

DATED

-----[202_]

ELECTRONIC COMMUNICATIONS CODE WAYLEAVE AGREEMENT

relating to

[description/address of property]

[between/among]

[Landlord]

and

[Operator]

This Agreement is dated [] 202[]

Parties

- (1) [NAME] of [ADDRESS] (**Landlord**)
- (2) [NAME] incorporated and registered in England and Wales with company number [NUMBER] whose registered office is at [ADDRESS] (**Operator**)

BACKGROUND

- (A) This Agreement is made in accordance with Part 2 of Schedule 3A of the Act (as defined in clause 1) by the Landlord, as “occupier”, and by the Operator, as “operator”, conferring upon the Operator rights for statutory purposes with respect to the Installation Works described in Schedules 1 and 2 and certain powers under the Code (as defined in clause 1).
- (B) The Landlord is the freeholder of the Property or has a leasehold interest in the Property of greater than one year.
- (C) The electronic communications apparatus is to be installed only in the common parts of the Property, none of which is demised to any tenant of the Landlord or any other party.

AGREED TERMS

1. Interpretation

- 1.1 The definitions and rules of interpretation in this clause apply in this Agreement.

Act: the Communications Act 2003, as amended by the Digital Economy Act 2017

Agreement: this agreement together with its schedules (and includes any Property added from time to time to the schedules in accordance with the terms of this Agreement) or any document which is made or expressed to be supplemental to this Agreement.

Apparatus: the electronic communications equipment to be installed along the Wayleave Route as identified in Schedule 4 and as further described in the Method Statement and any electronic communications equipment lawfully substituted therefore or otherwise as altered or upgraded in accordance with this Agreement from time to time or in any of the

ways permitted under clause 16; a reference to the Apparatus is to all or any part of it as the context so allows.

Business Day: a day other than a Saturday, Sunday, or a public holiday in England and Wales.

CA 2003: Communications Act 2003.

Code: the Electronic Communications Code as set out in Schedule 3A to the Act as amended by the Digital Economy Act 2017 2003.

Code Rights: the rights set out in Schedule 1 as are referred to in paragraph 3 of the Code.

Commencement Date: the date of this Agreement.

Competent Authority: any statutory undertaker or any statutory public local or other authority or regulatory body or any court of law or government department or any of them or any of their duly authorised officers.

Landlords Guidelines (Technical and Installation Requirements): the document set out in Schedule 7.

Designated Hours: [TIMES] on [a Business Day **OR** [DAYS]] [unless otherwise agreed in writing between the parties].

Designation Notice: a written notice in which the Landlord designates the new location of the Wayleave Route having regard to the Operator's reasonable requirements to secure the uninterrupted service provided by the Apparatus.

Electronic Communications Operator: an electronic communications operator to whom a direction applies under section 106(3)(a) of the CA 2003.

Extra Apparatus: apparatus added to the Apparatus, or otherwise installed, or which is treated under paragraph 1.2 of Schedule 1 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.

Installation Works: works to be carried out on, over or under an Individual Property to install the Apparatus along the Wayleave route and to reinstate the Property as described in the Method Statement.

Method Statement: the written statement and accompanying plans relating to the Installation Works including a programme for the carrying out and completion of such works.

Necessary Consents: all consents, licences, permissions, certificates, authorisations and approvals whether of a public or private nature which shall be required by any Competent Authority for the installation, inspection, maintenance, adjustment, alteration, repair, renewal, connection to, replacement, operation, upgrade and removal of the Apparatus.

Operator's Obligations: the obligations set out in Schedule 2.

Landlord's Obligations: the obligations set out in Schedule 3.

Landlord's Rights: the rights set out in Schedule 5.

Survey Plan: the plans, drawings and specifications that shall be provided for each Individual Property and be materially in the form attached to this Agreement at Schedule 4 (or in such other form as may reasonably be agreed between the parties in writing).

Property: Property: all the property at [ADDRESS] [shown edged [COLOUR] on the Survey Plan] and registered at HM Land Registry under title number [TITLE NUMBER]].

Relocation Works: such works as are necessary to relocate the Apparatus in accordance with a Designation Notice.

Works: Any of the works to the Wayleave Property set out in the Planning (route) Pack and necessary for the purposes set out in Operators Obligations whether by way of initial installation of the Apparatus, alteration to or sharing use of the Apparatus or any other works permitted by this Agreement.

