

[ ● ]

and

[ ● ]

## LEASE

Subjects: Electrical vehicle charging point[s] at [ ● ]

### **GENERAL COMMENTS:-**

- Authority to confirm if the expectation is that the Concessionaire will obtain a satisfactory grid connection as a pre-condition of the granting of the lease. Express provisions can be added to the Concession Agreement to oblige the Concessionaire to do this.
- Detailed rental provisions have been included under Schedule Part 3 as an example of what we're seeing in the market, but each Authority will need to confirm the commercial arrangements and draft accordingly.
- The Lease allows for the necessary works to be carried out rather than having a separate licence to alter to accompany the Lease but we can separate the relevant provisions into a licence to alter if that is the preference of any Authority.
- This Lease is drafted on the basis of the Authority owning the land that is to be leased. If a third party owns the land then a sub-lease structure can be considered.

DISCLAIMER: This Template Lease is not a replacement for independent, specialist advice and parties must ensure that they have taken appropriate legal, financial and technical advice before using this document. Neither SFT nor its legal advisers accept liability for losses arising from the use of this document by other parties.

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## LEASE

between

- (1) [●] (the “**Landlord**” which expression shall, wherever the context so requires, include their successors as landlords under the Lease); and
- (2) [●], [incorporated][registered] under the Companies Acts][a company organised and existing under the laws of [COUNTRY OF INCORPORATION]] (Registered Number [[●]]) and having its Registered Office at [●] (the “**Tenant**” which expression shall, wherever the context so requires, include its successors [and permitted assignees]).

**IT IS CONTRACTED AND AGREED** between the Landlord and the Tenant as follows:-

### 1 **DEFINITIONS AND INTERPRETATION**

In this Lease unless the context otherwise requires:-

“**Base Rent Review Dates**” means [●] in each year of the Term and “Base Rent Review Date” means the relevant Base Rent Review Date in the context in which it is used;

“**Cables**” means all electrical plant and underground electric lines (as defined in section 64 of the Electricity Act 1989) installed or to be installed by the Tenant at its own cost on, over and under the Premises and all apparatus appurtenant to the Permitted Use at such locations and along such routes as agreed with the Landlord;

[“**Car Park**” means the car park forming part of the Retained Land as is shown [●] on the Plan;]<sup>1</sup>

[“**Car Park Regulations**” means the reasonable rules and regulations made by the Landlord from time to time for the safety, better management and operation of the Car Park as a whole in accordance with the principles of good estate management and notified to the Tenant from time to time in writing but such rules and regulations must:

- (a) not derogate from or prejudice the exercise of any rights in terms of this Lease; and
- (b) not prevent members of the public from accessing the Car Park and the Premises with or without vehicles at any time during the Term for the charging of electric vehicles on the Premises pursuant to the Permitted Use;]<sup>2</sup>

“**CDM Regulations**” means the Construction (Design and Management) Regulations 2015 (SI 2015/51);

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<sup>1</sup> **Drafting note:** Delete if Charging Points are not being installed within a car park.

<sup>2</sup> **Drafting note:** Delete if Charging Points are not being installed within a car park.

**“Charging Station”** means the [ ● ] rapid charging unit[s] to be installed at the Premises;

**“Concession Agreement”** means [ ● ];

**“Direct Agreement”** means a direct agreement between the Landlord, the Tenant and any Tenant’s lender taking a standard security or charge over the Premises in such form as such lender reasonably requires that gives the Tenant’s lender (or their nominee) a right to step into or be assigned the Lease, in such form approved by the Landlord (approval not to be unreasonably withheld or delayed and that places no onerous conditions or obligations on the Landlord and having due regard to the Tenant’s lender’s requirements);<sup>3</sup>

**“DNO”** means the local distribution operator for the Premises;

**“Environment”** means all or any of the following media; namely air (including the air within buildings) water (including surface water, groundwater and water in drains and sewers) and land (including surface land sub-surface land and land under water) and any living organisms or ecosystems supported by those media;

**“Equipment”** means the Charging Station together with any permitted additional or replacement equipment which the Tenant may from time to time install on the Premises;

**“Exclusion Zone”** means the area shown [ ● ] on the Plan;]

**“Existing Hazardous Substances”** means any Hazardous Substances at in on or under the Premises at or prior to the date of commencement of this Lease;]

**“First Unavailable Date”** means any date during the Term of this lease on which any one of the Charging Stations on the Premises (or the one Charging Stations, if applicable) is Unavailable at any time on that given day having been available on and throughout the immediately preceding day;

**“Force Majeure”** means fire, storm, tempest, other exceptionally inclement weather conditions, war, hostilities, rebellion, insurrection, military or usurped power or civil war, labour lock-outs, strikes, local combination of workmen and other industrial disputes, riot, civil commotion, disorder, decree of government, non-availability of labour, materials or equipment and aircraft or articles dropped therefrom or any other event or incident outside the reasonable control of the Tenant which causes a Charging Station to be non-operational and available for public use. For the avoidance of doubt such circumstances shall include for the purposes of this lease:

- (a) a Charging Station suffering power failure from the permanent connection to the national power grid notwithstanding that the Tenant has used reasonable endeavours to seek restoration of power to the Charging Station and save where such power

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<sup>3</sup> **Drafting note:** Each Authority will need to consider if it is willing to enter into a direct agreement with a Concessionaire’s funder if a Concessionaire is looking to obtain funding to construct and operate a new site. This will be less relevant if a Concessionaire is taking over an already established site.

failure is a result of faulty Equipment or Cables and/ or is otherwise within the reasonable control of the Tenant;

- (b) where the Premises are damaged to the extent that the Tenant is not able to trade (but not including damage caused by the actions or omission of the Tenant or third parties authorised by the Tenant) provided that such damage is made good by the Tenant with all reasonable speed;
- (c) the carrying out of any major repairs or (if the Landlord has consented to them) alterations or additions to the Premises provided that the same are carried out with all reasonable speed;
- (d) access to the Premises is restricted by a third party; or
- (e) any cellular communications outage to a Charging Station notwithstanding that the Tenant has used reasonable endeavours to seek restoration and save where such outage is a result of faulty facilities and/ or is otherwise within the reasonable control of the Tenant;

**“Hazardous Substances”** means any natural or artificial substance (whether solid, liquid or gas) which alone or in combination with any other substance is capable of causing harm to man or is damaging to the Environment;

**“Initial Term”** means the period commencing on (and including) the [ ● ] day of [ ● ] [20[ ● ] ] and expiring on (and including) the [ ● ] day of [ ● ] [20[ ● ] ] [(the **“Expiry Date”**)];<sup>4</sup>

**“Outgoings”** means all existing and future rates, duties, taxes and charges for utilities;

**“Permitted Use”** means the installation, erection and operation of the Equipment and the Cables for use as a charging point for electrical vehicles and (in connection with and ancillary to such charging) the parking of vehicles;

**“Plan”** means the plan annexed hereto;

**“Planning Acts”** means the Town and Country Planning (Scotland) Act 1997 as amended by the Planning etc (Scotland) Act 2006, the Local Government and Planning (Scotland) Act 1982, the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997, the Planning (Hazardous Substances) (Scotland) Act 1997, the Planning (Consequential Provisions) (Scotland) Act 1997, and the Planning (Scotland) Act 2019 and any references to the Planning Act are references to the Town and Country Planning (Scotland) Act 1997 (as amended) and all other statutes regulating the development design use and control of property;

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<sup>4</sup> **Drafting note:** Definition only required if extension provisions are to be included in the Lease. Alternatively, the Concession Agreement could make reference to a further Lease being granted by agreement at the expiry of this Lease.

