
Electronic Communications Code

Standard Terms

STATEMENT:

Publication Date: 15 December 2017

About this document

This document contains Standard Terms which may (but need not) be used by Code operators and landowners or occupiers when negotiating agreements to confer Code rights.

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1. Standard Terms

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1. Standard Terms

[Name of Grantor]

and

[Name of Operator]

CODE AGREEMENT

relating to the installation of electronic communications apparatus at [address]

This Agreement is made on [Insert date] between:

- i) [Insert name], whose [address/registered office] is at [Insert address] (the “Grantor”); and where applicable, whose Company Registration Number is [insert CRN]; and
- ii) [Insert name], whose registered office is at [Insert address] (the “Operator”), and whose Company Registration Number is [insert CRN].

RECITALS

- a) The Code (as defined in clause 1) facilitates the deployment of electronic communications apparatus by persons in whose case it is applied.
- b) The Code has been applied to the Operator by virtue of a direction under section 106 of the Communications Act 2003.
- c) The Grantor is the occupier of certain land.
- d) This Agreement is an agreement pursuant to paragraph 9 of Part 2 of the Code. It sets out the contractual basis upon which the Grantor is willing to confer code rights in respect of that land on the Operator.

IT IS AGREED AS FOLLOWS:

1. DEFINITIONS AND INTERPRETATION

1.1. In this Agreement, the following words shall have the following meanings:

“**Act**” means the Communications Act 2003;

“**Apparatus**” means the Electronic Communications Apparatus described in Schedule 1, and shall be deemed to include any future alterations to or upgrades of the Apparatus that are made in accordance with this Agreement and/or pursuant to the Code;

“**Code**” means the electronic communications code set out at Schedule 3A to the Act;

“**Code Rights**” means the rights set out at clause [2.1];

“**Electronic Communications Apparatus**” shall have the meaning ascribed to that term in paragraph 5 of the Code;

“**Land**” means the land at [insert address] [and marked on the plan attached at Schedule 2];

“**Term**” means the period of time during which this Agreement is in force, which shall be a period starting on [insert date] and ending on [insert date].

1.2. In this Agreement, unless expressly stated otherwise:

- a) a reference to either party includes that party’s employees, agents, contractors and sub-contractors;

- b) a reference to any statute or statutory provision includes that statute or statutory provision as amended, re-enacted, consolidated or replaced;
- c) a reference to a clause or schedule is to the relevant clause or schedule of this Agreement;
- d) words importing the singular shall include the plural, and vice versa.

2. RIGHTS OF THE OPERATOR

2.1 In consideration of the covenants set out at clause [4] of this Agreement [and payment of the sum set out at clause [3]], the Grantor hereby agrees that the Operator shall have the right for the Term:

- a) to install the Apparatus on, under or over the Land;
- b) to keep installed the Apparatus which is on, under or over the Land;
- c) to inspect, maintain, adjust, alter, repair, operate or (subject to clause [2.3]) upgrade the Apparatus which is on, under or over the Land;
- d) to carry out any works on the Land for or in connection with the installation of the Apparatus on, under or over the Land [or the installation of Electronic Communications Apparatus elsewhere];
- e) to carry out any works on the Land for or in connection with the maintenance, adjustment, alteration, repair, operation or (subject to clause [2.3], the upgrading of the Apparatus which is on, under or over the Land [or any Electronic Communications Apparatus elsewhere];
- f) to enter the Land to inspect, maintain, adjust, alter, repair, operate or (subject to clause [2.3]) upgrade the Apparatus which is on, under or over the Land [or any Electronic Communications Apparatus elsewhere];
- g) to connect the Apparatus to a power supply;
- h) to interfere with or obstruct a means of access to or from the Land (whether or not the Apparatus is on, under or over the Land);
- i) to lop or cut back, or require another person to lop or cut back, any tree or vegetation that interferes or will or may interfere with [any Electronic Communications Apparatus/the Apparatus],

(together, the “**Code Rights**”).

2.2. Subject to clause [2.3], the Operator may also share the use of the Apparatus with another Operator, and carry out any works to the Apparatus to enable that sharing to take place.

2.3. The Operator may only upgrade or share the Apparatus (and exercise the associated rights set out in clauses [2.1(e), 2.1(f) and 2.2]) if:

- a) any changes to the Apparatus as a result of the upgrading or sharing have no adverse impact, or no more than a minimal adverse impact, on its appearance;

- b) the upgrading or sharing does not impose any additional burden on the Grantor, including:
 - i) anything that has an additional adverse effect on the Grantor's enjoyment of the Land; or
 - ii) anything that causes additional loss, damage or expense to the Grantor.

2.4. The right of entry set out in clause [2.1(f)] may be exercised by the Operator with or without workmen, vehicles (where appropriate), plant equipment or machinery.

3. PAYMENT

The Operator agrees that it will pay to the Grantor, in respect of this Agreement, the sum of [Insert amount] pounds (£[Insert amount]) [per annum / for the Term].