VAT: value added tax or any equivalent tax chargeable in the UK.

Third Party and Public Liability Insurance: fully comprehensive public liability insurance with reputable insurers in a sum not less than TEN MILLION POUNDS (£10,000,000.00) for each insurance year arising in respect of the exercise by the Operator of the Code Rights granted by this Agreement upon such terms as are first approved in writing by the Landlord (such approval not to be unreasonably withheld or delayed).

Wayleave Route: such part of the Property as shown on the Survey Plan and as described in the Method Statement or such other route to accommodate the Apparatus as is designated pursuant to clause 14.

- 1.2 Clause, Schedule and paragraph headings shall not affect the interpretation of this Agreement.
- 1.3 A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).
- 1.4 A reference to the Landlord includes a reference to any party bound by this Agreement or who shall become bound by it under the Code.
- 1.5 A reference to the Operator includes a reference to its successors in title and assigns and any party with whom the Apparatus is assigned or shared pursuant to clause 12.5.
- 1.6 The Schedules form part of this Agreement and shall have effect as if set out in full in the body of this Agreement. Any reference to this Agreement includes the Schedules.

- 1.7 Except where a contrary intention appears, references to clauses and Schedules are to the clauses and Schedules of this Agreement; reference to paragraphs are to paragraphs of the relevant Schedule.
- 1.8 Unless the context otherwise requires, words in the singular shall include the plural and vice versa.
- 1.9 Unless the context otherwise requires, a reference to one gender shall include a reference to the other genders.
- 1.10 A reference to laws in general is a reference to all local, national and directly applicable supra-national laws as amended, extended or re-enacted from time to time and shall include all subordinate laws made from time to time under them and all orders, notices, codes of practice and guidance made under them.
- 1.11 Unless otherwise specified, a reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time and shall include all subordinate legislation made from time to time under that statute or statutory provision and all orders, notices, codes of practice and guidance made under it.
- 1.12 A reference to **writing** or **written** includes email but not faxes.
- 1.13 Any obligation in this Agreement on a person not to do something includes an obligation not to agree or allow that thing to be done and an obligation to use reasonable endeavours to prevent that thing being done by another person.
- 1.14 Any phrase introduced by the terms **including**, **include**, **in particular** or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms.
- 1.15 Unless expressly provided otherwise, the obligations and liabilities of the Landlord and the Operator under this Agreement are joint and several.
- 1.16 Where the consent or approval of the Landlord to any matter is required under this Agreement:
 - (a) the consent or approval is not to be unreasonably withheld unless expressly indicated otherwise; but
 - (b) in order to be effective, the consent or approval must be in writing.

2. Grant

2.1 The Landlord grants to the Operator the Code Rights for the period until this Agreement is terminated in accordance with clause 6 or until the Operator's Rights later come to an end.

2.2 The Code Rights are granted:

- (a) subject to the Landlord's Rights and any other rights of the Landlord in relation to the Property whether or not referred to in this Agreement; and
- (b) in common with any other persons lawfully entitled to exercise similar rights to the Code Rights or the Landlord's Rights in relation to the Property.

3. Operator's Obligations

The Operator agrees to carry out the Operator's Obligations [Schedule 2].

4. Landlord's Obligations

The Landlord agrees to carry out the Landlord's Obligations [Schedule 3].

5. Reservation of rights

The Landlord reserves the Landlord's Rights.

6. Termination

6.1 This Agreement may be terminated if either the Operator or the Landlord is in substantial breach of this Agreement and has failed to remedy the breach within three (3) months following service of notice by the other specifying the breach and requiring it to be remedied. The Landlord 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.

6.2 This Agreement terminates immediately if:

- (a) the Operator ceases to be a person to which the Code is applied.
- (b) the Operator ceases permanently to provide the electronic communications service to which this Agreement relates whether or not it removes the Apparatus; or
- (c) the Apparatus is no longer being used, nor likely to be used, or is removed by the Operator otherwise than temporarily for repair or replacement.

