreed or determined even if the notice given under clause 4.1 has not expired.
  4. If the Permitted Apparatus is relocated, the provisions of this agreement will continue to apply to the Property and Permitted Apparatus in its altered location. If the Grantor requires, the Company will accept (and execute and deliver a counterpart of) a further wayleave agreement coming into effect on the date of the relocation of the Permitted Apparatus on the same terms, provisions and conditions as this agreement with such amendments as required to describe the Permitted Apparatus in the altered location that has been agreed between the parties.
  5. If a new wayleave agreement is not required to be entered into by the Grantor under clause 4.4, the Grantor and the Company shall each sign a memorandum, which includes details of the Permitted Apparatus in its altered location, and shall each send the signed memorandum to the other party within one month of the date of the relocation of the Permitted Apparatus.
  6. If the parties are unable to agree on an alternative location for the Permitted Apparatus by the expiry of the written notice given by the Grantor in accordance with clause 4.1, any party may refer the matter for determination under clause 9.

1. **Interference**

If it is demonstrated by the Grantor that the Permitted Apparatus is materially interfering (electronically, electromagnetically or otherwise) with the operation of other equipment now or at any time after the date of this agreement installed at the Property, all parties agree with each other to co-operate and use reasonable endeavours in achieving a technical solution.

1. **Contractual Period and Termination**

The Grantor and the Company agree between themselves as follows:

* 1. This Agreement shall endure for the Contractual Period save where earlier terminated in accordance with its terms.
  2. The Grantor may terminate this agreement with immediate effect by giving written notice to the Company in the event of:
     1. The Company removing the Permitted Apparatus from the Property; or
     2. the Company ceasing to be a person to whom the Code is applied.
  3. The Grantor may terminate this agreement by giving the Company not less than 30 days’ written notice in the event of there being no Customer at the Property.
  4. In the event that the Company is in breach of any of its obligations under this agreement and the breach is incapable of remedy or the Company fails to remedy such breach within 5 business days following receipt of written notice from the Grantor, the Grantor may terminate this agreement with immediate effect by giving written notice to the Company.
  5. The Grantor may terminate this agreement by giving the Company not less than one months’ written notice if:
     1. The Grantor or any superior landlord intends to redevelop all or part of the Property; or
     2. In accordance with paragraph 31 (4)(d) of the Code, either of the following applies:-
        1. the prejudice caused to the Grantor and/or the superior landlord(s) by the continuation of the agreement is incapable of being adequately compensated by money and
        2. The public benefit likely to result from the continuation of this agreement does not outweigh the prejudice to the Grantor or the superior landlord(s) ;
  6. The Grantor may terminate this agreement at any time by giving not less than 2 weeks’ notice in circumstances whereby the parties, both parties acting reasonably, have agreed the terms of a replacement agreement, which does not put the Company in a worse position than this Agreement.
  7. The Company’s rights will continue under Paragraph 30 of the Code until notice is served under Paragraph 31 of the Code.
  8. Termination under this clause 6 shall be without prejudice to the rights of any party in respect of any antecedent claim or breach of obligation, or any outstanding obligation, under this agreement.
  9. On the termination of this agreement (except where this agreement continues in accordance with paragraph 30(2) of Part 5 of the Code) the Company shall as soon as reasonably practicable as required by the Grantor to decommission, and remove the Permitted Apparatus from the Property and make good any damage to the Property caused by its removal to the reasonable satisfaction of the Grantor at the Company’s exclusive cost and expense.
  10. If this agreement no longer continues pursuant to Paragraph 30 (2) of Part 5 of the Code the Company shall as soon as reasonably practicable as required by the Grantor either decommission and remove the Permitted Apparatus from the Property and make good any damage to the Property caused by its removal to the reasonable satisfaction of the Grantor at the Company’s exclusive cost and expense.
  11. If the Company does not comply with its obligation under clause 6.9 within three months after termination of this agreement or if later one month after the date of this agreement is no longer continuing pursuant to Paragraph 30 (2) of Part 5 of the Code the Company may be treated by the Grantor as having abandoned its property in the Permitted Apparatus (which shall be deemed to be without value) and the Grantor may remove and dispose of the Permitted Apparatus and may recover from the Company the reasonable and proper costs of doing so.
  12. The Company shall indemnify the Grantor against all losses, actions, claims, demands, compensation, damages, costs and expenses and increased costs and expenses in respect of each claim or series of connected claims, relating to or arising from any breach of the obligations owed by the Company under clauses 6.9, 6.10 or 6.11 or failure to comply with an Order under Paragraph 44 of the Code whether related to the retention and use of the Permitted Apparatus in breach of this agreement and/or it remaining in or on the Property in breach of this agreement including any such arising from delay to or abandonment of or re-design of works to repair, renew, redevelop, refurbish, alter, improve or change the use of the Property or any adjoining property or any part thereof or plant or machinery serving it and/or the difference between the value of Grantor’s interest with the Permitted Apparatus installed on it and the value of those interests with the Permitted Apparatus removed from it which flows from any such delay or abandonment or re-design of such works.