“**Premises**” is as described in [Part 1] of the Schedule;

[“**Rent**” means the Base Rent and the Additional Rent payable in accordance with [Part 3] of the Schedule;]

“**Rent Commencement Date**” means the [ ● ] day of [ ● ] [20[ ● ]];<sup>5</sup>

“**Retained Land**” means the Landlord’s property adjoining the Premises which as at the date hereof is as shown [ ● ] on the Plan;

“**Schedule**” means the schedule comprising Parts [ ● ] to [ ● ] (inclusive) annexed and executed as relative hereto and which schedule forms part of this Lease;

“**Service Media**” means all media for the supply or removal of heat, electricity, gas, water, sewage, energy, telecommunications, data and all other services and utilities and all structures, machinery and equipment ancillary to those media;

“**Term**” [means the period commencing on (and including) the [ ● ] day of [ ● ] [20[ ● ]] and expiring on (and including) the [ ● ] day of [ ● ] [20[ ● ]] OR [means the Initial Term and any extension thereof in terms of Clause [3] hereof];

“**Unavailable**” means a Charging Station is non-operational and/or unavailable for use by the public at any time for reasons that are not wholly and directly attributable to:

- (a) an event of Force Majeure; or
- (b) an act or omission of the Landlord or any other failure by the Landlord to observe any of its obligations under this Lease;

“**Unavailable Period**” means any period of consecutive days during the Term from and including a First Unavailable Date on which each of those days in that period any one of the Charging Stations the Premises (or the one Charging Station, if applicable) is Unavailable at any time on a given day (where the relevant Charging Station that is not Unavailable on a given day need not be the same on each day during that period);

“**Working Day**” is any day other than a Saturday, Sunday or a bank or public holiday in England and Wales or Scotland and “Working Days” shall be construed accordingly; and

“**Works**” means [ ● ]

- 1.1 Headings in this Lease are for convenience only and will not affect its construction.
- 1.2 This Lease will bind successors in title of the parties and those deriving title under them and references to “**Landlord**” or “**you**” include your successors in title (including any holder of

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<sup>5</sup> Authority to consider if this should be on completion of the Works or date of entry.

a standard security of the Retained Land) and references to “Tenant” or us include the Tenant’s successors in title.

- 1.3 Words denoting persons include firms companies and corporations and *vice versa*.
- 1.4 The singular includes the plural and *vice versa* and one gender includes any other.
- 1.5 Obligations of a party to this Lease are deemed to be joint and several obligations where that party is more than one person.
- 1.6 Where there are two or more persons at any time included in the expressions “**Tenant**” will include all or any one of them.
- 1.7 Every obligation of the Tenant not to do an act or thing includes an obligation not to allow it to be done.
- 1.8 References to clauses paragraphs and schedules are to clauses and paragraphs of and schedules to this Lease.
- 1.9 The words “**include**” “**includes**” and “**including**” are deemed to be followed by the words “**without limitation**”.
- 1.10 References to any act or omission of the Tenant are deemed to extend to any act or omission of any person at the Premises with the consent of the Tenant.
- 1.11 Unless the context otherwise requires, a reference to the “Premises” is to the whole and any part of it
- 1.12 Unless otherwise specified, a reference to a particular law is a reference to it as it is in force for the time being, taking account of any amendment, extension, application or re-enactment and includes any subordinate laws for the time being in force made under it and all orders, notices, codes of practice and guidance made under it

## 2 **PREMISES**

- 2.1 The Landlord, in consideration of the Rent and other prestations hereinafter contained, hereby lets to the Tenant the Premises for the Permitted Use together with the rights mentioned in [Part 2] of the Schedule for the [Initial] Term and that with vacant possession and subject to the provisions of this Lease and to any servitudes, rights, privileges, conditions and/or obligations enjoyed by or benefiting any other land or person.

### 3 [TENANT'S RIGHT TO NEGOTIATE AN EXTENSION<sup>6</sup>

- 3.1 The Tenant shall be entitled to extend this Lease for such further period as is required by the Tenant (acting reasonably) subject always to a maximum extension of [ ● ] years (the “**Extension Period**”) with effect from the date following the Expiry Date by serving written notice on the Landlord (such written notice to specify the length of extension required)(the “**Extension Notice**”) not less than 12 months prior to the Expiry Date. For the avoidance of doubt, such extended Lease shall be on the same terms *mutatis mutandis* as this Lease except (i) excluding this Clause [3] and (ii) in relation to the payment of Rent which will be agreed or determined pursuant to the remaining provision of this Clause [3].
- 3.2 In the event that the Tenant serves the Extension Notice, the rent payable with effect from the commencement of the Extension Period shall be such rent as is agreed or determined pursuant to this Clause [3].
- 3.3 If (i) the Tenant serves an Extension Notice and (ii) the said rent has not been agreed or determined by the Expiry Date, then pending such agreement or determination, the Tenant shall continue to pay rent at the rate payable immediately prior to the Expiry Date and within 20 Working Days after such agreement or determination, there shall be a balancing payment representing the difference between the amount of rent actually paid in the period from and including the commencement of the Extension Period and the amount of rent which should have been paid in that period had the said rent been agreed or determined by the Expiry Date.
- 3.4 From the date of service of the Extension Notice both parties shall act reasonably to agree the reasonable open market rent as at the commencement of the Extension Period which would reasonably be agreed to be paid for the Premises by a willing landlord to a willing developer on the open market under a lease on the same terms *mutatis mutandis* as this Lease (save (i) excluding this Clause [3] and (ii) in relation to the amount of rent and other payments due) for a period equal to the Extension Period for the Permitted use without fine or premium but taking no account of any effect of the rent as the result of (a) the fact that the Tenant or their predecessors are or may have been in occupation of the Premises or (b) the Equipment or improvements on the Premises. The Landlord and the Tenant shall use reasonable endeavours to agree the rent payable with effect from the commencement of the Extension Period by the Expiry Date.
- 3.5 If the Landlord and the Tenant have not agreed the said rent within three months after the Expiry Date, the matter may at any time thereafter be referred by either party to be determined by an arbitrator in accordance with Clause 12.
- 3.6 [The Landowner and the Tenant shall enter into and register in the Land Register of Scotland a formal minute of extension or such other document as may be necessary to give effect to the

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<sup>6</sup> **Drafting note:** The provisions for term extension can be included in the Lease or alternatively provision can be made in the Concession Agreement in respect of a further lease to be granted following the expiration however, the latter approach is less prevalent in Scotland.



aforementioned extension.] [D.N. To be included if the original Term triggered the registration of the Lease in the Land Register of Scotland.]]

- 3.7 Notwithstanding the terms of this Clause [3], upon receipt of an Extension Notice from the Tenant and following agreement or determination of the rent and/or other commercial terms which would become due in respect of the Extension Period, the Landlord shall be entitled, but not obliged, to decline an extension of the Term in terms of this Clause if the open market rent (or any other prevalent market standard financial term(s)) falls below the Landlord's expectation, acting reasonably.]

#### 4 **TENANT'S OBLIGATIONS**

The Tenant binds and obliges itself and undertakes to the Landlord throughout the Term as follows:

##### 4.1 **Rent**

To pay the Rent to the Landlord without deduction set-off or counterclaim in accordance with Part 3 of the Schedule.

