

DATED _____

[GRANTOR]

and

[OPERATOR]

[and

[TENANT]

and

[TENANT'S GUARANTOR]]

**DIGITAL FIXED LINE INFRASTRUCTURE WAYLEAVE
AGREEMENT**

in respect of
the installation of electronic communication
apparatus at [_____]

**DIGITAL FIXED LINE INFRASTRUCTURE WAYLEAVE
AGREEMENT**

DATE

PARTIES

- (1) [¹**GRANTOR**] (incorporated and registered in England and Wales under company registration number [], the registered office of which is at [] (the "**Grantor**"); [and]
- (2) [**OPERATOR**] (incorporated and registered in England and Wales under company registration number [], the registered office of which is at [] (the "**Operator**"); [and]
- (3) ²[**TENANT**] (incorporated and registered in England and Wales under company registration number [], the registered office of which is at [] (the "**Tenant**");] [and;
- (4) [**TENANT'S GUARANTOR**] (incorporated and registered in England and Wales under company registration number [], the registered office of which is at [] (the "**Tenant's Guarantor**")]

BACKGROUND

- (A) This Agreement is a code agreement under, and made in accordance with, Part 2 of the Code by the Grantor, as "occupier", and by the Operator, as "operator", conferring upon the Operator rights for statutory purposes with respect to the Works described in **clause 3.1** and certain powers under the Code.
- (B) ³[The Grantor is the freeholder of the Property (as defined in **clause 1**)] [The Grantor is the owner of the leasehold estate in the Property (as defined in **clause 1**)].
- (C) ⁴[The Tenant has a lease [of part] of the Property.]
- (D) The expressions, "**Code**", "**Operator**" "**Property**", "**Tenant**" and "**Works**" are defined in **clause 1**.

IT IS AGREED as follows:

1 Definitions

In this Agreement:

1.1 Apparatus

¹ The Grantor will either be the freehold owner, or a long lease-holder, or a Tenant under a Lease. Each of these entities qualifies as an occupier for the purposes of The Electronic Communications Code.

² Whether the Tenant, and the Tenant's Guarantor will be required to be parties to the Agreement depends on the following circumstances. Where the Tenant is the Grantor as the lessee of the Property as a whole, or of a part of the Property including common parts, and the freeholder or other superior Landlord is not granting rights in respect of the electronic communications apparatus, the references to the Tenant, and the Tenant's Guarantor (if any) should be deleted; the Tenant will act as Grantor.

Where the installation of the electronic communications apparatus is to be installed only in the common parts of the Property, none of which is within the Tenant's demise, the Tenant and the Tenant's Guarantor (if any) will not be required to be parties to the Agreement, and the references to them in the parties' clause should be deleted.

Where the installation will affect the common parts and part of the Tenant's premises, the Tenant and Tenant's Guarantor should be included as parties.

³ Delete whichever alternative of clause in recital (B) does not apply to the Grantor.

⁴ Delete recital (C) if the Tenant is acting as Grantor.

"**Apparatus**" means the apparatus described in **Schedule 2**, (being "electronic communications apparatus" as defined by the Code), supplied by the Operator for the use of the Grantor ⁵[and of its tenants of the Property] [and the Tenant]] as altered or upgraded in accordance with this Agreement from time to time in any of the ways permitted under **clause 3.1.3**; a reference to the Apparatus is to all or part of it as the context so allows;

1.2 Code

⁶"**Code**" means the Electronic Communications Code contained in Schedule 3A to the Communications Act 2003;

1.3 Code Rights

"**Code Rights**" means such of the rights granted by the Grantor to the Operator in **clause 3.1** of this Agreement as are referred to in paragraph 3 of the Code;

1.4 Extra Apparatus

"**Extra Apparatus**" means apparatus added to the Apparatus, or otherwise installed, or which is treated under **clause 3.1.3** as permitted; once Extra Apparatus has been added, installed or treated as permitted in accordance with this Agreement, the expression "**Apparatus**" is to be treated as including the Extra Apparatus without differentiation;

1.5 Group Company

"**Group Company**" means a member of the group of companies of which the Operator is a member; for this purpose, two bodies corporate are to be taken as member of a group if one is a subsidiary of the other or both are subsidiaries of a third body corporate within the meaning of section 1159 of the Companies Act 2006;

[1.6 Lease

⁷"**Lease**" means a lease dated [] made between (1) [] [and] (2) [] [and (3) []] of the Premises, and any document supplemental to or varying the Lease, whether entered into before or after the date of this Agreement; for the purposes of this Agreement, the expression "**Lease**" as used in this Agreement includes any period of statutory continuation of the Lease and any renewal;]

1.7 Operator

"**Operator**" means the Operator named above in the **Parties clause**, or such other party to whom this Agreement is from time to time assigned in accordance with its terms during its continuance;

1.8 Plan(s)

"**Plan(s)**" means the [plan(s),] [drawings] [and] [specifications] referred to and annexed in **Schedule 2**;

[1.9 Premises

⁸"**Premises**" means the premises, comprised in the Property, known as [] but as described in the Lease;]

1.10 Property

"**Property**" means the property described in **Schedule 1**; a reference to the Property is to all or part of it as the context so allows;

1.11 Route

⁵ Amend accordingly.