- 6.3 Termination of this Agreement shall not affect the rights of any party in connection with any breach of any obligation under this Agreement which existed at or before the date of termination.
- 6.4 The Operator shall remove the Apparatus and all works ancillary to it in accordance with the Operators Obligations as soon as reasonably practicable not exceeding six (6) months following termination in accordance with this clause 6 and the coming to an end of the Operator's Code Rights.
- 6.5 The Operator shall in addition to its obligations under clause 6.4 make good damage occasioned by the removal of the Apparatus to the reasonable satisfaction of the Landlord within a reasonable time not exceeding six (6) months after such removal.
- 6.6 If the Operator does not comply with the requirements under clause 6.5, the Landlord is to be entitled to treat the Apparatus as abandoned and of no value and dispose of the Apparatus and recover from the Operator the reasonable costs of doing so.
- 6.7 The Landlord may give the Operator not less than three (3) months notice that it intends to commence to repairs to the Property in circumstances in which the continuation of this Agreement under Schedule 5.1 could not be practicable.
- 6.8 The Landlord 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.
- 6.9 For the avoidance of doubt, the termination provisions contained in this clause 6 do not affect any statutory rights of the Operator relating to the exercise of the Code Rights that remain exercisable in accordance with Part 5 of the Code and to be binding during that period on the Landlord.

7. Insurance

- 7.1 Before the Commencement Date and until such time as the Agreement is terminated in accordance with clause 6 the Operator shall maintain the Third Party and Public Liability Insurance for not less than TEN MILLION POUNDS (£10,000,000.00) and the Operator shall ensure that:
- (a) all current premiums are paid and up to date;
 - (b) the Operator complies in all respects with the terms of such insurance and does not allow the Third Party and Public Liability Insurance to lapse; and
 - (c) satisfactory evidence is produced to the Landlord (when reasonably requested) that the Third Party and Public Liability Insurance is valid and subsisting and that all

premiums due have been properly paid, 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.

- (d) the cover includes but is not limited to loss caused to person, injury or death and damage or destruction caused to property.

8. Indemnity provisions

- 8.1 The Operator shall keep the Landlord 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.
- 8.2 In this clause 8, "**liabilities**" includes losses, claims, demands, proceedings, damages, compensation, costs and expenses caused by the actions or omissions of the Operator.
- 8.3 The indemnity of the Operator under clause 8.1 applies to liabilities suffered by the Landlord arising from any cause, including but not limited to the following causes:
 - (a) material delay to, prevention or material redesign of works of repair or development (as defined in clause 15.2) by the Landlord of the Property (or adjoining property, or the plant and machinery serving it); and
 - (b) loss of rent from the Property, or loss of value equal to the difference between the value of the Landlord's interest in the Property with the continuing presence of the Apparatus and the value of its interest without it.
- 8.4 Claims of the Landlord under these indemnity provisions, or otherwise arising in connection with this Agreement, howsoever the liability of the Operator arises, are not to exceed TEN MILLION POUNDS (£10,000,000) in relation to any one event or series of connected events, unless it involves death or personal injury caused by negligence of the Operator or those for whom it is vicariously responsible.
- 8.5 The Landlord:
 - (a) 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
 - (b) may not compromise or settle any of the liabilities, unless required under an order of court, without the consent of the Operator (such consent not to be unreasonably withheld or delayed), and shall permit the Operator to defend the claims in the name of the Landlord at the expense of the Operator.

9. Limitation of Landlord's liability

- 9.1 Save where loss or damage is caused or partially caused by the negligent acts, misrepresentations or omissions of the Landlord (including by its employees or agents or those persons under its control) and subject to clause 9.2, the Landlord is not liable for:
- (a) the death of, or injury to the Operator, its employees, contractors, agents or invitees to the Property;
 - (b) damage to any property of the Operator or that of the Operator's employees, contractors, agents or invitees to the Property; or
 - (c) any liabilities, costs, expenses, damages, and losses incurred by the Operator or the Operator's employees, contractors, agents or invitees to the Property in the exercise or purported exercise of the Code Rights.
- 9.2 Nothing in clause 9.1 shall limit or exclude the Landlord's liability for:
- (a) death or personal injury caused by negligence wholly or partially on the part of the Landlord or its employees or agents or those persons under its control or damage to property wholly or partially on the part of the Landlord or its employees or agents; or
 - (b) any matter in respect of which it would be unlawful for the Landlord to exclude or restrict liability.
- 9.3 The Landlord shall not be liable to the Operator for any failure of the Landlord to comply with the Landlord's Obligations contained in paragraph 2 of Schedule 3 unless and until the Operator has given the Landlord notice of the facts that give rise to the failure and the Landlord has not remedied the failure within a reasonable time.