##### 4.2 **Outgoings**

4.2.1 The Tenant shall pay all Outgoings in respect of the Premises save for Outgoings arising from any dealing with the Landlord's interest in this Lease.

4.2.2 The Tenant shall pay all costs in connection with the supply of electricity to the Premises and any initial connection costs.

##### 4.3 **Repair and maintenance**

The Tenant shall:

4.3.1 accept the Premises as at the commencement of the [Initial Term/Term] as being in good and substantial and tenantable condition and repair and as fit for purpose in all respects;

4.3.2 keep the Premises in good and substantial repair and tenantable condition; and

4.3.3 whenever necessary following exercise of the rights granted in Part 2 of the Schedule, cause as little damage as reasonably practicable and make good any such damage to the Retained Land to include any damage caused to any part of the Retained Land where the Landlord has let it to a third party (and furthermore such damage shall relate to third party stock, fixtures and fittings) and any damage shall be made good forthwith to the Landlord and the Landlord's third party tenant's reasonable satisfaction and restore the surface of the Retained Land as soon as reasonably practicable to the reasonable satisfaction of the Landlord.

#### 4.4 Use

4.4.1 The Tenant shall not use the Premises:

- (a) other than for the Permitted Use;
- (b) for any illegal purpose;
- (c) for the carrying out of any repairs (other than as permitted in terms of Clause [4.6]) or mobile valeting; or
- (d) in a manner which causes or may cause danger, damage or legal nuisance to the Landlord or any other person.

4.4.2 Not to take into or keep on the Premises any motor fuel or any other inflammable liquid except that already within the fuel tank or engine of a motor vehicle on the Premises.

4.4.3 [Not to obstruct any of the entrances to or exits from the Car Park or any other parking spaces within the Car Park save for temporary occupation of an adjacent parking space or spaces where and only for so long as is reasonably required in connection with the exercise of the Rights.

4.4.4 Not to overload any structural part of the Car Park.

4.4.5 To comply with the Car Park Regulations.]<sup>7</sup>

4.4.6 Subject to compliance with the provisions of Clauses 4.4.1(a) - 4.4.1(d), 4.4.2, [4.4.3, 4.4.4 and 4.4.5]<sup>8</sup>, it is acknowledged and agreed that the proper use of the Premises for the Permitted Use shall not constitute a breach of this Clause 4.4.

#### 4.5 Legal requirements

4.5.1 The Tenant shall comply in all respect with all legal requirements and statutes for the time being in force and requirements of any competent authority relating to the Premises and the use of it by the Tenant, whether the requirements are imposed on the Landlord or the Tenant.

4.5.2 The Tenant shall indemnify the Landlord against all actions, proceedings, claims or demands which may be brought or made by reason of such statutes or requirements or any failure to comply with them.

4.5.3 To comply with all requirements under any present or future statute, order, by law or regulation as to the use or occupation of or otherwise concerning the Premises.

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<sup>7</sup> **Drafting note:** Only required where Charging Points installed within a car park.

<sup>8</sup> **Drafting note:** As per above.

The Tenant must not do or fail to do anything in respect of the Premises the effect of which could make the Landlord liable to pay any penalty, damages, compensation or costs under any statute, order, by law or regulation.

#### 4.6 Alterations, Equipment and Cables

4.6.1 Not to alter or add to the Premises unless expressly allowed under the remainder of this Clause 4.6.

4.6.2 The Tenant may without the consent of the Landlord but not otherwise:

(a) carry out any works within the Premises required to maintain and repair the Charging Stations, Equipment and/or Cables subject to the Tenant giving reasonable notice to the Landlord of such works; and

(b) [attach and/or install any sign, poster or advertisement at the Premises and on the Charging Stations exhibiting the branding or promotions of the Tenant, and/or exhibiting instructions that relate to the use of the Charging Stations (which without prejudice to the foregoing must always be reasonable and appropriate to the nature of the Premises and the Permitted Use). The Tenant acknowledges that any such advertisement on the Charging Stations;

(i) shall include the branding of the Tenant only and shall exclusively advertise the Tenant; and

(ii) any advertising of third parties and/or commercial advertising shall require the prior written consent of the Landlord in its absolute discretion.]<sup>9</sup>

4.6.3 The Tenant may with Landlord's consent (not to be unreasonably withheld or delayed) replace, alter, upgrade and renew the Charging Stations, Equipment and Cables in, on or under the Premises.

4.6.4 [The Tenant may with the Landlord's consent (not to be unreasonably withheld or delayed) add to the number of Charging Stations at the Premises PROVIDED ALWAYS THAT the Base Rent shall be adjusted accordingly in accordance with paragraph 1.1 of Part 3 of the Schedule.]<sup>10</sup>

#### 4.7 Yielding up

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<sup>9</sup> **Drafting note:** *Concessionaires will likely expect to be able to do this, but commercial advertising may not be appropriate.*

<sup>10</sup> **Drafting note:** *Clause to be included if the site is suitable for installation of more Charging Points than originally agreed.*

At the expiry or earlier determination of the [Initial Term/Term] (howsoever arising) the Tenant shall:

4.7.1 yield up and give back the Premises with vacant possession and with all apparatus and equipment (including, for the avoidance of doubt, the Equipment and Cables) other than such apparatus and equipment to be removed or rendered permanently safe at the request of the Landlord and in accordance with the Tenant's obligations in this Lease in respect of repair and maintenance;

4.7.2 make good any damage cause in removing the Charging Points, Equipment and/or Cables not being retained by the Landlord; and

4.7.3 if requested by the Landlord [(and at the Landlord's cost)]<sup>11</sup>, use reasonable endeavours to assist the Landlord in any application made o the DNO to transfer the grid connection to the Landlord [or any third party advised by the Landlord].<sup>12</sup>

#### 4.8 **Insurance**

To keep the Equipment insured in their full reinstatement value against loss or damage by fire or vandalism and such other risks and all in accordance with the Concession Agreement.

#### 4.9 **Indemnity**

The Tenant shall indemnify the Landlord in respect of all liabilities incurred, all damage and loss suffered, all claims, demands, actions and proceedings and properly incurred costs and expenses arising as a consequence of any breach of the tenant obligations by the Tenant.

#### 4.10 **Value Added Tax**

The Tenant shall pay any Value Added Tax chargeable on the Rent or on any other sum payable by the Tenant under this Lease and (save to the extent that the Landlord can reclaim it) on any payment made by the Landlord which the Tenant is obliged to reimburse.

#### 4.11 **Alienation<sup>13</sup>**

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<sup>11</sup> **Drafting note:** This would be reasonable in the circumstances but the Authority may wish to be kept free of all costs.

<sup>12</sup> **Drafting note:** The Concessionaires may not wish to assist with the transfer of the grid connection to a competitor so may resist inclusion of this wording and further qualification to expressly exclude transfers to third parties. Each Authority will need to confirm whether the equipment is to be considered as belonging to the Authority and therefore to remain in situ at the end of the Lease or whether the Concessionaire is to be responsible for the removal of the equipment.

<sup>13</sup> **Drafting Note:** The Concession Agreement is personal to the parties and we assume the intention is that the Concession Agreement and the Lease will be held by the same parties and one will not be assigned without the other.

4.11.1 The Tenant may assign, sublet, charge, part with, or share the possession or occupation of the Premises in whole or in part with Landlord's consent (at the Landlord's sole discretion).

4.11.2 Within one month of any permitted assignment, sublease, standard security or any other dealing affecting this Lease or any interest deriving title under it, the Tenant shall deliver to the Landlord a certified copy of the relevant document.