⁶ This form of agreement has been drafted based on the Electronic Communications Code which came into operation on 28 December 2017. The agreement makes a number of references to provisions of the Code and, although **clause 2.4** contains a standard provision that references to the Code are as it is amended from time to time, care should be taken to check that the Code references are up-to-date.

⁷ If the Grantor is the tenant under the Lease, the definitions of "Lease", "Premises", "Tenant" and "Tenant's Guarantor" should be deleted. If the Grantor is a leaseholder, it would be good practice to give short details of the Lease in Schedule 1 in describing the "Property".

⁸ If the Grantor is the tenant under the Lease comprising the whole of the Property, the definition of Premises should be omitted and corresponding changes made in the operative provisions of the Agreement.

⁹"Route" means such part of the Property as now shown edged red on the Plan, but as may be changed from time to time by the Grantor, acting reasonably, to accommodate the Apparatus or as determined in accordance with **clause 7.8**;

[1.12 Tenant

"Tenant" means the party in whom the Lease is from time to time vested;]

1.13 Works

"Works" means any of the works to the Property necessary for the purposes set out in **clause 3.1** whether by way of initial installation of the Apparatus, upgrading, other alteration to the Apparatus, repairs or otherwise, and includes any related works.

2 Interpretation

2.1 A reference to the Grantor includes those other persons bound by this Agreement, or who will become bound by it, under the Code.

2.2 A reference to the Operator includes an entity to whom the benefit of this Agreement is assigned, or with whom the Apparatus is shared, under **clause 9**.

2.3

¹⁰[A reference to the Tenant [includes] [does not include] successors-in-title to the Lease and any persons deriving title to the Premises under the Tenant.]

2.4 A reference to particular legislation includes that legislation as amended, consolidated, re-enacted or replaced, and all subordinate legislation made under it as is, in each case, from time to time in force.

2.5 In this Agreement where the context so allows:

2.5.1

words importing the singular meaning include the plural meaning and vice versa;

2.5.2

an obligation of a party includes the obligation to procure its observance or performance;

2.5.3

a restriction on a party includes the obligation not to permit the infringement of the restriction; and

2.5.4

a reference to a Schedule or to a clause is to a Schedule to or to a clause in this Agreement.

2.6 Where the consent or approval of the Grantor [or the Tenant] to any matter is required under this Agreement:

2.6.1

the consent or approval is not to be unreasonably withheld unless expressly indicated otherwise; but

2.6.2

in order to be effective, the consent or approval must be in writing.

⁹ It is advisable for clarity to include a plan of the Route in Schedule 2, showing the location of the Route, particularly where it may not be in a single location in the Property. If so, attention should be given as to whether working areas and particular points of access to the Apparatus should be shown.

¹⁰ Delete this clause if the Tenant is the Grantor. If the Tenant is not the Grantor, delete whichever alternative is inapplicable. In practice, it will seldom be the case that the Agreement will be for the benefit of the Tenant personally and not be for the Tenant and its successors in title to the Lease. Clear instructions on the point are necessary.

3 Rights of the Operator

3.1 The Grantor grants [and the Tenant consents to the grant] to the Operator, for the period until it is terminated in accordance with **clause 11**, or the Code Rights of the Operator later come to an end, the rights for it and its duly authorised agents to:

3.1.1

install, keep installed and operate the Apparatus in, on, under, over or through the Route and to connect to a power supply;

3.1.2

inspect, maintain, adjust, repair, decommission and power down the Apparatus;

3.1.3

¹¹upgrade the Apparatus, and to alter the Apparatus whether or not by the addition of Extra Apparatus within the limits of the Route, but not outside those limits without the consent of the Grantor ¹²[and the Tenant];

3.1.4

remove the Apparatus as required or entitled so to do under this Agreement on or after the coming to an end of this Agreement; and

3.1.5

carry out the Works,

with such rights over the Property (but none other) as are necessary, reasonably to gain access to the Route and Apparatus in the execution of the rights granted under this **clause 3.1**. The rights so granted to the Operator are to be exercised in accordance with the Operator's obligations under this Agreement.