1. **Assignment**

Upon first agreeing with the Grantor in writing:

* 1. The Company may assign this agreement to another Operator, who will be bound by its terms (the “**relevant obligations**”) with effect from the date of the assignment.
  2. The Grantor may require the assignor to enter into an agreement, under which the assignor guarantees the performance by the assignee of the relevant obligations to the extent the Grantor (in its discretion) considers it reasonably necessary taking into account amongst other factors the financial position of the assignee. Such agreement may:
     1. impose on the assignor liability as sole or principal debtor in respect of the relevant obligations;
     2. impose on the assignor liabilities as guarantor in respect of the assignee’s performance of the relevant obligations, which are no more onerous than those to which the assignor would be subject in the event of the assignor being liable as sore or principal debtor in respect of any of the relevant obligation; and
     3. include incidental or supplementary provisions;

but such agreement may not impose of the assignor any liability, restriction or other requirement of any kind in relation to a time after the relevant obligations cease to be binding on the assignee.

* 1. The Company shall pay the costs incurred by the Grantor in connection with approving any assignment.
  2. The Company shall notify the Grantor of completion of the assignment within one month of the date of the assignment and shall provide a certified copy of the deed of assignment.
  3. Assignment is not permitted, except in accordance with this clause 7.

1. **UPGRADING OR SHARING OF PERMITTED APPARATUS**

The Grantor and the Company agree between themselves as follows:

* 1. Upon first agreeing in writing with the Grantor providing specifications and plans of the proposed upgrade or sharing of the Permitted Apparatus the Company may:
     1. Upgrade the Permitted Apparatus; or
     2. Share the use of the Permitted Apparatus with another Operator (including the carrying out of works to the Permitted Apparatus to enable such sharing to take place);

provided that the conditions in clauses 8.2 and 8.3 are met. Any reference to “**sharing**” in the remainder of this clause 8 includes the carrying out of works referred to in clause 8.1.2.

* 1. Any changes to the Permitted Apparatus as a result of the upgrading or sharing will have no adverse impact, or no more than a minimal adverse impact, on the appearance of the Permitted Apparatus;
  2. The upgrading or sharing will impose no additional burden on the Grantor and “**additional burden**” includes anything that:
     1. Has an additional adverse effect on the Grantor’s enjoyment of the Property; or
     2. Causes additional loss, damage or expense to the Grantor.
  3. A reasonable period of not less than one month before the Company commences any upgrade of the Permitted Apparatus or sharing use of the Permitted Apparatus with another Operator, which will require the carrying out of any works the Company shall provide:
     1. Reasonable evidence (including drawings, specifications, plans and method statements as appropriate) to the Grantor’s reasonable satisfaction that the conditions in clauses 8.2 and 8.3 will be met; and
     2. Where relevant, details of the identity of the Operator with whom the Company will share the use of the Permitted Apparatus.
  4. Upgrading or sharing of Permitted Apparatus is not permitted, except in accordance with this clause 8.

1. **Disputes**

The Grantor and the Company agree between themselves as follows:

* 1. If any dispute of differences arises between the parties in connection with this agreement, such dispute or difference will be referred to a single duly qualified independent surveyor where the parties can agree on one, or otherwise to such a surveyor appointed by the President of the Royal Institution of Chartered Surveyors (“**President**”) on the application by any party.
  2. The surveyor is to act as an expert.
  3. The surveyor shall allow the parties to submit within such reasonable time as he may stipulate representations and cross-representation (accompanied if the parties so wish by statements of reasons and professional valuations or reports (as the case may be) of which copies are to be supplied to each party) in relation to the dispute or difference and shall have due regard to the same, but shall nevertheless determine the dispute or difference in his own absolute discretion, which determination will be final and binding, except in the case of manifest error.