10. Notices

- 10.1 Except where this Agreement specifically states that a notice need not be in writing (and in any event for notice of access to the Property which may be given in electronic format), any notice or notification given under or in connection with this Agreement must be:
- (a) in writing and for the purposes of this clause an email is not in writing;
 - (b) Code-compliant (Part 15 of the Code); and
 - (c) given by hand or by a registered post service (within the meaning of the Postal Services Act 2000) or by recorded delivery to the relevant party as follows:
 - (i) to the Landlord at:
[ADDRESS]
marked for the attention of: [NAME/POSITION]

(ii) to the Operator at:

Marked for the attention of:

- (d) or as otherwise specified by the relevant party by notice in writing to each other party; and
 - (e) any change of the details in clause 10.1(c) specified in accordance with that clause shall take effect for the party notified of the change at 9.00 am on the later of:
 - (i) the date, if any, specified in the notice as the effective date for the change; or
 - (ii) the date five Business Days after deemed receipt of the notice.
- 10.2 If a notice complies with the criteria in clause 10.1, whether or not this Agreement requires that notice to be in writing, it shall be deemed to have been received:
- (a) if delivered by hand, at the time the notice is left at the proper address; or
 - (b) if sent by a registered post service or by recorded delivery, on the second Business Day after posting.
- 10.3 Each party agrees that the address set out in clause 10.1(c) (as it may subsequently be amended under clause 10.1(e)) shall also constitute its address for service under paragraph 91(2)(a) of the Code.
- 10.4 This clause 10 does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.

11. Licence only

The parties acknowledge that:

- 11.1 no relationship of landlord and tenant is created between the Landlord and the Operator by this Agreement.
- 11.2 nothing in this agreement is intended to, or shall be deemed to, establish any partnership between any of the parties, constitute any party the agent of another party, or authorise any party to make or enter into any commitments for or on behalf of any other party except as expressly provided for.
- 11.3 the Landlord retains control, possession and management of the Property and the Operator has no right to exclusive possession nor to exclude the Landlord from the Property; and
- 11.4 this Agreement confers no easement.

12. Assignment of agreement and sharing use of Apparatus

- 12.1 The Operator shall not assign this Agreement except to a party that is an Electronic Communications Operator.
- 12.2 The Landlord may require the Operator to enter into an agreement, under which the Operator as assignor guarantees the performance by the assignee of all the Operator's obligations in this Agreement and which:
- (i) is in respect of the period beginning with the date the assignee becomes bound by those obligations and ending on the date when those obligations cease to be binding on the assignee;
 - (ii) imposes sole or principal debtor liability on the assignor; and
 - (iii) is otherwise in a form reasonably required by the Landlord.
- 12.3 The Operator shall not be liable for any breach of this Agreement occurring on or after the date of the permitted assignment, save for any liability under a guarantee agreement, provided that:
- (a) the Landlord is given written notice of the assignee's name and address for service for the purposes of clause 10; and
 - (b) the notice was given to the Landlord prior to the breach occurring.
- 12.4 The Operator shall notify the Landlord of the completion of the assignment of this Agreement and provide the Landlord with the guarantee agreement (or a certified copy thereof) (unless the Landlord has waived the requirement to provide such agreement) and a certified copy of the assignment within 28 days of completion of the assignment.
- 12.5 The Operator may share the use of the Apparatus situated on the Property with another Electronic Communications Operator provided that:
- (a) any changes as a result of sharing use of the Apparatus have no adverse impact or no more than a minimal adverse impact on its appearance; and
 - (b) the sharing imposes no additional burden on the Landlord (which includes anything that has an additional adverse effect on the Landlord's enjoyment of the Property or that causes additional loss, damage or expense to the Landlord).
- 12.6 Except as expressly permitted by this Agreement, the Operator shall not assign, charge or directly or indirectly share use of the Apparatus and the rights granted by this Agreement with another Electronic Communications Operator or any other person.

12.7 The Operator shall supply the Landlord with full details of anyone sharing the use of the Apparatus.

13. Ownership of Apparatus

13.1 Subject to clause 6.6, the Apparatus shall remain the absolute property of the Operator at all times.

14. Relocation of the Apparatus

14.1 From time to time the Landlord may serve a Designation Notice on the Operator. On receipt of a Designation Notice the Operator shall (provided there is a likelihood of it providing services at an Individual Property in the future) carry out the Relocation Works.