3.2 For the purposes of **clause 3.1.3**, Extra Apparatus is to be treated as kept within the limits of the Route if it does not involve taking up substantially more space within, or enlarging, the Route.

3.3 Subject to **clause 11.6.2**, the Apparatus is at all times to remain the property of the Operator.

3.4 For the purposes of **clause 3.1**, the Operator and its duly authorised agents may enter the Property at reasonable times, subject to **clause 4.4**, with or without vehicles (where appropriate), and with workmen, plant, equipment or machinery as may reasonably be required to carry out the Works.

3.5 This **clause 3.5** applies where an alteration is made to the Apparatus or it is relocated:

3.5.1

the provisions of this Agreement are to continue to apply to the Property and the Apparatus as altered and, so far as applicable, in the new location; and

3.5.2

each party shall promptly sign a memorandum recording the details of the alterations to the Apparatus and, (if applicable) the new location and any consequential adjustment of the terms of this Agreement, and retain a copy with its part of this Agreement.

3.6 The Operator may use the Apparatus only for the purpose of providing an electronic communications service (as defined by and construed in accordance with the Code) to the Property until this Agreement is terminated under **clause 11**, or the Code Rights of the Operator later come to an end.

¹¹ The ability of the Operator to install Extra Apparatus within the Route without consent demonstrates the importance of carefully defining and limiting the extent of the Route accurately. It is recommended that the specification for the installation of the Apparatus shows the dimensions of the Route so that if Extra Apparatus involves enlargement of the Route, consent of the Grantor will be required. It may be of significance as imposing an additional burden upon the Grantor and be a ground for not permitting an upgrade of the Apparatus which would otherwise be a void control on the part of the Grantor under r.17(1) of the Electronic Communications Code.

¹² Delete if the Tenant is the Grantor or if the consent of the Tenant is not to be required.

3.7 This Agreement does not, or will not, apply to any part of the Property which is, or becomes, adopted as a highway maintainable at public expense.

3.8 This Agreement does not create the relationship of landlord and tenant between the Grantor [or the Tenant] and the Operator in respect of the Property.

4 The Operator's Obligations

4.1 The Operator undertakes with the Grantor to observe and perform the obligations in the following provisions of this **clause 4**.

4.2 Before commencing any Works:

4.2.1

to obtain such statutory consents, permits to work, licences, permissions, approvals and authorisations as are required, necessary for the commencement, execution and retention of the Works; and

4.2.2

unless in case of the initial installation of Apparatus the Grantor has approved the specification and the Works involved, to provide to the Grantor [and the Tenant] details of the Works for prior approval; but

4.2.3

if consent of the Grantor [or the Tenant] is not required to Works to be carried out under **clause 3.1.3**, to give details of the Works within two months after they have been completed; and

4.2.4

unless the Grantor has approved the specification for the initial installation of Apparatus and the Works, or has granted consent to the alteration of the Apparatus, to provide to the Grantor details of the Apparatus as installed or altered within two months after completion of the Works.

4.3 Before entering the Property to carry out Works, to give to the Grantor [and the Tenant] reasonable notice to that effect (except in the case of emergency when as much notice as is reasonably practicable, or none if not practicable, has to be given).

4.4 To carry out and complete the Works:

4.4.1

in accordance with the Plans, and in a proper, safe and workmanlike manner;

4.4.2

in compliance with applicable statutory requirements and international standards, and in accordance with health and safety regulations and permits to work;

4.4.3

in accordance with the reasonable guidelines of the Grantor [and the Tenant] of which the Operator has been notified;

4.4.4

taking all proper precautions as may reasonably be practicable:

(a) to avoid unnecessary or undue obstruction or interference with the access to or use of the Property, or any neighbouring property; and

(b) so as not to cause unnecessary or undue damage, nuisance or inconvenience to the Grantor, and the ¹³[Tenant and any other] tenants or occupiers of the Property, or of any neighbouring property; and

4.4.5

¹³ Delete the bracketed words if the Tenant is the Grantor in clauses 4.2.2, 4.2.3, 4.3, 4.4.3-4.4.5 and 4.5.

in compliance with the reasonable security and access requirements of the Grantor [and the Tenant] as notified to the Operator.

4.5 By way of reinstatement, to make good to the reasonable satisfaction of the Grantor [and the Tenant] damage caused to the Property, or any neighbouring property of the Grantor, by the Works as soon as may reasonably be practicable, but no later than [3] months following completion of the Works. In case of temporary reinstatement of affected areas of the Property during the course of the Works, to render them safe for their intended use until final reinstatement can be carried out.

