

Ofcom

sicrhau bod cyfathrebiadau'n
gweithio i bawb

Y Cod Cyfathrebiadau Electronig

Y Bil Economi Ddigidol: Cod Ymarfer, Telerau
Cytundeb Safonol a Hysbysiadau Safonol Arfaethedig

Dyddiad cyhoeddi:
Dyddiad Cau ar gyfer
Ymatebion:

Ymgynghoriad
24 Mawrth 2017
2 Mehefin 2017

Gair am y ddogfen hon

Ym mis Gorffennaf 2016, cyflwynodd y Llywodraeth y Bil Economi Ddigidol i'r Senedd. Ymysg pethau eraill byddai'r Bil Economi Ddigidol, petai'n cael ei fabwysiadu, yn diwygio'r 'cod cyfathrebiadau electronig' drwy gynnwys amrywiaeth o fesurau i'w gwneud hi'n haws i weithredwyr rhwydweithiau gyflwyno seilwaith (fel mastiau ffôn, cyfnewidfeydd a chabinetau) ar dir cyhoeddus ac ar dir preifat. Bydd y Bil yn cwblhau ei daith drwy'r Senedd cyn bo hir.

Mae'r diwygiadau i'r cod cyfathrebiadau electronig a gynigir yn y Bil Economi Ddigidol yn amrywiol a byddant yn arbennig o arwyddocaol i weithredwyr rhwydweithiau a thirfeddianwyr. Fodd bynnag, maent yn cynnwys dyletswyddau newydd ar Ofcom i gyhoeddi:

- Cod Ymarfer a fydd yn mynd gyda'r newidiadau a gynigir i'r cod cyfathrebiadau electronig;
- nifer o hysbysiadau templed y bydd yn rhaid i weithredwyr y Cod eu defnyddio ynghyd â thirfeddianwyr/meddianwyr; a
- telerau safonol y bydd modd i weithredwyr y Cod a thirfeddianwyr neu feddianwyr eu defnyddio wrth drafod cytundebau i gyflwyno hawliau Cod (ond ni fydd angen iddynt wneud hynny).

Mae Ofcom wedi paratoi fersiynau drafft o bob un o'r dogfennau y cyfeirir atynt uchod ac, fel y nodir yn y Bil Economi Ddigidol, mae nawr yn gofyn am sylwadau ynghylch pob un o'r rhain.

Cynnwys

Adran

Tudalen

1	Crynodeb Gweithredol	1
2	Cyflwyniad	2
3	Beth rydyn ni'n ymgynghori yn ei gylch	7
4	Y camau nesaf	10

Atodiad

Tudalen

1	Ymateb i'r ymgynghoriad hwn	11
2	Egwyddorion ymgynghori Ofcom	14
3	Cwestiynau'r ymgynghoriad	16
4	Cod Ymarfer Drafft	17
5	Atodlenni i'r Cod Ymarfer	26
6	Telerau Safonol Drafft	28
7	Hysbysiadau Templed Drafft	41

Adran 1

Crynodeb Gweithredol

- 1.1 Ar hyn o bryd mae'r cod cyfathrebiadau electronig (**y Cod**) yn rhoi hawliau penodol i weithredwyr (**Gweithredwyr y Cod**) sy'n gyfrifol am y gwaith o osod a chynnal offer cyfathrebiadau electronig ar dir cyhoeddus. Ar ben hynny, caiff Gweithredwr y Cod wneud cais am orchymyn llys i osod a chynnal a chadw offer ar dir preifat, os nad yw wedi gallu dod i gytundeb gyda'r tiffeddiannwr.
- 1.2 Ym mis Gorffennaf 2016, cyflwynodd y Llywodraeth y Bil Economi Ddigidol gerbron y Senedd, sy'n cynnwys amrywiaeth o ddiwygiadau i'r Cod, gan gynnwys dyletswyddau newydd ar Ofcom i gyhoeddi:
 - Cod Ymarfer a fydd yn mynd gyda'r newidiadau a gynigir i'r Cod;
 - nifer o hysbysiadau templed y bydd yn rhaid i Weithredwyr y Cod a thirfeddianwyr/meddianwyr eu defnyddio neu y cânt eu defnyddio (bydd yn dibynnu ar yr amgylchiadau dan sylw); a
 - telerau safonol y bydd modd i weithredwyr y Cod a thirfeddianwyr neu feddianwyr eu defnyddio wrth drafod cytundebau i gyflwyno hawliau Cod (ond ni fydd angen iddynt wneud hynny).
- 1.3 Diben yr ymgynghoriad hwn ydy rhoi cyfle i randdeiliaid gyflwyno sylwadau ar fersiynau drafft o bob un o'r dogfennau y cyfeirir atynt uchod. Rydyn ni'n cydnabod y gallai'r Bil Economi Ddigidol gael ei ddiwygio ymhellach cyn iddo ddod yn Ddeddf, ond rydyn ni'n credu ei bod hi'n briodol ymgynghori ar y cam hwn i sicrhau ein bod yn gallu cydymffurfio â'n dyletswyddau statudol cyn gynted ag y daw darpariaethau perthnasol y Ddeddf a fydd yn dilyn i rym.
- 1.4 Mae Ofcom wedi datblygu'r Cod Ymarfer drafft (a'r telerau a'r hysbysiadau safonol ategol) gan weithio gyda thrawstoriad cytbwys o gynrychiolwyr a enwebwyd gan grwpiau rhanddeiliaid gwahanol, er mwyn ystyried ystod eang o fuddiannau a phryderon yn llawn.
- 1.5 Mae rhanddeiliaid wedi cwestiynu yn y gorffennol a oedd y berthynas rhwng darparwyr seilwaith cyfanwerthol a'r darparwyr cyfathrebiadau'n yn cael ei llywodraethu'n effeithiol gan y Cod ynteu a fyddai'n dod o dan gwmpas pwerau rheoleiddio eraill Ofcom. Gallwn gadarnhau y gallai rhai o bwerau statudol eraill Ofcom ein galluogi, mewn egwyddor, i reoleiddio ar ba delerau y byddai darparwyr seilwaith cyfanwerthol yn rhoi mynediad i'w seilwaith.
- 1.6 Bydd yr ymgynghoriad hwn ar agor am 10 wythnos, gan gau ddydd Iau, 1 Mehefin 2017. Ar ôl i'r ymgynghoriad ddod i ben byddwn yn adolygu'r holl ymatebion a fydd wedi cael eu cyflwyno ac yn cyhoeddi fersiynau terfynol o'r Cod Ymarfer a'r telerau a'r hysbysiadau safonol ategol mewn datganiad terfynol a gyhoeddir cyn gynted â phosibl ar ôl i ddarpariaethau perthnasol y Bil Economi Ddigidol ddod i rym.
- 1.7 Rydyn ni wedi ymrwymo i fonitro ac adolygu'r Cod Ymarfer, ar ôl cyhoeddi ein datganiad terfynol, i sicrhau bod ei gynnwys yn dal yn addas i'r diben, yn briodol ac yn gymesur wrth ystyried datblygiadau parhaus.

Cyflwyniad

Trosolwg

- 2.1 Ar hyn o bryd mae'r Cod yn rhoi hawliau i rai darparwyr rhwydweithiau a systemau sianeli cyfathrebiadau electronig (a ddynodwyd gan Ofcom yn 'Weithredwyr y Cod') i osod a chynnal offer cyfathrebiadau electronig (gan gynnwys mastiau, cyfnewidfeydd, cabinetau a cheblau) ar dir cyhoeddus. Caiff Gweithredwyr y Cod hefyd wneud cais am orchymyn llys i osod a chynnal a chadw offer ar dir preifat, os nad yw wedi gallu dod i gytundeb gyda'r trefeddiannwr. Mae'r Cod felly'n rheoleiddio'r berthynas gyfreithiol rhwng trefeddiannwr a Gweithredwyr y Cod.
- 2.2 Ym mis Gorffennaf 2016, cyflwynodd y Llywodraeth y Bil Economi Ddigidol gerbron y Senedd. Ymysg pethau eraill, byddai'r Bil Economi Ddigidol, petai'n cael ei fabwysiadu, yn diwygio'r Cod drwy gynnwys amrywiaeth o fesurau i'w gwneud hi'n haws i Weithredwyr y Cod gyflwyno offer cyfathrebiadau electronig.¹ Adeg cyhoeddi'r ddogfen hon, roedd y Bil yn cael ei drafod yn Nhŷ'r Arglwyddi.
- 2.3 Mae'r diwygiadau i'r Cod a gynigir yn Atodlen 1 Bil yr Economi Ddigidol (**y Cod Newydd**) yn amrywiol a byddant yn cynnwys, er enghraifft, newidiadau sylweddol i'r ffordd y caiff tir ei brisio a hawl awtomatig i Weithredwyr y Cod uwchraddio a rhannu eu hoffer telegyfathrebiadau.
- 2.4 Byddant hefyd yn cynnwys dyletswyddau newydd ar Ofcom i gyhoeddi:
- Cod Ymarfer a fydd yn mynd gyda'r Cod Newydd;
 - nifer o hysbysiadau templed y bydd yn rhaid i Weithredwyr y Cod a thirfeddiannwr/meddiannwr eu defnyddio neu y cânt eu defnyddio (bydd yn dibynnu ar yr amgylchiadau); a
- telerau safonol y bydd modd i Weithredwyr y Cod a thirfeddiannwr/meddiannwr eu defnyddio wrth drafod cytundebau i gyflwyno hawliau Cod (ond ni fydd angen iddynt wneud hynny).
- 2.5 Diben yr ymgynghoriad hwn ydy rhoi cyfle i'r rheini sydd â diddordeb, yn unol â pharagraffau 89(3) a 102(4) y Cod Newydd,² gyflwyno sylwadau ar fersiynau drafft y dogfennau hyn.
- 2.6 Rydyn ni'n cydnabod nad yw'r Bil Economi Ddigidol wedi cael Cydsyniad Brenhinol eto ac y gallai gael ei ddiwygio ymhellach yn ystod y broses ddeddfwriaethol. Fodd

¹ Byddai hyn yn cael ei gyflawni drwy ddiddymu'r fersiwn gyfredol o'r Cod (a nodir yn Atodlen 2 Deddf Telegyfathrebiadau 1984) a gosod fersiwn newydd o'r Cod mewn Atodlen 3A newydd i Ddeddf Cyfathrebiadau 2003. Mae'r fersiwn newydd o'r Cod wedi'i osod ar hyn o bryd yn Atodlen 1 o'r Bil Economi Ddigidol.

² Mae pob cyfeiriad yn yr Ymgynghoriad hwn a'r Atodiadau cysylltiedig at y Bil Economi Ddigidol neu'r Cod Newydd yn seiliedig ar [Fil HL 102 56/2](#), a gyhoeddwyd ar 8 Chwefror 2017, sy'n ymgorffori diwygiadau a wnaed hyd at a gan gynnwys cam Pwyllgor Tŷ'r Arglwyddi.

bynag, rydyn ni'n credu ei bod hi'n briodol ymgynghori ar y cam hwn er mwyn i ni allu cydymffurfio â'n dyletswyddau statudol cyn gynted ag y daw Atodlen 1 y Bil Economi Ddigidol i rym, neu yn fuan ar ôl hynny.³ Er ein bod yn cydnabod efallai y bydd angen i ni ail ymgynghori ynghylch rhai o'r dogfennau hyn os caiff newidiadau mawr eu gwneud i'r Cod Newydd cyn iddo ddod i rym, ni fyddem yn disgwyl ail ymgynghori os mai bach ydy'r newidiadau.

Hanes y Cod Cyfathrebiadau Electronig

- 2.7 Yn wreiddiol cafodd y Cod ei ddeddfu yn 1984 i reoleiddio darparu telefoni llinell dir o dan Atodlen 2 y Ddeddf Telegyfathrebiadau. Cafodd ei ddiwygio wedyn gan Atodlen 3 Deddf Cyfathrebiadau 2003,⁴ er mwyn ei alluogi i gefnogi'r seilwaith sy'n darparu band eang, rhyngwyd symudol a theledu cebl.
- 2.8 Rhwng 2011 a 2013, mewn ymateb i gais gan yr Adran dros Ddiwylliant, y Cyfryngau a Chwaraeon, cynhaliodd Comisiwn y Gyfraith adolygiad o'r Cod. Cyhoeddwyd yr adolygiad⁵ ym mis Chwefror 2013 ac roedd yn cynnwys dros 15 tudalen o argymhellion r gyfer diwygio.
- 2.9 Yn nes ymlaen yn 2013, cyflwynodd y Ddeddf Twf a Seilwaith⁶ gyfres o ddiwygiadau dros dro (a oedd yn para 5 mlynedd) i'r Cod. Cawsant eu cynllunio yn benodol i gyflymu'r gwaith o osod seilwaith band eang.
- 2.10 Ddechrau 2015, cyflwynodd Llywodraeth y Glymblaid ddiwygiadau i'r Bil Seilwaith a fyddai, petai'n dod i rym, wedi cynnwys diwygiadau sylweddol i'r Cod⁷ ar sail argymhellion Comisiwn y Gyfraith. Cafodd y diwygiadau hyn wedyn eu tynnu'n ôl oherwydd pryderon gan randdeiliaid, i alluogi ymgynghori ac ymchwil pellach. Cyhoeddodd yr Adran Ddiwylliant, y Cyfryngau a Chwaraeon ei Ddogfen Ymgynghori ei hun yn Chwefror 2015. Yn dilyn hyn, ymgynghorodd yr Adran Ddiwylliant, y Cyfryngau a Chwaraeon ymhellach gyda randdeiliaid, a chomisiynu ymchwil economaidd annibynnol ar impact ystod o opsiynau diwygio ar y farchnad.
- 2.11 Ym mis Mai 2016, cyhoeddodd y Llywodraeth y byddai'r Cod yn cael ei ddiwygio yn y Bil Economi Ddigidol a oedd ar y gweill, "*gan gynnig diwygiadau mawr i'r hawliau sydd gan ddarparwyr cyfathrebiadau o ran cael mynediad i dir.*"⁸

Ein darpar ddyletswyddau fel y nodir yn y Bil Economi Ddigidol

- 2.12 Fel sy'n cael ei egluro uchod, byddai'r Cod newydd a osodir yn Atodlen 1 y Bil Economi Ddigidol, petai'n cael ei ddeddfu, yn mynnu bod Ofcom yn paratoi ac yn cyhoeddi nifer o ddogfennau.

³ Daw Atodlen 1 y Bil Economi Ddigidol i rym ar ddyddiad a bennir gan yr Ysgrifennydd Gwladol drwy offeryn statudol (adran 97(7), y Bil Economi Ddigidol).

⁴ [Deddf Cyfathrebiadau 2003, Adran 106, Atodlen 3: Diwygiadau Atodlen 2 Deddf Telegyfathrebiadau 1984](#)

⁵ [Comisiwn y Gyfraith, Y Cod Cyfathrebiadau Electronig, 27 Chwefror 2013](#)

⁶ [Deddf Twf a Seilwaith 2013, adran 9](#)

⁷ [Telegyfathrebiadau, Ateb Ysgrifenedig, 6 Ionawr 2015](#)

⁸ [Yr Adran dros Ddiwylliant, y Cyfryngau a Chwaraeon, Cod Cyfathrebiadau Electronig Newydd, 17 Mai 2016, tudalen 4](#)

- 2.13 Yn gyntaf, mae paragraff 89 o'r Cod Newydd yn darparu ei bod yn rhaid i Ofcom *“ragnodi ffurf hysbysiad a roddir dan bob un o ddarpariaethau'r cod hwn sy'n mynnu bod hysbysiad yn cael ei roi”*. Petai'r Bil Economi Ddigidol yn dod yn gyfraith, byddai'n rhaid i Ofcom felly gyhoeddi nifer o hysbysiadau templed y byddai'n rhaid i Weithredwyr y Cod a thirfeddianwyr/meddianwyr eu defnyddio neu y caent eu defnyddio (gan ddibynnu ar yr amgylchiadau).
- 2.14 Yn ail, byddai paragraff 102(1) o'r Cod Newydd⁹ yn mynnu bod Ofcom yn paratoi ac yn cyhoeddi cod ymarfer yn delio â:
- a) darparu gwybodaeth at ddibenion y Cod Newydd gan weithredwyr i'r rheini sy'n meddiannu'r tir neu sydd â buddiant yn y tir;
 - b) cynnal trafodaethau at ddibenion y Cod Newydd rhwng gweithredwyr ac unigolion o'r fath;
 - c) ymddygiad gweithredwyr mewn perthynas ag unigolion sy'n meddiannu tir neu sydd â buddiant mewn tir sy'n gyfagos i dir lle caiff offer cyfathrebiadau ei osod arno, oddi tano neu drosto; a
 - d) materion eraill sy'n ymwneud â gweithredu'r Cod Newydd fel mae Ofcom yn credu sy'n briodol.
- 2.15 Eglurodd y Llywodraeth yn ei hymgyngoriad ynghylch y Cod y bydd y Cod Ymarfer yn galluogi rhoi ei ddiwygiadau tymor hir ar waith yn llyfn, ac y carai weld holl grwpiau rhanddeiliaid y diwydiant yn gweithio gydag Ofcom i'w ddatblygu. Mae hi'n bwysig nodi mai diben y Cod Ymarfer arfaethedig hwn ydy gosod y disgwyliadau ar gyfer ymddygiad partiön yng nghyswllt cytundebau a gaiff eu llunio o dan y Cod Newydd. Nid yw'n ganllaw i'r Cod Newydd ac nid yw'n disodli darpariaethau'r Cod Newydd. Yn lle hynny mae wedi cael ei ddylunio i ategu'r Cod Newydd drwy hwyluso ymgysylltu cadarnhaol a chynhyrchiol rhwng pob parti ar draws amrywiaeth o faterion, rolau a chyfrifoldebau.
- 2.16 Nid yw'r Cod Ymarfer yn rhwymo (o ran nad oes dyletswydd statudol ar weithredwyr na thirfeddianwyr i gydymffurfio â'i ddarpariaethau). Fodd bynnag, byddem yn disgwyl gweld partiön yn ceisio gweithredu yn unol â'r egwyddorion sydd wedi'u nodi yn y Cod Ymarfer. Byddem hefyd yn nodi y gall llysoedd ystyried cydymffurfiaid â chodau ymarfer perthnasol wrth asesu ymddygiad wrth ddyrannu costau. Gyda'i gilydd dylai hyn sicrhau bod y Cod Ymarfer yn cael effaith go iawn ar sicrhau'r ymarfer gorau wrth roi seilwaith cyfathrebiadau digidol ar waith. Yn drydydd, byddai paragraff 102(2) y Cod Newydd yn mynnu bod Ofcom yn paratoi ac yn cyhoeddi telerau safonol y byddai modd eu defnyddio mewn cytundebau o dan y Cod Newydd (er na fyddai angen gwneud hynny).

Proses ddatblygu'r Cod Ymarfer drafft

- 2.17 Fel rydyn ni wedi'i egluro uchod, awgrymodd y Llywodraeth yn ei hymgyngoriad ynghylch y Cod yr hoffai weld holl grwpiau rhanddeiliaid y diwydiant yn gweithio gydag Ofcom i ddatblygu'r Cod Ymarfer.

⁹ [Y Bil Economi Ddigidol, Bil HL 102 56/2, 8 Chwefror 2017, tudalen 159](#)

- 2.18 Mae Ofcom wedi datblygu drafft cychwynnol o'r Cod Ymarfer hwn drwy weithio gyda sbectrwm eang o randdeiliaid gan gynnwys cynrychiolwyr o'r gymuned gweithredwyr sefydlog a symudol, darparwyr seilwaith cyfathrebiadau a chynrychiolwyr o Undeb Cenedlaethol yr Amaethwyr, Cymdeithas Tir a Busnesau Cefn Gwlad, Ffederasiwn Eiddo Prydain a Chymdeithas Ganolog y Prîswyr Amaethyddol.
- 2.19 Drwy gydol y broses hon, mae Ofcom wedi bod yn hwylusydd niwtral, gyda'r amcan o hybu trawstoriad cytbwys o gynrychiolwyr o grwpiau rhanddeiliaid gwahanol er mwyn dod i gonsensws sy'n adlewyrchu ystod eang o fuddiannau a phryderon.
- 2.20 Ar 28 Gorffennaf 2016 cynhaliodd Ofcom gyfarfod cwmpasu cychwynnol gyda rhanddeiliaid yn nodi sut roedd am fynd ati i gynnal y broses o ddrafftio'r Cod Ymarfer, a gofynnodd i gymunedau rhanddeiliaid gwahanol enwebu cynrychiolwyr i wasanaethu ar Grŵp Drafftio Cod Ymarfer.
- 2.21 Ym mis Medi 2016 fe wnaethom gadarnhau aelodaeth y Grŵp Drafftio Cod Ymarfer, a oedd yn cynnwys wyth ymarferydd arbenigol yn cynrychioli tîfeddianwyr, gweithredwyr rhwydweithiau cyfathrebu a darparwyr seilwaith.
- 2.22 Rhwng mis Medi a mis Rhagfyr 2016 paratôdd y Grŵp Drafftio fersiynau olynol o'r ddogfen Cod Ymarfer ddrafft, a gafodd ei hadolygu mewn cyfarfodydd misol wedi'u cynnal gan Ofcom gyda'r nod o gasglu mewnbyn ychwanegol gan grŵp ehangach o randdeiliaid ar draws y sector.
- 2.23 Ochr yn ochr â'r broses o ymgysylltu â rhanddeiliaid y prif ffrwd, roedd Ofcom wedi paratoi templedi ategol ar gyfer hysbysiadau safonol a thelerau safonol (edrychwch ar Atodiad XX), roedd y telerau yn seiliedig ar ddeunyddiau a gyflwynwyd gan y grŵp rhanddeiliaid ehangach y cyfeirir ato uchod.
- 2.24 Yn unol â'r amserlen roedden ni wedi cytuno arni ymlaen llaw, cyflwynodd y Grŵp Drafftio fersiwn terfynol o'r Cod Ymarfer drafft i Ofcom ar 16 Rhagfyr 2016. Rydym wedi adolygu eu hallbwn ac yn credu, gyda rhai mân ddiwygiadau drafftio, ei fod yn diwallu'r gofynion a nodir ym mharagraff 102(1) y Cod Newydd. O ganlyniad, mae'r testun yn Atodiad 4 y ddogfen hon, sydd bellach yn destun ymgynghoriad gydag amrywiaeth ehangach o bartïon sydd â diddordeb.

Rheoleiddio mynediad i seilwaith darparwyr seilwaith cyfanwerthol

- 2.25 Wrth ddatblygu'r pecyn o ddiwygiadau i'r Cod a arweiniodd at y diwygiadau a gynigiwyd yn y Bil Economi Ddigidol, roedd rhanddeiliaid wedi darparu amrywiaeth o fewnbwn i'r Adran dros Ddiwylliant, y Cyfryngau a Chwaraeon ac Ofcom ynghylch a oedd y berthynas rhwng darparwyr seilwaith cyfanwerthol¹⁰ a darparwyr cyfathrebiadau (yn enwedig gweithredwyr rhwydweithiau symudol) yn cael ei llywodraethu'n effeithiol gan y Cod ac, os nad, pa ddiwygiadau allai fod yn angenrheidiol i'r Cod.

¹⁰ Mae darparwyr seilwaith cyfanwerthol yn sefydliadau sy'n darparu seilwaith ffisegol (hy safleoedd, mastiau ac ati) i weithredwyr rhwydweithiau symudol er mwyn eu galluogi i gyflwyno eu rhwydweithiau. Arqiva a Wireless Infrastructure Group (WIG) ydy'r darparwyr seilwaith cyfanwerthol annibynnol mwyaf. Mae'r gweithredwyr rhwydweithiau symudol eu hunain yn gweithredu fel darparwyr seilwaith cyfanwerthol wrth roi mynediad i'w mastiau i'w gilydd.

