



# Digital Infrastructure Toolkit

## Standardised Wayleave Agreement

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The City of London Law Society

## Front page

DATED \_\_\_\_\_

**[GRANTOR]**

and

**[OPERATOR]**

[and

**[TENANT]**

and

**[TENANT'S GUARANTOR]]**

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***DRAFT – 06/06/16***

**DIGITAL INFRASTRUCTURE WAYLEAVE  
AGREEMENT TEMPLATE**

in respect of the installation of electronic communication  
apparatus at [ \_\_\_\_\_ ]

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## DIGITAL NON-MOBILE INFRASTRUCTURE WAYLEAVE AGREEMENT TEMPLATE

### DATE

### PARTIES

- (1) [<sup>1</sup>**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) <sup>2</sup>[**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 made in accordance with paragraph 2 of the Code (as defined in **clause 1**) by the Grantor, as "occupier", and by the Operator, as "operator", conferring upon the Operator rights for statutory purposes with respect to the Works referred to in **clause 3.1**.
- (B) <sup>3</sup>[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**) and has an interest in the Property of one year or more.]
- (C) <sup>4</sup>[The Tenant [(as defined by **clause 1**)] has a lease of part of the Property.]

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<sup>1</sup> The Grantor will either be the freehold owner, or a long lease-holder, or a Tenant under a Lease having a fixed term for a year or more. Each of these entities qualifies as an occupier for the purposes of the Telecommunications Code.

<sup>2</sup> 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 electronics apparatus is to be installed only in the common parts of the Property, none of which is within the Tenant's demise, the reference to "the Tenant" and to 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.

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

<sup>4</sup> Delete recital (C) if the Tenant is acting as Grantor.

## IT IS AGREED AS FOLLOWS:

### 1 Definitions

In this Agreement:

#### 1.1 Apparatus

"**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 <sup>5</sup>[and of its tenants of the Property/the Tenant] as altered 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

<sup>6</sup>"**Code**" means the Electronic Communications Code contained in Schedule 2 to the Telecommunications Act 1984 (as amended);

#### 1.3 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 or installed, the expression "**Apparatus**" is to be treated as including the Extra Apparatus without differentiation;

#### 1.4 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;

#### 1.5 Lease

<sup>7</sup>"**Lease**" means a lease dated [ ] made between (1) [ ] and (2) [ ] 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 renewal;]

#### 1.6 Plans

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

#### 1.7 Premises

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

#### 1.8 Property

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<sup>5</sup> Amend accordingly.

<sup>6</sup> This Agreement takes into account the Code as amended up to and including the Communications Act 2003. It does not take into account the impending proposals for the replacement of the Code.

<sup>7</sup> If the Grantor is the tenant under the Lease, the definitions of "Lease", "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".

<sup>8</sup> If the Grantor is the tenant under the Lease comprising the whole of the Property, the definition of Premises should be omitted.

**"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;

### **1.9 Route**

<sup>9</sup>**"Route"** means such part of the Property as shown edged red on the Plan as is allocated from time to time by the Grantor, acting reasonably, to accommodate the Apparatus;

### **1.10 Tenant**

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

### **1.11 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, alteration to the Apparatus or otherwise.

## **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**

<sup>10</sup>[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 clause is to a Schedule 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:

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<sup>9</sup> 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.

<sup>10</sup> 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.

### 2.6.1

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

### 2.6.2

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

## 3 Rights of the Operator

**3.1** The Grantor grants to the Operator the rights for it and its duly authorised agents to:

### 3.1.1

install, keep and operate the Apparatus in, on, under, over or through the Route;

### 3.1.2

maintain, test, inspect, monitor, repair, decommission and power down the Apparatus;

### 3.1.3

<sup>11</sup>alter, amend, substitute, and upgrade the Apparatus and add Extra Apparatus, kept within the limits of the Route, but not outside those limits without the consent of the Grantor <sup>12</sup>[and the Tenant]; and

### 3.1.4

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

### 3.1.5

to 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**

**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 existing Apparatus if it does not involve taking up additional space within the Route.

**3.3** Subject to **clause 10.3**, 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 4.3.6**, 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

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<sup>11</sup> 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.

<sup>12</sup> Delete if the Tenant is the Grantor or if the consent of the Tenant is not to be required.

### **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**<sup>13</sup>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 10**, or until otherwise agreed in writing with the Grantor [and Tenant]].

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

**3.8** This Agreement does not create the relationship of landlord and tenant between the Grantor 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, licences, permissions, approvals and authorisations as are required, necessary for the commencement, execution and retention of the Works;

### **4.2.2**

unless in the 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 its 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.

**4.3** To carry out and complete the Works:

### **4.3.1**

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

### **4.3.2**

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

### **4.3.3**

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

### **4.3.4**

taking all proper precautions:

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<sup>13</sup> Delete the bracketed words if the benefit of the Agreement is not restricted to the Tenant under the Lease but may continue for a term beyond the termination of the Lease.