4.6 Not to use any part of the Property apart from the Route and such other parts of the Property as it is reasonably necessary to enter in order to carry out the Works or in connection with the Works as permitted by **clause 3.1**.

4.7 To maintain and keep the Apparatus:

4.7.1

identifiably labelled with the name of the Operator; and

4.7.2

in good repair and condition and so as not to be a danger to the Grantor, its employees or property, or to the tenants and occupiers of, or visitors to, the Property,

and to use and operate the Apparatus in accordance with applicable legislation and recommended guidelines.

4.8 To maintain third party and public liability insurance cover in respect of the exercise of the Operator's rights and the performance of the Operator's obligations under this Agreement, whether by the Operator, its employees, agents, or persons under its control or by a Group Company:

4.8.1

¹⁴with a reputable insurance company for not less than [£10,000,000] for each insurance year:

- (a) during the course of this Agreement; and then
- (b) for each insurance year until the Operator is no longer actually or contingently liable in respect of matters arising from actions and omissions on its part, or for those for whom it would be vicariously liable, during the course of this Agreement; and

4.8.2

against injury or death and loss caused to persons and damage or destruction caused to property,

and to provide to the Grantor details of the insurance and evidence that cover is in force upon reasonable request, but no more than once in any insurance year applicable to the policy unless in the meantime there is a change of insurer, policy conditions or cover.

5 The Grantor's ¹⁵[and Tenant's] Obligations to the Operator

5.1 The [Grantor] [and the Tenant] undertake[s] with the Operator to observe and perform the obligations in this **clause 5.1**:

5.1.1

to use reasonable endeavours:

- (a) to prevent damage, or anything likely to cause damage to be done, to the Apparatus; and
- (b) not to interfere or tamper with the Apparatus and its operation.

¹⁴ Cover of £10,000,000 is commonly used in the case of large buildings, but £5,000,000 is more often used as the amount of cover in the case of small buildings as the amount insured. Note that the cap on liability under the indemnity in clause 12.4 is normally coordinated with the amount of public liability insurance covered.

¹⁵The Tenant should join with the Grantor in giving the undertakings in clause 5 where the Apparatus passes through premises comprised in its lease.

5.1.2

to give reasonable notice of any activity, by way of power outages or otherwise, that it intends to carry out, that would or might affect the continuous operation of the Apparatus or otherwise limit the ability of Operator to provide electronic communications services to the Property.

5.2 ¹⁶[The Grantor confirms that it has obtained the consent of [the superior landlord,] [its mortgagee], [any covenantee] or other person necessary to enter into and give authorised effect to this Agreement.] [The Grantor confirms that it does not require the consent of any person freely to enter into this Agreement.]

5.3 [The obligations of the Tenant in this **clause 5** apply only to the Premises and its rights in relation to the Premises.]

6 ¹⁷[Tenant's [and Tenant's Guarantor's] Obligations to the Grantor

6.1 The Tenant confirms to the Grantor that, without prejudice to the obligation of the Operator in **clause 4.5**, its covenant in the Lease to reinstate the Premises at the coming to an end of the Lease is to apply also to reinstatement, if the Grantor reasonably requires it, made necessary by the removal of the Apparatus.

6.2 The Tenant's Guarantor confirms to the Grantor that its guarantee of the Tenant's obligations in the Lease remains in effect and as extended by **clause 6.1**.]

7 Relocation of Apparatus Required by the Grantor

7.1 This **clause 7** applies if the Grantor intends to repair or redevelop the Property, necessarily involving the relocation of the Apparatus. For these purposes, the expressions:

7.1.1

"**repair**" is to be construed as including any operation by way of repair, improvement, alteration, refurbishment, renewal or addition of or to the Property, or of or to the plant and equipment of the Grantor in the Property; and

7.1.2

"**relocation of the Apparatus**" means the relocation of the Apparatus whether it is to be temporary or permanent.

7.2 The parties shall use reasonable endeavours to collaborate with a view to providing acceptable solutions to situations that:

7.2.1

allow for the Grantor's requirements to repair or redevelop the Property, and to require the relocation of the Apparatus; and

7.2.2

enable the Operator to provide a continuous electronic communications service to its customers in the Property.

7.3 The Grantor shall give to the Operator:

7.3.1

not less than 3 months' notice of its intention so to repair or redevelop the Property except in case of emergency when as much notice as is reasonably practicable, or none if not practical, has to be given;

7.3.2

¹⁶ Note that whichever alternative clause applies, it operates as a warranty to the Operator of entitlement to make the grant of rights and is actionable if incorrect.