14.2 The Landlord shall only serve a Designation Notice pursuant to clause 14.1 for one or more of the following reasons:

- (a) to carry out works of redevelopment, repair, inspection, maintenance or development to an Individual Property;
- (b) to comply with all laws; or
- (c) to comply with any obligation owed by the Landlord to any tenant or occupier of an Individual Property.

14.3 Subject to clause 14.2, the Landlord may serve more than one Designation Notice during the term of this Agreement but not more than three times in any consecutive period of five years.

14.4 A Designation Notice shall give at least three months' notice, save in case of emergency and/or safety risk materially affecting or liable to materially affect the Property and/or tenants, occupiers or other persons residing in any part of the Property when a Designation Notice may specify such other period of notice as may be reasonable in all the circumstances.

14.5 The Landlord shall pay the Operator's reasonable costs of carrying out any Relocation Works. Except where the Operator's Apparatus is shown to materially interfere (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.

14.6 The part of an Individual Property newly designated as a Wayleave Route by the Landlord shall be as convenient for the purposes of the Operator's Apparatus as reasonably practicable.

- 14.7 The Operator shall carry out the Relocation Works in a proper and workmanlike manner and in accordance with the provisions of Schedule 2 to this Agreement.
- 14.8 The Operator shall complete any Relocation Works within six months of the relevant Designation Notice subject to reasonable extensions for events beyond the Operator's control.
- 14.9 If the Operator at any time fails to comply with any of its obligations in this clause 16, the Landlord may, but without prejudice to any other rights of the Landlord and without being liable for any damage caused, complete any Relocation Works permitted or required by this clause and the Operator shall pay to the Landlord all reasonable and proper fees, costs and expenses incurred by the Landlord in carrying out any such works which, if not paid, shall be recoverable by the Landlord as a debt provided that the Landlord provides valid invoices to the Operator in relation to the same.
- 14.10 The parties agree that the operation of this clause 16 shall not constitute an interruption of or interference with the Operator's Rights.
- 14.11 Subject to clause 14.10:
- (a) the provisions of this Agreement are to continue to apply and the Apparatus as relocated subject to sub-clause 14.11.(b) (below); and
 - (b) each party shall promptly sign a memorandum recording the details of the new location of the Apparatus and any consequential adjustment of the terms of this Agreement and retain a copy with its part of the agreement. The Landlord shall pay the Operator's reasonable legal costs in respect of such agreement.

15. Fees and associated costs

[Note: Landlords can recover reasonable costs under the provisions within the electronic communication codes. Further legal advice should be sought as requested fees deemed excessive by operators could be challenged within an upper land tribunal.]

Fees need to be agreed upon before the works are carried out.

[Clauses to be added following discussion between Operator and Landlord]

16. VAT

- 16.1 All sums payable by the Operator are exclusive of any VAT that may be chargeable. Subject to clause 15 the Operator shall pay VAT in respect of all taxable supplies made to it in connection with this Agreement on the due date for making any payment or, if earlier, the date on which that supply is made for VAT purposes.

- 16.2 Every obligation on the Operator, under or in connection with this Agreement, to pay the Landlord any sum by way of a contribution, refund or indemnity, shall include an obligation to pay an amount equal to any VAT incurred on that sum by the Landlord, except to the extent that the Landlord obtains credit for such VAT under the Value Added Tax Act 1994.
- 16.3 The Operator shall not be required to make any payment of VAT unless and until the Landlord provides the Operator with a valid VAT invoice addressed to the Operator.

17. Misrepresentation

- 17.1 The Landlord and the Operator each acknowledge to the other that no statement or representation, whether written or oral, previously made by or on behalf of the other has induced it to enter into this Agreement.
- 17.2 Liability of the Landlord 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 except in cases where personal injury or death occur.

18. Severance of Invalid Provisions

If any provision or part-provision of this Agreement (or the application of any term of this Agreement to any person or circumstance) is held to be (or becomes) invalid, illegal or unenforceable, the relevant provision or part-provision (or 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. Rights of third parties

A person who is not a party to this Agreement shall not have any rights under section 1(1)(b) of the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Agreement.

20. Governing law and jurisdiction

- 20.1 This Agreement and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the law of England and Wales.
- 20.2 The parties irrevocably agree that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with this Agreement or its subject matter or formation (including non-contractual disputes or claims).

This Agreement takes effect on the date stated at the beginning of it.

Signature [Landlord]:

Signature [Operator]:.....