#### 4.12 **Environmental Liability**<sup>14</sup>

The Tenant shall not permit any Hazardous Substances to escape from the Premises PROVIDED THAT the Tenant will have no responsibility or liability whatsoever under this Lease or otherwise as a result of or in respect of the presence or accumulation of any Existing Hazardous Substances at the Premises or the escape or migration of any Existing Hazardous Substances from the Premises at any time whether before or after the date of commencement of this Lease provided that the Tenant's use of the Premises does not contribute to or cause any escape or migration of any Existing Hazardous Substances and for the avoidance of doubt to the extent that this provision is inconsistent with any other provision of this Lease then this provision will prevail and use of the Premises for the Permitted Use will not be in breach of this Clause except as aforesaid in this clause.

#### 4.13 **Registration**<sup>15</sup>

The Tenant shall as soon as reasonably practicable register this Lease:-

4.13.1 in the Land Register of Scotland; or

4.13.2 the Books and Council and Session;

as applicable.

#### 4.14 **Works**<sup>16</sup>

4.14.1 The Tenant must:

- (a) obtain all licences and consents that are required for the Works under all laws and by the owner or occupier of any neighbouring land or otherwise;

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<sup>14</sup> **Drafting note:** We have provided for the standard provision in terms of any environmental liability. Each Authority will need to consider if it expects the Concessionaire to take on all environmental liability, past and present, and this may depend on the location of the site.

<sup>15</sup> **Drafting note:** Additional provisions to be added in the event the underlying title is not registered in the Land Register of Scotland.

<sup>16</sup> **Drafting note:** These provisions are to be included if this is a new site and it is expected that the Concessionaire will carry out the Works. These provisions can be catered for in a separate licence to alter if that is the preference of the Authority.

- (b) provide the Landlord with details of the Works to give to the insurers of the Premises and the Landlord shall use reasonable endeavours to obtain the consent of the Landlord's insurers to carrying out the Works. The Tenant shall not start the Works until it has written confirmation from the Landlord that the Landlord's insurers have given consent to the Works or that their consent is not required;
- (c) produce copies of all such licences and consents to the Landlord before the Works are begun;
- (d) notify the Landlord of the date it intends to start carrying out the Works;
- (e) carry out the Works:
  - (i) using good quality materials which are fit for the purpose for which they will be used;
  - (ii) using the Equipment specified in this Lease;
  - (iii) in a good and workmanlike manner and in accordance with good building and other relevant practices, codes and guidance; and
  - (iv) to the reasonable satisfaction of the Landlord;
- (f) comply with all laws and the terms of all other licences and consents, the requirements and reasonable recommendations of all relevant utility suppliers and those of the insurers of the Premises;
- (g) take all proper steps to ensure that carrying out the Works does not make any of the following unsafe: any plant or machinery at the Premises, any neighbouring land or building;
- (h) cause as little disturbance and inconvenience as possible to the Landlord and the owners, occupiers and users of the Retained Land of which the Premises forms part and of any neighbouring land. The Tenant must not infringe any of their rights nor the rights of any other person in relation to the Premises;
- (i) as soon as reasonably practicable make good, to the reasonable satisfaction of the Landlord, any damage to any land or building or any plant and machinery which is caused by carrying out the Works;
- (j) allow the Landlord and its surveyors access to the Premises, both while the Works are being carried out and afterwards, and will give the Landlord the information it reasonably requests to establish that the Works are being and have been carried out in accordance with this Lease;

- (k) complete the Works by [ ● ]; and
  - (l) notify the Landlord as soon as the Works have been completed, and send the Landlord a copy of plans showing the Premises as altered by the Works.
- 4.14.2 The Tenant and the Landlord agree that, to the extent that the Landlord may be a client for the purposes of the CDM Regulations, the Tenant is to be treated as the only client in respect of the Works for the purposes of the CDM Regulations.
- 4.14.3 The Tenant must comply with its obligations as a client for the purposes of the CDM Regulations and must ensure that the principal designer and the principal contractor that it appoints in relation to the Works comply with their respective obligations under the CDM Regulations, including preparing and maintaining the health and safety file for the Works.
- 4.14.4 The Tenant must ensure that all relevant documents relating to the Works are placed in the health and safety file for the Premises by the principal designer or principal contractor in accordance with the CDM Regulations. The Tenant must maintain the health and safety file for the Premises in accordance with the CDM Regulations and give the health and safety file to the Landlord at the end of the [Initial Term/Term]. The Tenant must allow the Landlord and its agents or appointees to inspect the health and safety file and must at its own cost supply the Landlord with copies of it or any of the documents in it.

## 5 LANDLORD'S OBLIGATIONS

The Landlord agrees with the Tenant as follows:

### 5.1 Quiet Enjoyment

That the Tenant paying the Rent and other sums payable by the Tenant and performing the Tenant's obligations under this Lease the Tenant may quietly possess and enjoy the Premises during the [Initial Term/Term] without any interruption by the Landlord or any person lawfully claiming through under or in trust for it, subject always to Clause 6.1.3.

### 5.2 Retained Land

The Landlord shall not make any alteration to the Retained Land to the extent that it will impact the use of the Premises in accordance with this Lease nor plant any tree or shrub or erect any structure on, under or over the Retained Land to the extent that it will impact the use of the Premises in accordance with this Lease which adversely affects the Permitted Use and/or the Tenant's business from the Premises, other than with the prior written consent and under the supervision of the Tenant (such consent not to be unreasonably withheld or delayed).

### 5.3 Cables and Electricity Supply

5.3.1 The Landlord shall not interfere with or obstruct either the operation of the Cables, or the access to the Cables.

5.3.2 If the electricity supply to the Premises is interrupted due to an act or default of the Landlord only the Rent (or a fair proportion of it) will not be payable until the electricity supply is reinstated and the Premises are again fit for use.

5.4 **[Exclusion Zone<sup>17</sup>**

The Landlord shall procure that no part of the Exclusion Zone (other than the Premises) shall be used as a charging point for electrical vehicles except where a charging point is installed by a party in occupation of any part of the Exclusion Zone where such charging point is a charger available solely for their own use and not their customers/public use.]

5.5 **[Direct Agreement**

The Landlord shall, if reasonably required by the Tenant, enter into the Direct Agreement. The Tenant will bear the Landlord's legal costs of entering into the Direct Agreement.]

5.6 **Wayleaves**

If reasonably requested to do so by the Tenant due to the requirements of a telecommunications provider or distribution network provider in relation to the use of the Premises the Landlord shall (subject to the Tenant paying the Landlord's reasonable and proper costs incurred in doing so) together with the Tenant enter into a wayleave or such other form of consent with a telecommunications provider or distribution network provider in such form as shall be approved by the Landlord (such approval not to be unreasonably withheld or delayed) and the Tenant shall indemnify the Landlord for any liability incurred in relation to the same.

5.7 **Planning**

The Landlord shall not object to any application by the Tenant under the Planning Acts which relates to the use of the Premises for the Permitted Use and shall if reasonably required by the Tenant (and subject to the Tenant paying the Landlord's reasonable and proper costs incurred in doing so) be a party to any planning obligations required by a local authority in order to consent to the same and bind the land as landowner.

6 **LANDLORD'S RESERVED RIGHTS**

6.1 The following rights are reserved in favour of the Landlord and those authorised by the Landlord:

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<sup>17</sup> **Drafting note:** the Concessionaire may seek this kind of exclusivity however an Authority may prefer to have several developers operating charging points on adjacent site, in which case this clause should be removed.