¹⁷ Delete this clause if the Tenant is the Grantor.

details of how the relocation of the Apparatus is to be accommodated to enable, or allow for, the Property to be repaired or redeveloped; and

7.3.3

evidence that it has obtained, if applicable, planning permission or other permissions, or licences, enabling it to commence carrying out repair or the redevelopment.

7.4 If the nature or extent of the repair or the redevelopment is such that the continuation in the location specified in this Agreement would not be practicable, the Grantor shall use reasonable endeavours:

7.4.1

to find an alternative, suitable, location in the Property for the Apparatus reasonably satisfactory to the Operator and the Grantor; and

7.4.2

to meet the Operator's reasonable requirements to secure the uninterrupted service provided by the Apparatus.

7.5 The Operator shall use reasonable endeavours not materially to hinder, prevent, impede or increase the cost to the Grantor of works of repair or redevelopment.

7.6 The Grantor may not require relocation of the Apparatus more than three times in any consecutive period of five years during the continuance of this Agreement.

7.7 ¹⁸The reasonable costs of relocating the Apparatus are to be borne by the Grantor.

7.8 If the parties are unable to agree an alternative location for the Apparatus by a time at least one month before the expiry of the notice given by the Grantor under **clause 7.3.1**, either the Grantor or the Operator may refer the matter for determination under **clause 13**.

7.9 The Operator acknowledges that nothing in this Agreement is intended to prevent or restrict the right of the Grantor to repair or redevelop the Property or any other buildings, property or land.

8 Interference

If it is demonstrated by the Grantor that the Apparatus at any time materially interferes (electronically, electromagnetically, mechanically or otherwise) with the operation of other equipment installed at the Property before the date of this Agreement, the parties are to co-operate and use reasonable endeavours to find and implement a technical solution.

9 Assignment and Sharing

9.1 This Agreement may be assigned only to an operator to whom the Code is applied under section 106 of the Communications Act 2003.

9.2 Unless the Grantor agrees to forgo the right to require it, the assignor shall enter into a guarantee agreement guaranteeing the performance by the assignee of the obligations under this Agreement of the assignee as Operator on terms that the guarantee may:

9.2.1

impose on the assignor liability as a sole or principal debtor in respect of the relevant obligations in this Agreement; and

9.2.2

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 sole or principal debtor in respect of any of the relevant obligations; and

¹⁸ As the Grantor requires the relocation of the Apparatus, it will be usual for it to agree to bear the costs of the Operator doing so, but that will not always be the case. Clear instructions are required.

9.2.3

Include incidental or supplementary provisions,

but may not impose on the assignor a requirement to guarantee in any way the performance of relevant obligations by a person other than the assignee, or 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.

9.3 The assignor is not liable, otherwise than under a guarantee agreement in **clause 9.2**, for a breach of this Agreement occurring after the assignment if:

9.3.1

the Grantor is given notice of the name of the assignee, to whom this Agreement has been assigned, and the assignee's address for service in the form of ¹⁹(or a form of notice containing all the same information as) the notice set out in Schedule 3; and

9.3.2

the notice has been given to the Grantor before the occurrence of the breach.

9.4 The Operator shall notify the Grantor of the completion of the assignment of this Agreement within 28 days after the date of the assignment, and shall provide to it a certified copy of the assignment.

9.5 The Operator may share the use of the Apparatus with another operator to whom the Code is applied under section 106 of the Communications Act 2003 subject to the conditions in **clauses 10.2** and **10.3**.

10 Upgrading and Works to facilitate sharing of Apparatus

10.1 The Operator may upgrade the Apparatus, or carry out Works required to give effect to sharing the Apparatus whether or not by way of upgrade to it, subject to meeting the tests applying, and the requirements, in the following provisions of this **clause 10**.

10.2 The changes to the Apparatus so required may only be made if they do not:

10.2.1

have an adverse impact, or no more than a minimal adverse impact, on the appearance of the Apparatus; or

10.2.2

impose an additional burden of any kind on the Grantor, including anything that has an additional adverse effect on the Grantor's enjoyment of the Property, or causing it additional loss, damage or expense,

unless the Grantor consents to the changes being made on terms it reasonably requires to mitigate the adverse impact or additional burden which would otherwise result, or the changes are ordered by the court.