- 2.26 Daeth y Llywodraeth i'r casgliad nad oedd angen newidiadau penodol i'r Cod, fel yr eglurwyd yn natganiad polisi'r Adran dros Ddiwylliant, y Cyfryngau a Chwaraeon "Cod Cyfathrebiadau Electronig Newydd" a gyhoeddwyd ym mis Mai 2016.¹¹
- 2.27 Byddem yn nodi, ers i'r Adran dros Ddiwylliant, y Cyfryngau a Chwaraeon gyhoeddi'r datganiad hwn bod rhywfaint o gynnydd wedi cael ei wneud tuag at ddatblygu Cod Ymarfer gwirfoddol rhwng darparwyr seilwaith cyfanwerthol a gweithredwyr rhwydweithiau symudol, a bod Ofcom yn cefnogi hynny. Serch hynny, rydym yn cydnabod bod rhanddeiliaid yn y diwydiant yn chwilio am gadarnhâd, petai trafodaethau masnachol ac unrhyw gyflafareddu dilynol yn methu, ar ba delerau mae modd rheoleiddio sut mae darparwyr seilwaith cyfanwerthol yn rhoi mynediad i'w seilwaith.
- 2.28 Er ei bod hi'n anodd rhoi safbwynt ar y mater hwn mewn ffordd haniaethol, gallwn gadarnhau bod gan Ofcom nifer o bwerau statudol a allai ein galluogi, mewn egwyddor, i reoleiddio ar ba delerau mae darparwyr seilwaith cyfanwerthol yn rhoi mynediad i'w seilwaith. Er enghraifft, mae gan Ofcom bwerau penodol i reoleiddio mynediad i seilwaith o dan y ddeddfwriaeth ganlynol:¹²
- rheoliad 3(4) o'r Rheoliadau Cod Cyfathrebiadau Electronig (Amodau a Chyfngiadau) 2003/2553;¹³
 - adran 73 o Ddeddf Cyfathrebiadau 2003 ("**Deddf 2003**") (hy drwy osod amod sy'n ymwneud â mynediad);
 - adran 87 o Ddeddf 2003 (hy drwy osod amod pŵer sylweddol yn y farchnad); ac
 - adran 185 o Ddeddf 2003 (hy drwy ddatrys anghydfod sy'n ymwneud â darparu mynediad rhwydwaith).
- 2.29 Rydym yn nodi, yn y lle cyntaf, yn gyffredinol byddem yn ceisio datrys problemau drwy ddefnyddio'r ffordd fwyaf priodol a lleiaf ymwthiol, gydag atebolrwydd i ymyriadau mwy ffurfiol dim ond pan fyddai angen.

¹¹ [Yr Adran dros Ddiwylliant, y Cyfryngau a Chwaraeon, Cod Cyfathrebiadau Electronig Newydd, Mai 2016](#)

¹² Mae gan Ofcom hefyd bwerau penodol o dan gyfraith cystadleuaeth gyffredinol i wneud iawn am gamddefnydd neu oruchafiaeth cytundebau sy'n wrthgystadleuol.

¹³ Mae Rheoliad 3(4) yn pennu y bydd Gweithredwr y Cod "yn rhannu offer cyfathrebiadau electronig pan fydd hynny'n ymarferol". Mae gan Ofcom bwerau o dan adran 110 o Ddeddf 2003 i ofodi'r gofyniad hwn.

Adran 3

Beth rydyn ni'n ymgynghori yn ei gylch

Cod Ymarfer Drafft

- 3.1 Fel yr eglurir yn Adran 2 uchod, byddai'r Bil Economi Ddigidol (petai'n cael ei fabwysiadu) yn mynnu bod Ofcom yn paratoi ac yn cyhoeddi Cod Ymarfer i fynd gyda'r diwygiadau a gynigir i'r Cod.
- 3.2 Rydym nawr yn ymgynghori ynghylch y Cod Ymarfer drafft a'r Atodlenni cysylltiedig sydd ar gael yn **Atodiad 4 ac Atodiad 5** y naill a'r llall.

1. Oes gennych chi unrhyw sylwadau ynghylch cwmpas neu ddrafftio'r Cod Ymarfer, fel sydd wedi'i nodi yn Atodiadau 4 a 5?

Telerau safonol drafft

- 3.3 Fel yr eglurir yn Adran 2 uchod, byddai paragraff 102(2) y Cod Newydd yn mynnu bod Ofcom yn paratoi ac yn cyhoeddi telerau safonol y byddai modd eu defnyddio mewn cytundebau o dan y Cod Newydd (er na fyddai angen gwneud hynny).
- 3.4 Er mwyn paratoi i'r Bil Economi Ddigidol ddod i rym rydym felly wedi paratoi (ac nawr yn ymgynghori ynghylch) cyfres o delerau safonol y gellid eu defnyddio gan unrhyw barti sy'n ceisio dod i gytundeb ynghylch trosglwyddo hawliau Cod o dan y Cod Newydd. Mae fersiwn drafft o'r telerau safonol hyn ar gael yn **Atodiad 6**.
- 3.5 Er mwyn helpu i baratoi'r telerau safonol hyn, roeddem wedi gofyn i aelodau o'r Grŵp Drafftio Cod Ymarfer os byddent yn fodlon rhannu copïau o'u cytundebau Cod templed â ni. Roedd nifer o'r aelodau wedi rhannu eu cytundebau â ni ac rydym wedi defnyddio'r rhain er mwyn drafftio'r telerau safonol rydyn ni nawr yn ymgynghori yn eu cylch.
- 3.6 Wrth baratoi'r telerau safonol hyn, rydym wedi ystyried safbwyntiau ac argymhellion Comisiwn y Gyfraith.¹⁴ Yn benodol, eglurodd Comisiwn y Gyfraith, ymysg pethau eraill, y byddai telerau safonol yn ddefnyddiol ar y sail eu bod yn gallu rhoi man cychwyn defnyddiol ar gyfer trafodaethau, ond y byddai modd eu diwygio yn ôl yr angen er mwyn diwallu amgylchiadau penodol. Roedd o'r farn, ar y lefel mwyaf sylfaenol, y gallai telerau safonol helpu partïon, yn enwedig tirfeddianwyr, i sicrhau nad oedd telerau pwysig yn cael eu hanghofio.
- 3.7 Rydym yn cydnabod efallai y bydd rhai paratoi yn ystyried y byddai'n ddefnyddiol petai Ofcom yn paratoi mwy nag un set o delerau safonol. Fodd bynnag, ar ôl ystyried hyn yn ofalus ein barn dros dro ydy nad oes angen gwneud hyn ac mai cyfyngedig (os o gwbl) fyddai gwerth paratoi mwy nag un set o delerau.
- 3.8 Rydym yn nodi nad yw'r Bil Economi Ddigidol yn mynnu bod Ofcom yn paratoi mwy nag un set o delerau safonol. Ar ben hynny, roedd Comisiwn y Gyfraith yn cydnabod,

¹⁴ [Comisiwn y Gyfraith, Y Cod Cyfathrebiadau Electronig, 27 Chwefror 2013, tudalennau 203 – 205.](#)

y bydd cytundebau Cod, yn ymarferol, yn berthnasol i ystod eithriadol o eang o amgylchiadau; y dechnoleg sydd i'w gosod i nodweddion ffisegol y safle a'r dull gweithredu sy'n cael ei ffafrio ac yn aml bydd soffistigeiddrwydd partïon y cytundeb yn dra gwahanol. Byddai'n dasg fawr i Ofcom baratoi amrywiaeth o delerau safonol sy'n addas i bob math o dechnoleg, safle, gweithredwr a thirfeddiannwr/meddiannwr ac nid yw hi'n glir i ni y byddai hyn o fudd i Weithredwyr y Cod a'r tîr feddiannwyr/meddiannwyr.

- 3.9 I'r perwyl hwn, ac fel y nodir uchod, diben y telerau safonol ydy rhoi man cychwyn i'r partïon ar gyfer eu trafodaethau, yn hytrach na darparu set derfynol o delerau ar gyfer pob parti. Rydym yn disgwyl y bydd hi'n well gan nifer o ddarparwyr safle a Gweithredwyr Cod profiadol ddefnyddio eu telerau eu hunain ac, ar gyfer trafodion sy'n fwy cymhleth, mae'n debyg y bydd partïon yn gofyn am gyngor cyfreithiol annibynnol i sicrhau bod eu cytundeb Cod wedi'i deilwra'n briodol yn ôl eu hamgylchiadau penodol. Rydym hefyd yn ymwybodol bod ffynonellau eraill o delerau ac amodau safonol sydd wedi cael eu datblygu drwy ymgynghoriadau rhwng phartïon a diddordeb. Enghraifft dda o hyn fyddai'r cytundeb fforddfraint ar gyfer adeilad swyddfa aml-breswlydd a ddatblygwyd ar gyfer Dinas Llundain.¹⁵

2. Oes gennych chi unrhyw sylwadau ynghylch cwmpas neu ddrafftio'r telerau safonol, fel sydd wedi'u nodi yn Atodiad 6?

Hysbysiadau templed drafft

- 3.10 Mewn rhai amgylchiadau, mae'r Cod Newydd sy'n cael ei gynnig yn y Bil Economi Ddigidol yn mynnu bod Gweithredwyr y Cod, tîr feddiannwyr/meddiannwyr a phartïon eraill yn darparu hysbysiad i'w gilydd. Er enghraifft, byddai'n rhaid i Weithredwr Cod roi gwybod i ymgynghwr trafndiaeth am ei fwiad i wneud gwaith nad yw'n waith brys ar dir trafndiaeth o dan baragraff 48(1) o'r Cod Newydd.
- 3.11 Fel sy'n cael ei egluro yn Adran 2 uchod, ar hyn o bryd mae paragraff 89 o'r Cod Newydd yn darparu pan fydd darpariaeth yn y Cod Newydd "*yn mynnu bod hysbysiad yn cael ei roi*", rhaid i Ofcom ragnodi ffurf yr hysbysiad hwnnw.
- 3.12 Pan fydd ffurf yr hysbysiad yn cael ei ragnodi gan Ofcom, byddai paragraffau 87(2) a 88(2) o'r Cod Newydd yn mynnu, er mwyn iddynt fod yn ddilys, ei bod yn rhaid i hysbysiadau a roddir gan Weithredwyr y Cod a rhai hysbysiadau a roddir gan bartïon eraill fod ar y ffurf a ragnodir. Fodd bynnag, mae paragraffau 88(5) a (6) yn nodi bod modd rhoi rhai hysbysiadau penodol eraill ar ffurf ar wahân i'r ffurf a ragnodir gan Ofcom (ar yr amod bod y parti sy'n rhoi'r hysbysiad yn talu am y costau canlyniadol i'r parti arall, os bydd rhai).
- 3.13 Er mwyn paratoi i'r Bil Economi Ddigidol ddod i rym, rydym felly wedi paratoi (ac nawr yn ymgynghori ynghylch) nifer o hysbysiadau templed i'w defnyddio rhwng

¹⁵ Dinas Llundain, [Pecyn Seilwaith Digidol, cytundeb fforddfraint safonol](#) cyrchwyd 15 Mawrth 2017 – adolygir a diweddarir y ddogfen hon yn rheolaidd, a chaiff ei diwygio i adlewyrchu darpariaethau'r Bil Economi Ddigidol pan fydd yn dod i rym.

Gweithredwyr y Cod a phartïon eraill. Mae fersiynau drafft o bob un o'r hysbysiadau rydym yn bwriadu eu rhagnodi ar gael yn **Atodiad 7**.¹⁶

- 3.14 Rydyn ni'n cydnabod mewn nifer o achosion bod yr hysbysiadau rydyn ni'n cynnig eu rhagnodi yn ddewisol (hy mae modd eu rhoi ond nid oes yn rhaid eu rhoi – edrychwch ar eiriad y Cod Newydd ym mharagraff 3.11 uchod). Fodd bynnag, rydym wedi dehongli ein rhwymedigaeth arfaethedig o dan baragraff 89 o'r Cod Newydd yn helaeth ac wedi ceisio darparu fersiynau drafft o hysbysiadau safonol hyd yn oed pan nad ydynt yn angenrheidiol dan y Cod Newydd mewn gwirionedd. Rydym yn gobeithio y bydd Gweithredwyr y Cod a thirfeddianwyr/meddianwyr fel ei gilydd yn teimlo bod hyn yn ddefnyddiol, ac y bydd hyn yn hwyluso pontio i drefn y Cod Newydd.
- 3.15 Fodd bynnag, rydym yn nodi mewn nifer cyfyngedig iawn o achosion, mae'n debyg y bydd gwerth cyfyngedig (os o gwbl) yn Ofcom yn rhagnodi ffurf hysbysiad dewisol. Yn benodol, rydym o'r farn na fyddai llawer o werth petai Ofcom yn rhagnodi ffurf hysbysiadau o dan baragraffau 31(1)¹⁷ a 38(4)¹⁸ y Cod Newydd oherwydd byddai cynnwys unrhyw hysbysiadau o'r fath yn benodol iawn o ran ffeithiau a byddem yn disgwyl i Weithredwyr y Cod allu paratoi'r rhain yn hawdd. Nid ydym felly'n cynnig rhagnodi ffurf unrhyw hysbysiadau ffurf safonol o dan y paragraffau penodol hyn o'r Cod Newydd.
- 3.16 Wrth baratoi'r hysbysiadau safonol sydd yn Atodiad 7, rydym wedi ystyried yr angen i sicrhau eu bod mor glir a chryno â phosibl, yn ogystal â'r angen i Weithredwyr y Cod gydymffurfio â pharagraff 87(1) y Cod Newydd wrth roi hysbysiad (hy eu bod yn egluro effaith yr hysbysiad a'r camau y mae modd i dderbynwyr eu cymryd).
- 3.17 Rydym hefyd wedi ystyried y ffaith, er bod Gweithredwyr y Cod o bosibl yn gyfarwydd â'r Cod Newydd, efallai na fydd hyn o reidrwydd yn wir i dirfeddianwyr/meddianwyr. Rydym felly wedi ceisio darparu 'Nodiadau' neu arweiniad defnyddiol, yn enwedig ar gyfer tirfeddianwyr/meddianwyr, ar ddiwedd nifer o'r hysbysiadau a ddylai eu helpu wrth anfon neu dderbyn hysbysiadau o dan y Cod Newydd.

3. *Ydych chi'n cytuno bod Ofcom wedi nodi'r holl hysbysiadau y mae angen iddo eu paratoi o dan baragraff 89 y Cod Newydd?*

4. *Oes gennych chi unrhyw sylwadau ynghylch cwmpas neu ddrafftio'r hysbysiadau hyn, fel y maent wedi'u nodi yn Atodiad 7?*

¹⁶ Er mwyn gwneud pethau'n haws, rydym yn nodi ein bod yn cynnig rhagnodi hysbysiadau o dan y paragraffau canlynol o'r Cod Newydd: paragraff 15(5); paragraff 19(2); paragraff 25(3); paragraff 26(1); paragraff 30(1); paragraff 32(1); paragraff 38(1); paragraff 38(2); paragraff 39(2); paragraff 40(2); paragraff 40(5); paragraff 42(5); paragraff 48(1); paragraff 49(2); paragraff 49(3); paragraff 50(2); paragraff 50(4); paragraff 50(7); paragraff 52(1); paragraff 52(2); paragraff 53(7); paragraff 66(1); paragraff 67(2); paragraff 70(2); paragraff 74(2); paragraff 77(1); paragraff 81(3); a pharagraff 81(4). Fel sy'n cael ei nodi yn Adran 2 uchod, mae'r cyfeiriadau hyn at baragraffau yn seiliedig ar y fersiwn o'r Cod newydd sydd ym [Bil HL 102 56/2](#), a gyhoeddwyd ar 8 Chwefror 2017, sy'n ymgorffori diwygiadau a wnaed hyd at a gan gynnwys cam Pwyllgor Tŷ'r Arglwyddi.

¹⁷ hy gwrth-hysbysiad gan Weithredwr Cod ynghylch terfynu cytundeb Cod.

¹⁸ hy hysbysiad gan Weithredwr Cod yn datgelu a ydy offer ar dir yn unol â hawl Cod.

Adran 4

Y camau nesaf

Y broses ymgynghori

- 4.1 Bydd yr ymgynghoriad hwn ar agor am 10 wythnos, gan gau ddydd Iau, 1 Mehefin 2017

Datganiad terfynol

- 4.2 Bydd ein datganiad terfynol, ynghyd â fersiynau terfynol o'r Cod Ymarfer, y telerau safonol a'r hysbysiadau templed, yn cael eu cyhoeddi cyn gynted ag sy'n bosibl ar ôl i'r Cod Newydd (Atodlen 1 i'r Bil Economi Ddigidol) ddod i rym.

Adolygu'r Cod Ymarfer

- 4.3 Byddai paragraff 102(3) o'r Cod Newydd¹⁹ yn galluogi Ofcom i ddiwygio neu i ddisodli elfennau o'r Cod Ymarfer a thelerau safonol cysylltiedig ar adeg y byddai'n ei dewis. Yn unol â hynny, rydyn ni wedi ymrwymo i fonitro ac adolygu'r Cod Ymarfer i sicrhau bod ei gynnwys yn dal yn addas i'r diben, yn briodol ac yn gymesur wrth ystyried datblygiadau parhaus.

¹⁹ [Bil Economi Ddigidol, Rhan 17, Adran 102\(3\), tudalen 159](#)

Atodiad 1

Ymateb i'r ymgynghoriad hwn

Sut mae ymateb

- A1.1 Byddai Ofcom yn hoffi i chi gyflwyno eich safbwyntiau a'ch sylwadau ynghylch y materion sydd wedi'u codi yn y ddogfen hon erbyn **5pm Dydd Iau, 1 Mehefin 2017**.
- A1.2 Mae'n well o lawer gennym gael ymatebion drwy'r ffurflen ar-lein sydd ar gael yn <https://www.ofcom.org.uk/cymru/consultations-and-statements/category-1/electronic-communications-code>. Rydyn ni hefyd yn darparu dalen gyflwyno (<https://www.ofcom.org.uk/consultations-and-statements/consultation-response-coversheet>) ar gyfer ymatebion sy'n cael eu hanfon dros e-bost neu bost; a fydddech chi cystal â llenwi hon er mwyn ein helpu i gynnal eich cyfrinachedd, ac mae'n cyflymu ein gwaith. Nid oes angen i chi wneud hyn os ydych chi'n ymateb drwy ddefnyddio'r ffurflen ar-lein.
- A1.3 Os yw eich ymateb yn ffeil fawr, neu os yw'n cynnwys siartiau, tablau neu ddata arall i'w gefnogi, a fydddech chi cystal â'i anfon dros yr e-bost i ecc.consultation@ofcom.org.uk, fel atodiad mewn fformat Microsoft Word, ynghyd â'r ddalen gyflwyno (<https://www.ofcom.org.uk/consultations-and-statements/consultation-response-coversheet>).
- Fel arall, gellir postio ymatebion i'r cyfeiriad isod, a theitl yr ymgynghoriad wedi'i farcio arnynt.
- ECC Consultation Team
5th Floor
Ofcom
Riverside House
2A Southwark Bridge Road
London SE1 9HA
- A1.4 Os hoffech chi gyflwyno'ch ymateb mewn fformat gwahanol, (ee ffeil sain neu fideo), cysylltwch â Dan Mount ar 020 7981 3050 neu anfonwch neges e-bost i ecc.consultation@ofcom.org.uk
- A1.5 Nid oes angen copi papur o'ch ymateb arnom yn ogystal â fersiwn electronig. Byddwn yn cydnabod derbyn ymatebion os cânt eu cyflwyno drwy ddefnyddio'r ffurflen ar-lein ar y we ond nid fel arall.
- A1.6 Nid oes yn rhaid i chi ateb pob cwestiwn yn yr ymgynghoriad os nad oes gennych chi safbwynt; mae ymateb byr ar ddim ond un pwynt yn iawn. Rydyn ni hefyd yn croesawu ymatebion ar y cyd.
- A1.7 Byddai'n ddefnyddiol petai modd i'ch ymateb gynnwys atebion uniongyrchol i'r cwestiynau sy'n cael eu gofyn yn y ddogfen ymgynghori. Mae'r cwestiynau wedi cael eu rhestru yn Atodiad X. Byddai'n ddefnyddiol hefyd petai modd i chi egluro pam rydych yn arddel eich safbwyntiau, a beth rydych chi'n ei gredu fyddai effaith cynigion Ofcom.

- A1.8 Os ydych chi eisiau trafod y materion a'r cwestiynau sydd wedi cael eu codi yn yr ymgynghoriad hwn, cysylltwch â Dan Mount ar 020 7981 3050, neu dros yr e-bost i ecc.consultation@ofcom.org.uk

Cyfrinachedd

- A1.9 Mae ymgynghoriadau'n fwy effeithiol os ydyn ni'n cyhoeddi'r ymatebion cyn i'r cyfnod ymgynghori gau. Yn benodol, gall hyn fod o gymorth i bobl a sefydliadau sy'n brin eu hadnoddau neu heb fod yn gyfarwydd iawn â'r materion dan sylw i ymateb yn fwy gwybodus. Felly, er mwyn bod yn dryloyw a sicrhau ymarfer rheoleiddio da, ac oherwydd ein bod ni'n credu ei bod hi'n bwysig bod pawb sydd â diddordeb mewn mater yn gallu gweld safbwyntiau ymatebwyr eraill, fel rheol byddwn yn cyhoeddi pob ymateb ar ein gwefan, www.ofcom.org.uk, cyn gynted ag y byddan nhw'n dod i law.
- A1.10 Os ydych chi'n meddwl y dylid cadw eich ymateb yn gyfrinachol, a fyddech chi cystal â nodi i ba ran(nau) mae hyn yn berthnasol, ac egluro pam. Anfonwch unrhyw adrannau cyfrinachol fel atodiad ar wahân. Os ydych am i'ch enw, eich cyfeiriad, manylion cyswllt eraill, neu deitl eich swydd aros yn gyfrinachol, rhowch y manylion hynny ar y ddalen gyflwyno'n unig, fel na fydd rhaid inni olygu'ch ymateb.
- A1.11 Os bydd rhywun yn gofyn i ni gadw ymateb cyfan neu ran ohono yn gyfrinachol, byddwn yn trin y cais hwn o ddifrif ac yn ceisio ei barchu. Ond weithiau bydd angen i ni gyhoeddi pob ymateb, gan gynnwys y rheini sydd wedi'u marcio'n rhai cyfrinachol, er mwyn bodloni rhwymedigaethau cyfreithiol.
- A1.12 Sylwch hefyd y cymerir bod yr hawlfraint a phob eiddo deallusol arall sydd mewn ymatebion wedi'u rhoi o dan drwydded i Ofcom i'w defnyddio. Mae hawliau eiddo deallusol Ofcom yn cael eu hegluro ymhellach yn <https://www.ofcom.org.uk/about-ofcom/website/terms-of-use>

Y camau nesaf

- A1.13 Ar ôl y cyfnod ymgynghori hwn, mae Ofcom yn bwriadu cyhoeddi datganiad yn nes ymlaen yn 2017.
- A1.14 Gallwch chi gofrestru i gael diweddariadau post i roi gwybod i chi am gyhoeddiadau newydd Ofcom; i gael rhagor o fanylion edrychwch ar <https://www.ofcom.org.uk/about-ofcom/latest/email-updates/>

Prosesau ymgynghori Ofcom

- A1.15 Mae Ofcom yn ceisio sicrhau ei bod mor hawdd â phosibl ymateb i ymgynghoriad. I gael rhagor o wybodaeth, edrychwch ar ein hegwyddorion ymgynghori yn Atodiad 2.
- A1.16 Os oes gennych unrhyw sylwadau neu awgrymiadau ynghylch y modd rydyn ni'n rheoli ein hymgyngoriadau, anfonwch neges drwy'r e-bost atom yn consult@ofcom.org.uk. Rydym yn arbennig o falch o gael syniadau ynghylch sut y gallai Ofcom fod yn fwy effeithiol wrth ofyn am farn grwpiau neu unigolion, fel busnesau bach a defnyddwyr preswyl, sy'n llai tebygol o roi eu barn drwy ymgynghoriad ffurfiol.