- 6.1.1 To develop any part of the Retained Land as the Landlord may think fit subject to Clause 5.2.
- 6.1.2 [to temporarily suspend the use of the Premises where reasonably necessary in order to carry out refurbishment and/or maintenance works at the Car Park (including resurfacing and/or line painting) where such works cannot otherwise reasonably be carried out without such suspension PROVIDED THAT the Landlord:
- (a) gives the Tenant as much notice as reasonably practicable, including details of any proposed works and the Landlord's reasonable estimate of how long the works will take to complete; and
  - (b) uses reasonable endeavours to procure that any period of suspension is as short as reasonably practicable;]<sup>18</sup>
- 6.1.3 subject to Clause 5.1, to enter the Premises:
- (a) to maintain, repair, replace, alter, upgrade, renew and/or carry out any works to Service Media;
  - (b) [to resurface the Premises (including the line painting on the Premises) at reasonable intervals when the remainder of the Car Park is resurfaced;]
  - (c) to inspect, clean, repair, maintain, renew or alter any Retained Land;
  - (d) for any purpose referred to elsewhere in this lease;
- 6.1.4 to have support and protection for the Retained Land from the Premises;
- 6.1.5 to use any Service Media at the Premises which are in existence at the date of this lease or which are installed or constructed during the [Initial Term/Term], together with an ancillary right of access to facilitate the same; and
- 6.1.6 to be represented on and/or display content on any sign or poster as may be installed by the Tenant pursuant to Clause 4.6.2(b) and in such form as the Landlord shall request PROVIDED THAT the Landlord shall not request to advertise or promote competitors of the Tenant.

## 7 PROVISOS

Provided always and it is further agreed and declared that:

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<sup>18</sup> *Drafting note: Only applicable where Charging Stations are within a car park.*

7.1 If the whole or any part of the Rent or any other sum payable by the Tenant under this Lease is unpaid for 15 Working Days <sup>19</sup>after becoming payable or if any material obligation on the part of the Tenant is not observed or if (in relation to an individual Tenant) an application or a bankruptcy petition is presented or a proposal is made for a voluntary arrangement or he enters into a deed of arrangement or if (in relation to a corporate Tenant) it goes into compulsory or voluntary liquidation (excluding a voluntary winding up for the amalgamation or reconstruction of a solvent company) a receiver manager administrative receiver administrator or provisional liquidator is appointed or an administration application or order is considered or made or steps are taken to obtain a moratorium or a proposal is made for a voluntary arrangement or a scheme of arrangement THEN (subject to the terms of the Law Reform (Miscellaneous Provisions) (Scotland) Act 1985 [and any Direct Agreement]) in any such case the Landlord may terminate this Lease and the Tenant shall thereupon forfeit all right and title under this Lease which Lease shall thereupon become ipso facto void and null but without prejudice to any rights of the Landlord in respect of any antecedent breach of any of the Tenant's obligations in this Lease PROVIDED THAT before re-entering the Premises pursuant to this clause, or commencing any proceedings for irritancy of this Lease, the Landlord shall:

7.1.1 give notice of the breach complained of to any chargee of this Lease of whom the Landlord has received notice pursuant to Clause 4.11;

7.1.2 if the chargee confirms in writing to the Landlord within 10 Working Days of the notice that it wishes to remedy the breach, allow the chargee 20 Working Days (or such longer time as may be reasonable in view of the nature of the breach) to remedy the breach; and

7.1.3 in the case of the Tenant going into liquidation or suffering a permanent trustee, liquidator, receiver or administrator to be appointed the Landlord shall allow the permanent trustee or liquidator or receiver or administrator (as the case may be) and any such creditor as aforesaid (the "**Relevant Party**") a period of 12 months in which to dispose of the Tenant's interest in this Lease and shall only be entitled to terminate this Lease if the Relevant Party shall have failed to dispose of the Tenant's interest at the end of the said period provided always that the Relevant Party shall within 28 days of his or her appointment personally accept in writing and implement full responsibility for payment of the rent (whether due in respect of a period occurring before or after the date of sequestration, liquidation, receivership or administration (as the case may be) and for the performance of all other obligations of the Tenant under this Lease from the date of sequestration, liquidation, receivership or administration (as the case may be) to the date of disposal or the expiry of the said period of 12 months, whichever is the earlier, including settlement of any arrears of rent and the performance of any outstanding obligations which may subsist at the date of sequestration, liquidation, receivership or administration (as the case may be); AND IT IS HEREBY DECLARED THAT the Landlord shall deal

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<sup>19</sup> **Drafting note:** we have provided for a grace period for rent to be paid which we see in leases of this type but an Authority may prefer not to have a grace period.

with any request for consent to assign this Lease made by the Relevant Party in the same manner as if the request had been made by the Tenant.

7.2 If the Premises or the Retained Land (or the landlord's adjoining property to the extent that it will impact the Premises) are either:

7.2.1 damaged by fire or any other risk so as the Premises are unfit for occupation and use and payment of the insurance money is not refused wholly or in part through the fault of the Tenant; or

7.2.2 are not fully accessible then:

(a) the Rent (or a fair proportion of it) will not be payable until the damage is made good and the Premises are again fit for occupation and use or are fully accessible; and

(b) if six months from the damage it has not been made good and the Premises are still unfit for occupation and use or are not fully accessible the Landlord or the Tenant may by written notice served on the other within four weeks of the expiry of the said period of six months (provided the Premises are still unfit for occupation and use or are inaccessible at the time of service of the notice) determine this Lease but without prejudice to any antecedent rights which either party may have against the other and the Landlord and Tenant shall be entitled to any insurance monies received by the Landlord in proportion to the value of their interest in the Premises.

7.3 The Tenant does not have the benefit of any servitude right or privilege except any expressly granted by this Lease.

7.4 If the Tenant does not possess the necessary consents in accordance with the Planning Acts to use the Premises for the Permitted Use for a continuous period of more than ten months' the Landlord or the Tenant may by written notice served on the other within four weeks of the expiry of the said period of ten months (provided the necessary consents in accordance with the Planning Acts to use the Premises for the Permitted Use have still not been obtained) determine this Lease but without prejudice to any antecedent rights which either party may have against the other.

## 8 [RELOCATION OF EQUIPMENT]<sup>20</sup>

8.1 In this clause "**Development**" means the demolition or reconstruction or the carrying out of substantial works of construction that could not reasonably be carried out without obtaining possession of the Premises or that in the Tenant's reasonable opinion make the Premises no

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<sup>20</sup> **Drafting note:** Clause included for completeness however, it is for each Authority to decide whether relocation is to be permitted. Please note that some of the provisions, 8.3 in particular, are very Concessionaire friendly but may not be as palatable to the Authority.

longer suitable or commercially viable for the Permitted Use and “**Develop**” will be construed accordingly.