4. OPERATOR'S OBLIGATIONS

4.1. The Operator covenants with the Grantor that it will:

- a) save in the event of an [emergency¹], give the Grantor not less than seven days' prior written notice of its intention to enter the Land;
- b) in the event of an [emergency], seek to contact the Grantor (which may be by electronic or verbal communication) as soon as reasonably practicable to inform him:
 - i) that the Operator intends to enter the Land, or has entered the Land;
 - ii) why entry is or was required; and
 - iii) when entry took place or is intended to take place.
- c) otherwise exercise its right to enter the land in accordance with the access arrangements set out in Schedule [3] to this Agreement;
- d) exercise its Code Rights in a proper and workmanlike manner taking all reasonable precautions to avoid obstructions to, or interference with, the use of the Land or any adjoining land and so as to cause as little damage, nuisance and inconvenience as possible to the Grantor and any occupiers of any adjoining land;
- e) do as little physical damage as is reasonably practicable in exercising its Code Rights and, as soon as reasonably practicable, make good to the reasonable satisfaction of the Grantor all resulting damage caused to the Land or any adjoining land;
- f) exercise its Code Rights and use and operate the Apparatus in accordance with all applicable legislation;
- g) obtain and maintain in force any necessary consents for the installation and retention of the Apparatus, provide evidence of any such consents upon demand to the Grantor and carry out all works in accordance with such consents;

¹ The parties may wish to define what constitutes an "emergency".

- h) maintain and keep the Apparatus in good repair and condition and so as not to be a danger to the Grantor, its employees or property, or the occupiers or any adjoining land;
- i) pay all rates or other charges that may be levied in respect of the Apparatus or the exercise of its Code Rights; and
- j) maintain insurance with a reputable insurance company against any liability to the public or other third party liability in connection with any injury, death, loss or damage to any persons or property belonging to any third party arising out of the exercise by the Operator of the rights granted under this Agreement, and provide details of such insurance and evidence that it is in force to the Grantor upon reasonable request.

5. THE GRANTOR'S OBLIGATIONS

5.1. The Grantor agrees that it will:

- a) not build or place anything on the Land, or permit any third party to do the same, that makes it more difficult for the Operator to access the Apparatus, or which might interfere with the Apparatus, without the Operator's express written consent (which should not be unreasonably withheld);
- b) not cause damage to or interfere with the Apparatus or its operation and not permit any third party to do the same; and
- c) give reasonable prior written notice to the Operator of any action that it intends to take that would or might affect the continuous operation of the Apparatus, including (but not limited to) causing an interruption to any power supply to which the Apparatus is connected.

6. OWNERSHIP OF THE APPARATUS

The Apparatus shall remain the absolute property of the Operator at all times.

7. GENERAL

7.1. It is agreed that no relationship of landlord and tenant is created by this Agreement between the Grantor and the Operator.

7.2. This Agreement will not apply to any part of the Land which is or (from the date of such adoption) becomes adopted as highway maintainable at the public expense.

7.3. In the event of any inconsistency between this Agreement and any provision of the Code, the Code will prevail.

8. INDEMNITY FOR THIRD PARTY CLAIMS

8.1. The Operator will indemnify the Grantor up to a maximum of [£1 million / £3 million / £5 million] [per annum / in aggregate in respect of a claim or series of claims arising from the same incident] against any third party actions, claims, costs, proceedings or demands ("Third Party Claim") arising as a result of any act or omission by the Operator in exercising its rights under this Agreement, except to

the extent that the Grantor's acts or omissions have caused or contributed to any such Third Party Claim and provided that:

- a) the Grantor shall as soon as reasonably practicable give notice in writing to the Operator of any Third Party Claim brought, made or threatened against the Grantor;
- b) the Grantor shall not compromise or settle such Third Party Claim without the express written consent of the Operator (which shall not be unreasonably withheld or delayed);
- c) the Grantor shall permit the Operator to defend any Third Party Claim in the name of the Grantor at the expense of the Operator.

9. LIMITATION OF LIABILITY

9.1. Nothing in this Agreement limits or excludes the liability of either party:

- a) for death or personal injury resulting from its negligence;
- b) for any damage or liability incurred as a result of fraud or fraudulent misrepresentation by that party; or
- c) where or to the extent that it is otherwise prohibited by law.

9.2. Subject to clause [9.1], the Operator's liability under this Agreement to the Grantor shall be limited to the sum of [Insert amount] pounds (£[Insert amount]) [per annum/in aggregate]. This limitation of liability shall not apply to the indemnity granted under clause [8.1].

9.3. Subject to clause [9.1], the Grantor's liability under this Agreement to the Operator shall be limited to the sum of [Insert amount] pounds (£[Insert amount]) [per annum/in aggregate in respect of a claim or series of claims arising from the same incident].