Os hoffech drafod y materion hyn neu brosesau ymgynghori Ofcom yn gyffredinol, cysylltwch â Steve Gettings, hyrwyddwr ymgynghori Ofcom:

Steve Gettings
Ofcom
Riverside House
2a Southwark Bridge Road
Llundain SE1 9HA

E-bost: corporationsecretary@ofcom.org.uk

Atodiad 2

Egwyddorion ymgynghori Ofcom

Mae Ofcom yn dilyn saith egwyddor ar gyfer pob ymgynghoriad ysgrifenedig cyhoeddus:

Cyn yr ymgynghoriad

A2.1 Os oes modd, byddwn yn cynnal sgysiau anffurfiol â phobl a chyrrff cyn cyhoeddi ymgynghoriad mawr i gael gwybod a ydym yn meddwl yn y cyfeiriad iawn. Os nad oes gennym ddigon o amser i wneud hyn, byddwn yn cynnal cyfarfod agored i egluro ein cynigion yn fuan ar ôl cyhoeddi'r ymgynghoriad.

Yn ystod yr ymgynghoriad

A2.2 Byddwn yn glir ynghylch pwy rydym yn ymgynghori â hwy, pam, ar ba gwestiynau ac am ba hyd.

A2.3 Byddwn yn gwneud y ddogfen ymgynghori'n un mor fyr ac mor syml ag y bo modd gyda chrynodeb o ddim mwy na dwy dudalen. Byddwn yn ceisio ei gwneud mor hawdd â phosibl i bobl roi ymateb ysgrifenedig i ni. Os yw'r ymgynghoriad yn gymhleth, efallai y byddwn yn darparu canllaw Cymraeg Clir / Plain English i helpu sefydliadau llai neu unigolion na fyddent yn gallu rhoi o'u hamser i rannu eu barn fel arall.

A2.4 Byddwn yn ymgynghori am gyfnod o hyd at ddeg wythnos yn dibynnu ar effaith bosibl ein cynigion.

A2.5 Bydd rhywun yn Ofcom yn gyfrifol am sicrhau ein bod yn dilyn ein canllawiau ein hunain ac yn ceisio cyrraedd y nifer fwyaf o bobl a sefydliadau sydd efallai â diddordeb yng nghanlyniad ein penderfyniadau. Hyrwyddwr Ymgynghori Ofcom ydy'r prif unigolyn i gysylltu ag ef i roi barn am y modd rydym yn cynnal ein hymgyngoriadau.

A2.6 Os na fyddwn yn gallu dilyn unrhyw un o'r saith egwyddor hyn, byddwn yn egluro pam.

Ar ôl yr ymgynghoriad

A2.7 Rydyn ni'n credu ei bod hi'n bwysig bod pawb sydd â diddordeb mewn mater yn gallu gweld safbwyntiau pobl eraill. Felly, fel rheol, byddwn yn cyhoeddi pob ymateb ar ein gwefan cyn gynted ag y byddan nhw'n dod i law. Ar ôl yr ymgynghoriad byddwn yn gwneud ein penderfyniadau ac yn cyhoeddi datganiad sy'n egluro beth fyddwn ni'n ei wneud, a pham, gan ddangos sut mae safbwyntiau'r ymatebwyr wedi helpu i siapio'r penderfyniadau hyn.

Dalen cyflwyno ymateb i ymgynghoriad gan Ofcom

MANYLION SYLFAENOL

Teitl yr ymgynghoriad:

At (cyswllt yn Ofcom):

Enw'r ymatebydd:

Yn cynrychioli (eich hun neu sefydliad(au)):

Cyfeiriad (os na chafwyd ef drwy'r e-bost):

CYFRINACHEDD

Ticiwch isod i ddangos pa ran o'ch ymateb rydych yn ei hystyried yn gyfrinachol, a rhowch eich rhesymau am hynny

Dim byd

Enw/manylion cyswllt/teitl swydd

Yr ymateb cyfan

Sefydliad

Rhan o'r ymateb

Os nad oes atodiad ar wahân, pa rannau?

Os nad ydych am i ran o'ch ymateb, eich enw neu enw'ch sefydliad gael eu cyhoeddi, a gaiff Ofcom barhau i gyhoeddi cyfeiriad at gynnwys eich ymateb (gan gynnwys, yn achos unrhyw rannau cyfrinachol, grynodedb cyffredinol nad yw'n datgelu'r wybodaeth benodol nac yn golygu bod modd eich adnabod)?

DATGANIAD

Rwy'n cadarnhau bod yr ohebiaeth sydd gyda'r ddalen gyflwyno hon yn ymateb ffurfiol i ymgynghoriad y caiff Ofcom ei gyhoeddi. Fodd bynnag, wrth roi'r ymateb hwn, rwy'n deall y gallai fod angen i Ofcom gyhoeddi'r holl ymatebion, gan gynnwys y rheini sydd wedi'u marcio'n rhai cyfrinachol, er mwyn cyflawni rhwymedigaethau cyfreithiol. Os wyf wedi anfon ymateb drwy'r e-bost, caiff Ofcom ddiystyru unrhyw destun e-bost safonol ynghylch peidio â datgelu cynnwys neges e-bost ac atodiadau.

Mae Ofcom yn ceisio cyhoeddi ymatebion wrth iddynt ddod i law. Os nad yw eich ymateb yn gyfrinachol (yn gyfan gwbl neu'n rhannol), ac y byddai'n well gennych i ni beidio â chyhoeddi'ch ymateb nes bod yr ymgynghoriad wedi dod i ben, ticiwch yma.

Enw

Llofnod (os darperir copi papur)

Atodiad 3

Cwestiynau'r ymgynghoriad

Cod Ymarfer

1. *Oes gennych chi unrhyw sylwadau ynghylch cwmpas neu ddrafftio'r Cod Ymarfer fel sydd wedi'i nodi yn Atodiadau 4 a 5?*

Telerau safonol

2. *Oes gennych chi unrhyw sylwadau ynghylch cwmpas neu ddrafftio'r telerau safonol, fel sydd wedi'u nodi yn Atodiad 6?*

Hysbysiadau templed

3. *Ydych chi'n cytuno bod Ofcom wedi nodi'r holl hysbysiadau y mae angen iddo eu paratoi o dan baragraff 89 y Cod Newydd?*
4. *Oes gennych chi unrhyw sylwadau ynghylch cwmpas neu ddrafftio'r hysbysiadau hyn, fel y maent wedi'u nodi yn Atodiad 7?*

Atodiad 4

Cod Ymarfer Drafft

Cyflwyniad

- 4.4 Mae gwasanaethau cyfathrebiadau electronig (fel llinellau sefydlog, ffonau symudol a gwasanaethau'r rhyngwyd) nawr yn cael eu hystyried fel gwasanaethau hanfodol. Er mwyn i'r gwasanaethau hyn gael eu darparu lle mae eu hangen. Mae'r Cod Cyfathrebiadau Electronig yn rhoi sylfaen statudol er mwyn i ddarparwyr cyfathrebiadau (a elwir yn y cyd-destun hwn yn 'Weithredwyr²⁰') allu rhoi eu Hoffer²¹ ar dir neu adeiladau sy'n berchen i unigolyn neu i sefydliad arall.
- 4.5 Yng ngoleuni anghenion cynyddol a hollbwysig cymunedau lleol (ac economi'r DU yn gyffredinol) i gael gafael ar rwydweithiau cyfathrebiadau 21ain ganrif, fel cysylltiad band eang cyflym neu gysylltiad symudol 4G (a 5G maes o law), mae'r Cod Cyfathrebiadau Electronig wedi cael ei ddiwygio o dan [Ddeddf Economi Ddigidol 2017] er mwyn ei gwneud hi'n haws i Weithredwyr gael mynediad i leoliadau lle mae angen iddynt wella darpariaeth, gallu a chapasiti.

Diben y Cod Ymarfer

- 4.6 Diben y Cod Ymarfer hwn, sydd hefyd wedi cael ei sefydlu o dan y [Ddeddf Economi Ddigidol], yw gosod y disgwyliadau ar gyfer ymddygiad y partiön yng nghyswllt unrhyw gytundeb a wneir o dan y Cod Cyfathrebiadau Electronig. Nid yw'n ganllaw i'r Cod Cyfathrebiadau Electronig na rheoliadau'r Cod, ond ei fwriad ydy eu hategu a'i gwneud hi'n symlach i Weithredwyr a Thirfeddianwyr²² ddod i gytundeb ynghylch amrywiaeth o faterion sy'n ymwneud â meddiannu safle. Mae cytundebau o dan y Cod Cyfathrebiadau Electronig yn rhwymo felly efallai y bydd Tirfeddianwyr eisiau cael cyngor proffesiynol annibynnol cyn cytuno ar gytundeb o'r fath (gweler isod).
- 4.7 Mae 'safle' yn y Cod Ymarfer yn cael ei ddefnyddio mewn ffordd gyffredinol²³ fel unrhyw leoliad i osod Offer fel o dan neu ar ben tir agored, to adeilad, twnnel neu bostyn lamp.
- 4.8 Dylai pob parti y mae'r Cod Ymarfer hwn yn berthnasol iddynt drin ei gilydd yn broffesiynol a gyda pharch, gan gofio mai'r nod bob amser ydy gwella a chynnal gwasanaethau cyfathrebiadau hanfodol i bawb. Rhaid i Dirfeddianwyr a Gweithredwyr barchu anghenion a phryderon dilys meddianwyr tir wrth arfer hawliau

²⁰ Mae Gweithredwr yn sefydliad sydd wedi cael Pwerau Cod gan Ofcom, er enghraifft, darparwr cyfathrebiadau sy'n darparu rhwydwaith llinell sefydlog, band eang, cebl neu symudol, neu rywun sy'n darparu seilwaith sy'n cefnogi rhwydwaith o'r fath. Mae Ofcom yn cynnal rhestr o'r rheini sydd â Phwerau Cod.

²¹ Mae 'offer' yn derm cyffredinol ac mae'n cyfeirio at yr hyn sy'n cael ei ddiffinio yn y Cod Cyfathrebiadau Electronig fel offer cyfathrebiadau electronig; mae'n cynnwys eitemau fel antena ar gyfer signalau symudol, mastiau, cabinetau, ceblau, twneli a pholion telegraff.

²² Y sawl sydd â'r hawl gyfreithiol i rwymo i gytundeb gyda Gweithredwr

²³ Mae 'safle' yn gyfystyr i'r term 'Tir' yn y Cod Cyfathrebiadau Electronig fel y nodir ym mharagraff 108.

o dan y Cod Cyfathrebiadau Electronig. Bydd Gweithredwyr yn gyfrifol am ymddygiad unrhyw gontractwyr byddant yn eu cyfarwyddo i wneud gwaith ar eu rhan.

Hyd a Lled

4.9 Mae'r Cod Ymarfer hwn:

- Yn rhoi fframwaith cyfeirio i gefnogi Tirfeddianwyr a Gweithredwyr i lunio, datblygu a chynnal cysylltiadau gwaith effeithiol, er budd defnyddwyr pob gwasanaeth cyfathrebiadau.
- Mae'n nodi beth dylai Tirfeddianwyr a Gweithredwyr ddisgwyl gan ei gilydd yng nghyd-destun:
 - Sefydlu cytundebau newydd er mwyn gosod offer;
 - Mynediad parhaus i weithredu, cynnal a chadw ac uwchraddio safleoedd ac offer cyfredol;
 - Datgomisiynu safleoedd nad oes mo'u hangen mwyach;
 - Ailddatblygu safleoedd;
- Mae'n rhoi fframwaith ar gyfer darparu safle, lle mae'r broses fasnachol o ddod i gytundeb a chynnal cytundeb yn gallu ystyried holl ofynion ymarferol y naill barti a'r llall;
- Mae'n gosod llinellau cyfathrebu clir er mwyn dyrchafu materion sy'n destun anghydfod;
- **Nid** yw'n rhoi sylw i agweddau ariannol y berthynas rhwng y Tirfeddiannwr a'r Gweithredwr

4.10 Er bod y Cod Ymarfer yn rhoi rhai egwyddorion a disgwyliadau clir ynghylch sut dylai Tirfeddianwyr a Gweithredwyr ymddwyn tuag at ei gilydd, dylid nodi bod rhai trefniadau arbennig ar waith (ee tir trafndiaeth, priffordd gyhoeddus sy'n cael ei gynnal a dyfroedd llanw), lle gall ystyriaethau penodol gwahanol fod yn berthnasol.

4.11 Mae'r Cod Ymarfer yn berthnasol i ystod eang o sefyllfaoedd, o adeiladu mast symudol llawn i osod dim ond un polyn telegraff neu ddarn byr iawn o gebl a dylid nodi na fydd angen yr holl elfennau gweithdrefnol ym mhob un achos.

Cyfathrebu a gwybodaeth gyswllt

4.12 Yn ganolog i ddiben y Cod Ymarfer hwn mae cynnal cyfathrebu da rhwng y partion i hwyluso cysylltiadau gwaith da.

Sicrhau bod gwybodaeth gyswllt yn ddiweddar

4.13 Dylai'r Gweithredwr sicrhau bod gan y Tirfeddiannwr ac unrhyw Feddiannwr perthnasol o'r safle neu lwybrau mynediad i'r safle **wybodaeth gyswllt ddiweddar**, er mwyn i'r Tirfeddiannwr allu asesu'n hawdd pa bwynt cyswllt i'w ddefnyddio yn yr holl amgylchiadau a all godi, fel:

- Os bydd argyfwng

- Ar gyfer materion rheoli neu ystâd arferol
- I newid neu gadarnhau trefniadau mynediad

4.14 Maes o law, dylai'r Tirfeddiannwr a'r Meddiannwr sicrhau bod y Gweithredwr yn cael yr wybodaeth gyswllt bresennol (ac yn cael gwybod am unrhyw newidiadau i rifau ffôn, cyfeiriadau e-bost ac ati) er mwyn i'r Gweithredwr wybod pa bwynt cyswllt dylid ei ddefnyddio yn yr holl amgylchiadau a allai godi.

Cyngor proffesiynol

- 4.15 Caiff Tirfeddiannwyr a Gweithredwyr ddewis trafod â'i gilydd yn uniongyrchol. Fel arall, efallai bydd y partïon eisiau gofyn am gyngor proffesiynol gan rywun sydd â chymwysterau a phrofiad addas fel arolygwr neu brisiwr. Gallai hyn hefyd olygu cael cyngor cyfreithiol cyn cytuno ar gytundeb yn derfynol²⁴.
- 4.16 Bydd yn rhaid cytuno ar ffioedd cynghorwyr ymlaen llaw fel rhan o delerau ymgysylltu'r cynghorydd.
- 4.17 Ym mhob achos bydd Gweithredwyr a Thirfeddiannwyr yn gweithredu mewn ffordd gyson, deg ac agored gyda'i gilydd yng nghyswllt unrhyw waith arfaethedig.

Cytundebau newydd er mwyn gosod Offer

- 4.18 Efallai bydd angen Offer ychwanegol am nifer o resymau, fel:
- Y galw gan gwsmeriaid
 - Er mwyn sicrhau darpariaeth i ardaloedd newydd
 - Er mwyn darparu capasiti rhwydwaith ychwanegol
 - Er mwyn darparu gwasanaethau newydd
 - I ddisodli safleoedd sydd wedi darfod neu safleoedd sy'n cael eu hailddatblygu
- 4.19 Pan fydd eisiau defnyddio offer newydd bydd y Gweithredwyr yn dilyn cyfres o gamau, gan ddibynnu ar natur yr offer sydd i'w osod. Ar gyfer gosod mân offer (er enghraifft, gosod polyn telegraff), mae modd dod i gytundeb ar delerau ac amodau safonol a heb fod angen ymweld â'r safle. Ar gyfer sefyllfaoedd sy'n fwy cymhleth (fel mast symudol newydd), efallai bydd angen ymweld â'r safle er mwyn asesu pa mor addas yw'r lleoliad ac i gael rhagor o wybodaeth gefndirol.

²⁴ Mae rhestr o gynghorwyr o'r fath yn gallu cael ei darparu gan gyrrff proffesiynol fel Cymdeithas Ganolog y Prswyr Amaethyddol, Cymdeithas y Gyfraith, Cymdeithas y Gyfraith yr Alban, Sefydliad Brenhinol y Syrfewyr Siartredig a Chymdeithas Prswyr a Chanolwyr Amaethyddol yr Alban.

Cam 1: Arolwg Safle

- 4.20 Ar ôl penderfynu bod angen Offer newydd mewn ardal benodol, bydd y Gweithredwr yn nodi dewisiadau gwahanol ar gyfer safleoedd newydd ac yn arolygu atebion posibl ar sail ystyriaethau technegol a chynllunio.
- 4.21 Er bod mynediad i fapiau, delweddau lloeren, cynlluniau adeiladau ac ati yn golygu bod modd gwneud llawer o'r gwaith ynghylch dichonoldeb y safle o bell, efallai y bydd angen mynediad uniongyrchol i safle posibl a'r gallu i drafod materion ymarferol â Thirfeddianwyr.
- 4.22 Pan fydd angen mynediad, dylai'r Gweithredwr ofyn am fynediad o'r fath yn ysgrifenedig, gan nodi'r materion sydd yn Atodiad A, pan fo hynny'n berthnasol. Yn gyffredinol bydd y Gweithredwr yn gofyn bod mynediad yn cael ei roi cyn pen cyfnod rhesymol (ee gall hyn fod yn gyfnod o ryw 7 diwrnod). Bydd y cais am fynediad yn nodi natur yr ymweliad ac amlinelliad sylfaenol o'r hyn y mae cynnig i'w osod.
- 4.23 I sicrhau bod yr arolwg safle yn gynhyrchiol, gall y partïon ddewis cwrdd ar y safle. Ar yr adeg briodol yn y broses asesu, dylai'r Tirfeddianwr, ar gais y Gweithredwr, geisio darparu gwybodaeth berthnasol fel:
- Pwy sy'n berchen ar y safle/yn meddiannu'r safle;
 - Defnydd y safle ar hyn o bryd;
 - A oes unrhyw drefniadau rheoli aml-feddiannaeth ar waith
 - Unrhyw newid sydd wedi'i gynllunio neu unrhyw newid a fwriedir mewn perchnogaeth, meddiannaeth neu ddefnydd;
 - Unrhyw gynigion a allai fod i newid defnydd neu ddatblygu'r tir, gan gynnwys a oes unrhyw ganiatadau cynllunio cyfredol mewn lle;
 - Manylion pibelli, draeniau, ceblau neu strwythurau ac ati hysbys;
 - A oes unrhyw ddeunyddiau niweidiol, hylif, llystyfiant, safleoedd o ddiddordeb gwyddonol arbennig, fflora, ffawna wedi'u diogelu, adeiladau rhestredig, ystyriaethau archaeolegol neu hawliau tramwy cyhoeddus ar y safle neu wrth y safle.

Cam 2: Ymgynghori a chytuno

- 4.24 Mae'r math o offer mae modd ei ddefnyddio ar, dros neu o dan safle yn gallu amrywio'n enfawr. Gallai gynnwys, er enghraifft:
- Gosod polyn telegraff mewn cae;
 - Gosod cebl mewn pibell bresennol mewn canolfan siopa;
 - Gosod system antena ar gyfer darpariaeth symudol ar do bloc o swyddfeydd;
 - Codi tŵr latis mewn coed
- 4.25 Gallai pob un o'r enghreifftiau hyn ofyn am brosesau ymgynghori gwahanol.

- 4.26 Ar ôl canfod lleoliad addas ar gyfer gosod offer, bydd y Gweithredwr yn symud ymlaen i sicrhau unrhyw ganiatadau angenrheidiol ar gyfer y safle, yn unol â'r rheoliadau perthnasol, gan ymgynghori â'r Awdurdod Cynllunio Lleol, a phartion eraill, pan fydd angen, ac unrhyw ganllawiau neu godau ymarfer perthnasol²⁵.
- 4.27 Pan fydd cynnig yn syml, gydag offer safonol, fel un cabinet neu bolyn, gall y Gweithredwr anfon cytundeb ysgrifenedig syml i'r Tirfeddiannwr gyda chais i'w lofnodi a'i ddychwelyd. Pan fydd y cynnig yn llai syml, efallai y bydd y Gweithredwr yn anfon crynodeb o delerau'r cytundeb arfaethedig i'r Tirfeddiannwr eu hystyried a'u hadolygu. Mewn achosion o'r fath gall y dogfennau gynnwys, er enghraifft, cynllun yn dangos y dyluniad arfaethedig, llwybrau mynediad a llwybrau ceblau; cyfrifiadau llwytho ar gyfer safleoedd ar ben toeau; a chynigion ar gyfer darparu trydan.
- 4.28 Cyn cwblhau unrhyw gytundeb, dylai'r Tirfeddiannwr a'r Gweithredwr gytuno ar drefniadau mynediad ar gyfer adeiladu, gosod, gwaith cynnal a chadw dilynol a fydd wedi'i gynllunio, uwchraddio a chynnal a chadw brys i drwsio namau sy'n effeithio ar y gwasanaeth. Mae'r pynciau sydd i'w trafod yn y cytundebau mynediad wedi cael eu gosod yn **Atodiad B**.
- 4.29 Er bod y Cod Cyfathrebiadau Electronig yn rhoi mecanwaith i'r llys orfodi telerau meddiannu ar y Tirfeddiannwr a'r Gweithredwr, dylai'r partion wneud pob ymdrech i ddod i gytundeb gwirfoddol yn gyntaf.
- 4.30 Er y dylid disgwyl i rai cytundebau gael eu cwblhau cyn pen ychydig wythnosau, ac efallai y byddai rhai achosion syml hyd yn oed yn cael eu llofnodi ar y safle ar y cam arolygu, efallai y bydd cytundebau ar gyfer trefniadau mwy neu fwy cymhleth yn cymryd mwy o amser, ond ym mhob achos dylai'r partion geisio ymateb yn ddiymdroi i ohebiaeth gan yr ochr arall a cheisio cwblhau'r broses mor gyflym ag sy'n bosibl.
- 4.31 Os na fydd y partion yn cytuno ar delerau cyn pen cyfnod rhesymol, mae'r Cod Cyfathrebiadau Electronig yn darparu ar gyfer proses lle gall llys orfodi telerau meddiannaeth a/neu gyflwyno hawliau cod yn unol â pharagraff 19 y Cod Cyfathrebiadau Electronig. Ond mae'n rhaid pwysleisio mai un o brif ddibenion y Cod Ymarfer hwn ydy sefydlu proses wirfoddol, sy'n osgoi gorfod mynd i'r llys.

Cam 3: Y cam gosod

- 4.32 Pan fydd y Gweithredwr yn gweithio ar eiddo Tirfeddiannwr bydd yn ceisio creu cyn lleied â phosibl o amhariad ac anhwylystod. Dylai'r gweithredwr roi gwybod i'r Tirfeddiannwr am y canlynol:
- Manylion cyswllt ar gyfer y Gweithredwr, enw'r contractwr sy'n rheoli'r cynllun a'r sawl y gall y Tirfeddiannwr ddyrchafu materion sy'n peri pryder iddynt
 - Lluniadau sy'n dangos manylion yr offer sydd i'w gosod gyda disgrifiad ysgrifenedig o'r gwaith

²⁵ Er enghraifft: Cod Ymarfer Gorau ar Ddatblygu Rhwydweithiau Symudol yn Lloegr,

<http://www.mobileuk.org/codes-of-practice.html>

- Unrhyw ofyniad i allu cael mynediad ar draws tir arall (os yw'n perthyn i'r Tirfeddiannwr neu i drydydd parti)
 - Amseriad y gwaith, gan gynnwys amcan o'r dyddiad dechrau a hyd y gwaith
 - Amseroedd gweithio
 - Gweithdrefnau ar gyfer diogelu eiddo'r Tirfeddiannwr (ee da byw)
- 4.33 Pan fo'n berthnasol, bydd y Gweithredwr yn cadw cofnod ffotograffig wedi'i ddyddio o gyflwr y safle cyn dechrau'r gwaith ac ar ôl cwblhau'r gwaith

Cymdogion a meddianwyr eraill

- 4.34 Efallai bydd angen ymgynghori ag unigolion sydd â diddordeb mewn tir sydd wrth ymyl safle arfaethedig yn unol â rheoliadau cenedlaethol, canllawiau ac unrhyw Godau Ymarfer perthnasol²⁶.
- 4.35 Rhaid i weithredwyr hefyd drafod trefniadau mynediad â'r perchennog a/neu feddiannydd y tir cyffiniol, lle mae angen defnyddio'r tir hwnnw ar gyfer adeiladu a/neu gynnal y safle (gan ddefnyddio pwerau'r Cod Cyfathrebiadau Electronig, os na ellir dod i gytundeb).
- 4.36 Bydd unrhyw ofynion ar gyfer mynediad gan y Gweithredwr yng nghyswllt tir cyffiniol o'r fath yn trafod y materion sydd yn Atodiad B (hy yr un ystyriaethau ag ar gyfer y Tirfeddiannwr, pan fo'n berthnasol).