Print Name:

Print Name:

Date:

Date:.....

Schedule 1 Code Rights

1. The rights, for the Operator and its duly authorised agents during the Designated Hours save in the case of emergency and in common with the Landlord to enter the Property with or without vehicles, plant and equipment (at the Operator's expense and in a good, proper and workmanlike manner) to:
 - 1.1 install (and keep installed) the Apparatus over the Wayleave Route (including in existing ducts) and make good the Property in accordance with the Method Statement and afterwards to inspect, maintain, adjust, repair, replace, decommission, power down and operate the Apparatus ensuring that on each occasion that the Property is reinstated in accordance with the Method Statement and otherwise left in a neat and tidy condition;
 - 1.2 upgrade and/or alter (within the limits of the Wayleave Route and not outside such limits without the consent of the Landlord] the Apparatus whether or not by the addition of Extra Apparatus provided that:
 - (a) any changes as a result of the upgrading to the Apparatus have no adverse impact or no more than a minimal adverse impact on its appearance; and
 - (b) the upgrading imposes no additional burden on the Landlord (which includes anything that causes additional loss, damage or expense to the Landlord);
 - 1.3 fell, trim or lop any trees, bushes and other vegetation on the Property which obstruct or interfere with the exercise of the rights in accordance with the Method Statement, provided that the Operator removes from the Property all timber, wood and vegetation so cut or otherwise deals with it as the Landlord directs and leaves the Property properly reinstated in accordance with the Method Statement and otherwise in a neat and tidy condition;
 - 1.4 connect to a power supply including pay and indemnify the Landlord against all rates, utilities and proper charges that may be or become payable in relation to the permitted apparatus, provided that the Operator shall not be entitled to connect into the Landlords electricity supply and if the Landlord requires a supply of electricity, it shall install its own electricity supply to the permitted apparatus either directly or via the regional electricity company along a route to be agreed by the parties acting reasonably (but not through the residential flats (if any) within the Landlords property) the exact route, depth, method of fixing and specification of such cabling to be approved by the Landlord;
 - 1.5 remove the Apparatus as required or entitled so to do under this Agreement on or after the coming to an end of this Agreement;
 - 1.6 carry out the Installation 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 Schedule 1; and

- 1.7 enter the Property with or without vehicles (where appropriate), plant and equipment and with workmen, as may be reasonably required to carry out the Installation Works to obtain access to any adjoining land over which the Operator has similar rights.
- 1.8 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 terminates under clause 7, or the Code Rights of the Operator later come to an end. For the avoidance of doubt connection to the Operator's electronic communications network within the vicinity of the Property shall not be a breach of this paragraph 1.8.
- 1.9 For the purposes of paragraph 1.2, Extra Apparatus is to be treated as kept within the limits of the Wayleave Route if it does not involve taking up substantially more space within, or enlarging, the Wayleave Route.

Schedule 2 Operator's Obligations

1. Statutory requirements

When exercising any and all of the Code Rights, the Operator and its contractors, employees and others authorised by it shall do so in a good, proper and workmanlike manner, in accordance with all Necessary Consents and shall comply with all applicable legislation/laws relating to the exercise of the Code Rights in relation to the Installation Works and with the code of practice published from time to time by Ofcom pursuant to paragraph 103 of the Code.

2. Damage

The Operator and its employees, contractors, agents and others authorised by it shall not cause any material damage to an Individual Property, or to any property of the owners or occupiers of the Property, and shall as soon as reasonably possible make good any such damage caused (including any damage caused due to the Installation Works) and reinstate the Property to the Landlord's reasonable satisfaction in accordance with the reinstatement provisions in the Method Statement.

3. Nuisance

The Operator and its employees, contractors, agents and others authorised by it shall not cause any material nuisance, annoyance or disturbance to the Landlord or occupiers of the Property, or of any neighbouring land, or to any other person entitled to rights over the Property or entitled to exercise the Code Rights in common with the Operator.

4. Interference

In exercising the Code Rights the Operator and its employees, contractors, agents and others authorised by it shall take all reasonable precautions to avoid any undue interference with the use of any road, footpath, sewer, drain, watercourse or other services that may be affected by the Installation Works or that the Wayleave Route passes over.