8.2 If at any time during the Term the Landlord wishes to Develop the whole or any part of the Retained Land (or the landlord’s adjoining property to the extent that it will impact the Premises) the Landlord or the Tenant may terminate this Lease by giving to the other not less than three months’ prior notice in writing and on the expiry of such notice this Lease will immediately cease and terminate but without prejudice to any claim by a party in respect of any antecedent breach of any obligation of any other party under this Lease and subject also to the following terms and conditions:

8.2.1 On or before the expiry of such notice the Landlord will with the agreement of every relevant incumbrancer and without payment of any consideration by the Tenant grant to the Tenant a new lease of an alternative site no less commodious and accessible by motor vehicles than the Premises (“**Alternative Site**”) for a term of years equal to the period then unexpired of the Term (or for such longer term of years as the Landlord and the Tenant may agree) but otherwise such new lease will be in the same form and contain the same provisions and covenants (mutatis mutandis) as those contained in this Lease;

8.2.2 As soon as reasonably practical before the expiry of the Landlord or Tenant’s notice referred to in Clause 8.2 the Tenant will (in the following order):

(a) complete the erection of the Equipment and associated Cables on the Alternative Site subject to successful planning and satisfactory grid applications (which the Tenant will diligently pursue); and

(b) remove so far as the Landlord may require the Equipment and the Cables from the Premises or render the same permanently safe (as may reasonably be required by the Landlord) for the avoidance of doubt the Charging Station will be removed and relocated at the Alternative Site.

In the event that the Tenant is unable to obtain the necessary consents under Clause 8.2.2 then the Landlord or Tenant’s notice shall be of no effect and the procedure set out in Clause 8.2 may be repeated as many times as may be reasonably required (including that a new Alternative Site will need to be agreed in accordance with Clause 8.2.1).

8.3 The Landlord will within 20 Working Days of receiving a valid VAT invoice and evidence of invoices addressed to the Tenant for the matters referred to at Clause 8.3.1 pay to the Tenant the reasonable and proper costs charges and expenses properly incurred by the Tenant in connection with:

8.3.1 the negotiation preparation and completion of a new lease as provided for by this Clause 8 above including any Land and Buildings Transaction Tax (where payable) and (if appropriate) all fees for the registration of such new lease

8.3.2 the dismantling and decommissioning of the Equipment and the erection of a new Equipment under the provisions of Clause 8.2.2.

The Landlord gives no express or implied warranty as to the condition of the Premises or that the Premises are suitable for the Tenant's purposes or that the Permitted Use will be or remain a lawful or authorised use under the Planning Acts or otherwise.]

## 9 **LANDLORD BREAK – CONCESSION AGREEMENT [AND WORKS]**

9.1 If the Concession Agreement is terminated by the Landlord, the Landlord may simultaneously with such termination or after such termination terminate this Lease by serving written notice on the Tenant to that effect whereupon this Lease shall automatically determine.

9.2 [If the Tenant has not started the Works within [ ● ] months of the date of this Lease, the Landlord may (unless the Landlord gives the Tenant notice extending the period) terminate this Lease by serving written notice on the Tenant to that effect whereupon this Lease shall automatically determine.]

9.3 Termination of this Lease pursuant to this Clause 9 shall be without prejudice to any right or remedy of the Landlord in respect of any antecedent breach of the Tenant's obligations or conditions on the part of the Tenant in terms of this Lease.

## 10 **LANDLORD BREAK – UNAVAILABLE PERIOD**

10.1 The Landlord may terminate this Lease at any time after the occurrence of an Unavailable Period during the [Initial Term/Term] of [ ● ] days or more by serving written notice on the Tenant to that effect whereupon this Lease shall automatically determine.

10.2 Termination of this Lease pursuant to this Clause 10 shall be without prejudice to any right or remedy of the Landlord in respect of any antecedent breach of the Tenant's obligations or conditions on the part of the Tenant in terms of this Lease.

10.3 The Tenant shall notify the Landlord in writing as soon as reasonably possible after:

10.3.1 the occurrence of a First Unavailable Date; and

10.3.2 any one of the Charging Stations on the Premises (or the one Charging Stations, if applicable) becomes no longer operational and/or unavailable for use by the public but which the Tenant (acting reasonably) does not consider that the relevant Charging Station is Unavailable for the purposes of this Lease.

10.4 The Tenant shall provide reasonably detailed reasons for why it does not consider any given Charging Station to be Unavailable together with any notice served on the Landlord in connection with Clause 10.3.2.

- 10.5 Subject always to an event of Force Majeure, in which case the Tenant shall not be obliged to comply with the obligation contained in this clause for so long as the Force Majeure event subsists, the Tenant shall use reasonable endeavours at its own cost to render any Charging Station that becomes non-operational and/or unavailable for public use as operational and available for public use as soon as reasonably practicable.
- 10.6 The Tenant shall notify the Landlord in writing as soon as reasonably possible after the date on which the Tenant (acting reasonably) considers that an Unavailable Period has expired.
- 10.7 On written request, the Tenant shall provide the Landlord with such information as it reasonably requires in connection with:
- 10.7.1 the occurrence of a First Unavailable Date and the reasons for it;
  - 10.7.2 a notice served pursuant to clause 10.3.2 including in connection with the reasons required by that notice;
  - 10.7.3 the Tenant's compliance with clause 10.5; and/or
  - 10.7.4 any Charging Station becoming non-available and/ or operational at any time during the Term.
- 10.8 For the avoidance of doubt a failure to by the Tenant to comply with any obligation in this Clause 10 (including provision of the notice in clause 10.3) shall not prejudice the Landlord's right to terminate this Lease pursuant to Clause 10.1.
- 10.9 Any dispute in relation to this Clause 10 may be referred by either the Landlord or the Tenant for determination pursuant to Clause 11.1 of this Lease.

## 11 **NOTICES**

- 11.1 Any notice required to be given by either party pursuant to or in connection with this Lease shall not be effective unless given in writing and sent by first class post or by email to the following addresses:
- 11.1.1 [ ● ]
  - 11.1.2 [ ● ]
- 11.2 A notice served in accordance with Clause 11 shall be deemed to have been duly served when received except that if it is received between 5pm on a business day and 9am on the immediately following business day it shall be deemed to have been served at 9am on the second of such business days.
- 11.3 Each party shall notify the other in writing within five business days of any change in its addresses for service.

## 12 **DISPUTE RESOLUTION**

- 12.1 In the event of a dispute between any of the parties, they shall seek to resolve the matter in good faith through negotiation.
- 12.2 Save where specifically stated elsewhere in this Lease, any dispute arising between the Landlord and the Tenant relating to the provisions of this Lease shall, where the matter has not been capable of resolution by negotiation within 10 Working Days of the matter being notified in writing by one party to the other, be referred to and determined by a single arbitrator to be agreed between the parties, or in default of such agreement to be appointed, having regard to the nature of the dispute, and that arbitrator having experience of the nature of the dispute, by (i) the Chairman for the time being of the Scottish branch of the Royal Institution of Chartered Surveyors, (ii) the President of the Law Society of Scotland, (iii) the President of the Institution of Engineering and Technology or (iv) the President of the Institute of Chartered Accountants of Scotland and in the event of a mixed dispute or where the Landlord and the Tenant cannot agree the nature of the difference or dispute and the most appropriate body to nominate the arbitrator, the arbitrator will be nominated by the Chairman of the Chartered Institute of Arbitrators (Scottish Branch) or in any case any person authorised by them to make appointments on their behalf, on the application of either party within one month of notice requiring such appointment and any such reference or determination shall be accordance with the Arbitration (Scotland) Act 2010 or any statutory modification or re-enactment thereof for the time being in force.

## 13 **SEVERANCE**

- 13.1 If any provision or part of a provision of this Lease is found by any court or administrative body of competent jurisdiction to be invalid, unenforceable or illegal, the other provisions will remain in force;
- 13.2 If any invalid, unenforceable or illegal provision would be valid, enforceable or legal if some part of it were deleted, the provision will apply with whatever modification is necessary to give effect to the commercial intention of the parties.