10. TERMINATION

The Grantor may terminate this Agreement² by giving the Operator [thirty (30)] days' notice in writing if:

- a) the Operator is in [material/substantial] breach of any of its obligations under this Agreement and:
 - i) the breach is incapable of remedy; or
 - ii) the Operator has failed to remedy the breach within [thirty (30)] days after the Grantor notifies the Operator of the breach;
- b) the Operator has persistently delayed making payments due to the Grantor under the terms of this Agreement;

² Please note that, if the Grantor exercises any of these termination rights, the agreement will nevertheless continue under paragraph 29 of the Code, unless the Grantor also gives 18 months' notice to terminate under paragraph 30 of the Code.

- c) the Grantor intends to redevelop all or part of the Land or any neighbouring land, and could not reasonably do so unless this Agreement comes to an end; or
- d) both:
 - i) the prejudice caused to the Grantor by the continuation of the Agreement is incapable of being adequately compensated by money; and
 - ii) the public benefit likely to result from the continuation of the Agreement does not outweigh the prejudice to the Grantor.

10.3. The Operator may terminate this Agreement by giving the Grantor [x days / months] notice in writing.

10.4. On termination of this Agreement (except where the Agreement continues in accordance with paragraph 29(2) of the Code), the Operator will as soon as reasonably practicable remove the Apparatus from the Land and make good any damage to the Land caused by its removal to the reasonable satisfaction of the Grantor.

11. ASSIGNMENT/ASSIGNATION

11.1. The Operator may assign this Agreement to another Operator who will be bound by its terms with effect from the date of the assignment.

11.2. The Operator will not be liable for any breach of this Agreement occurring on or after the date of the assignment if:

- a) the Grantor is given written notice of the name of the Operator assignee and its address for the purposes of clause [15.2]; and
- b) that notice was given prior to the breach occurring.

12. CONTRACTS (RIGHTS OF THIRD PARTIES) ACT

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

13. ENTIRE AGREEMENT

This Agreement is the entire agreement between the Grantor and the Operator relating to the Apparatus at the Land.

14. SEVERANCE

Each provision of this Agreement will be construed as a separate provision and if one or more of them is considered illegal, invalid or unenforceable then that provision will be deemed deleted but the enforceability of the remainder of this Agreement will not be affected.

15. NOTICES

15.1. Any notice given under this Agreement must be in writing and signed by or on behalf of the person giving it.³

15.2. Any such notice will be deemed to have been given if it is personally delivered or sent by registered, recorded or first class post, and (in each case) addressed:

- a) to the Grantor at
- b) [insert address]
- c) [marked for the attention of [insert name]]
- d) to the Operator at:
- e) [insert address]
- f) [marked for the attention of [insert name]]

15.3. Following the execution of this Agreement, either party may amend its address for the purposes of clause [15.2] by notice to the other party.

15.4. Each party agrees that the address set out in clause [15.2] (as it may be subsequently amended under clause [15.3]) will also constitute their address for service for the purposes of paragraph 87(2)(a) of the Code.

16. MEDIATION

16.1. If any dispute arises in connection with this agreement, the parties may agree to enter into mediation in good faith to settle such a dispute and will do so in accordance with the [Centre for Effective Dispute Resolution (“CEDR”) Model Mediation Procedure]. To initiate the mediation a party must give notice in writing (“ADR notice”) to the other party to the dispute, referring the dispute to mediation. A copy of the referral should be sent to [CEDR]. Unless otherwise agreed between the parties, the mediator will be nominated by [CEDR] within [14] days of notice of the dispute.

16.2. Unless otherwise agreed, the mediation will start not later than [28] days after the date of the ADR notice. [The commencement of a mediation will not prevent the parties commencing or continuing court proceedings]

16.3. [No party may commence any court proceedings in relation to any dispute arising out of this agreement until it has attempted to settle the dispute by mediation and either the mediation has terminated or the other party has failed to participate in the mediation, provided that the right to issue proceedings is not prejudiced by a delay].

³ In addition, please also have regard to paragraphs 88 and 89 of the Code which apply to notices given by operators and by persons other than operators under paragraphs of the Code.

17. GOVERNING LAW AND JURISDICTION

17.1. This agreement is governed by, and shall be construed in accordance with, the laws of England and Wales/Scotland/Northern Ireland.

17.2. [Subject to clause 16] the parties agree to submit to the exclusive jurisdiction of the [courts of England/sheriff in Scotland/county courts of Northern Ireland] as regards any disputes or claims arising out of this Agreement.⁴

Signed for and on behalf of [Grantor] by:

_____ Signature

_____ Name

_____ Date

Signed for an on behalf of [Operator] by:

_____ Signature

_____ Name

_____ Date

⁴ Please note paragraph 95 of the Code which provides the Secretary of State with the power to confer jurisdiction on tribunals other than the county court in England and Wales, the sheriff court in Scotland and a county court in Northern Ireland.

SCHEDULE 1 THE APPARATUS

[Insert description of the electronic communications apparatus to be installed]

[SCHEDULE 2

THE LAND]

[Insert plan showing location of the Land]

SCHEDULE [3]

ACCESS ARRANGEMENTS

[To be agreed between the parties – see Schedule B of the ECC Code of Practice]