Mynediad parhaus i weithredu, cynnal a chadw ac uwchraddio safleoedd ac offer cyfredol

- 4.37 Mae pob safle cyfathrebiadau electronig yn rhan hollbwysig o rwydwaith ehangach. Mae safleoedd unigol yn darparu darpariaeth, capasiti a swyddogaethau i'r rhwydwaith ehangach hwnnw ac mae'n rhaid i Weithredwyr gael mynediad i'w hoffer er mwyn gallu cynnal gwasanaeth o ansawdd i'w cwsmeriaid. Yn achos namau sy'n effeithio ar wasanaeth, bydd yn rhaid cael mynediad cyn gynted ag sy'n bosibl.
- 4.38 Fel y nodir yng Nghyfnod Ymgynghori Cam 2, rhaid i unrhyw gytundebau rhwng y Gweithredwr a'r Tirfeddiannwr nodi sut bydd modd cael mynediad i'r safleoedd ar gyfer anghenion gweithredol. Mae'r materion sydd i'w trafod yng nghyswllt mynediad wedi cael eu nodi yn **Atodiad B**. Pan fydd angen, dylai Gweithredwyr a Thirfeddiannwyr gwrdd, cyn ymrwymo i gontract, er mwyn trafod y prosesau a'r llwybrau mynediad sy'n cael eu ffafrio a chytuno ar ddisgwyliadau clir ynghylch beth fydd yn digwydd pan fydd eisiau mynediad.

²⁶ Er enghraifft: Y Cod Ymarfer ar leoli cabinetau a pholion a'r Cod Ymarfer Gorau ar Ddatblygu Rhwydweithiau Symudol yn Lloegr, <http://www.mobileuk.org/codes-of-practice.html>

- 4.39 Yn achos argyfyngau, er enghraifft pan fydd nam sy'n effeithio ar y gwasanaeth neu nid ydy'r Offer yn gweithio, mae angen i Weithredwyr allu cyrraedd yr Offer yn ddiymdroi, er mwyn datrys y broblem a chynnal y gwasanaeth i'r cwsmeriaid, gan gynnwys y gallu i ffonio'r gwasanaethau brys. Pan fo'n bosibl, bydd Gweithredwyr yn cysylltu â'r Tirfeddiannwr i egluro pryd a pham mae angen mynediad a bydd Tirfeddiannwyr yn ceisio cydweithredu ag adfer y gwasanaeth.
- 4.40 Dylid trefnu mynediad ar gyfer gwaith cynnal a chadw arferol er mwyn i'r Gweithredwyr roi digon o rybudd yn unol â'r trefniadau mynediad y cytunwyd arnynt gyda'r Tirfeddiannwr.
- 4.41 Pan fydd Gweithredwyr yn rhannu safle yn ffisegol, ac nad oes angen unrhyw gydsyniad ychwanegol o dan y Cod Cyfathrebiadau Electronig, bydd y Gweithredwyr serch hynny yn rhoi gwybod i'r Tirfeddiannwyr am enw'r rhai eraill sy'n rhannu, er mwyn i'r Tirfeddiannwr, am resymau diogelwch, allu gwybod pwy sy'n meddiannu'r safle yn gyfreithlon.
- 4.42 Pan fydd angen mynediad i rannau eraill o'r tir sy'n berchen i'r Tirfeddiannwr, er enghraifft pan fydd eisiau ardal o dir er mwyn defnyddio craen neu graen casglu ffrwythau, dylai'r trefniadau mynediad drafod sefyllfaoedd o'r fath a sicrhau y bydd y Gweithredwr yn dychwelyd y tir i'r cyflwr roedd ynddo cyn defnyddio'r tir neu gael mynediad i'r tir.
- 4.43 Bydd Gweithredwyr yn ceisio sicrhau bod unrhyw un sy'n cael mynediad i safle ar eu rhan:
- Yn cario manylion adnabod a fydd yn cynnwys llun
 - Yn gallu egluro pam eu bod yno ac i bwy maen nhw'n gweithio
 - Yn gallu dweud wrth y Tirfeddiannwyr pwy ddylen nhw gysylltu â nhw yn y Gweithredwr i gael rhagor o wybodaeth neu i roi sylw ynghylch unrhyw ymweliad
- 4.44 Ar gais, bydd gweithredwyr yn darparu dilysiad ynghylch pa gontractwr oedd ar y safle ar unrhyw adeg benodol a chadarnhad ynghylch pam roedden nhw yno – ee l arolygu, cynnal a chadw, gwneud gwaith trwsio brys neu uwchraddio ac ati.
- 4.45 Bydd Gweithredwyr yn glynu wrth unrhyw ofynion cenedlaethol ar gyfer rheoli risgiau sy'n benodol i'r lleoliad. Gall hyn gynnwys clefydau hysbysadwy (fel Clwy'r Traed a'r Genau, Ffliw Adar ac ati). Ar gyfer safleoedd mewn lleoliadau sensitif, gall gynnwys trefnu mynediad gyda chwmni i ddiogelu ardaloedd. Bydd Gweithredwyr yn cydymffurfio ag unrhyw weithdrefnau rhesymol a weithredir gan Dirfeddiannwyr ar gyfer y dibenion hyn. Cymaint ag y bo modd bydd Tirfeddiannwyr yn cadw'r gallu i Weithredwyr gael mynediad i'w heiddo, yn enwedig os bydd argyfwng gweithredol.

Datgomisiynu safleoedd nad oes mo'u hangen mwyach

- 4.46 Mae'r Cod Cyfathrebiadau Electronig yn darparu i Dirfeddiannwyr wneud cais i symud offer o'r safle, os nad yw'n cael ei ddefnyddio mwyach ac nad yw'n debyg y caiff ei ddefnyddio eto.
- 4.47 Fel egwyddor gyffredinol, bydd Gweithredwyr yn sicrhau bod safleoedd segur yn cael eu datgomisiynu cyn pen cyfnod rhesymol ar ôl rhoi'r gorau i'w defnyddio. Fodd bynnag, os yw'r offer o dan y ddaear (fel pibellau ar gyfer ceblau), efallai y bydd hi'n

well i'r partiön os caiff yr Offer ei ddiogelu a'i adael yn ei leoliad. Dylai Gweithredwyr drafod cynigion datgomisiynu â Thirfeddiannwyr er mwyn cytuno ar y ffordd ymlaen.

- 4.48 Pan fydd cais gan Dirfeddiannwr i dynnu offer nad yw'n cael ei ddefnyddio mwyach, bydd y Gweithredwr, cyn pen cyfnod rhesymol, yn ymateb, naill ai drwy egluro y bydd dal angen yr offer neu drwy osod dyddiad pan fydd yr offer yn cael ei wneud yn ddiogel neu'n cael ei gymryd oddi yno, ac y caiff y safle ei ddychwelyd i'w ddefnydd gwreiddiol, os yw hynny'n berthnasol.

Arall

Adnewyddu safleoedd presennol a'r Cod Cyfathrebiadau Electronig

- 4.49 Pan fydd cytundeb safle presennol ar fin dod i ben, bydd y partiön yn ceisio cytuno ar delerau er mwyn parhau i ddefnyddio'r safle cyn i'r cytundeb presennol ddod i ben.
- 4.50 Dylai partiön ddechrau trafodaethau ddigon ymlaen llaw cyn i'r cytundeb presennol ddod i ben er mwyn rhoi digon o amser i gytuno ar delerau. Droeon, efallai na fydd angen newid y telerau presennol, ac felly ni fydd y cyfnod i gytuno ar delerau newydd yn hir.

Trwsio eiddo Tirfeddiannwr

- 4.51 O bryd i'w gilydd bydd yn rhaid i Dirfeddiannwyr wneud gwaith trwsio hanfodol i'w heiddo ac efallai y bydd angen symud yr offer dros dro er mwyn gallu gwneud y gwaith hwnnw. Mewn amgylchiadau o'r fath bydd y partiön yn trafod mewn ewyllys da i allu cwblhau'r gwaith, er mwyn amharu cyn lleied â phosibl ar wasanaethau cyfathrebu cyhoeddus.

Ailddatblygu gan y Tirfeddiannwr

- 4.52 Mae'r Cod Cyfathrebiadau Electronig yn darparu i Dirfeddiannwyr ailddatblygu eu heiddo (Paragraffau 30-31), gan fynnu y dylai'r Tirfeddiannwr roi 18 mis o rybudd o'r bwriad i ailddatblygu. Bwriedir i baragraffau 30-31 o'r Cod Cyfathrebiadau Electronig gael eu defnyddio gan Dirfeddiannwyr sydd wir yn bwriadu ailddatblygu eu heiddo (a bod tystiolaeth o hynny, drwy gydsyniad cynllunio perthnasol er enghraifft). Caiff Tirfeddiannwyr eu hannog i roi cymaint o rybudd ymlaen llaw â phosibl i Weithredwyr er mwyn gallu caniatáu digon o amser i'r Gweithredwr ddod o hyd i safleoedd addas eraill.
- 4.53 Caiff Gweithredwyr wneud cais i weld tystiolaeth o'r cynlluniau i ailddatblygu ond dylent weithredu'n rhesymol bob amser, er mwyn peidio â llesteirio cynnydd y Tirfeddiannwr. Er enghraifft, dylai Gweithredwyr weithredu'n amserol er mwyn dod o hyd i safleoedd newydd addas gyda'r prif nod o gynnal gwasanaethau cyfathrebu yn yr ardal leol a gan amharu cyn lleied â phosibl ar ddefnyddwyr.
- 4.54 Pan fydd Tirfeddiannwr yn mynd ar drywydd cyfle i ailddatblygu, dylid bob amser ystyried ymgorffori'r offer cyfathrebu yn eiddo'r Tirfeddiannwr os ydy hyn yn ddewis ymarferol.

Gweithdrefnau dyrchafu

- 4.55 Mae'r Cod Cyfathrebiadau Electronig yn gosod gweithdrefnau ffurfiol i ddatrys anghydfod.
- 4.56 Serch hynny, pan fydd anghydfod yn codi, dylai'r partion geisio eu datrys yn anffurfiol (hy heb fynd i ymgyfreitha) yn y lle cyntaf. Serch hynny, efallai y bydd adegau pan fydd yn rhaid i un parti neu'r llall gyflwyno hysbysiadau cyfreithiol, ar yr un pryd â cheisio mynd ar drywydd ateb anffurfiol.
- 4.57 Er mwyn hwyluso'r broses hon, bydd Gweithredwyr a Thirfeddianwyr yn darparu i'w gilydd a, phan fo'n berthnasol, y rheini sydd â budd mewn tir cyffiniol, fanylion cyswllt ar gyfer yr unigolyn perthnasol, er mwyn codi materion sy'n destun anghydfod. Gall y materion hynny gynnwys methu â dilyn y Cod Ymarfer.

Atodiad 5

Atodlenni i'r Cod Ymarfer

Atodlen A – Cais am fynediad ar gyfer arolwg

4.58 Dylai Gweithredwr sydd eisiau cael mynediad i dir er mwyn arolygu pa mor addas ydyw i osod offer cyfathrebiadau electronig gysylltu â darpar dirfeddiannwr a darparu'r wybodaeth ganlynol:

- Pwy ydy'r gweithredwr, pwyntiau cyswllt ar gyfer y gweithredwr ac unrhyw asiant
- Meysydd chwilio er mwyn gosod offer posibl
- Gofynion ar gyfer arolwg cychwynnol:
 - Pa fynediad sydd ei angen?
 - Gyda pha offer?
 - Dros pa gyfnod?
- Disgrifiad o'r offer tebygol ac unrhyw gysylltiadau ategol sydd eu hangen, er enghraifft cysylltiadau pŵer
- Cadarnhad ynghylch a fyddai angen cydsyniad cynllunio
- Effaith debygol offer ar y safle a/neu ar dir cyffiniol, er enghraifft gofynion llinell welediad, ymyriant posibl gydag offer sydd eisoes yno ac ati.
- Math o gytundeb (ee dros dro neu dymor hir)
- Yr amserlen arfaethedig ar gyfer adeiladu/gosod
- Gall y llythyr hefyd gynnwys gwybodaeth ynghylch pa gamau gallai Gweithredwr eu cymryd, os bydd y Tirfeddiannwr yn methu ymateb

4.59 Mewn rhai amgylchiadau, pan fydd Gweithredwr yn arolygu eiddo cymdogol, a'i bod yn dod yn amlwg y byddai'r Offer yn well ar eiddo cyffiniol, efallai y bydd hi'n bosibl cytuno â'r Tirfeddiannwr i gwblhau arolwg ar unwaith ac wedyn dilyn hynny'n ysgrifenedig ar ôl i'r arolwg gael ei gwblhau.

Atodlen B – Pwyntiau allweddol ar gyfer trefniadau mynediad

4.60 Dylai trefniadau mynediad drafod y pwyntiau canlynol, pan fo'n briodol²⁷:

²⁷ Nodyn: ar gyfer gosod nifer o linellau sefydlog, bydd hyn yn cael ei drafod yn fforddfraint safonol Gweithredwr

- Manylion cyswllt (gan gynnwys mewn argyfwng) ar gyfer:
 - Y Gweithredwr
 - Y Tirfeddiannwr
 - Unrhyw feddiannwr o'r tir, os yw'n wahanol i'r Tirfeddiannwr
- Disgrifiad o'r trefniadau mynediad (gan gynnwys unrhyw ffactorau y tu allan i oriau swyddfa neu ar benwythnos (ee ar gyfer eiddo busnes sydd ar gau dros y penwythnos)
- Adennill costau rhesymol (ee os oes angen cael goruchwyliwr mewn lleoliadau sensitif)
- Ymrwymiad gan y Gweithredwr i drwsio unrhyw ddifrod i eiddo'r Tirfeddiannwr
- Hysbysu'r Gweithredwr ynghylch unrhyw ystyriaethau penodol ar y safle, er enghraifft:
 - Gofynion ar gyfer goruchwyliaeth mewn safleoedd sensitif neu beryglus
 - Trefniadau bio-ddiogelwch
 - Unrhyw gynlluniau amgylcheddol perthnasol (lle cymerwyd gofal i beidio â thorri rheolau'r cynllun)
- Parcio a llwybrau mynediad ar draws tir neu drwy adeiladau ar gyfer personél adeiladu a chynnal a chadw, cerbydau, cyfarpar ac offer.
- Glynu wrth y Cod Cefn Gwlad, pan fo hynny'n berthnasol

Atodiad 6

Telerau Safonol Drafft

[Enw'r Grantwr]

a

[Enw'r Gweithredwr]

CYTUNDEB COD

sy'n ymwneud â gosod offer cyfathrebiadau electronig yn
[cyfeiriad]

Caiff y Cytundeb hwn ei wneud ar **[Rhowch y dyddiad]** rhwng:

- (1) **[Rhowch yr enw]**, y mae eu **[cyfeiriad/swyddfa gofrestrdig]** yn **[Rhowch y cyfeiriad]** (y “Grantwr”); a
- (2) **[Rhowch yr enw]**, y mae eu swyddfa gofrestrdig yn **[Rhowch y cyfeiriad]** (y “Gweithredwr”).

CRONICLIADAU

- (A) Mae'r Cod (fel sy'n cael ei ddiffinio yng nghymal 1) yn hwyluso defnyddio offer cyfathrebiadau electronig gan y rheini y caiff ei ddefnyddio yn eu hachos.
- (B) Mae'r Cod yn berthnasol i'r Gweithredwr yn rhinwedd cyfarwyddyd o dan adran 106 o Ddeddf Cyfathrebiadau 2003.
- (C) Y Grantwr ydy meddiannwr tir penodol.
- (D) Mae'r Cytundeb hwn yn gytundeb yn unol â pharagraff 9 o Ran 2 o'r Cod. Mae'n gosod ar ba sail contractiol y mae'r Grantwr yn barod i drosglwyddo hawliau cod mewn perthynas â'r tir hwnnw i'r Gweithredwr.

CYTUNIR FEL A GANLYN:

1. DIFFINIADAU A DEHONGLI

1.1. Yn y Cytundeb hwn, bydd gan y geiriau canlynol yr ystyron canlynol:

“**Deddf**” mae hyn yn golygu Deddf Cyfathrebiadau 2003;

“**Offer**” mae hyn yn golygu'r Offer Cyfathrebiadau Electronig sy'n cael eu disgrifio yn Atodlen 1, a phennir ei fod yn cynnwys unrhyw ddiwygiadau neu uwchraddio yn y dyfodol i'r Offer a fydd yn cael ei wneud yn unol â'r Cytundeb hwn a/neu yn unol â'r Cod;

“**Cod**” mae'n golygu'r cod cyfathrebiadau electronig fel sy'n cael ei bennu yn Atodlen 3A i'r Ddeddf;

“**Hawliau Cod**” mae hyn yn golygu'r hawliau sydd yng nghymal **[2.1]**;

“**Offer Cyfathrebiadau Electronig**” mae hyn yn golygu'r ystyr a briodolir i'r term hwnnw ym mharagraff 5 y Cod;

“**Tir**” mae'n golygu'r tir yn **[rhowch y cyfeiriad]** **[ac sydd wedi'i farcio ar y cynllun sydd wedi'i atodi yn Atodlen 2]**;

“**Gweithredwr**” mae hyn yn golygu unrhyw un y mae'r Cod yn berthnasol iddynt drwy gyfarwyddyd o dan adran 106 o'r Ddeddf; a

“**Tymor**” mae hyn yn golygu'r cyfnod pan fydd y Cytundeb hwn mewn grym.

1.2 Yn y Cytundeb hwn, oni nodi yn glir fel arall:

- (a) mae cyfeiriad at y naill barti neu'r llall yn cynnwys cyflogeion, asiantau ac is-gontractwyr y parti hwnnw;
- (b) mae cyfeiriad at unrhyw statud neu ddarpariaeth statudol yn cynnwys y statud neu'r ddarpariaeth statudol hynny fel y mae wedi'i ddiwygio, ei ail-ddeddfu, ei gyfuno neu ei ddisodli;
- (c) mae cyfeiriad at gymal neu atodlen yn cyfeirio at y cymal neu'r atodlen berthnasol yn y Cytundeb hwn;
- (d) mae geiriau unigol yn cyfeirio at y lluosog ac fel arall.

2. HAWLIAU'R GWEITHREDWR

2.1. Wrth ystyried y cyfamodau sydd yng nghymal [4] y Cytundeb hwn [a thalu'r swm a nodir yng nghymal [3]], drwy hyn mae'r Grantwr yn cytuno y bydd y Gweithredwr yn cael yr hawl dros y Tymor:

- (a) i osod yr Offer ar, o dan neu dros y Tir;
- (b) i gadw wedi'i osod yr Offer sydd ar, o dan neu dros y Tir;
- (c) i arolygu, cynnal a chadw, addasu, newid, trwsio, gweithredu neu (yn amodol ar gymal [2.3]) uwchraddio'r Offer sydd ar, o dan neu dros y Tir;
- (d) i wneud unrhyw waith ar y Tir ar gyfer neu mewn cysylltiad â gosod yr Offer ar, o dan neu dros y Tir [neu osod Offer Cyfathrebiadau Electronig yn rhywle arall];
- (e) i wneud unrhyw waith ar y Tir ar gyfer neu mewn cysylltiad â chynnal a chadw, addasu, newid, trwsio, gweithredu neu (yn amodol ar gymal [2.3]), uwchraddio'r Offer sydd ar, o dan neu dros y Tir [neu unrhyw Offer Cyfathrebiadau Electronig yn rhywle arall];
- (f) i fynd ar y Tir i arolygu, cynnal a chadw, addasu, newid, trwsio, gweithredu neu (yn amodol ar gymal [2.3]) uwchraddio'r Offer sydd ar, o dan neu dros y Tir [neu unrhyw Offer Cyfathrebiadau Electronig yn rhywle arall];
- (g) i gysylltu'r Offer i gyflenwad pŵer;

- (h) i ymyrryd â neu rwystro ffordd fynediad i neu o'r Tir (os ydy'r Offer ar, o dan neu dros y Tir ai peidio);
- (i) i docio neu dorri neu ofyn i rywun arall docio neu dorri unrhyw goeden neu lystyfiant sy'n ymyrryd â neu a allai ymyrryd ag [unrhyw Offer Cyfathrebiadau Electronig/yr Offer],

(“**Hawliau'r Cod**” gyda'i gilydd).

2.2. Yn amodol ar gymal [2.3], efallai y bydd y Gweithredwr hefyd eisïau rhannu defnydd o'r Offer â Gweithredwr arall, a gwneud unrhyw waith i'r Offer er mwyn galluogi'r rhannu hwnnw.

2.3. Caiff y Gweithredwr ond uwchraddio neu rannu'r Offer (ac ymarfer yr hawliau cysylltiedig sydd wedi'u nodi yng nghymalau [2.1(e), 2.1(f) a 2.2]) os:

- (a) na fydd unrhyw newidiadau i'r Offer o ganlyniad i'r uwchraddio neu'r rhannu yn cael unrhyw effaith negyddol, neu ddim mwy nag effaith negyddol finimal, ar ei ymddangosiad;
- (b) na fydd yr uwchraddio neu'r rhannu yn rhoi unrhyw faich ychwanegol ar y Grantwr, gan gynnwys:
 - (j) unrhyw beth sy'n cael effaith niweidiol ychwanegol ar fwynhad y Grantwr o'r Tir; neu
 - (ii) unrhyw beth sy'n achosi colled, difrod neu gost ychwanegol i'r Grantwr.

2.4. Mae modd i'r hawl mynediad a nodir yng nghymal [2.1(f)] gael ei ymarfer gan y Gweithredwr gyda neu heb weithwyr, cerbydau (pan fo'n briodol), cyfarpar neu beiriannau.

3. [TÂL

Mae'r Gweithredwr yn cytuno y bydd yn talu i'r Grantwr, mewn perthynas â'r Cytundeb hwn, [*Rhowch y swm*] o bunnoedd (£[*Rhowch y swm*]) [*y flwyddyn / ar gyfer y Tymor*].]

4. RHWYMEDIGAETHAU'R GWEITHREDWR

4.1. Mae'r Gweithredwr yn cyfamodi gyda'r Grantwr y bydd yn:

- (a) ac eithrio mewn [*argyfwng*²⁸], yn rhoi i'r Grantwr dim llai na saith niwrnod o rybudd ysgrifenedig ymlaen llaw o'i fwriad i ddod ar y Tir;

²⁸ Efallai y bydd y partïon yn dymuno diffinio beth sydd yn “argyfwng”.