- (a) to avoid unnecessary or undue obstruction or interference with the access or use of the Property, or any neighbouring property; and
- (b) so as not to cause unnecessary or undue damage, nuisance or inconvenience, as may reasonably be practicable to the Grantor, and the <sup>14</sup>[Tenant and any other] tenants or occupiers of the Property, or of any neighbouring property; and

#### **4.3.5**

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

#### **4.3.6**

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** 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 or related 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 Works, to render them safe for their intended use until final reinstatement can be carried out.

**4.5** 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.

**4.6** To maintain and keep the Apparatus:

#### **4.6.1**

identifiably labelled with the name of the Company; and

#### **4.6.2**

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.

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

#### **4.7.1**

with a reputable insurance company for not less than £10,000,000<sup>15</sup>;

#### **4.7.2**

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

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

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<sup>14</sup> Delete the bracketed words if the Tenant is the Grantor in clauses 4.3.4, 4.3.5, 4.3.6, and 4.4.

<sup>15</sup> Cover of £10,000,000 is commonly used in 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 11.4 is normally coordinated with the amount of public liability insurance covered.



**4.8** Not to give a counter-notice to the Grantor under paragraph 20 of the Code, otherwise than in circumstances where it may reasonably be needed in order to protect the service provided by the Operator to the occupier of the Property.

**4.9** 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 notify the Grantor with details of the Apparatus as installed or altered within 2 months after completion of the Works

## **5 The Grantor's <sup>16</sup>[and Tenant's] Obligations**

**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 with or tamper with the Apparatus and its operation.

### **5.1.2**

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** <sup>17</sup>[The Grantor confirms that it has obtained the consent of [the superior landlord,] [mortgagee], [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 <sup>18</sup>[Tenant's [and Tenant's Guarantor's] Obligations to the Grantor**

**6.1** The Tenant confirms to the Grantor that, without prejudice to the covenant of the Operator in **clause 4.4**, 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 Alterations to Apparatus Required by the Grantor**

**7.1** This **clause 7** applies if the Grantor requires to repair or develop the Property, necessarily involving an alteration to be made to the Apparatus. For these purposes, the expressions:

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<sup>16</sup>.The Tenant should join with the Grantor in giving the undertakings in clause 5 where the Apparatus passes through premises comprised in its lease.

<sup>17</sup> 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.

<sup>18</sup> Delete this clause if the Tenant is the Grantor.

### 7.1.1

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

### 7.1.2

“**alteration to the Apparatus**” is to be construed as including the relocation of the Apparatus whether temporary or permanent,

and cognate uses of either expression are to be construed accordingly;

**7.2** The parties shall use reasonable endeavours to collaborate with a view to providing acceptable solutions to situations to allow the Grantor’s requirements to carry out repairs to, or development of, the Property or alterations to the Apparatus without delay or obstruction, and the Operator’s requirement to provide a continuous electronic communications service to its customers in the Property.

**7.3** The Grantor must give to the Operator:

#### 7.3.1

not less than 3 months’ notice of its intention so to repair or develop the Property except in case of emergency when as much notice as is reasonably practicable, , has to be given;

#### 7.3.2

details of how the Apparatus is required to be altered to enable, or allow for, the Property to be repaired or developed; and

#### 7.3.3

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

**7.4** Unless the nature or extent of the repair or development is such that the continuation of this Agreement would not be practicable, the Grantor shall use reasonable endeavours:

#### 7.4.1

to find an alternative, suitable, location in on or under the Property for the Apparatus reasonably satisfactory to both parties:

#### 7.4.2

to meet the Operator's reasonable requirements; and

#### 7.4.3

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 development.

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

**7.7** <sup>19</sup>The reasonable costs of altering 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 12**.

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<sup>19</sup> As the Grantor requires the relocation of the Apparatus, it will be usual for it to agree to bear the costs of the Operator’s doing so, but that will not always be the case. Clear instructions are required.

**7.9** The Operator acknowledges that nothing in this Agreement is intended to prevent or restrict the right of the Grantor to repair or develop 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** Subject to **clauses 9.2** and **9.3**, this Agreement is personal to the Operator; the Operator may not assign, share, hold on trust or otherwise part with possession of its interest under this Agreement.

**9.2** This Agreement may be assigned in whole (but not in part) to, or the use of the Apparatus may be shared with:

### **9.2.1**

a party carrying on the whole or substantially the whole of the Operator's electronic communications business in place of the Operator; or

### **9.2.2**

a person to whom the Code applies under section 106 of the Communications Act 2003, with the consent of the Grantor.

**9.3** The use of the Apparatus may be shared by the Operator with a Group Company, but an assignment of the benefit of this Agreement to a Group Company may be made only with the consent of the Grantor.

**9.4** A consent given under **clauses 9.2** and **9.3** may be subject to conditions that:

### **9.4.1**

the assignee enters into a direct covenant with the Grantor, in a form that the Grantor reasonably requires, to comply with the obligations on the Operator in this Agreement, effective from the date of the assignment; but

### **9.4.2**

in the case of a sharing arrangement, the Apparatus may not, because of the sharing, be altered without the consent of the Grantor in its absolute discretion.