## 14 **EXCLUSION OF REI INTERITUS**

Save as expressly provided otherwise under this Lease, this Lease shall not be terminated by reason of destruction of or damage to the whole or any part of the Premises or the Retained Land but shall nevertheless endure for the Term notwithstanding any rule of law to the contrary and the application of *rei interitus* is expressly hereby excluded.

## 15 **COSTS**

- 15.1 Each of the Landlord and the Tenant shall meet their own costs in connection with the preparations, execution and completion of this Lease.

15.2 [The Tenant will pay, within five Business Days after written demand, the costs of registering the Lease in the Books of Council and Session and obtaining two extracts (one for the Landlord and one for the Tenant).]<sup>21</sup>

## 16 **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.

## 17 **GOVERNING LAW AND JURISDICTION**

This Lease and any dispute, claim or obligation (whether contractual or non-contractual) arising out of or in connection with it, its subject matter or formation shall be governed by the law of Scotland. The parties irrevocably agree that the Scottish courts shall, subject to Clause 11.1, have exclusive jurisdiction to settle any dispute or claim (whether contractual or non-contractual) arising out of or in connection with this Lease, its subject matter or formation.

## 18 **COUNTERPARTS AND DELIVERY**

18.1 This Lease may be executed in any number of counterparts and by each of the parties on separate counterparts.

18.2 Where executed in counterpart:

18.2.1 this Lease will not take effect until each of the counterparts has been delivered; and

18.2.2 where any counterpart is being held as undelivered, delivery will take place only when the date of delivery is agreed between the parties after execution of this Lease.

## 19 **CONSENT TO REGISTRATION**

The parties consent to registration hereof for preservation and execution: IN WITNESS WHEREOF these presents consisting of this and the preceding [ ● ] pages [together with the schedule [in [ ● ] parts] annexed hereto] are executed as follows:<sup>22</sup>

<sup>21</sup> **Drafting note:** Insert clause if Lease being registered in the BC&S and not the Land Register].

<sup>22</sup> **Drafting note:** Adjust signing blocks as relevant for parties to the Lease.



This is the [plan][Schedule] referred to in the foregoing Lease between [ ● ] Limited and [ ● ] Limited in respect of Unit [ ● ], [ ● ] [Industrial Estate][Commercial Park], [ ● ]

### **PART 1 – THE PREMISES**

The land at [ ● ] shown edged [ ● ] on the Plan including Service Media located on and exclusively serving the Premises and excluding all other Service Media.

DRAFT

## PART 2 – RIGHTS GRANTED<sup>23</sup>

- 1 The right to carry out the Works.
- 2 The non-exclusive right for the Tenant and all those authorised by it (including its customers) to pass and re-pass with or without vehicles, plant and equipment between the public highway to the Premises, and to park a vehicle thereon for all proper purposes connected with the Permitted Use of the Premises or the exercise of the rights granted in this Part 2.
- 3 The right for the Tenant and all those authorised by it (including its customers) to enter onto so much of the Retained Land as is reasonably necessary, with or without vehicles, plant and equipment at all reasonable times (and at any time in cases of emergency) for all proper purposes connected with the Permitted Use of the Premises or the exercise of the rights granted in this Part 2.
- 4 The right to the supply of electricity to the Premises.
- 5 The right to use and to connect into any Cables and Service Media.
- 6 The right to install, alter, maintain, renew, remove, connect to and enjoy the passage of utilities through the Cables along such routes as agreed in writing with the Landlord in advance, including the right to alter the depth, increase the capacity and reroute any such Cables with the Landlord's prior consent (not to be unreasonably withheld or delayed).
- 7 The right to place or exhibit on the Premises any sign advertising or notification material of any kind relating to the Permitted Use at the Premises.
- 8 To display commercial advertisements on the surface and/or screen of the Charging Station provided that the Landlord shall have a right to veto any companies or brands or other advertising or promotion:
  - 8.1 which in the Landlord's sole opinion would expose it to negative publicity and or negatively affect its reputation or otherwise materially adversely affect the Landlord; and/or
  - 8.2 which would have a detrimental effect to the Premises and/or the Retained Land.

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<sup>23</sup> **Drafting note:** Specific site right to be inserted.

## Part 3 – RENT<sup>24</sup>

### 1 DEFINITIONS

1.1 In this Part of the Schedule:

“**Account Date**” means [ ● ] in each year;

“**Accounts Records**” means all books and other documents or records (including computer tapes, discs and other storage systems and bank statements and any VAT returns) kept by the Tenant for the purpose of ascertaining (or otherwise are relevant to) Net Profit;

“**Additional Rent**” means the Rent Percentage of the Net Profit in each Profit Period;

“**Base Figure**”:

- (a) on the first Base Rent Review Date, [ ● ]<sup>25</sup> (being the Index figure for the month [ ● ] months preceding the date of this Lease);
- (b) on each succeeding Base Rent Review Date, the Current Figure for the preceding Base Rent Review Date;

“**Base Rent**” subject to paragraph **Error! Reference source not found.** and paragraph 11, the annual rent of the Base Sum per Charging Station (irrespective of whether the Charging Station has been installed and/ or is in operation);

“**Base Rent Review Dates**” [ ● ] in each year of the Term and “**Base Rent Review Date**” means the relevant Base Rent Review Date in the context in which it is used;

“**Base Sum**” the sum of [ ● ]<sup>26</sup> (as increased (if at all) under paragraph 6 of Part 3 of the Schedule);

“**Current Figure**” the Index figure for the month [ ● ] months preceding the Base Rent Review Date;

“**Index**” the “all items” figure of the Index of Retail Prices published by the Office for National Statistics or any successor Ministry, Department or Government Agency.

“**Net Profit**” has the meaning set out in paragraph 2;

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<sup>24</sup> **Drafting note:** this is an example of the rent provisions we have come across in this type of lease. Each Authority will need to confirm what has been agreed in respect of commercial terms. Depending on the grid position further tweaks can be made.

<sup>25</sup> **Drafting note:** Insert as applicable.

<sup>26</sup> **Drafting note:** We have seen figures ranging from £1,500 to £2,000 however, we cannot advise on market standard for commercial terms.

“**Profit Certificate**” means the certificate to be provided under paragraph 3.6;

“**Profit Period**” means a period of 12 months falling within the [Initial Term/Term] and ending on the Account Date but:

- (a) the first Profit Period will start on the Rent Commencement Date and end upon the first Account Date unless such period is less than 3 months, in which case the first Profit Period will end upon the second Account Date;
- (b) the last Profit Period shall start on the day following the last Account Date prior to the last day of the Term and end on the last day of the Term;

“**Rent Percentage**” means [ ● ]<sup>27</sup>;

“**Uplift Period**” means a period of 12 months falling within the Term and ending on a Base Rent Review Date but:

- (a) the first Uplift Period will start on the date of commencement of the Term and end upon the first Base Rent Review Date; and
- (b) the last Uplift Period shall start on the day following the last Base Rent Review Date prior to the last day of the Term and end on the last day of the Term.