- (b) os bydd [argyfwng], yn ceisio cysylltu â'r Grantwr (a all fod yn gyfathrebu electronig neu ar lafar) cyn gynted ag sy'n rhesymol ymarferol er mwyn rhoi gwybod iddo:
- i) bod y Gweithredwr yn bwriadu dod ar y Tir, neu ei fod wedi dod ar y Tir;
 - ii) pam bod angen mynediad; a
 - iii) pryd y digwyddodd y mynediad neu pryd y mae bwriad iddo ddigwydd.
- (c) fel arall ymarfer ei hawl i ddod ar y tir yn unol â'r trefniadau mynediad sydd wedi'u nodi yn Atodlen [3] y Cytundeb hwn;
- (d) ymarfer ei Hawliau Cod mewn ffordd briodol a gweithgar gan gymryd pob gofal rhesymol er mwyn osgoi rhwystrau neu ymyrraeth â'r defnydd o'r Tir neu unrhyw dir cyffiniol ac i achosi cyn lleied o ddifrod, niwsans ac anhwylystod ag sy'n bosibl i'r Grantwr ac unrhyw feddianwyr tir cyffiniol;
- (e) gwneud cyn lleied o ddifrod ffisegol ag sy'n rhesymol ymarferol wrth ymarfer ei Hawliau Cod a, cyn gynted ag sy'n rhesymol ymarferol, trwsio i foddhad rhesymol y Grantwr yr holl ddifrod sydd wedi cael ei achosi i'r Tir neu i unrhyw dir cyffiniol;
- (f) ymarfer ei Hawliau Cod a defnyddio a gweithredu'r Offer yn unol â'r holl ddeddfwriaeth berthnasol;
- (g) cael a chynnal unrhyw gysyniadau angenrheidiol ar gyfer gosod a chadw'r Offer, darparu tystiolaeth o unrhyw gydsyniadau o'r fath ar gais y Grantwr a chynnal yr holl waith yn unol â chysyniadau o'r fath;
- (h) cynnal a chadw'r Offer mewn cyflwr da ac fel na fydd yn achosi perygl i'r Grantwr, ei gyflogeion neu ei eiddo, na meddianwyr unrhyw dir cyffiniol;
- (i) talu yr holl ardrethi a ffioedd eraill y gellir eu codi mewn perthynas â'r Offer neu ymarfer ei Hawliau Cod; a
- (j) cynnal yswiriant gyda chwmni yswiriant parchus yn erbyn unrhyw atebolrwydd i'r cyhoedd neu unrhyw atebolrwydd trydydd parti arall yng nghyswllt unrhyw anaf, marwolaeth, colled neu ddifrod i unrhyw unigolyn neu eiddo sy'n perthyn i unrhyw drydydd parti sy'n deillio o'r Gweithredwr yn ymarfer yr hawliau a roddir o dan y Cytundeb hwn, a rhoi manylion yswiriant o'r fath a thystiolaeth ei fod mewn grym i'r Grantwr ar gais rhesymol.

5. RHWYMEDIGAETHAU'R GRANTWR

5.1. Mae'r Grantwr yn cytuno y bydd yn:

- (a) peidio ag adeiladu na gosod unrhyw beth ar y Tir, na chaniatáu i unrhyw drydydd parti wneud hynny, sy'n ei gwneud hi'n anoddach i'r Gweithredwr

gael mynediad at yr Offer, neu a allai ymyrryd â'r Offer, heb ganiatâd ysgrifenedig penodol y Gweithredwr (na ddylid ei ddal yn ôl yn afresymol);

- (b) peidio ag achosi difrod i'r Offer nac yn ymyrryd â'r Offer neu ei weithrediad a pheidio â chaniatáu i unrhyw drydydd parti wneud hynny; a
- (c) rhoi rhybudd ysgrifenedig ymlaen llaw rhesymol i'r Gweithredwr am unrhyw gamau y mae'n bwriadu eu cymryd a fyddai neu a allai effeithio ar weithrediad parhaus yr Offer, gan gynnwys (ond nid yn unig hyn) achosi ymyrraeth i unrhyw gyflenwad pŵer y mae'r Offer wedi'i gysylltu iddo.

6. PERCHNOGAETH O'R OFFER

Bydd yr Offer yn aros yn eiddo absoliwt i'r Gweithredwr bob amser.

7. CYFFREDINOL

- 7.1. Cytunir na fydd perthynas o landlord a thenant yn cael ei chreu gan y Cytundeb hwn rhwng y Grantwr a'r Gweithredwr.
- 7.2. Ni fydd y Cytundeb hwn yn berthnasol i unrhyw ran o'r Tir sydd wedi cael ei fabwysiadu neu (o ddyddiad mabwysiadu o'r fath) sydd yn cael ei fabwysiadu fel priffordd sy'n cael ei chynnal drwy'r pwrs cyhoeddus.
- 7.3. Os bydd unrhyw anghysondeb rhwng y Cytundeb hwn ac unrhyw ddarpariaeth yn y Cod, y Cod fydd drechaf.

8. INDEMNIAID AR GYFER HAWLIADAU TRYDYDD PARTI

8.1. Bydd y Gweithredwr yn indemnio'r Grantwr hyd at uchafswm o [£1 miliwn / £3 miliwn / £5 miliwn] [y flwyddyn / gyda'i gilydd mewn perthynas â hawliad neu gyfres o hawliadau sy'n deillio o'r un digwyddiad] yn erbyn unrhyw achos, hawliad, cost neu ofynion trydydd parti ("Hawliad Trydydd Parti") sy'n codi o ganlyniad i unrhyw weithred neu esgeulustod gan y Gweithredwr wrth ymarfer ei hawliau o dan y Cytundeb hwn, ac eithrio i'r graddau y mae gweithred neu esgeulustod gan y Grantwr wedi achosi neu wedi cyfrannu at unrhyw Hawliad Trydydd Parti o'r Fath ac ar yr amod:

- (a) y bydd y Grantwr cyn gynted ag sy'n rhesymol ymarferol yn rhoi hysbysiad ysgrifenedig i'r Gweithredwr ynghylch unrhyw Hawliad Trydydd Parti sydd wedi'i ddwyn, ei wneud neu ei fygwth yn erbyn y Grantwr;
- (b) na fydd y Grantwr yn cyfaddawdu nac yn setlo unrhyw Hawliad Trydydd Parti o'r fath heb ganiatâd ysgrifenedig penodol y Gweithredwr (na fydd yn cael ei ddal yn ôl na'i ohirio'n afresymol);
- (c) Bydd y Grantwr yn caniatáu i'r Gweithredwr amddiffyn unrhyw Hawliad Trydydd Parti yn enw'r Grantwr a hynny ar gost i'r Gweithredwr.

9. CYFYNGU AR ATEBOLRWYDD

9.1. Nid oes dim byd yn y Cytundeb hwn yn cyfyngu ar nac yn eithrio atebolrwydd y naill barti na'r llall:

- (a) am farwolaeth neu anaf personol sy'n deillio o'i esgeulustod;
- (b) am unrhyw ddifrod neu atebolrwydd a ddaw o ganlyniad i dwyll neu gamddechongli twyllodrus gan y parti hwnnw; neu
- (c) pan neu i'r graddau y mae wedi'i wahardd gan gyfraith fel arall.

9.2. Yn amodol ar gymal [9.1], bydd atebolrwydd y Gweithredwr o dan y Cytundeb hwn i'r Grantwr wedi'i gyfyngu i [Rhowch y swm] o bunnoedd (£[Rhowch y swm]) [y flwyddyn/gyda'i gilydd]. Ni fydd y cyfyngiad hwn ar atebolrwydd yn berthnasol i'r indemniad a roddir o dan gymal [8.1].

9.3. Yn amodol ar gymal [9.1], bydd atebolrwydd y Grantwr o dan y Cytundeb hwn i'r Gweithredwr wedi'i gyfyngu i [Rhowch y swm] o bunnoedd (£[Rhowch y swm]) [y flwyddyn/gyda'i gilydd mewn perthynas â hawliad neu gyfres o hawliadau sy'n deillio o'r un digwyddiad].

10. TERFYNU

10.1. Caiff y Grantwr derfynu'r Cytundeb hwn²⁹ drwy roi [tri deg (30)] diwrnod o rybudd yn ysgrifenedig i'r Gweithredwr os:

- (a) bydd y Gweithredwr wedi torri unrhyw un o'i rwymedigaethau o dan y Cytundeb hwn mewn ffordd [faterol/sylweddol] ac:
 - i) nid oes modd gwneud iawn am dorri'r rhwymedigaeth; neu
 - ii) mae'r Gweithredwr wedi methu gwneud iawn am dorri'r rhwymedigaeth cyn pen [tri deg (30) diwrnod] ar ôl i'r Grantwr roi gwybod i'r Gweithredwr am dorri'r rhwymedigaeth;
- (b) bydd y Gweithredwr wedi gohirio'n gyson gwneud taliadau sy'n ddyledus i'r Grantwr o dan delerau'r Cytundeb hwn;
- (c) bydd y Grantwr yn bwriadu ailddatblygu rhan neu'r cyfan o'r Tir neu unrhyw dir cyfagos, ac ni allai wneud hynny'n rhesymol oni bai fod y Cytundeb hwn yn dod i ben; neu

²⁹ Cofiwch, os bydd y Grantwr yn ymarfer unrhyw un o'r hawliau terfynu hyn, y bydd y cytundeb serch hynny yn parhau o dan baragraff 29 o'r Cod, oni bai fod y Grantwr hefyd yn rhoi 18 mis o rybudd i derfynu o dan baragraff 30 o'r Cod.

(d) y ddau:

- i) nad oes modd gwneud iawn digonol drwy arian am y niwed sy'n cael ei achosi i'r Grantwr drwy barhau â'r Cytundeb hwn; ac
- ii) nad yw'r budd cyhoeddus sy'n debyg o ddeillio o barhau â'r Cytundeb yn drech na'r niwed i'r Grantwr.

10.3 Caiff y Gweithredwr derfynu'r Cytundeb hwn drwy roi [x diwrnod / mis] o rybudd yn ysgrifenedig i'r Grantwr:

10.4 Wrth derfynu'r Cytundeb hwn (ac eithrio pan fydd y Cytundeb yn parhau yn unol â pharagraff 29(2) o'r Cod), bydd y Gweithredwr cyn gynted ag sy'n rhesymol ymarferol yn tynnu'r Offer oddi ar y Tir ac yn trwsio unrhyw ddifrod i'r Tir a achoswyd gan ei dynnu oddi yno i foddhad rhesymol y Grantwr.

11. ASEINIO

11.1. Caiff y Gweithredwr aseinio'r Cytundeb hwn i Weithredwr arall a fydd yn rhwym wrth ei delerau o'r dyddiad aseinio ymlaen.

11.2. Ni fydd y Gweithredwr yn atebol am dorri unrhyw un o amodau'r Cytundeb hwn a fydd yn digwydd ar neu ar ôl y dyddiad aseinio os:

- (a) ydy'r Grantwr yn cael rhybudd ysgrifenedig o enw aseina'i'r Gweithredwr a'i gyfeiriad at ddibenion cymal [15.2]; a
- (b) bod y rhybudd wedi cael ei roi cyn i'r amod gael ei dorri.

12. DEDDF CONTRACTAU (HAWLIAU TRYDYDD PARTÏON)

Oni nodir yn glir, ni fydd dim yn y Cytundeb hwn yn creu unrhyw hawliau o blaid unrhyw unigolyn yn unol â Deddf Contractau (Hawliau Trydydd Partïon) 1999.

13. Y CYTUNDEB CYFAN

Y Cytundeb hwn ydy'r cytundeb cyfan rhwng y Grantwr a'r Gweithredwr sy'n ymwneud â'r Offer yn y Tir.

14. HOLLTI

Bydd pob un o ddarpariaethau'r Cytundeb yma'n cael eu dehongli fel darpariaeth ar wahân ac os bydd un neu ragor ohonynt yn cael eu hystyried yn anghyfreithlon, yn annilys neu nad oes modd eu gorfodi yna pennir y bydd y ddarpariaeth honno'n cael ei dileu ond ni fydd hynny'n effeithio ar orfodadwyedd gweddill y Cytundeb hwn.

15. HYSBYSIADAU

15.1. Rhaid i unrhyw hysbysiad a roddir o dan y Cytundeb hwn fod yn ysgrifenedig a bod wedi'i lofnodi gan neu ar ran y sawl sy'n ei roi.

15.2. Pennir y bydd unrhyw hysbysiad o'r fath wedi cael ei roi os caiff ei ddanfôn yn bersonol neu os caiff ei anfon drwy bost cofrestredig, post wedi'i gofnodi neu bost dosbarth cyntaf, ac (ym mhob achos) ei fod wedi'i gyfeirio:

(a) at y Grantwr yn

[*rhowch y cyfeiriad*].
[wedi'i farcio at sylw [*rhowch yr enw*]]

(b) at y Gweithredwr yn:

[*rhowch y cyfeiriad*].
[wedi'i farcio at sylw [*rhowch yr enw*]]

15.3 Yn dilyn gweithredu'r Cytundeb hwn, caiff unrhyw barti ddiwygio ei gyfeiriad at ddibenion cymal [15.2] drwy roi hysbysiad i'r parti arall.

15.4 Mae pob parti yn cytuno y bydd y cyfeiriad a nodir yng nghymal [15.2] (fe y gellir ei ddiwygio wedyn o dan gymal [15.3]) hefyd yn cynrychioli eu cyfeiriad ar gyfer cyflwyno at ddibenion paragraff 87(2)(a) y Cod.

16. CYFLAFAREDDU

16.1. Os bydd unrhyw anghydfod yn codi mewn perthynas â'r cytundeb hwn, mae'r partiön yn cytuno i gymryd rhan mewn cyflafareddu mewn ewyllys da i setlo anghydfod o'r fath a bydd yn gwneud hynny'n unol â [Gweithdrefn Cyflafareddu Enghreifftiol y Ganolfan ar gyfer Datrys Anghydfodau yn Effeithiol ("CEDR")]. Er mwyn dechrau'r cyflafareddu rhaid i barti roi hysbysiad ysgrifenedig ("hysbysiad dull amgen o ddatrys anghydfod") i'r parti arall yn yr anghydfod, gan gyfeirio'r anghydfod at gyflafareddu. Dylid anfon copi o'r atgyfeiriad at [CEDR]. Oni chytunir yn wahanol rhwng y partiön, fel rheol bydd y cyflafareddwr yn cael ei enwebu gan [CEDR] cyn pen [14] diwrnod o rybudd o'r anghydfod.

16.2. Oni chytunir yn wahanol, bydd y cyflafareddu yn dechrau dim hwyrach na [28] diwrnod ar ôl dyddiad yr hysbysiad dull amgen o ddatrys anghydfod. [Ni fydd dechrau cyflafareddu yn rhwystro'r partiön rhag dechrau neu barhau ag achos llys]

16.3. [Ni chaiff unrhyw barti gychwyn unrhyw achos llys mewn perthynas ag unrhyw anghydfod sy'n deillio o'r cytundeb hwn nes iddo fod wedi ceisio setlo'r anghydfod drwy gyflafareddu ac naill ai mae'r cyflafareddu wedi dod i ben neu mae'r parti arall wedi methu cymryd rhan yn y cyflafareddu, ar yr amod nad yw'r hawl i gychwyn achos wedi'i niweidio oherwydd yr oedi].

17. AWDURDODAETH A CHYFRAITH SY'N LLYWODRAETHU

- 17.1. Caiff y cytundeb hwn ei lywodraethu gan, a bydd yn cael ei lunio yn unol â, chyfreithiau Cymru a Lloegr.
- 17.2. [Yn amodol ar gymal 16] mae'r partiön yn cytuno i gyflwyno i awdurdodaeth Iwyr [llysoedd Lloegr/siryf yn yr Alban] yng nghyswllt unrhyw anghydfodau neu hawliau a fydd yn deillio o'r Cytundeb hwn.

Llofnodwyd ar gyfer ac ar ran [**Grantwr**] gan:

_____ Llofnod

_____ Enw

_____ Dyddiad

Llofnodwyd ar gyfer ac ar ran [**Gweithredwr**] gan:

_____ Llofnod

_____ Enw

_____ Dyddiad

**ATODLEN 1
YR OFFER**

[Rhowch ddisgrifiad o'r offer cyfathrebiadau electronig sydd i'w gosod]

[ATODLEN 2

Y TIR]

[Rhowch gynllun sy'n dangos lleoliad y Tir]

ATODLEN [3]

TREFNIADAU MYNEDIAD

[I'w cytuno rhwng y partïon – gweler Atodlen B o God Ymarfer y Cod Cyfathrebiadau Electronig]

Atodiad 7

Hysbysiadau TEMPLLED DRAFFT

STATUTORY NOTICE
OF THE ASSIGNMENT OF AN AGREEMENT UNDER THE ELECTRONIC
COMMUNICATIONS CODE

Paragraph 15(5) of Part 3 of Schedule 3A of the Communications Act 2003

1. This is a statutory notice pursuant to paragraph 15(5) of the electronic communications code, set out in Schedule 3A to the Communications Act 2003 (the “**Code**”).¹
2. [*Insert name of Code operator*] (“**we**” or “**us**”) are currently party to an agreement under Part 2 of the Code with you, [*Insert name of site provider*] (the “**Agreement**”). Under the Agreement, you agreed to [*confer / be bound by*] a number of Code rights in order to facilitate the deployment by us of our [*electronic communications network / infrastructure system*]. These Code rights relate to land occupied by you at [*Insert address*].
3. The purpose of this notice is to inform you that, on [*Insert date*], we assigned the Agreement to [*Insert name of assignee*] (the “**Assignee**”). This means that we have transferred the benefit of the Code rights [*conferred by / binding on*] you under the Agreement to the Assignee, and the Assignee is (from the date of the assignment) bound by the terms of the Agreement.
4. Please note that, from the date on which this notice has been given to you, we will not be liable for any breach of a term of the Agreement (unless that breach took place before the date on which this notice was given to you). As a result, should you have any concerns in the future about the exercise of Code rights on your land, please contact the Assignee.
5. The contact address for the Assignee is [*Insert*].
6. If you have any questions about this notice, please do not hesitate to contact us via telephone (*Insert number*) or e-mail (*insert email address*).

[*Insert date of Notice*]

¹ A copy of the Communications Act 2003 is available online at www.legislation.gov.uk.

STATUTORY NOTICE
SEEKING AGREEMENT TO THE CONFERRAL OF RIGHTS UNDER THE ELECTRONIC COMMUNICATIONS CODE

Paragraph 19(2) **[and Paragraph 26(1)]** of Part 4 of Schedule 3A of the Communications Act 2003

IMPORTANT NOTICE
If you are willing to enter into a Code Agreement, you should respond within 28 days

1. This is a statutory notice pursuant to paragraph 19(2) **[and paragraph 26(1)]** of the electronic communications code, set out in Schedule 3A to the Communications Act 2003 (the “**Code**”).¹
2. This notice has been issued by **[Name of Code operator]** (“**we**” or “**us**”) to you, **[Insert name]**, because we would like to **[insert brief description of rights sought, e.g. to install apparatus and carry out related works]** on land occupied by you for the purposes of our **[electronic communications network and/or infrastructure system]**. We are seeking your agreement to confer these rights on us.

[OR - delete appropriate version of paragraph 2]

2. This notice has been issued by **[Name of Code operator]** (“**we**” or “**us**”) to you, **[Insert name]**, because we have certain rights to **[insert brief description of rights already exercisable by operator in relation to the land, e.g. keep apparatus installed on land in relation to which you have an interest]** for the purpose of our **[electronic communications network and/or infrastructure system]**. We are seeking your agreement to be bound by these rights.
3. **[We also require your agreement on a temporary basis in relation to electronic communications apparatus that is already installed on, under or over your land. This is in order to secure that the service provided by our [electronic communications network and/or infrastructure system] is maintained, and the apparatus is properly adjusted and kept in repair.]**

BACKGROUND

4. We provide an **[electronic communications network and/or infrastructure system]** in the United Kingdom. This is used in order to provide consumers with **[insert a brief description of the retail services which are dependent on this network and/or infrastructure system (e.g. fixed voice and broadband services)]**.
5. For this purpose, the Office of Communications (OFCOM) has given a direction applying the Code to us. The Code regulates the relationships between us and occupiers of land, thereby facilitating the deployment of electronic communications apparatus.

¹ A copy of the Communications Act 2003 is available online at www.legislation.gov.uk.

INTERPRETATION

6. In this notice:
 - a. “**Apparatus**” means the electronic communications apparatus described in Annex 1;
 - b. “**Land**” means the [land] at [Insert address / description of land, etc.]; and
 - c. words used but not defined in this Notice shall have the meaning ascribed to them in the Code.

DETAILS OF THE AGREEMENT WE ARE SEEKING

7. In this notice, we are seeking your agreement [to confer on us / to be bound by] the following rights:
 - a. [the right to install the Apparatus on, under or over the Land];
 - b. [the right to keep installed the Apparatus which is on, under or over the Land];
 - c. [the right to inspect, maintain, adjust, alter, repair, upgrade or operate the Apparatus which is on, under or over the Land];
 - d. [the right 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. [the right to carry out any works on the Land for or in connection with the maintenance, adjustment, alteration, repair, upgrading or operation of the Apparatus which is on, under or over the Land [or of electronic communications apparatus elsewhere]];
 - f. [the right to enter the Land to inspect, maintain, adjust, alter, repair, upgrade or operate the Apparatus which is on, under or over the Land [or any electronic communications apparatus elsewhere]];
 - g. [the right to connect the Apparatus to a power supply];
 - h. [the right 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)]; and
 - i. [the right to lop or cut back, or require another person to lop or cut back, any tree or other vegetation that interferes or will or may interfere with the Apparatus].

(together, the “**Code Rights**”).

8. In addition to the Code Rights, we are also seeking in this notice your agreement to the additional terms set out in Annex 2.
9. [As the electronic communications apparatus described in Annex 3 (the “**Existing Apparatus**”) is already installed on, under or over the Land, we are also seeking your agreement on a temporary basis to [confer/be bound by] the Code Rights set out at paragraph 7 above in respect of the Existing Apparatus (the “**Temporary Code Rights**”).]

CONSEQUENCES OF NOT REACHING AGREEMENT ON THE CODE RIGHTS

10. If either:
 - a. you do not, before the end of 28 days beginning with the day on which this notice is given, agree [to confer / to be bound by] the Code Rights; or
 - b. at any time after this notice is given, you give notice in writing to us that you do not agree [to confer / to be bound by] the Code Rights,

we will be entitled to apply to the court for an order under paragraph 19(4) of the Code.

11. For more information on the circumstances in which a court may impose such an order, and on the type of agreement that the court may impose, please see the supplementary information at the back of this notice.

[CONSEQUENCES OF NOT REACHING AGREEMENT ON THE TEMPORARY CODE RIGHTS]

12. If:

- a. you have the right to require the removal of the Existing Apparatus under paragraph 36 or 40(1) of the Code but we are not for the time being required to remove it; and
- b. either:
 - i. you do not, before the end of 28 days beginning with the day on which this notice is given, agree [*to confer / to be bound by*] the Temporary Code Rights; or
 - ii. at any time after this notice is given, you give notice in writing to us that you do not agree [*to confer / to be bound by*] the Temporary Code Rights,

we will have the right to apply to the courts for an order under paragraph 26(2) of the Code. Further detail on these orders is provided in the supplementary information at the back of this notice.

13. We consider that the agreement sought in this notice in relation to Temporary Code Rights is [*not*] a matter of urgency and therefore [*do not*] intend to apply for such an order prior to the end of the 28-day period referred to above.²

YOUR OPTIONS

14. In response to this notice, you may:
 - a. agree [*to confer the Code Rights on us / to be bound by the Code Rights*] [*and/or to confer the Temporary Code Rights on us / to be bound by the Temporary Code Rights*];
 - b. give notice to us that you do not agree [*to confer / to be bound by*] the Code Rights [*and/or the Temporary Code Rights*]; or
 - c. do nothing.
15. In deciding how to respond to this notice, you may wish to seek independent legal advice.
16. If you agree [*to confer the Code Rights on us / to be bound by the Code Rights*], we will send you an agreement reflecting the terms set out in this notice and ask you to sign it. Similarly, if you agree [*to confer the Temporary Code Rights on us / to be bound by the Temporary Code Rights*], we will also send you an agreement reflecting the terms set out in this notice and ask you to sign it. You would be entitled to seek independent legal advice in relation to [*this/these*] agreement[s].

² In limited circumstances, where the court agrees that it is a matter of urgency for an order to be made under paragraph 26(2) of the Code, it may make such an order even though the 28-day period referred to at paragraph [12]a. above has not elapsed (and paragraph [12]b. does not apply).

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17. Alternatively, and as explained at paragraph[s] 10 [and 12] above, if you do nothing or give notice to us that you do not agree [to confer / to be bound by] the Code rights [and Temporary Code Rights], we will be entitled to apply to the court for an order under paragraph 19(4) [and an order under paragraph 26(2)] of the Code.
18. Please submit any notification pursuant to paragraph 14a. or b. to us in writing as soon as possible and, in any event, before the end of 28 days beginning with the day on which this notice is given.
19. To be effective, such notification must be **delivered by hand** or sent by **registered post** or **recorded delivery** to the following address:
[Insert address details]
20. If you have any questions about this notice, please do not hesitate to contact us via telephone (*Insert number*) or e-mail (*insert email address*).