**9.5** On reasonable written request of the Grantor, the Operator shall provide to the Grantor within 28 days full details of any operator or other person, who has a right to use the Apparatus.

## **10 Termination**

**10.1** This Agreement comes to an end or otherwise terminates in any of the following circumstances:

### **10.1.1**

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

### **10.1.2**

the Operator and any person using the Apparatus in the Route ceases to be a person to whom the Code is applied;

#### **10.1.3**

at the expiration of not less than three months' notice to the Operator given by the Grantor that it intends to commence repair or development of the Property in circumstances in which the Grantor can demonstrate that the continuation of this Agreement under **clause 7.4** would not be practicable;

#### **10.1.4**

[<sup>20</sup>the Tenant's interest in the Premises ceases and is not renewed;] or

#### **10.1.5**

immediately following the grant of an order of the court for the removal of the Apparatus.

**10.2** If either the Operator or the Grantor is in material breach of an obligation under this Agreement, and fails to remedy the breach within [30<sup>21</sup>] days following service of notice from 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 with immediate effect by giving further notice to the other to that effect.

**10.3** Subject to **clause 10.4**, the Operator may be treated by the Grantor as having abandoned its property in the Apparatus if the Apparatus remains on the Property [3<sup>22</sup>] months after the termination of this Agreement and is not using the Apparatus during that time to provide electronic communications service to the Property.

**10.4** On or after the termination of this Agreement:

##### **10.4.1**

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:

- (a) as soon as reasonably practicable, remove the Apparatus from the Property; 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
- (c) if the notice of the Grantor is not complied with, the Grantor may remove and dispose of the Apparatus and may recover from the Operator the reasonable and proper costs of doing so.

## **11 Indemnity Provisions**

**11.1** 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.

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<sup>20</sup> Delete **Sub-clause 10.1.4** if the Tenant is the Grantor.

<sup>21</sup> Or other agreed date

<sup>22</sup> Or other agreed period

**11.2** In this **clause 11**, “**liabilities**” includes losses, claims, demands, proceedings, damages, compensation, costs and expenses caused by the actions or omissions of the Operator.

**11.3** The indemnity of the Operator under **clause 11.1.1** applies to liabilities suffered by the Grantor arising from any cause, including the following causes:

**11.3.1**

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

**11.3.2**

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; and

**11.3.3**

the service of a counter-notice or the making of an application to court, by the Operator in breach of **clause 4.8**.

**11.4** Claims of the Grantor under these indemnity provisions, howsoever the liability of the Operator arises, are not to exceed <sup>23</sup>[£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.

**11.5** The Grantor:

**11.5.1**

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; and

**11.5.2**

shall 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 same in the name of the Grantor at the expense of the Operator.

## **12 Mediation of Disputes and Dispute Resolution**

**12.1** 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.

**12.2** If the dispute is not so resolved within twenty-eight (28) days after referral in accordance with **clause 12.1**, either party may request by notice given to the other (“**dispute notice**”) that the dispute is referred to mediation for resolution. In that event:

**12.2.1**

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

**12.2.2**

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<sup>23</sup> 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 4.7.1**.

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

### **12.2.3**

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

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

#### **12.3.1**

it has first attempted to settle the dispute by mediation in accordance with **clause 12.2**; and

#### **12.3.2**

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.

**12.4** A dispute or difference between the parties (other than one in relation to the Code), that is not resolved by mediation under this **clause 12**, 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.

**12.5** The Arbitration Act 1996 is to apply to the reference.

**12.6** 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.

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

## **13 <sup>24</sup>Notices**

**13.1** 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.

**13.2** A notice given under or in connection with this Agreement will be validly given 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 each case) addressed to:

#### **13.2.1**

the Grantor at [*insert the address and email address*];

#### **13.2.2**

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

#### **13.2.3**

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<sup>24</sup> Clause 12 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. Paragraph 24 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.

Note that only notices of intended entry by the Operator may be given by email.

[the Tenant [or the Tenant's Guarantor] at [*insert the address and email address*].

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

Notices under or in connection with this Agreement may not be given by email or other electronic media except in case of notice of required access to the Property.

## **14 Costs and VAT**

**14.1** 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.

**14.2** 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.

## **15 Entire Agreement**

This Agreement constitutes the entire agreement between the Grantor [and] the Operator <sup>25</sup>[and] [the Tenant] [and the Tenant's Guarantor].

## **16 Misrepresentations**

**16.1** 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.

**16.2** 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.

## **17 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.

## **18 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.

## **19 Governing Law and Jurisdiction**

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.

The courts of England and Wales are to have 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.

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<sup>25</sup> Delete references to the Tenant and the Tenant's Guarantor if the Grantor is the Tenant.

## **20 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 1<sup>26</sup>**

**Property**

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

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<sup>26</sup> 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 2<sup>27</sup>

### 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]

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<sup>27</sup> 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 8 and 10 above.

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]*