5. Safety

The Operator shall ensure that:

- 5.1 all proper safety precautions are taken during the Installation Works and thereafter that safety devices in, on or relating to the Apparatus function properly at all times;
- 5.2 the Apparatus is regularly inspected at proper intervals by an appropriately qualified and experienced person (who may be an employee or contractor of the Operator) and that any lawful recommendations to carry out any works or remedy any defects that are necessary

to put and keep the Apparatus safe and in good repair and condition are carried out as soon as reasonably practicable; and

5.3 the Apparatus is kept identifiably labelled with the name of the Operator where possible.

6. Notice of entry

6.1 Except in the case of emergency when no notice is necessary or where access is required for Stage 2 Works, the Operator shall give the Landlord not less than **10 (ten)** Business Days' written notice of its intention to enter the Property to install, inspect, maintain, adjust, alter, repair, remove, replace and operate the Apparatus.

6.2 The Operator shall give the Landlord not less than 15 Business Days' written notice of its intention to enter the Property to upgrade the Apparatus and the notice shall be accompanied by full details of what is proposed, including drawings, specifications, plans and method statements as appropriate.

7. Before Start on Site

Before commencing any Installation Works:

7.1 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 Installation Works; and

7.2 unless in case of the initial installation of Apparatus the Landlord has approved the specification and the Installation Works involved or in relation to Stage 2 Works, to provide to the Landlord details of the Installation Works for prior approval; but

7.3 if consent of the Landlord is not required to Installation Works to be carried out, to give details of the Installation Works within two months after they have been completed other than or in relation to Stage 2 Works; and

7.4 unless the Landlord has approved the specification for the initial installation of Apparatus and associated works, or has granted consent to the alteration of the Apparatus or in relation to Stage 2 Works, to provide to the Landlord details of the Apparatus as installed or altered within two months after completion of the Installation Works.

8. Execution of Installation Works

8.1 When exercising any and all of the Code Rights, to carry out and complete the Installation Works:

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

- (b) in accordance with all requirements contained in the Method Statement;
- (c) in compliance with applicable statutory requirements and international standards (to the extent applicable in England), and in accordance with health and safety regulations and permits to work;
- (d) in accordance with the reasonable guidelines of the Landlord set out in schedule 7.
- (e) taking all proper precautions as may reasonably be practicable: (i) to avoid unnecessary or undue obstruction or interference with the access to or use of the Property, or any neighbouring property; and (ii) so as not to cause unnecessary or undue damage, nuisance or inconvenience to the Landlord, or the occupiers of the Property, or of any neighbouring property; and
- (f) in compliance with the reasonable security and access requirements of the Landlord as notified to the Operator in writing in advance.

8.2 Not to use any part of the Property apart from the Wayleave Route and such other parts of the Property as it is reasonably necessary to enter in order to carry out the Installation Works or otherwise in connection with those and associated works as permitted by this Agreement.

Schedule 3 Landlord's Obligations

1. Interference with Apparatus

The Landlord:

- 1.1 shall not do anything or allow anything to be done on the Property that may interfere with or damage the Apparatus or interfere with, impede or obstruct the Operator's access to the Apparatus.
- 1.2 will 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.
- 1.3 confirms that it does not require the consent of any person freely to enter into this Agreement.

2. Prohibited activity

The Landlord shall not:

- 2.1 erect any new building or structure or plant on or beneath the Wayleave Route referred to in Schedule 4; or
- 2.2 raise the level of the surface, ground cover or composition of the ground beneath the Wayleave Route.
- 2.3 Install equipment or cables in a way that would compromise roots within the protection area of a tree located within the site.

Schedule 4 Description of Apparatus and associated equipment

Schedule 5 Landlord's Rights

The Landlord reserves the following rights for itself, its successors in title and all other persons authorised by it to benefit from the same:

1. Right to repair the Property

The right to enter onto the Wayleave Route at reasonable times on reasonable prior written notice to repair, maintain or replace any services, structures or facilities on any part of the Property provided that in so doing the Landlord shall cause as little interference as is reasonably practicable to the exercise of the Code Rights by the Operator.

2. Right to build on the Property

Subject to the Landlord's Obligations in paragraph 2 of Schedule 3, the right to use any part of the Property as the Landlord thinks fit, or to build on or develop any part of the Property or any neighbouring land, provided that any such use or works do not interfere with, or obstruct, the exercise of the Code Rights by the Operator.

Schedule 6 List of Properties

Schedule 7 Landlords Guidelines (Technical and Installation Requirements)

Schedule 7 enclosed:

Schedule 7- Landlord guidelines