1. **No Restrictions on Redeveloping**

Nothing in this agreement will prevent or restrict the Grantor from altering, amending, developing or redeveloping the Property or any other buildings, property or land (subject (where applicable) to the terms of clause 4).

1. **Notices**

The Grantor and the Company agree between themselves as follows:

* 1. Any notice given by any party to this agreement shall be in writing.
  2. Any such notice will be deemed to have been given if it is:
     1. Personally delivered (in which case service will be deemed effective immediately); or
     2. Sent by a registered post service or recorded delivery (in the case of the Grantor it will be deemed effective upon being signed for by the Grantor);

and in each case addressed to the Grantor at [Defence Infrastructure Organisation Land Management Services, Room F16, Leyburn Road, Piave Lines, Catterick, DL9 3LR]

to the Company at AQ Ltd, 13-15 Hunslet Road, Leeds, LS10 1JQ. ]

and for any successor of the Grantor or assignee from the Company addressed to such address and contact name notified to the other party to this agreement.

* 1. Following the date of this agreement, any party may amend its addressee and address for the purposes of clause 11.2 by notice to the other party.
  2. Each party agrees that the address set out in clause 11.2 (as it may be subsequently amended under clause 11.3) will also constitute their address for service for the purposes of paragraph 91(2)(a) of the Code.

1. **Payments by way of indemnity**

The Grantor and the Company agree between themselves as follows:

* 1. In this agreement where a payment falls to be made by the Company to the Grantor by way of indemnity the Grantor shall mitigate its losses damages costs and expenses which are the subject matter of this indemnity and shall not admit settle or compromise any such losses, actions, claims demands, compensation, or damages without the consent of the Company (which shall not be unreasonably withheld or delayed) or its insurers, unless required to do so by its own insurers or by an order of the Court.
  2. The Company undertakes with the Grantor to indemnify the Grantor against all losses, actions, claims, demands, compensation, damages, costs and expenses and increased costs and expenses in respect of each claim or series of connected claims, relating to or arising from any breach of any obligation owed by the Company under this agreement.
  3. For the avoidance of doubt a claim made under clause 12.2 may not also be made under clause 6.12.

1. **Claims in respect of death or personal injury**
   1. It is agreed that any liability to any claim in respect of death or personal injury arising through the Company’s deliberate act or omission or negligence shall be unlimited.
2. **Governing law**
   1. This agreement and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) are governed by English law and any such dispute or claim not dealt with by clause 9 will be decided in accordance with the provisions of the Code in so far as the Code is applicable to it.
3. **Contracts (Rights of Third Parties) Act**

Unless expressly stated nothing in this agreement will create any rights in favour of any person pursuant to the Contracts (Rights of Third Parties) Act 1999.

1. **General**
   1. It is agreed that no relationship of landlord and tenant is created by this agreement between the Grantor and the Company;
   2. Subject to clause 6.11, the Permitted Apparatus will at all times remain the property of the Company.
   3. This agreement will not apply to any part of the Property which is (or from the date of such adoption becomes) adopted as highway maintainable at the public expense.
   4. This agreement is the entire agreement between the Grantor and the Company relating to the Permitted Apparatus at the Property.
   5. In the event that any term(s) contained in this Agreement conflict with the Code, the conflicting provision in the Code shall always take precedence.

Each obligation and provision of this agreement will be construed as a separate obligation or provision and if one or more of them is considered unenforceable or unlawful for whatever reason then that obligation or provision will be deemed deleted but the enforceability of the remainder of this agreement will not be affected.

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| Signed for and on behalf of  the Grantor:  Simon Bratchell |
|  |
| Signed for an on behalf of the Company: |
|  |

**Schedule 1**

Property

[rooftop of building] at RAF Leeming, Northallerton,   
DL7 9NJ



**Schedule 2**

**Schedule 3**

**Service Specification**

**Schedule 4**

**Requirements of the Permitted Apparatus**

**Schedule 5**

Service Levels

The Company shall:

* Provide a contact number to allow the Grantor and its personnel to report issues with the Services and/or Equipment 24/7 365 days per year;
* Make reasonable endeavours to resolve any issues with the Services and/or Equipment within 72 hours of notification without charge to the Grantor or its personnel;
* Inform the Grantor where it cannot for any reason resolve the issue within 72 hours and the steps and timeframe reasonably required to resolve such issues to the satisfaction of the Grantor.
* Seek to engage on a quarterly basis with the Grantor to assess performance of the Permitted Apparatus and the Services with a view to remedying any issues/concerns.