10.3 The Operator shall give to the Grantor not less than [] weeks' notice of its intention to make changes to the Apparatus of more than minimal adverse impact upon the Grantor or the Property before commencing any Works, and shall provide:

10.3.1

evidence (including drawings, specifications, plans and method statements as appropriate) to show to the reasonable satisfaction of the Grantor that the conditions in **clause 10.2** are to be met; and

10.3.2

¹⁹ Operators may wish to use their own forms of notice of assignment, but alterations from the text of the OFCOM form of notice of assignment should not be made and will be treated as void unless they are approved by OFCOM. See the OFCOM link –

<https://www.ofcom.org.uk/phones-telecoms-and-internet/information-for-industry/policy/electronic-comm-code/notices>.

if applicable, details of the identity of the operator with whom the Apparatus is to be shared.

11 Termination

11.1 This Agreement may be terminated in any of the circumstances set out in this **Clause 11**. Following termination of this Agreement by the Grantor, the Code Rights of the Operator may nevertheless continue to be exercised by it for so long as they remain exercisable in accordance with Part 5 of the Code and to be binding during that period on the Grantor.

11.2 This Agreement terminates immediately if:

11.2.1

the Operator ceases permanently to provide the electronic communications service to which this Agreement relates whether or not it removes the Apparatus;

11.2.2

the Operator ceases to be a person to whom the Code is applied; [or]

11.2.3

the Apparatus is no longer being used, nor likely to be used, at the [Property] [Premises], or is removed by the Operator otherwise than temporarily for repair or replacement; [or]

[²⁰11.2.4

the Tenant's interest in the Premises ceases and is not renewed.]

11.3 This Agreement may be terminated if either the Operator or the Grantor is in substantial breach of this Agreement, and has failed to remedy the breach within three months following service of notice by the other specifying the breach and requiring it to be remedied. The Grantor or the Operator (as the case may be) may then, or at a later time while the breach has not been remedied, terminate this Agreement immediately by giving notice to the other to that effect.

²¹**11.4** The Grantor may terminate this Agreement by giving to the Operator not less than three months' notice that it intends to commence to repair (as defined in **clause 7.1.1**) the Property in circumstances in which the continuation of this Agreement under **clause 7.4** could not be practicable.

11.5 The Grantor may terminate this Agreement and the Operator's Code Rights by giving to the Operator not less than 18 months' notice that it intends to redevelop the whole or part of the Property and could not reasonably do so unless this Agreement is terminated and the Code Rights come to an end.

11.6 Following the termination of this Agreement and the coming to an end of the Code Rights of the Operator:

11.6.1

the Operator shall, at the Grantor's reasonable request by notice given within a period, not exceeding [6] months after the date of termination of this Agreement and the coming to an end of the Operator's Code Rights:

- (a) remove the Apparatus from the Property as soon as reasonably practicable; and
- (b) make good damage occasioned to the Property by its removal to the reasonable satisfaction of the Grantor within a reasonable period not exceeding three months after the date of the Grantor's request; but

11.6.2

²⁰ Delete **Sub-clause 11.2.4** if the Tenant is the Grantor.

²¹ The "lift and shift" provisions in clause 7 apply to both repair, as defined there, and to redevelopment of the Property. Clause 11.4 applies only to the impracticality of repairing the Property and of the continuation of this Agreement; the Operator's Code Rights would continue in operation if the Operator were to invoke them. The intention is that the parties would reach a commonsense arrangement in the circumstances. In contrast, redevelopment is dealt with in clause 11.5 and specifically is drawn to terminate this Agreement and the Operator's Code Rights.

if the Operator does not comply within 3 months with the request of the Grantor given under **clause 11.6.1**, the Grantor:

- (a) is to be entitled to treat the Apparatus as abandoned and of no value; and
- (b) may remove and dispose of the Apparatus and recover from the Operator the reasonable costs of doing so.

12 Indemnity provisions

12.1 The Operator shall keep the Grantor indemnified against liabilities suffered or incurred by it arising out of the breach, non-observance or non-performance of the obligations of the Operator in this Agreement.

12.2 In this **clause 12**, “**liabilities**” includes losses, claims, demands, proceedings, damages, compensation, costs and expenses.

12.3 The indemnity of the Operator under **clause 12.1** applies to liabilities suffered by the Grantor arising from any cause, including the following causes:

12.3.1

delay to, prevention or redesign of works of repair (as defined in **clause 7.1**) by the Grantor of the Property (or adjoining property, or the plant and machinery serving it); and

12.3.2

loss of rent from the Property, or loss of value equal to the difference between the value of the Grantor's interest in the Property with the continuing presence of the Apparatus and the value of its interest without it.

12.4 Claims of the Grantor under these indemnity provisions, howsoever the liability of the Operator arises, are not to exceed ²²[£10,000,000] in aggregate in any insurance year under the policy of insurance, unless it involves death or personal injury caused by negligence of the Operator or those for whom it is vicariously responsible.