## 2 **NET PROFIT**

2.1 Subject to paragraphs 2.2 and 2.3, ‘Net Profit’ means the aggregate of all sums of money or other consideration received or receivable for the use of the Premises from the business of charging of electric vehicles at the Premises and from all business of any nature whatsoever conducted at, in, from or upon the Premises by the Tenant (including without limitation all grants, subsidies and fees of a revenue nature paid to the Tenant by national or local government or any public authority in consideration of or to defray in whole or part the cost of conducting business at or from the Premises (or a fair proportion of those grants, subsidies and fees where they relate to the conduct of business from the Premises and other premises) **LESS** (in each case attributable to the relevant Profit Period only):

- 2.1.1 direct costs relating to the Premises (including any Outgoings but excluding any capital expenditure);
- 2.1.2 transaction processing fees payable to third parties;
- 2.1.3 Base Rent;
- 2.1.4 VAT, purchase tax and any similar sales or excise tax imposed directly on the Tenant in respect of the supply of goods or services but only to the extent that such tax is

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<sup>27</sup> **Drafting note:** We have seen this percentage at 15%.

actually paid or accounted for by the Tenant to the taxing authority and is irrecoverable by the Tenant; and

2.1.5 network service fees payable to third parties in respect of the Charging Stations.

2.2 In calculating Net Profit no deduction shall be made for bad or doubtful debts.

2.3 For the purposes of Net Profit, 'Tenant' means the Tenant or any licensees or concessionaires and any other person in occupation of the Premises.

### 3 RENT

3.1 The Rent shall be the Base Rent and the Additional Rent.

3.2 The Tenant hereby acknowledges that the Base Rent is calculated on the basis that a Charging Station is only capable of simultaneously serving one vehicle at a given time and further agrees that if:

3.2.1 any Charging Station is capable of simultaneously serving more than one vehicle at any given time; and

3.2.2 such Charging Station is operated to simultaneously serve more than one vehicle at any point during the relevant Uplift Period,

then the Base Sum for that given Charging Station during the relevant Uplift Period shall be substituted for the amount which is equal to the sum calculated in accordance with the following formula:

**$A \times B$**

Where:

**A** is the Base Sum

**B** is the number of vehicles which are simultaneously served at one time by the Charging Station. at the relevant point during the relevant Uplift Period.

3.3 Without prejudice to the other provisions of this paragraph 3, the Tenant shall notify the Landlord upon any occurrence of any Charging Station simultaneously serving more than one vehicle at any given time as soon as reasonably possible after becoming aware of the same.

3.4 The Tenant shall pay within 10 Working Days of demand the difference (if any) between the amount of Base Rent already paid during an Uplift Period and the sum that otherwise becomes due for the relevant Uplift Period as a consequence of any substitution of the Base Sum pursuant to paragraph 3.2.

- 3.5 In the event that paragraph 3.2 applies on more than one occasion during an Uplift Period, the substitution of the Base Sum for that Uplift Period shall be based on the maximum number of vehicles simultaneously served at any given time during that Uplift Period.
- 3.6 Within 6 weeks after the end of a Profit Period, the Tenant must deliver to the Landlord a Profit Certificate certifying the amount of the Net Profit during such Profit Period.
- 3.7 The Tenant promises and agrees with the Landlord that each Profit Certificate will state accurately the amount of the Net Profit during the relevant Profit Period.

#### 4 PAYMENT OF RENT

- 4.1 The Tenant will pay the Base Rent to the Landlord without deduction set-off or counterclaim by [equal quarterly payments in advance on the 25th March, 24th June, 29th September and 25th December in every year]<sup>28</sup> save that the first payment of Base Rent shall be the sum equivalent to six months' Base Rent totalling [ ] pounds (£[ ])<sup>29</sup> which is payable on the Rent Commencement Date and the following payment will be for the period starting on (and to be paid on) the date six months after the Rent Commencement Date) and ending on the next quarter day.
- 4.2 Upon receipt of a Profit Certificate the Landlord shall calculate and serve a written demand on the Tenant for any Additional Rent due and the Tenant must pay that Additional Rent to the Landlord within 15 Working Days after service of that demand.
- 4.3 If the Tenant fails to deliver a Profit Certificate under paragraph 3.6 the Tenant must within 6 weeks from the end of the relevant Profit Period pay to the Landlord on account of Additional Rent for that Profit Period an amount being the Landlord's reasonable estimate of the Additional Rent having regard to the turnover information supplied (or in the absence of such information the Landlord's reasonable estimate of the Tenant's Net Profit for that Profit Period).
- 4.4 If on receipt of the relevant Profit Certificate it appears that the amount paid on account exceeds the actual Additional Rent payable the Landlord will repay to the Tenant the excess within 10 Working Days after receipt by the Landlord of the Profit Certificate and if the amount paid is less than the actual Additional Rent payable the Tenant shall pay to the Landlord the shortfall within 5 Working Days of written demand by the Landlord.

#### 5 INSPECTION OF ACCOUNTS ETC.

- 5.1 The Tenant must maintain the Accounts Records fully and accurately throughout the Term, keeping safely and available for inspection by the Landlord (on reasonable prior notice), the Accounts Records relating to the then current and two immediately preceding Profit Periods.

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<sup>28</sup> **Drafting note:** Each Local Authority to advise preferred payment frequency.

<sup>29</sup> **Drafting note:** Calculate as applicable and insert.

- 5.2 The Landlord may at its discretion cause an audit of the Account Records relating to the current Profit Period or any preceding Profit Period to be made by a professionally qualified accountant appointed by the Landlord. If that audit establishes that the Net Profit for any Profit Period has been understated by more than 10% then the cost of the audit shall be paid by the Tenant on demand.
- 5.3 The Landlord will not disclose the Net Profit or any other information obtained from inspection or audit of the Accounts Records except where necessary:
- 5.3.1 to comply with any lawful requirement of any interested authority; and
- 5.3.2 for the proper conduct of the Landlord's business.
- 5.4 If any inspection, audit or other circumstance discloses that any further Additional Rent is payable, then it shall be paid by the Tenant within 15 Working Days of demand.

## 6 **BASE SUM REVIEW**

- 6.1 On each Base Rent Review Date, the Base Sum is to be reviewed to the higher of:
- 6.1.1 the Base Sum applicable immediately before that Base Rent Review Date; and
- 6.1.2 the revised Base Sum (rounded up to the nearest £5) calculated in accordance with the following formula:

$$R = A \times \frac{C}{B}$$

Where:

R is the revised Base Sum;

A is the Base Sum applicable immediately before the relevant review date;

C is the Current Figure; and

B is the Base Figure

## 7 **NOTICE OF BASE RENT**

If the Base Sum is increased, the Landlord must notify the Tenant as soon as possible after the Base Rent Review Date.

## 8 **EFFECT OF DELAY IN NOTIFYING THE REVISED BASE SUM**

- 8.1 Following any Base Rent Review Date until the Landlord has notified the Tenant of the revised Base Sum:

8.1.1 the Base Rent payable under this Lease immediately before that Base Rent Review Date will continue to be payable until the revised Base Sum has been notified to the Tenant;

8.1.2 following the notification of the revised Base Sum and calculation of the revised Base Rent, the Landlord will demand the difference (if any) between the amount the Tenant has actually paid and the amount that would have been payable had the revised Base Sum been notified and Base Rent calculated before the Base Rent Review Date; and

8.1.3 the Tenant must pay that difference to the Landlord within 10 Working Days after that demand.

## 9 **CHANGES IN THE INDEX**

If the Index is no longer published or if there is any material change in the way it is compiled or the date from which it commences then a new arrangement for indexation or a rebasing (the "Revised Indexation") will be substituted for the calculation of the Base Sum to reflect increases in the cost of living on a similar basis to that originally set out in this lease.

## 10 **DISPUTE RESOLUTION**

10.1 Any disputes arising in connection with the amount of the Net Profit, the amount of the Rent and/or the basis for the Revised Indexation shall be resolved in accordance with Clause 11.1.