[INSERT DATE OF NOTICE]

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ANNEX 1
THE APPARATUS

[Insert a description of the electronic communications apparatus to which the notice relates]

DRAFT

ANNEX 2

ADDITIONAL TERMS OF AGREEMENT SOUGHT

[Insert description of the additional contractual terms sought or attach a draft agreement]

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ANNEX 3
THE EXISTING APPARATUS

[Insert a description of the electronic communications apparatus already installed on, under or over the Land and in respect of which you are seeking the Temporary Code Rights]

SUPPLEMENTARY INFORMATION FOR THE RECIPIENT OF THIS NOTICE

Orders under paragraph 19(4) of the Code

1. An order under paragraph 19(4) of the Code is an order which imposes on us and you an agreement. The effect of such an agreement would be *[to confer the Code Rights on us / provide for the Code Rights to bind you]*.
2. The court may only make an order under paragraph 19(4) of the Code if it thinks that **both** of the following conditions are met:
 - a. the prejudice caused to you by the order is capable of being adequately compensated by money; and
 - b. the public benefit likely to result from the making of the order (having regard to the public interest in access to a choice of high quality electronic communications services) outweighs the prejudice to you.
3. The court may **not** make such an order if it thinks that you intend to redevelop all or part of the land to which the Code Rights would relate, or any neighbouring land, and could not reasonably do so if the order were made.
4. Paragraphs 22 and 23 of the Code contain further detail about the terms of the agreement that the court may impose.
5. The court also has the power to order us to pay you compensation for any loss or damage that you have sustained or will sustain as a result of the exercise of the Code Rights. Paragraphs 24 and 83 of the Code contain further detail about this.

[Orders under paragraph 26(2) of the Code

6. *An order under paragraph 26(2) of the Code is an order which [confers on us/provides for you to be bound by] such temporary code rights as appear to the court reasonably necessary for securing the objective set out in paragraph 26(3) of the Code. This objective is that, until the proceedings under paragraph 19 and any proceedings under paragraph 39 of the Code are determined, the service provided by our network is maintained and the Existing Apparatus is properly adjusted and kept in repair.*
7. *Paragraphs 22 and 23 of the Code contain further detail about the terms of the temporary agreement that the court may impose.*
8. *The court also has the power to order us to pay you compensation for any loss or damage that you have sustained or will sustain as a result of the exercise of the Code Rights. Paragraphs 24 and 83 of the Code contain further detail about this.]*

STATUTORY NOTICE

SEEKING AGREEMENT TO THE CONFERRAL OF INTERIM RIGHTS UNDER THE ELECTRONIC COMMUNICATIONS CODE

Paragraph 25(3) of Part 4 of Schedule 3A of The Communications Act 2003

IMPORTANT NOTICE

If you are willing to enter into a Code Agreement, you should respond within 28 days

1. This is a statutory notice pursuant to paragraph 25(3) of the electronic communications code, set out in Schedule 3A to the Communications Act 2003 (the “**Code**”).¹
2. This notice has been issued by *[Name of Code operator]* (“**we**” or “**us**”) to you, *[Insert name]*, because we would like to *[insert brief description of rights sought, e.g. to install apparatus and carry out related works]* on land occupied by you for the purposes of our *[electronic communications network and/or infrastructure system]*. We are seeking your agreement, on an interim basis, to confer these rights on us.

[OR - delete appropriate version of paragraph 2]

2. This notice has been issued by *[Name of Code operator]* (“**we**” or “**us**”) to you, *[Insert name]*, because we have certain rights to *[insert brief description of rights already exercisable by operator in relation to the land, e.g. keep apparatus installed on land in relation to which you have an interest]* for the purpose of our *[electronic communications network and/or infrastructure system]*. We are seeking your agreement, on an interim basis, to be bound by these rights.

BACKGROUND

3. We provide an *[electronic communications network and/or infrastructure system]* in the United Kingdom. This is used in order to provide consumers with *[insert a brief description of the retail services which are dependent on this network and/or infrastructure system (e.g. fixed voice and broadband services)]*.
4. For this purpose, the Office of Communications (OFCOM) has given a direction applying the Code to us. The Code regulates the relationships between us and occupiers of land, thereby facilitating the deployment of electronic communications apparatus.

INTERPRETATION

5. In this notice:
 - a. “**Apparatus**” means the electronic communications apparatus described in Annex 1;
 - b. “**Land**” means the land at *[Insert address / description of land, etc.]*.

¹ A copy of the Communications Act 2003 is available online at www.legislation.gov.uk.

DETAILS OF THE AGREEMENT WE ARE SEEKING

6. In this notice, we are seeking your agreement to **[confer on us / be bound by]** the following rights, on the interim basis specified at paragraph 8 below:
- a. **[the right to install the Apparatus on, under or over the Land];**
 - b. **[the right to keep installed the Apparatus which is on, under or over the Land];**
 - c. **[the right to inspect, maintain, adjust, alter, repair, upgrade or operate the Apparatus which is on, under or over the Land];**
 - d. **[the right 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. **[the right to carry out any works on the Land for or in connection with the maintenance, adjustment, alteration, repair, upgrading or operation of the Apparatus which is on, under or over the Land [or of electronic communications apparatus elsewhere];**
 - f. **[the right to enter the Land to inspect, maintain, adjust, alter, repair, upgrade or operate the Apparatus which is on, under or over the Land [or any electronic communications apparatus elsewhere];**
 - g. **[the right to connect the Apparatus to a power supply];**
 - h. **[the right 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)];** and
 - i. **[the right to lop or cut back, or require another person to lop or cut back, any tree or other vegetation that interferes or will or may interfere with the Apparatus].**

(together, the “**Code Rights**”).

7. In addition to the Code Rights, we are also seeking in this notice your agreement to the additional terms set out in Annex 2.
8. We would like the Code Rights, and additional terms set out in Annex 2, to be exercisable **[for a period of [Insert period (e.g. 3 months)] / until the occurrence of [Insert details of a particular event (e.g. until redevelopment of alternative property)]].**

CONSEQUENCES OF NOT REACHING AGREEMENT

9. If either:
- a. you do not, before the end of 28 days beginning with the day on which this notice is given, agree **[to confer / to be bound by]** the Code Rights; or
 - b. at any time after this notice is given, you give notice in writing to us that you do not agree **[to confer / to be bound by]** the Code Rights,

we will be entitled to apply to the court for an order under paragraph 25 of the Code. Further detail on these orders is provided in the supplementary information at the back of this notice.

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10. We consider that the agreement sought in this notice is [not] a matter of urgency and therefore [do not] intend to apply for such an order prior to the end of the 28-day period referred to above.²

YOUR OPTIONS

11. In response to this notice, you may:
 - a. agree [to confer the Code Rights on us / to be bound by the Code Rights] on the interim basis requested in this notice;
 - b. give notice to us that you do not agree [to confer / to be bound by] the Code Rights on the interim basis requested in this notice; or
 - c. do nothing.
12. In deciding how to respond to this notice, you may wish to seek independent legal advice.
13. If you agree [to confer the Code Rights on us / to be bound by the Code Rights] on the interim basis requested in this notice, we will send you an agreement reflecting the terms set out in this notice and ask you to sign it. You would be entitled to seek independent legal advice in relation to this agreement.
14. Alternatively, and as explained at paragraph 9 above, if you do nothing or give notice to us that you do not agree [to confer / to be bound by] the Code rights on the interim basis requested in this notice, we will be entitled to apply to the court for an order under paragraph 25 of the Code.
15. Please submit any notification pursuant to paragraph 11a. or b. to us in writing as soon as possible and, in any event, before the end of 28 days beginning with the day on which this notice is given.
16. To be effective, such notification must be **delivered by hand** or sent by **registered post** or **recorded delivery** to the following address:
[Insert address details]
17. If you have any questions about this notice, please do not hesitate to contact us via telephone (*Insert number*) or e-mail (*insert email address*).

[INSERT DATE OF NOTICE]

² In limited circumstances, where the court agrees that it is a matter of urgency for an order to be made under paragraph 25 of the Code, it may make such an order even though the 28-day period referred to at paragraph 9a. above has not elapsed (and paragraph 9b. does not apply).

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ANNEX 1
THE APPARATUS

[Insert a description of the electronic communications apparatus to which the notice relates]

DRAFT

ANNEX 2

ADDITIONAL TERMS OF AGREEMENT SOUGHT

[Insert description of the additional contractual terms sought or attach a draft agreement]

SUPPLEMENTARY INFORMATION FOR THE RECIPIENT OF THIS NOTICE

Orders under paragraph 25(3) of the Code

1. An order under paragraph 25 of the Code is an order which imposes on us and you an agreement. The effect of such an agreement would be [*to confer the Code Rights on us / provide for the Code Rights to bind you*], on an *interim* basis.
2. Paragraphs 22 and 23 of the Code contain further detail about the terms of the agreement that the court may impose.
3. The court may only make an order if:
 - a. you have agreed with us to the making of the order and the terms of the agreement imposed by it; **or**
 - b. it thinks that there is a good arguable case that **both** of the following conditions are met:
 - i. the prejudice caused to you by the order is capable of being adequately compensated by money; and
 - ii. the public benefit likely to result from the making of the order (having regard to the public interest in access to a choice of high quality electronic communications services) outweighs the prejudice to you.
4. The court may **not** make such an order if it thinks that you intend to redevelop all or part of the land to which the Code Rights would relate, or any neighbouring land, and could not reasonably do so if the order were made.
5. The court also has the power to order us to pay you compensation for any loss or damage that you have sustained or will sustain as a result of the exercise of the Code Rights. Paragraphs 24 and 83 of the Code contain further detail about this.

STATUTORY NOTICE
BRINGING AN AGREEMENT UNDER THE ELECTRONIC
COMMUNICATIONS CODE TO AN END

Paragraph 30(1) of Part 5 of Schedule 3A of the Communications Act 2003

1. This is a statutory notice pursuant to paragraph 30(1) of the electronic communications code, set out in Schedule 3A to the Communications Act 2003 (the “Code”).¹ [see note (a)]
2. [I/We] [Insert name] [am/are] currently party to an agreement under Part 2 of the Code with you, [Name of Code operator] (the “Agreement”). Under the Agreement, [I/we] agreed to confer or be otherwise bound by a number of Code rights in order to facilitate the deployment by you of your electronic communications network and/or infrastructure system. These code rights relate to land occupied by [me/us] at [Insert address].
3. The purpose of this notice is to inform you that [I/we] would like to bring the Agreement to an end.
4. [I/we] propose that the Agreement be brought to an end on [Insert date]. [see note (b)]
5. [I/we] propose that the Agreement be brought to an end: [see note (c)]
 - a. [as a result of substantial breaches by you of your obligations under the Agreement;]
 - b. [because of persistent delays by you in making payments to [me/us] under the Agreement;]
 - c. [because [I/we] intend to redevelop all or part of the land to which the Agreement relates, or any neighbouring land, and could not reasonably do so unless the Agreement comes to an end;]
 - d. [because you are not entitled to the Agreement because the test under paragraph 20 of the Code for the imposition of the Agreement on [me/us] is not met.]
6. In accordance with paragraph 31 of the Code, the Agreement should come to an end on the terms set out in this notice unless:
 - a. within the period of three months beginning with the day on which the notice is given, you give [me/us] a counter-notice in accordance with paragraph 31(3) of the Code; and
 - b. within the period of three months beginning with the day on which the counter-notice is given, you apply to the court for an order under paragraph 33 of the Code.

[Insert date of Notice]

¹ A copy of the Communications Act 2003 is available online at www.legislation.gov.uk.

NOTES FOR COMPLETING THIS NOTICE

You may wish to obtain independent legal advice before completing this notice.

(a) This notice should be **delivered by hand** or sent by **registered post** or **recorded delivery** to the operator at:

- the address for service that the operator has given to you for the purposes of the Code; or
- if no such address has been given to you, at the address given by section 394 of the Communications Act 2003 (available online at www.legislation.gov.uk).

(b) Paragraph 30(3) of the Code provides that the date on which the Agreement is proposed to come to an end must fall:

- after the end of the period of 18 months beginning with the day on which this notice is given to the operator; **and**
- after the time at which, apart from paragraph 29 of the Code, the code right(s) to which the Agreement relates would have ceased to be exercisable or to bind you or at a time when, apart from that paragraph, the Agreement could have been brought to an end by you.

For the purposes of the first bullet point, the period of 18 months should not be calculated from the date of this notice, but from the date on which it is **given** to the operator. If the notice is sent by post, it will be deemed to have been given to the operator at the time at which it would be delivered in the ordinary course of post.

In accordance with the second bullet point, one of the following conditions must apply on the date on which you propose the Agreement should come to an end: (i) the code right(s) to which the Agreement relates are no longer exercisable or no longer bind you (e.g. because the term of the Agreement has expired) **or** (ii) you are able to bring the Agreement to an end (e.g. by giving notice to terminate under the Agreement). The effect of paragraph 29 of the Code should be disregarded in considering whether condition (i) or (ii) applies (paragraph 29 provides for the continuation of the Agreement notwithstanding that, under its terms, the code right(s) are no longer exercisable or no longer bind you, or that you may bring the Agreement to an end).

(c) The effect of paragraph 30(4) of the Code is that the Agreement may only be brought to an end if one of the grounds set out in a. to d. applies. Please delete as appropriate to state the ground on which you propose to end the Agreement.

STATUTORY NOTICE

REQUIRING A CHANGE TO THE TERMS OF AN AGREEMENT UNDER THE ELECTRONIC COMMUNICATIONS CODE

Paragraph 32(1) of Part 5 of Schedule 3A of the Communications Act 2003

IMPORTANT NOTICE

If you agree to the changes we are requesting, you should respond within six months

1. This is a statutory notice pursuant to paragraph 32(1) of the electronic communications code, set out in Schedule 3A to the Communications Act 2003 (the “Code”).¹
2. The purpose of this notice is to require a change to the terms of an agreement between you, [Insert name of site provider] and [us], [Insert name of Code operator] under Part 2 of the Code. We are seeking your agreement to this change.

BACKGROUND

3. We have entered into an agreement under Part 2 of the Code (the “Agreement”). Under the Agreement, you [have conferred on us / become bound by] certain rights under the Code. The purpose of these rights is to facilitate the deployment by us of our [electronic communications network and/or system of infrastructure] at [Insert address].
4. Paragraph 32 of the Code explains how a party to a Code agreement may require a change to the terms of an agreement which has expired. It provides that, in the first instance, the party seeking the change should provide notice to the other party of the change that it is seeking and the date on which that change would take place.

THE CHANGE WE ARE REQUESTING

5. We are asking you to agree, from the date set out in paragraph 6 below, that:
 - a. [the Agreement should have effect subject to the modified terms set out in Annex [X];]
 - b. [our existing Code right to [insert details of Code right] should no longer [be conferred by / bind] you;]
 - c. [the Agreement should also [confer on us / bind you to] [Insert details of additional Code right sought];]
 - d. [the Agreement should be terminated and a new agreement should have effect between us on the terms set out in Annex [X].]
6. The day from which we propose that:
 - a. [the modified terms should have effect;]
 - b. [the Code right referred to in paragraph 5 above should no longer [be conferred by / bind] you;]
 - c. [the additional Code right referred to in paragraph 5 above should [be conferred by / bind] you;]
 - d. [the Agreement should be terminated, and from which the new agreement set out in Annex [X] should have effect]

¹ A copy of the Communications Act 2003 is available online at www.legislation.gov.uk.

[CODE OPERATOR VERSION]

is *[Insert Date]*.²

CONSEQUENCES OF NOT REACHING AGREEMENT

7. If, after the end of six months beginning with the day on which this notice is given, we have not reached agreement with you on the proposals in this notice, we may apply to the court for an order under paragraph 33 of the Code.
8. Further detail on these orders is provided in the supplementary information at the back of this notice.

YOUR OPTIONS

9. In response to this notice, you may:
 - a. agree to the change requested above;
 - b. give notice to us that you do not agree to the change requested above; or
 - c. do nothing.
10. In deciding how to respond to this notice, you may wish to seek independent legal advice.
11. If you agree to the change requested above, we will send you *[a modified version of the Agreement reflecting the terms set out in this notice / a new agreement reflecting the terms set out in Annex [X] together with a notice of confirmation that you agree to termination of the Agreement]*. We will ask you to sign *[this/these documents]*. You would be entitled to seek independent legal advice in relation to *[this/these]* document*[s]*.
12. Alternatively, and as explained at paragraph 7 above, if you do nothing or give notice to us that you do not agree the change requested above, we will be entitled to apply to the court for an order under paragraph 33 of the Code after the end of six months beginning with the day on which this notice is given.
13. Please submit any notification pursuant to paragraph 9a. or b. to us in writing as soon as possible and, in any event, before the end of six months beginning with the day on which this notice is given.
14. To be effective, such notification must be **delivered by hand** or sent by **registered post** or **recorded delivery** to the following address:
[Insert address details]
15. If you have any questions about this notice, please do not hesitate to contact us via telephone (*Insert number*) or e-mail (*insert email address*).

[INSERT DATE OF NOTICE]

² Regulation 32(3) of the Code requires that the date must fall: (a) after the end of the period of six months beginning with the day on which this notice is given; and (b) after the time at which, apart from paragraph 29, the Code right to which the existing Code agreement relates would have ceased to be exercisable or to bind the site provider or at a time when, apart from that paragraph, the Code agreement could have been brought to an end by the site provider.

SUPPLEMENTARY INFORMATION FOR THE RECIPIENT OF THIS NOTICE

Orders under paragraph 33 of the Code

1. The types of orders which the court may make under paragraph 33 include an order which has the effect of:
 - a. [modifying the terms of the Agreement;]
 - b. [modifying the terms of the Agreement so that one of the Code rights set out therein is no longer *[conferred by / binding on]* you;]
 - c. [modifying the terms of the Agreement so that it *[confers an additional Code right on you / provides that you are bound by an additional Code right]*;]
 - d. [terminating the Agreement and ordering you to enter into a new agreement which *[confers a Code right on us / provides for a Code right to bind you]*;]
2. In determining whether to make an order under paragraph 33, the court must have regard to all the circumstances of the case, and in particular to:
 - a. the operator's business and technical needs;
 - b. the use that the site provider is making of the land to which the existing code agreement relates;
 - c. any duties imposed on the site provider by an enactment; and
 - d. the amount of consideration payable by the operator to the site provider under the existing code agreement.
3. If the court makes an order under paragraph 33, it may also order the operator to pay the site provider consideration. See paragraph 33(14) for details of how the consideration should be calculated by the court in this case.

STATUTORY NOTICE

REQUESTING DISCLOSURE OF WHETHER APPARATUS IS ON LAND PURSUANT TO THE ELECTRONIC COMMUNICATIONS CODE

Paragraph 38(1) of Part 6 of Schedule 3A of the Communications Act 2003

1. This is a statutory notice pursuant to paragraph 38(1) of the electronic communications code, set out in Schedule 3A to the Communications Act 2003 (the “Code”).¹ [see note (a)]
2. [I/We], [Insert name of landowner], have issued this notice to you, [Name of Code operator], in order to find out if you: [see note (b)]
 - a. [own electronic communications apparatus on, under or over land in which [I/we] have an interest or use such apparatus for the purpose of your network; and/or]
 - b. [have the benefit of a Code right (as defined in paragraph 3 of the Code) entitling you to keep electronic communications apparatus on, under or over land in which [I/we] have an interest.
3. The land in which [I/we] have an interest, and to which this notice relates, is [Insert address / description of land, etc] (the “Land”).
4. Please provide the information requested above as soon as possible and, in any event, before the end of **three months** beginning with the date on which this notice is given.
5. If you do not provide the information requested by this date² and BOTH:
 - a. [I/We] take action under paragraph 39 of the Code to enforce the removal of the apparatus at the Land; and
 - b. it is subsequently established that:
 - i. you own the apparatus or use it for the purposes of your network; and
 - ii. you have the benefit of a Code right entitling you to keep the apparatus on, under or over the Land,you must bear the costs of any such action taken by [me/us] under paragraph 39 of the Code.

[INSERT DATE OF NOTICE]

¹ A copy of the Communications Act 2003 is available online at www.legislation.gov.uk.

² This includes if you do not provide the information requested in a manner which complies with paragraph 87 of the Code.

NOTES FOR COMPLETING THIS NOTICE

You may wish to obtain independent legal advice before completing this notice.

*(a) This notice should be **delivered by hand** or sent by **registered post** or **recorded delivery** to the operator at:*

- the address for service that the operator has given to you for the purposes of the Code; or*
- if no such address has been given to you, at the address given by section 394 of the Communications Act 2003 (available online at www.legislation.gov.uk).*

(b) In a notice under paragraph 38(1) of the Code, you can only require disclosure of the information set out at paragraphs a. and b., and you must have an interest in the land to which the notice relates. Please delete a. or b. as appropriate, based on the information that you are seeking.

STATUTORY NOTICE

REQUESTING DISCLOSURE OF WHETHER APPARATUS IS ON LAND PURSUANT TO THE ELECTRONIC COMMUNICATIONS CODE

Paragraph 38(2) of Part 6 of Schedule 3A of the Communications Act 2003

1. This is a statutory notice pursuant to paragraph 38(2) of the electronic communications code, set out in Schedule 3A to the Communications Act 2003 (the “Code”).¹ [see note (a)]
2. [I/We], [Insert name of landowner or occupier], have issued this notice to you, [Name of Code operator], in order to find out if you: [see note (b)]
 - a. [own electronic communications apparatus on, under or over land that forms (or, but for the apparatus, would form) a means of access to neighbouring land in which [I/we] have an interest or use such apparatus for the purpose of your network; and/or]
 - b. [have the benefit of a Code right (as defined in paragraph 3 of the Code) entitling you to keep electronic communications apparatus on, under or over land that forms (or, but for the apparatus, would form) a means of access to neighbouring land in which [I/we] have an interest].
3. The land to which this notice relates is [Insert address / description of land, etc] (the “Land”). [I am / We are] the [landowner / occupier] of neighbouring land at [insert address / description of land, etc.].
4. Please provide the information requested above as soon as possible and, in any event, before the end of **three months** beginning with the date on which this notice is given.
5. If you do not provide the information requested by this date² and BOTH:
 - a. [I/We] take action under paragraph 39 of the Code to enforce the removal of the apparatus at the Land; and
 - b. it is subsequently established that:
 - i. you own the apparatus or use it for the purposes of your network; and
 - ii. you have the benefit of a Code right entitling you to keep the apparatus on, under or over the Land,you must bear the costs of any such action taken by [me/us] under paragraph 39 of the Code.

[INSERT DATE OF NOTICE]

¹ A copy of the Communications Act 2003 is available online at www.legislation.gov.uk.

² This includes if you do not provide the information requested in a manner which complies with paragraph 87 of the Code.

NOTES FOR COMPLETING THIS NOTICE

You may wish to obtain independent legal advice before completing this notice.

- (a) *This notice should be **delivered by hand** or sent by **registered post** or **recorded delivery** to the operator at:*
- *the address for service that the operator has given to you for the purposes of the Code; or*
 - *if no such address has been given to you, at the address given by section 394 of the Communications Act 2003 (available online at www.legislation.gov.uk).*
- (b) *In a notice under paragraph 38(2) of the Code, you can only require disclosure of the information set out at paragraphs a. and b., and you must have an interest in neighbouring land. In particular, you must be the landowner or occupier of land which is neighbouring the land to which the notice relates. Please delete a. or b. as appropriate, based on the information that you are seeking.*

STATUTORY NOTICE
REQUIRING THE REMOVAL OF APPARATUS INSTALLED UNDER THE ELECTRONIC COMMUNICATIONS CODE

Paragraph 39(2) of Part 6 of Schedule 3A of the Communications Act 2003

1. This is a statutory notice pursuant to paragraph 39(2) of the electronic communications code, set out in Schedule 3A to the Communications Act 2003 (the “Code”).¹ [see note (a)]
2. You, [Insert name of Code operator], have installed electronic communications apparatus [on / under / over] land at [Insert address] (the “Land”).
3. [I/we], [Insert name], [currently have an interest in the Land / [am/are] currently the owner or occupier of land that neighbours the Land]. [see note (b)]
4. The purpose of this notice is to inform you that [I/we] would like you to remove that apparatus and to restore the Land to its condition before the apparatus was placed [on / under / over] it.
5. [I/We] would like you to complete these works on or before [Insert Date]. [see note (c)]
6. Please confirm, within the period of 28 days beginning with the day on which this notice is given, if you agree to complete these works by the date(s) specified in paragraph 5 above.
7. Alternatively, if you consider that the date(s) specified by [me/us] at paragraph 5 above is not reasonable, please indicate as soon as possible (and at least within the period of 28 days beginning with the day on which this notice is given) what date(s) you consider to be reasonable for completion of the works.
8. [I/we] will be entitled to make an application to the court if we do not reach agreement on any of the following matters within the period of 28 days beginning with the day on which this notice is given:
 - a. that you will remove the apparatus;
 - b. that you will restore the Land to its condition before the apparatus was placed on, under or over the Land;
 - c. the time at which or period within which the apparatus is removed;
 - d. the time at which or period within which the Land will be restored.
9. The application to the court may be for:
 - a. an order under paragraph 43(1) of the Code requiring you to remove the apparatus;
or
 - b. an order under paragraph 43(3) of the Code enabling [me/us] to sell the apparatus,

[Insert date of Notice]

¹ A copy of the Communications Act 2003 is available online at www.legislation.gov.uk.