12.5 The Grantor:

12.5.1

shall notify the Operator as soon as may reasonably be practicable on becoming aware of any liabilities and shall use reasonable endeavours to mitigate the liabilities for which it seeks indemnity; but

12.5.2

may not compromise or settle any of the liabilities, unless required under an order of court, without the consent of the Operator, and shall permit the Operator to defend the claims in the name of the Grantor at the expense of the Operator.

13 Mediation of Disputes and Dispute Resolution

13.1 Either the Grantor or the Operator may refer a dispute in connection with this Agreement to the respective nominated managers of each for resolution, both of whom are to use their reasonable endeavours to resolve the dispute in the first instance as soon as reasonably practicable. A nominated manager must be a senior representative empowered to make executive decisions on behalf of the party he or she represents.

13.2 If the dispute is not so resolved within twenty-eight (28) days after referral in accordance with **clause 13.1**, either party may request by notice given to the other (“**dispute notice**”) that the dispute is referred to mediation for resolution. In that event:

13.2.1

the parties shall appoint a single mediator to perform the mediation;

²² Instructions should be taken as to the amount of the limit. The suggested limit of £10m is commonly adopted. The amount of the limit is usually coordinated with the sum insured under **clause 4.8.1**.

13.2.2

where the parties are unable to agree on the appointment of a mediator within twenty-eight (28) days of the dispute notice, the mediator is to be appointed by the Centre for Effective Dispute Resolution, or its successor or replacement body, on the application of either party; and

13.2.3

the mediation is to be conducted in England pursuant to a procedure established by the mediator in his or her absolute discretion.

13.3 Neither party may commence court proceedings in relation to the dispute until (acting in good faith):

13.3.1

it has first attempted to settle the dispute by mediation in accordance with **clause 13.2**; and

13.3.2

either the mediation has terminated or the other party has failed to participate in the mediation, but the right to issue proceedings is not to be prejudiced by unreasonable delay in the mediation proceedings.

13.4 A dispute or difference between the parties (other than one in relation to the Code), that is not resolved by mediation under this **clause 13**, is to be referred to a single arbitrator, if the parties can agree on one, but otherwise to an arbitrator appointed by the President of the Royal Institution of Chartered Surveyors at the request of either party.

13.5 The Arbitration Act 1996 is to apply to the reference.

13.6 The parties acknowledge the power of the arbitrator, under section 37 of the Arbitration Act 1996, to appoint experts or legal advisers, or technical assessors to assist on technical matters.

13.7 Disputes relating to the Code are to be resolved through the courts of England and Wales.

14 ²³Notices

14.1 A notice or notification given under or in connection with this Agreement must be given in writing and signed by or on behalf of the party giving it.

14.2 A notice given under the Code must comply with the provisions of Part 15 of the Code. Notice of required access to the Property may be given by email at the following email addresses:

The Grantor: *[insert email address]*;

The Operator; *[insert email address]*;

[The Tenant; *[insert email address]*,

but in case of change of address, at such other email address as has been notified to the other [party] [parties].

14.3 Notices (other than notices of required access given by email) given under or in connection with this Agreement will be validly served if personally delivered, or if sent by a registered post service (within the meaning of the Postal Services Act 2000), or by first class recorded delivery or first class ordinary post, and (in any such case) addressed to:

14.3.1

the Grantor at *[insert the address]*;

14.3.2

²³ **Clause 14** relates only to notices or notifications given under or in connection with this Agreement. It does not apply to a notice required to be given for the purposes of any provision of the Code. Part 15 of the Code governs a notice under the Code. Such a notice is not to be sent by post, unless it is sent by a registered post service or by recorded delivery.

the Operator at *[insert the address]*; or

14.3.3

[the Tenant [or the Tenant's Guarantor] at [insert the address],

but in case of change of address, at such other location as has been notified to the other [party] [parties].

14.4 Any such notice is to be deemed to have been served if it is:

14.4.1

personally delivered and with immediate effect on delivery; or

14.4.2

sent in accordance with **clause 14.3** and having effect 48 hours after posting.

14.5 Either [Any] of the parties may change its address for service and other relevant details by giving to the other[s] notice of the changes in accordance with this **clause 14**.

15 Costs and VAT

15.1 All costs payable to a party are exclusive of value added tax chargeable on taxable supplies made by that party under or in connection with this Agreement; the tax is to be paid in addition.

15.2 A party supplying goods or services under this Agreement is to be paid the amount of any input value added tax incurred by that party to the extent to which it is not entitled to credit under section 26 of the Value Added Tax Act 1994.

16 Entire Agreement

This Agreement constitutes the entire agreement between the Grantor [and] the Operator ²⁴[and] [the Tenant] [and the Tenant's Guarantor].

17 Misrepresentation

17.1 The Grantor and the Operator each acknowledge to the other that no statement or representation, whether written or oral, previously made to it by or on behalf of the other [or the Tenant] has induced it to enter into this Agreement.

17.2 Liability of the Grantor [or the Tenant] on the one hand and the Operator on the other and any remedy at law, in equity or under statute in respect of such a statement or representation, if innocently made, or for implied warranty, is excluded.

18 Severance of Invalid Provisions

If a term of this Agreement, or its application to any person or circumstance, is held to be invalid or unenforceable, the term, or the relevant extent of its application, is to be treated as severable; the remainder of this Agreement is to continue in force and to be enforceable to the extent permitted by law.

19 Exclusion of Third Party Rights

Nothing in this Agreement is intended to create rights in favour of a third party under section 1(1)(b) of the Contracts (Rights of Third Parties) Act 1999.

²⁴ Delete references to the Tenant and the Tenant's Guarantor if the Grantor is the Tenant.

20 Governing Law and Jurisdiction

20.1 This Agreement, and a dispute or claim arising out of or in connection with it (including its formation and non-contractual disputes or claims), are to be governed by the laws of England and Wales.

20.2 The courts of England and Wales are to have the exclusive jurisdiction to determine disputes or claims that arise out of or in connection with this Agreement, including its formation and non-contractual disputes or claims.

21 Execution of this Agreement

This Agreement may be signed in more than one document and in any number of duplicate counterparts.

This Agreement has been entered into on the date given at the beginning of it.

SCHEDULE 1²⁵

The Property

The building known as [] being [part of] the land registered at
the Land Registry under [freehold] [leasehold] title number [].

²⁵ If the Grantor is a leaseholder and the definition of "Tenant" and its associated definitions have been deleted, it would be advisable to include in the description of the Property short particulars of the relevant lease and its term.

SCHEDULE 2²⁶

Apparatus

[Ducting/sub-ducting, chambers and cable trays; [fibre-optic] cables [within the ducting/sub-ducting and chambers and supported from cable trays]; terminating equipment] as further shown and described in the drawings and specifications annexed to this Agreement, namely:

[Drawing number .]

[Method statement dated .]

[Plan number .]

[.].

[Working area included if any]

²⁶ The drawings and specifications to be attached to this Agreement should give sufficient details to inform the Grantor of what is to be or is installed at the Property, its various locations and the dimensions of the Apparatus. It is recommended that a plan of the Route be attached and the dimensions of the Route be shown on it. See footnotes 9 and 11 above.

SCHEDULE 3

²⁷[Text of the Statutory notice of the assignment of an agreement under the Electronic Communications Code – Paragraph 16(5), Part 3 of Schedule 3A of the Communications Act 2003]

1. This is a statutory notice pursuant to paragraph 16(5) of the Electronics Communications Code in Schedule 3A to the Communications Act 2003 (the “**Code**”).
2. We, [insert name of the Operator], are currently party to an agreement under Part 2 of the Code with you [insert name of the Grantor] (the “**Agreement**”). Under the Agreement, you agreed to [confer][be bound by} a number of Code rights in order to facilitate the deployment by us of our electronic communications network. These Code rights relate to land occupied by you at [insert address].
3. The purpose of this notice is to inform you that, on [insert date], we assigned the Agreement to [insert name and address of assignee] (the “**Assignee**”). This means that we have assigned the benefit of the Code rights [conferred by] [binding on] you under the Agreement to the Assignee, and the Assignee is (from the date of the assignment) bound by the terms of the Agreement.
4. Please note that, from the date on which this notice has been given to you, we will not be liable for any breach of a term of the Agreement (unless that breach took place before the date on which this notice was given to you). As a result, should you have any concerns in the future about the exercise of Code rights on your land, please contact the Assignee.
5. The address of the Assignee is [insert address].
6. If you have any questions about this notice, please do not hesitate to contact us via telephone ([insert telephone number]) or email ([insert email address])

[insert date of notice]

²⁷ See Note 19.

Signed by **[NAME OF SIGNATORY]** a duly authorised signatory for and on behalf of **[GRANTOR]**:

[Signature]

Signed by **[NAME OF SIGNATORY]** a duly authorised signatory for and on behalf of **[OPERATOR]**:

[Signature]

Signed by **[NAME OF SIGNATORY]** a duly authorised signatory for and on behalf of **[TENANT]**:

[Signature]

Signed by **[NAME OF SIGNATORY]** a duly authorised signatory for and on behalf of **[TENANT'S GUARANTOR]**:

[Signature]