NOTES FOR COMPLETING THIS NOTICE

You may wish to obtain independent legal advice before completing this notice.

- (a) This notice should be **delivered by hand** or sent by **registered post** or **recorded delivery** to the operator at:
- *the address for service that the operator has given to you for the purposes of the Code; or*
 - *if no such address has been given to you, at the address given by section 394 of the Communications Act 2003 (available online at www.legislation.gov.uk).*
- (b) You are only entitled to send this notice if:
- *you have an interest in the Land and have the right, under paragraph 36 of the Code, to require the removal of electronic communications apparatus on, under or over the Land. To have this right, one or more of the five conditions set out at paragraph 36 must be met; or*
 - *you are the owner or occupier of neighbouring land and have the right, under paragraph 37 of the Code, to require the removal of electronic communications apparatus on, under or over the Land. To have this right, both of the conditions set out at paragraph 37 must be met.*
- (c) *The date specified by you as the deadline for completion of the works must be a reasonable one. What is reasonable will depend on the individual circumstances of your case, including the complexity of the works to be undertaken.*

Please note that you are entitled to specify a date for removal of the apparatus which is different to the date specified by you for restoring the Land to its previous condition.

STATUTORY NOTICE
REQUIRING THE REMOVAL OF APPARATUS INSTALLED UNDER THE ELECTRONIC COMMUNICATIONS CODE

Paragraph 40(2) of Part 6 of Schedule 3A of the Communications Act 2003

1. This is a statutory notice pursuant to paragraph 40(2) of the electronic communications code, set out in Schedule 3A to the Communications Act 2003 (the “**Code**”).¹ [see note (a)]
2. You, **[Insert name of Code operator]**, have installed electronic communications apparatus **[on / under / over]** land at **[Insert address]** (the “**Land**”). Under **[Insert details of enactment or other document under which you have a right to require the removal of the apparatus]**, **[I/we]**, **[Insert name]**, have the right to require the removal of that apparatus. [see note (b)]
3. The purpose of this notice is to inform you that **[I/we]** would like you to remove that apparatus and restore the Land to its condition before the apparatus was placed **[on / under / over]** it.
4. **[I/We]** would like you to complete these works on or before **[Insert Date]**. [see note (c)]
5. If, within the period of 28 days beginning with the day on which this notice is given, you do not give **[me/us]** a counter-notice under paragraph 40(5) of the Code, **[I/we]** will be entitled to enforce the removal of the apparatus. [see note (d)]
6. Please give any such counter-notice to **[me/us]** at the following address:
[insert address]

[Insert date of Notice]

¹ A copy of the Communications Act 2003 is available online at www.legislation.gov.uk.

NOTES FOR COMPLETING THIS NOTICE

You may wish to obtain independent legal advice before completing this notice.

- (a) This notice should be **delivered by hand** or sent by **registered post** or **recorded delivery** to the operator at:
- the address for service that the operator has given to you for the purposes of the Code; or
 - if no such address has been given to you, at the address given by section 394 of the Communications Act 2003 (available online at www.legislation.gov.uk).
- (b) You are only entitled to send this notice if you have a pre-existing right, under an enactment other than the Code (i.e. legislation or other statutory instrument), or otherwise than under an enactment, to require the removal of the relevant apparatus. If you do have such a pre-existing right, that right is exercisable only in accordance with paragraph 40 of the Code and you are therefore required to send this notice before taking any action to enforce the removal of the apparatus.
- (c) The date specified by you as the deadline for completion of the works must be a reasonable one. What is reasonable will depend on the individual circumstances of your case, including the complexity of the works to be undertaken.
- (d) If the Code operator does give you a counter-notice within the period of 28 days beginning with the day on which this notice is given, you will only be entitled to enforce the removal of the apparatus if you obtain an order of the court to this effect.

Where you are entitled to enforce the removal of the apparatus because:

- the Code operator has failed to give you a counter-notice within the specified period, or
- the Code operator has given you a counter-notice but you have been granted a court order to enforce the removal of the apparatus,

you may make an application to the court for:

- an order under paragraph 43(1) of the Code requiring the Code operator to remove the apparatus; or
- an order under paragraph 43(3) of the Code enabling you to sell the apparatus.

STATUTORY NOTICE

COUNTER-NOTICE REGARDING THE REMOVAL OF APPARATUS INSTALLED UNDER THE ELECTRONIC COMMUNICATIONS CODE

Paragraph 40(5) of Part 6 of Schedule 3A of the Communications Act 2003

1. This is a statutory notice pursuant to paragraph 40(5) of the electronic communications code, set out in Schedule 3A to the Communications Act 2003 (the “Code”).¹
2. On *[Insert date]*, we *[Insert name of Code operator]*, were given a notice by you, *[Insert name of third party]*, under paragraph 40(2) of the Code. In that notice, you required us to remove electronic communications apparatus installed *[on / under / over]* land at *[Insert address]* (the “Apparatus”), and to restore that land to its previous condition.
3. The purpose of this counter-notice is to inform you that you are not entitled to require the removal of the Apparatus. This is because *[Insert details]*.

[OR - delete appropriate version of paragraph 3]

3. The purpose of this counter-notice is to inform you of the steps which we propose to take for the purpose of securing a right as against you to keep the Apparatus on the land. In particular, we propose to *[Insert details of proposed steps]*.²
4. As a result of this notice, you may only enforce the removal of the Apparatus in pursuance of an order of the court under paragraph 40(7) of the Code.

[Insert date of Notice]

¹ A copy of the Communications Act 2003 is available online at www.legislation.gov.uk.

² Paragraph 40(8) of the Code provides that the court may only make an order under paragraph 40(7) if it is satisfied that either: (a) we are not intending to take those steps or are being unreasonably dilatory in taking them; or (b) taking those steps has not secured, or will not secure, for us as against you any right to keep the Apparatus installed on, under or over the land or to reinstall it if it is removed.

STATUTORY NOTICE

REQUIRING THE RESTORATION OF LAND TO ITS CONDITION BEFORE THE EXERCISE OF RIGHTS UNDER THE ELECTRONIC COMMUNICATIONS CODE

Paragraph 42(5) of Part 6 of Schedule 3A of the Communications Act 2003

1. This is a statutory notice pursuant to paragraph 42(5) of the electronic communications code, set out in Schedule 3A to the Communications Act 2003 (the “Code”).¹ [see note (a)]
2. The purpose of this notice is to require you, [Insert name of Code operator], to restore land in which [I / we], [Insert name of relevant person], have an interest, to its condition before the exercise of a Code right by you.
3. The land to which this notice relates is at [Insert address and any other relevant details] (the “Land”). [I am / We are] the [occupier of / owner of the freehold estate in² / lessee of] the Land and have a right, under paragraph 42(2) of the Code to require you to restore the Land to its condition before the exercise of a Code right by you. [see note (b)]
4. In order to restore the Land to its previous condition, [I / we] ask that you complete the works on or before [Insert date]. [see note (c)]
5. Please confirm, within the period of 28 days beginning with the day on which this notice is given, if you agree to complete these works by the date specified in paragraph 4 above.
6. Alternatively, if you consider that the date specified by [me/us] at paragraph 4 above is not reasonable, please indicate as soon as possible (and at least within the period of 28 days beginning with the day on which this notice is given) what date you consider to be reasonable for completion of the works.
7. If we do not reach agreement on any of the above matters within 28 days beginning with the day on which this notice is given, [I/we] will be entitled to make an application to the court for:
 - a. an order under paragraph 43(2) of the Code requiring you to restore the Land; or
 - b. an order under paragraph 43(4) of the Code enabling [me/us] to recover the cost of restoring the Land.

[Insert date of Notice]

¹ A copy of the Communications Act 2003 is available online at www.legislation.gov.uk.

² When applied in Scotland, this should be read as a reference to the owner of the Land.

NOTES FOR COMPLETING THIS NOTICE

You may wish to obtain independent legal advice before completing this notice.

- (a) This notice should be **delivered by hand** or sent by **registered post** or **recorded delivery** to the operator at:
- the address for service that the operator has given to you for the purposes of the Code; or
 - if no such address has been given to you, at the address given by section 394 of the Communications Act 2003 (available online at www.legislation.gov.uk).
- (b) You only have a right to require the restoration of the Land if a number of conditions are satisfied. These are as follows:
- i. The condition of the Land has been affected by the exercise of a Code right and restoration of the Land to its condition before the Code right was exercised does not involve the removal of electronic communications apparatus from any land;
 - ii. You are the occupier of the Land, the owner of the freehold estate in the Land (or, in Scotland, the owner of the Land) or the lessee of the Land;
 - iii. You are not for the time being bound by the Code right (i.e. you have not entered into an agreement with the Code operator regarding the conferral of the Code right, or had such an agreement imposed on you by the courts).
- Further, even if you satisfy the conditions set out above, you will not have a right to require the restoration of the Land if:
- i. it is occupied by a person who either:
 - a. conferred a Code right (which is in force) entitling the Code operator to affect the condition of the Land in the same way as the Code right mentioned at paragraph (b) i. above; or
 - b. is otherwise bound by such a right; and
 - ii. that Code right was not conferred in breach of a covenant enforceable by you (or, in Scotland, in breach of a contractual term enforceable by you).
- (c) The date specified by you as the deadline for completion of the works must be a reasonable one. What is reasonable will depend on the individual circumstances of your case, including the complexity of the works to be undertaken.

STATUTORY NOTICE

REGARDING THE EXERCISE OF A TRANSPORT LAND RIGHT UNDER THE ELECTRONIC COMMUNICATIONS CODE TO CARRY OUT NON-EMERGENCY WORKS

Paragraph 48(1) of Part 7 of Schedule 3A of the Communications Act 2003

IMPORTANT NOTICE

If you object to the works proposed in this notice, you should give a notice of objection within 28 days

1. This is a statutory notice pursuant to paragraph 48(1) of the electronic communications code, set out in Schedule 3A to the Communications Act 2003 (the “Code”).¹
2. We, [*Insert name of Code operator*], are writing to you in your capacity as a transport undertaker (as defined in paragraph 45 of the Code) and, in particular, in respect of land at [*Insert address / description of land, etc.*] (the “Transport Land”).
3. The purpose of this notice is to inform you that we intend to exercise a transport land right (as defined at paragraph 47(1) of the Code) in order to carry out non-emergency works relating to a line crossing the Transport Land or any other electronic communications apparatus installed [*on / under / over*] the Transport Land.

BACKGROUND

4. We provide an [*electronic communications network and/or infrastructure system*] in the United Kingdom. For this purpose, the Office of Communications (OFCOM) has given a direction applying the Code to us.
5. The Code regulates the relationships between us and occupiers of land, thereby facilitating the deployment of electronic communications apparatus. Amongst other things, the Code entitles us to exercise transport land rights subject to the provisions of paragraphs 47 to 54 of the Code.
6. Paragraph 48(1) of the Code requires us to provide transport undertakers with a notice of proposed works before exercising a transport land right in order to carry out non-emergency works. This is a notice under paragraph 48(1) of the Code.

THE PROPOSED WORKS

7. We intend to carry out non-emergency works on the Transport Land for or in connection with the exercise of a transport land right.
8. A detailed plan and section of the works is set out in the Annex to this notice. ^[see note (a)]
9. We intend to commence the proposed works on [*Insert date*] [*and expect that they will be completed by [Insert date]*]. ^[see note (b)]

YOUR OPTIONS

¹ A copy of the Communications Act 2003 is available online at www.legislation.gov.uk.

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10. If you do not object to the proposed works set out at paragraphs 7 and 8 above, you do not have to do anything in response to this notice. We will then proceed to carry out the proposed works on the date(s) specified above.
11. However, if you object to the proposed works, you are entitled to give us a notice informing us of your objection (a “**notice of objection**”) within 28 days of the day on which this notice was given to you.² Please give any notice of objection to us at the following address:

[insert address]
12. Where a notice of objection is given, either of us may, within the period of 28 days beginning with the day on which the notice of objection is given (the “**arbitration notice period**”), give the other notice that the objection is to be referred to arbitration under paragraph 51 of the Code (an “**arbitration notice**”).
13. Where an arbitration notice has been given, works will only be permitted in accordance with an award made in the arbitration. However, if the arbitration notice period has ended and no arbitration notice has been given, we will be permitted to carry out the proposed works. This is the case notwithstanding your notice of objection.

[Insert date of Notice]

² See, in particular, paragraph 49(2) of the Code.

NOTES FOR COMPLETING THIS NOTICE

- (a) If the transport undertaker agrees, this notice may instead contain a description of the proposed works (whether or not in the form of a diagram) rather than a plan and section of the works.
- (b) Under paragraphs 48(3) and (5) of the Code, Code operators are not entitled to begin their proposed works until after the period of 28 days beginning with the day on which notice of proposed works is given.

STATUTORY NOTICE

NOTICE OF OBJECTION TO THE EXERCISE OF A TRANSPORT LAND RIGHT UNDER THE ELECTRONIC COMMUNICATIONS CODE TO CARRY OUT NON-EMERGENCY WORKS

Paragraph 49(2) of Part 7 of Schedule 3A of the Communications Act 2003

1. This is a statutory notice pursuant to paragraph 49(2) of the electronic communications code, set out in Schedule 3A to the Communications Act 2003 (the “**Code**”).¹ [see note (a)]
2. We, [*Insert name of Transport Undertaker*], have received a notice from you, [*Insert name of Code operator*], pursuant to paragraph 48(1) of the Code. In that notice, dated [*Insert date*], you informed us of your intention to carry out non-emergency works at [*Insert address / description of land, etc.*] (the “**Proposed Works**”).
3. The purpose of this notice is to inform you that we object to the Proposed Works.

CONSEQUENCES OF THIS NOTICE

4. As a result of this notice, either one of us may give the other a notice that the objection is to be referred to arbitration under paragraph 51 of the Code.
5. Any notice of arbitration must be given within the period of 28 days beginning with the day on which this notice of objection has been given (the “**arbitration notice period**”).
6. Please note that you may only exercise a transport land right in order to carry out the Proposed Works if **either**:
 - a. the arbitration notice period has ended and no arbitration notice has been given by either of us; **or**
 - b. an arbitration notice has been given within the arbitration notice period but the works are permitted in accordance with an award made on the arbitration.

[*Insert date of Notice*]

¹ A copy of the Communications Act 2003 is available online at www.legislation.gov.uk.

NOTES FOR COMPLETING THIS NOTICE

(a) This notice should be **delivered by hand** or sent by **registered post** or **recorded delivery** to the operator at:

- the address for service that the operator has given to you for the purposes of the Code; or
- if no such address has been given to you, at the address given by section 394 of the Communications Act 2003 (available online at www.legislation.gov.uk).

STATUTORY NOTICE

REFERRAL TO ARBITRATION OF AN OBJECTION TO PROPOSED WORKS UNDER THE ELECTRONIC COMMUNICATIONS CODE

Paragraph 49(3) of Part 7 of Schedule 3A of the Communications Act 2003

1. This is a statutory notice pursuant to paragraph 49(3) of the electronic communications code, set out in Schedule 3A to the Communications Act 2003 (the “**Code**”).¹ [see note (a)]
2. We, *[Insert name of Code operator]*, recently gave you, *[Insert name of Transport Undertaker]* notice of our intention to carry out non-emergency works at *[Insert address / description of land, etc.]* (the “**Proposed Works**”). You subsequently gave us a notice of objection to the Proposed Works under paragraph 49(2) of the Code.

[OR - delete appropriate version of paragraph 2]

2. You, *[Insert name of Code operator]*, recently gave us, *[Insert name of Transport Undertaker]* notice of your intention to carry out non-emergency works at *[Insert address / description of land, etc.]* (the “**Proposed Works**”). We subsequently gave you a notice of objection to the Proposed Works under paragraph 49(2) of the Code.
3. The purpose of this notice is to inform you that *[our/your]* objection to the Proposed Works is to be referred to arbitration under paragraph 51 of the Code.
4. This means that it will be referred to the arbitration of a single arbitrator² appointed **either**:
 - a. by agreement between both of us; **or**
 - b. in the absence of such agreement, by the President of the Institution of Civil Engineers.
5. *[We propose that [Insert name] be appointed as arbitrator in respect of this matter. A copy of this individual’s relevant qualifications is provided at Annex 1 of this notice. If you do not agree with this individual’s appointment as arbitrator, please provide the name of one or more individuals that you consider would be suitable for this role and provide details of their relevant qualifications].* [see note (b)]
6. Please note that, as a result of this notice, *[you/we]* will not be permitted to carry out the Proposed Works unless they are permitted in accordance with an award made on the arbitration.

[Insert date of Notice]

¹ A copy of the Communications Act 2003 is available online at www.legislation.gov.uk.

² Paragraph 51(3) of the Code sets out in detail the powers of the arbitrator in relation to this dispute. Paragraph 51(6) of the Code also explains that, in determining what award to make, the matters to which the arbitrator must have regard include the public interest in there being access to a choice of high quality electronic communications services.

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[ANNEX 1

QUALIFICATIONS OF PROPOSED ARBITRATOR]

NOTES FOR COMPLETING THIS NOTICE

You may wish to obtain independent legal advice before completing this notice.

(a) *This notice should be **delivered by hand** or sent by **registered post** or **recorded delivery** to the Code operator/transport undertaker (as applicable) at:*

- the address for service that the operator/undertaker has given to you for the purposes of the Code; or*
- if no such address has been given to you, at the address given by section 394 of the Communications Act 2003 (available online at www.legislation.gov.uk).*

(b) *You are not required to put forward the name of an individual that you think would be suitable to act as the arbitrator. However, the parties should seek to reach agreement on this, where possible.*

To facilitate this, it may be advisable for more than one individual's name to be put forward as the potential arbitrator.

STATUTORY NOTICE

REGARDING THE EXERCISE OF A TRANSPORT LAND RIGHT UNDER THE ELECTRONIC COMMUNICATIONS CODE TO CARRY OUT EMERGENCY WORKS

Paragraph 50(2) of Part 7 of Schedule 3A of the Communications Act

IMPORTANT NOTICE

If you consider you are entitled to compensation as a result of these emergency works, you should give us notice within 28 days

1. This is a statutory notice pursuant to paragraph 50(2) of the electronic communications code, set out in Schedule 3A to the Communications Act 2003 (the “Code”).¹
2. We, [*Insert name of Code operator*], are writing to you in your capacity as a transport undertaker (as defined in paragraph 45 of the Code) and, in particular, in respect of land at [*Insert address / description of land, etc.*] (the “Transport Land”).
3. The purpose of this notice is to inform you that we have started exercising a transport land right (as defined at paragraph 47(1) of the Code) in order to carry out emergency works relating to electronic communications apparatus installed [*on / under / over*] the Transport Land.

BACKGROUND

4. We provide an [*electronic communications network and/or infrastructure system*] in the United Kingdom. For this purpose, the Office of Communications (Ofcom) has given a direction applying the Code to us.
5. The Code regulates the relationships between us and occupiers of land, thereby facilitating the deployment of electronic communications apparatus. Amongst other things, the Code entitles us to exercise transport land rights subject to the provisions of paragraphs 47 to 54 of the Code.
6. Paragraph 50(1) of the Code provides that we may exercise a transport land right in order to carry out emergency works. However, as soon as reasonably practicable after starting those works, we are required by paragraph 50(2) of the Code to give the transport undertaker an emergency works notice (as defined in paragraph 50(3) of the Code). This is an emergency works notice under paragraph 50 of the Code.

THE WORKS

7. The emergency works that we have started at the Transport Land are [*Insert details of emergency works*]. A detailed plan and section of the works is set out in the Annex to this notice. ^[see note (a)]

[OR - delete appropriate version of paragraph 7]

¹ A copy of the Communications Act 2003 is available online at www.legislation.gov.uk.

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7. We provided you with details of the works that we have started at the Transport Land in a notice of proposed works, under paragraph 48(1) of the Code, dated [*Insert date of notice of proposed works and, where possible, append a copy of that notice of proposed works to this notice*].
8. We have already started these works because we consider them to be emergency works. They are emergency works because [*Insert a clear statement explaining why the works are emergency works*]. ^[see note (b)]
9. We commenced the emergency works on [*Insert date*] [*and expect that they will be completed by [Insert date]*].

YOUR OPTIONS

10. You are entitled, within the period of 28 days beginning with the day on which this notice is given (the “**compensation notice period**”), to give us notice which requires us to pay compensation for loss or damage sustained in consequence of the carrying out of the emergency works referred to at paragraph 7 above (a “**compensation notice**”).
11. Following receipt of a compensation notice, we will seek to agree with you the amount of compensation payable by us to you.
12. However, if we are unable to reach agreement on the amount of compensation payable within the period of 28 days beginning with the day on which you give a compensation notice to us, either of us may give the other notice that the disagreement is to be referred to arbitration under paragraph 51 of the Code.

[*Insert date of Notice*]

NOTES FOR COMPLETING THIS NOTICE

- (a) If the transport undertaker agrees, this notice may instead contain a description of the proposed works (whether or not in the form of a diagram) rather than a plan and section of the works.
- (b) Emergency works are defined in paragraph 50(9) of the Code as works carried out in order to stop anything already occurring, or to prevent anything imminent from occurring, which is likely to cause:
- danger to persons or property;
 - the interruption of any service provided by the operator's network; or
 - substantial loss to the operator,
- and any other works which it is reasonable (in all the circumstances) to carry out with those works.

Emergency works may include works which have been included in a notice of proposed works (under paragraph 48(1) of the Code) but become emergency works before you are authorised by paragraph 49 or 50 of the Code to carry them out.

STATUTORY NOTICE

REQUIRING THE PAYMENT OF COMPENSATION FOR LOSS OR DAMAGE SUSTAINED IN CONSEQUENCE OF THE CARRYING OUT OF EMERGENCY WORKS UNDER THE ELECTRONIC COMMUNICATIONS CODE

Paragraph 50(4) of Part 7 of Schedule 3A of the Communications Act 2003

1. This is a statutory notice pursuant to paragraph 50(4) of the electronic communications code, set out in Schedule 3A to the Communications Act 2003 (the “Code”).¹ [see note (a)]
2. On [Insert Date], you [Insert Name of Code operator], gave us [Insert name of Transport Undertaker], notice that you had started exercising a transport land right in order to carry out emergency works relating to electronic communications apparatus at [Insert address / description of land, etc.] (the “Emergency Works”).
3. The purpose of this notice is to require you to pay compensation for loss or damage sustained by us in consequence of the carrying out of the Emergency Works.

DETAILS OF OUR LOSS OR DAMAGE

4. As a consequence of the Emergency Works, [Please provide a brief summary of the loss or damage sustained by you as a result of those works].
5. To compensate us for this loss or damage, we request a compensation payment of £[Insert amount]. Further details on how we have calculated the amount of this compensation are set out at Annex 1.

CONSEQUENCE OF THIS NOTICE

6. You are required, by paragraph 50(5) of the Code, to pay us any compensation which is required by this notice.
7. The amount of compensation payable under paragraph 50(5) of the Code is to be agreed between us. However, if (within the period of 28 days beginning with the day on which this notice was given) we have not agreed the amount of compensation payable, either of us may give the other notice that the disagreement is to be referred to arbitration under paragraph 51 of the Code.

YOUR OPTIONS

8. We would like to agree the amount of compensation payable by you, without recourse to arbitration. Accordingly, please respond to this notice (within 28 days from the day on which it was given to you) to confirm whether you agree to pay us the compensation referred to at paragraph 5 above. If you do not agree, please explain why and explain what compensation (if any) you think should be payable.
9. Please note that, whilst you are not required to respond to this notice, we will be entitled to refer this matter to arbitration under paragraph 51 of the Code if you fail to do so within the period specified at paragraph 7 above.

¹ A copy of the Communications Act 2003 is available online at www.legislation.gov.uk.

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[*Insert date of Notice*]

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ANNEX 1

AMOUNT OF COMPENSATION SOUGHT

[Please insert details and where relevant, any supporting materials (such as invoices)]

NOTES FOR COMPLETING THIS NOTICE

You may wish to obtain independent legal advice before completing this notice.

*(a) This notice should be **delivered by hand** or sent by **registered post** or **recorded delivery** to the operator at:*

- the address for service that the operator has given to you for the purposes of the Code; or*
- if no such address has been given to you, at the address given by section 394 of the Communications Act 2003 (available online at www.legislation.gov.uk).*

Also, this notice should be given within the period of 28 days beginning with the day on which the emergency works notice was given to you by the Code operator. If you give this notice to the operator after this date, it will not be required to pay you any compensation under paragraph 50(5) of the Code.

STATUTORY NOTICE

REFERRAL TO ARBITRATION OF A DISAGREEMENT ABOUT THE AMOUNT OF COMPENSATION PAYABLE UNDER THE ELECTRONIC COMMUNICATIONS CODE

Paragraph 50(7) of Part 7 of Schedule 3A of the Communications Act 2003

1. This is a statutory notice pursuant to paragraph 50(7) of the electronic communications code, set out in Schedule 3A to the Communications Act 2003 (the “Code”).¹ [see note (a)]
2. We, [Insert name of Code operator], recently gave you, [Insert name of Transport Undertaker] notice that we had started exercising a transport land right under the Code in order to carry out emergency works at [Insert address / description of land, etc.] (the “Emergency Works”). You subsequently gave us a notice requiring the payment of compensation for loss or damage sustained by you in consequence of the carrying out of the Emergency Works, under paragraph 50(4) of the Code.

[OR - delete appropriate version of paragraph 2]

2. You, [Insert name of Code operator], recently gave us, [Insert name of Transport Undertaker] notice that you had started exercising a transport land right under the Code in order to carry out emergency works at [Insert address / description of land, etc.] (the “Emergency Works”). We subsequently gave you a notice requiring the payment of compensation for loss or damage sustained by us in consequence of the carrying out of the Emergency Works, under paragraph 50(4) of the Code.
3. We have not agreed, within the period of 28 days beginning with the day on which that compensation notice was given, the amount of compensation payable.
4. The purpose of this notice is to inform you that our disagreement about the amount of compensation payable is to be referred to arbitration under paragraph 51 of the Code.
5. This means that it will be referred to the arbitration of a single arbitrator² appointed **either**:
 - a. by agreement between both of us; **or**
 - b. in the absence of such agreement, by the President of the Institution of Civil Engineers.
6. [We propose that [Insert name] be appointed as arbitrator in respect of this matter. A copy of this individual’s relevant qualifications is provided at Annex 1 of this notice. If you do not agree with this individual’s appointment as arbitrator, please provide the name of one or more individuals that you consider would be suitable for this role and provide details of their relevant qualifications]. [see note (b)]

[Insert date of Notice]

¹ A copy of the Communications Act 2003 is available online at www.legislation.gov.uk.

² Paragraph 51(4) of the Code sets out in detail the powers of the arbitrator in relation to this dispute. Paragraph 51(6) of the Code also explains that, in determining what award to make, the matters to which the arbitrator must have regard include the public interest in there being access to a choice of high quality electronic communications services.

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[ANNEX 1

QUALIFICATIONS OF PROPOSED ARBITRATOR]

NOTES FOR COMPLETING THIS NOTICE

You may wish to obtain independent legal advice before completing this notice.

- (a) *This notice should be **delivered by hand** or sent by **registered post** or **recorded delivery** to the Code operator/transport undertaker (as applicable) at:*
- the address for service that the operator/undertaker has given to you for the purposes of the Code; or*
 - if no such address has been given to you, at the address given by section 394 of the Communications Act 2003 (available online at www.legislation.gov.uk).*

- (b) *You are not required to put forward the name of an individual that you think would be suitable to act as the arbitrator. However, the parties should seek to reach agreement on this, where possible.*

To facilitate this, it may be advisable for more than one individual's name to be put forward as the potential arbitrator.

STATUTORY NOTICE
REQUIRING THE ALTERATION OF ELECTRONIC COMMUNICATIONS APPARATUS
UNDER THE ELECTRONIC COMMUNICATIONS CODE

Paragraph 52(1) of Part 7 of Schedule 3A of the Communications Act 2003

1. This is a statutory notice pursuant to paragraph 52(1) of the electronic communications code, set out in Schedule 3A to the Communications Act 2003 (the “**Code**”).¹ [see note (a)]
2. The purpose of this notice is to require you, [Insert name of Code operator], to alter the electronic communications apparatus described in Annex 1 of this Notice in the manner specified in that Annex. That apparatus is installed at [Insert address] (the “**Transport Land**”).
3. We, [Insert name of transport undertaker], require this alteration on the ground that keeping the apparatus [on / under / over] the Transport Land [interferes with / is likely to interfere with]: [see note (b)]
 - a. [the carrying on of our [railway / canal / tramway] undertaking]; or
 - b. [anything [done / to be done] for the purposes of our [railway / canal / tramway] undertaking]

CONSEQUENCES OF THIS NOTICE

4. You may, within the period of 28 days beginning with the day on which this notice is given to you (the “**notice period**”), give us a notice specifying the respects in which you are not prepared to comply with this notice (a “**counter-notice**”).
5. If the notice period has ended and you have not given any counter-notice, you must comply with this notice within a reasonable time and to our reasonable satisfaction.
6. If you decide to give a counter-notice (within the notice period), we may apply to the court for an order requiring you to alter any of the apparatus specified in Annex 1. The court must not make an order unless it is satisfied that it is necessary on one of the grounds mentioned in paragraph 52(1) of the Code.²

[Insert date of Notice]

¹ A copy of the Communications Act 2003 is available online at www.legislation.gov.uk.

² See paragraphs 52(6) to 52(8) for further details on the matters to which the court must have regard when deciding whether or not to make such an order, as well as the court’s powers in making an order.

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ANNEX 1

DETAILS OF ELECTRONIC COMMUNICATIONS APPARATUS AND ALTERATION
REQUIRED

The electronic communications apparatus to which this notice relates

[Insert details of the line or other electronic communications apparatus to which this notice relates]

The alterations required to that apparatus

[Insert details of the alterations that you require]

NOTES FOR COMPLETING THIS NOTICE

You may wish to obtain independent legal advice before completing this notice.

*(a) This notice should be **delivered by hand** or sent by **registered post** or **recorded delivery** to the operator at:*

- the address for service that the operator has given to you for the purposes of the Code; or*
- if no such address has been given to you, at the address given by section 394 of the Communications Act 2003 (available online at www.legislation.gov.uk).*

(b) You are only entitled to require the alteration of electronic communications apparatus under paragraph 52(1) of the Code on one or both of the grounds set out above. Please delete as appropriate.

STATUTORY NOTICE

NOTICE OF OBJECTION TO THE ALTERATION OF ELECTRONIC COMMUNICATIONS APPARATUS UNDER THE ELECTRONIC COMMUNICATIONS CODE

Paragraph 52(2) of Part 7 of Schedule 3A of the Communications Act 2003

1. This is a statutory notice pursuant to paragraph 52(2) of the electronic communications code, set out in Schedule 3A to the Communications Act 2003 (the “Code”).^{1 2}
2. We, [*Insert name of Code operator*], have received a notice from you, [*Insert name of Transport Undertaker*], pursuant to paragraph 52(1) of the Code (the “**Notice requiring Alterations**”). In that notice, dated [*Insert date*], you required us to alter the electronic communications apparatus described in Annex 1 of that Notice in the manner specified in that Annex. That apparatus is installed at [*Insert address*].
3. The purpose of this notice is to inform you that we are not prepared to comply with the Notice requiring Alterations in the following respects:

[*Insert details of the respects in which you are not prepared to comply with the Notice requiring Alterations*].

CONSEQUENCES OF THIS NOTICE

4. As a result of this notice, you may apply to the court for an order requiring us to alter any of the specified apparatus under paragraph 52(4) of the Code.
5. The court must not make such an order unless it is satisfied that the order is necessary on the ground that keeping the apparatus on, under or over transport land interferes with, or is likely to interfere with, EITHER:
 - a. the carrying on of your railway, canal or tramway undertaking; OR
 - b. anything done or to be done for the purposes of your railway, canal or tramway undertaking.³

[*Insert date of Notice*]

¹ A copy of the Communications Act 2003 is available online at www.legislation.gov.uk.

² This notice must be given to the relevant Transport Undertaker within the period of 28 days beginning with the day on which the Notice requiring Alterations was given. If you do not give this notice before the expiry of that time period, then you are required by paragraph 52(3) of the Code to comply with the Notice requiring Alterations within a reasonable time and to the reasonable satisfaction of the Transport Undertaker.

³ Paragraphs 52(6) to 52(8) of the Code provide further details on the court’s powers to impose such an order, and on the matters to which it must have regard.

STATUTORY NOTICE
REGARDING THE TERMINATION OF TRANSPORT LAND RIGHTS UNDER THE
ELECTRONIC COMMUNICATIONS CODE

Paragraph 53(7) of Part 7 of Schedule 3A of the Communications Act 2003

1. This is a statutory notice pursuant to paragraph 53(7) of the electronic communications code, set out in Schedule 3A to the Communications Act 2003 (the “**Code**”). ^[see note (a)]
2. You, **[Insert name of Code operator]**, have been exercising a transport land right (as defined in paragraph 47 of the Code) in relation to land occupied by us, **[Insert name of Transport Undertaker]**. This land is at **[Insert address / description of land, etc.]** (the “**Land**”).
3. The Land has ceased to be transport land (as defined in paragraph 45 of the Code).
4. The purpose of this notice is to inform you that, from **[Insert date]**, Part 7 of the Code is to cease to apply to the Land in accordance with paragraph 53 of the Code. This means that the transport land rights which are currently exercisable in relation to the Land will cease to be exercisable. ^[see notes (b) and (c)]

[Insert date of Notice]

NOTES FOR COMPLETING THIS NOTICE

You may wish to obtain independent legal advice before completing this notice.

- (a) This notice should be **delivered by hand** or sent by **registered post** or **recorded delivery** to the operator at:
- the address for service that the operator has given to you for the purposes of the Code; or
 - if no such address has been given to you, at the address given by section 394 of the Communications Act 2003 (available online at www.legislation.gov.uk).

This notice may only be given **after** the land ceases to be transport land.

Also, the notice only needs to be given if the Code operator was exercising a transport land right in relation to the land immediately before the time when it ceased to be transport land.

- (b) Part 7 of the Code makes provision about the conferral, and exercise, of transport land rights. In particular, it provides that Code operators may exercise certain rights in respect of transport land and that some of these rights will continue to be exercisable even if the land ceases to be transport land.

In particular, if a Code operator is exercising a transport land right in relation to land immediately before a time when it ceases to be transport land, paragraph 53(2) of the Code provides that Part 7 of the Code will continue to apply to the land as if it were still transport land (and, accordingly, the Code operator may continue to exercise any transport land right in relation to the land as if it were still transport land).

However, paragraphs 53(4) to (9) of the Code set out a number of exceptions to this. One such exception is where the occupier of the land gives the Code operator a notice of termination under paragraph 53(7) of the Code. This standard form notice is intended to be such a notice of termination.

- (c) Under paragraph 53(8) of the Code, the date specified in this notice of termination must fall after the end of the period of 12 months beginning with the day on which this notice is given.

For example, if this notice is given on 1 November 2017, the earliest date which may be specified in this notice is 2 November 2018.

STATUTORY NOTICE

REGARDING NON-EMERGENCY UNDERTAKER'S WORKS WHICH INTERFERE WITH AN ELECTRONIC COMMUNICATIONS NETWORK

Paragraph 66(1) of Part 10 of Schedule 3A of the Communications Act 2003

1. This is a statutory notice pursuant to paragraph 66(1) of the electronic communications code, set out in Schedule 3A to the Communications Act 2003 (the "**Code**").¹ [see note (a)]
2. The purpose of this notice is to inform you that we, [Insert name of undertaker] intend to carry out non-emergency works at [Insert address, and any other relevant description] (the "**Land**"). [see note (b)]
3. These works will involve, or are likely to involve, an alteration of electronic communications apparatus kept by you, [Insert name of Code operator] on, under or over the Land for the purposes of your network.

THE PROPOSED WORKS AND ALTERATIONS

4. We propose to [Insert details of the proposed non-emergency works, with more detail in an annex if necessary] (the "**Proposed Works**"). These works will begin on [Insert date] at [the location specified in paragraph 2 above].
5. The Proposed Works [will involve / are likely to involve] the alteration of the electronic communications apparatus specified in the Annex to this notice in the manner specified in that Annex. This alteration would be [permanent / temporary].

YOUR OPTIONS

6. You are entitled, within the period of 10 days beginning with the day on which this notice is given (the "**notice period**"), to give us a counter-notice under paragraph 67(2) of the Code. Such a counter-notice can state either:
 - a. that you require us to make any alteration of the electronic communications apparatus that is necessary or expedient because of the Proposed Works under your supervision and to your satisfaction; or
 - b. that you intend to make any alteration of the electronic communications apparatus that is necessary or expedient because of the Proposed Works.²
7. We must not begin the proposed works (including the proposed alteration of your electronic communications apparatus) until the notice period has ended. [see note (c)]
8. Further, if you give us a counter-notice within the notice period, paragraphs 67(3) to (6) of the Code will apply.

¹ A copy of the Communications Act 2003 is available online at www.legislation.gov.uk.

² Under paragraphs 68(2) and 69(2)(b) of the Code, we would be required to pay you the amount of any loss or damage sustained by you in consequence of the alteration referred to in this notice. Further, if you choose to supervise us when altering the electronic communications apparatus, we are required by paragraph 68(3) of the Code to pay you any expenses incurred by you in, or in connection with, that supervision. Similarly, if you choose to make the alterations yourself, we are required under paragraph 69(2)(a) to pay you any expenses incurred by you in, or in connection with, making the alteration.

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9. Even if you do not provide us with a counter-notice within the notice period, we are required by paragraph 68 of the Code to pay you the amount of any loss or damage sustained by you in consequence of any alteration being made to your electronic communications apparatus (in carrying out the Proposed Works).

[Insert date of Notice]

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ANNEX 1

THE APPARATUS AND THE PROPOSED ALTERATION

The electronic communications apparatus

[Insert details of the electronic communications apparatus to which the alteration will relate]

The proposed alteration(s)

[Insert details of the alterations which will, or are likely, to be made to the electronic communications apparatus described above as a result of the Proposed Works]

NOTES FOR COMPLETING THIS NOTICE

You may wish to obtain independent legal advice before completing this notice.

- (a) This notice should be **delivered by hand** or sent by **registered post** or **recorded delivery** to the operator at:
- the address for service that the operator has given to you for the purposes of the Code; or
 - if no such address has been given to you, at the address given by section 394 of the Communications Act 2003 (available online at www.legislation.gov.uk).

Please note that you will be guilty of an offence if you make an alteration of electronic communications apparatus in carrying out non-emergency undertaker's works without giving this notice.

- (b) This notice is only suitable when providing notice of non-emergency undertaker's works. These works are defined at paragraph 66(5) of the Code as any undertaker's works (defined at paragraph 65(1) of the Code) which are not emergency works. Emergency undertaker's works are defined in paragraph 70 of the Code as follows:

"undertaker's works carried out in order to stop anything already occurring, or to prevent anything imminent from occurring, which is likely to cause:

- (a) danger to persons or property;
- (b) interference with the exercise of any functions conferred or imposed on the undertaker by or under any enactment; or
- (c) substantial loss to the undertaker,

and any other works which it is reasonable (in all the circumstances) to carry out with those works."

- (c) Please note that you will be guilty of an offence if you make an alteration of electronic communications apparatus in carrying out non-emergency undertaker's works before the end of the notice period.

STATUTORY NOTICE

COUNTER-NOTICE REGARDING NON-EMERGENCY UNDERTAKER'S WORKS WHICH INTERFERE WITH AN ELECTRONIC COMMUNICATIONS NETWORK

Paragraph 67(2) of Part 10 of Schedule 3A of the Communications Act 2003

1. This is a statutory notice pursuant to paragraph 67(2) of the electronic communications code, set out in Schedule 3A to the Communications Act 2003 (the "**Code**").¹
2. On *[Insert date]*, you, *[Insert name of undertaker]*, gave us, *[Insert name of Code operator]*, a notice under paragraph 66(1) of the Code. That notice informed us of your intention to carry out non-emergency works at *[Insert address]* which would interfere with our electronic communications apparatus (the "**Proposed Works**").
3. The purpose of this notice is to inform you that we require you to make any alteration of our electronic communications apparatus that is necessary or expedient because of the Proposed Works both under our supervision and to our satisfaction.

[OR - delete appropriate version of paragraph 3]

3. The purpose of this notice is to inform you that we intend to make any alteration of our electronic communications apparatus that is necessary or expedient because of the Proposed Works.

CONSEQUENCES OF THIS NOTICE

4. As a result of this notice, you must, in carrying out the Proposed Works, act in accordance with this counter-notice when altering our electronic communications apparatus and therefore carry out those alterations both under our supervision and to our satisfaction.² You must also pay us:
 - a. the amount of any loss or damage sustained by us in consequence of any alteration being made to our electronic communications apparatus (in carrying out the Proposed Works); and
 - b. any expenses incurred by us in, or in connection with, supervising you when altering our electronic communications apparatus (in carrying out the Proposed Works).

*[OR - delete appropriate version of paragraph 4]*³

4. As a result of this notice, you must not alter our electronic communications apparatus (in carrying out the Proposed Works).⁴ You must also pay us:
 - a. any expenses incurred by us in, or in connection with, making the alteration; and

¹ A copy of the Communications Act 2003 is available online at www.legislation.gov.uk.

² This is subject to paragraph 67(4) of the Code which provides that, where a Code operator unreasonably fails to provide the required supervision, the undertaker must act in accordance with the counter-notice only insofar as it requires alterations to be made to the satisfaction of the Code operator.

³ The appropriate version of paragraph 4 will depend on which version of paragraph 3 you have chosen. In particular, if you choose the first version of paragraph 3, you must choose the first version of paragraph 4 (and vice versa).

⁴ This is subject to paragraph 67(6) of the Code which provides that the undertaker should not be prevented from making any alteration of electronic communications apparatus which the Code operator fails to make within a reasonable time.

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- b. the amount of any loss or damage sustained by us in consequence of the alteration being made.

[*Insert date of Notice*]

STATUTORY NOTICE

REGARDING THE CARRYING OUT OF EMERGENCY UNDERTAKER'S WORKS UNDER THE ELECTRONIC COMMUNICATIONS CODE

Paragraph 70(2) of Part 10 of Schedule 3A of the Communications Act 2003

1. This is a statutory notice pursuant to paragraph 70(2) of the electronic communications code, set out in Schedule 3A to the Communications Act 2003 (the “Code”). ^[see note (a)]
2. We, [*Insert name of undertaker*], are writing to you in your capacity as a Code operator and, in particular, in respect of electronic communications apparatus kept by you [*on / under / over*] land at [*Insert address / description of land, etc.*] (the “Apparatus”).
3. The purpose of this notice is to inform you that we have begun carrying out emergency undertaker's works (as defined in paragraph 70 of the Code) and, in carrying out those works, [*have made / have commenced making / will make*] an alteration to the Apparatus in accordance with paragraph 70(1) of the Code.
4. Further details on the alteration that we [*have made / have commenced making / will make*] are set out in the Annex to this notice.

YOUR RIGHTS

5. We are required by paragraph 70(4) of the Code to make the alteration to your satisfaction. [*If you are not satisfied with the alterations made to the Apparatus / If you would like to supervise us in making these Alterations*]¹ ^[see note (b)], please let us know by contacting:

[*Insert contact details*].

6. We are also required by paragraph 70(5)(b) to pay you the amount of any loss or damage sustained by you in consequence of the alteration being made. If you sustain any loss or damage in consequence of the alteration being made, please provide details to the contact referred to in the paragraph above.

[*Insert date of Notice*]

¹ If you would like to supervise us in making these alterations, we are required by paragraph 70(5)(a) of the Code to pay you any expenses incurred in, or in connection with, that supervision.

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ANNEX
THE ALTERATIONS

[Insert details of the relevant alterations. These can be provided by descriptive text and/or diagrams].

NOTES FOR COMPLETING THIS NOTICE

You may wish to obtain independent legal advice before completing this notice.

- (a) This notice should be **delivered by hand** or sent by **registered post** or **recorded delivery** to the operator at:
- the address for service that the operator has given to you for the purposes of the Code; or
 - if no such address has been given to you, at the address given by section 394 of the Communications Act 2003 (available online at www.legislation.gov.uk).

This notice is only suitable for emergency undertaker's works and must be given to the relevant Code operator **as soon as practicable** after those works are started. Emergency undertaker's works are defined in paragraph 70 of the Code as follows:

"undertaker's works carried out in order to stop anything already occurring, or to prevent anything imminent from occurring, which is likely to cause:

- (a) danger to persons or property;*
- (b) interference with the exercise of any functions conferred or imposed on the undertaker by or under any enactment; or*
- (c) substantial loss to the undertaker,*

and any other works which it is reasonable (in all the circumstances) to carry out with those works."

Please note that an undertaker, or an agent of an undertaker, is guilty of an offence if that person makes an alteration of electronic communications apparatus in carrying out emergency undertaker's works and does so without notice of those works having been given in accordance with paragraph 70 of the Code.

- (b) *Please choose appropriate text depending on whether or not the alterations have already been completed. If they have not been completed, you should provide the operator with the opportunity to supervise them being made.*

STATUTORY NOTICE

REGARDING THE INSTALLATION OF ELECTRONIC COMMUNICATIONS APPARATUS UNDER THE ELECTRONIC COMMUNICATIONS CODE

Paragraph 74(2) of Part 11 of Schedule 3A of the Communications Act 2003

1. This is a statutory notice pursuant to paragraph 74(2) of the electronic communications code, set out in Schedule 3A to the Communications Act 2003 (the “**Code**”). ^[see note (a)]
2. We, [*Insert name of Code operator*], have installed [*this electronic communications apparatus / electronic communications apparatus that is directly or indirectly connected to this piece of apparatus*] for the purposes of our network (the “**Apparatus**”). We are required to provide this notice because the Apparatus is at a height of three or more metres above the ground.

RIGHT TO OBJECT

3. You **will** have a right to object to the Apparatus under paragraph 76 of the Code if BOTH:
 - a. you are an occupier of, or have an interest in, any land neighbouring the land on or over which the Apparatus is kept; AND
 - b. because of the nearness of that neighbouring land to the land on or over which the Apparatus is kept:
 - i. the enjoyment of that neighbouring land is capable of being prejudiced by the Apparatus; or
 - ii. any interest in that land is capable of being prejudiced by the Apparatus.
4. You **will not** however have a right to object, even if the criteria referred to at paragraph 3 above are satisfied, if the Apparatus:
 - a. replaces any electronic communications apparatus which is not substantially different from the Apparatus; and
 - b. is not in a significantly different position.
5. If you have a right to object to the Apparatus, you may exercise that right by giving us notice of your objection under paragraph 77 of the Code. Any such notice should be provided in writing to:

[*Insert appropriate UK postal address*]

6. Any notice of objection should be provided as soon as practicable. Please note that your right to object, and the procedure that applies to that right, will depend on whether you provide notice of your objection within 12 months of installation of the Apparatus, or after. The circumstances in which a court may uphold an objection are significantly more limited if the Apparatus has been installed for over 12 months.¹

[*Insert date of Notice*]

¹ See paragraphs 78 and 79 of the Code for more detail on your right to object and the procedure that will apply in respect of it.

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NOTES FOR COMPLETING THIS NOTICE

This notice should be given before the end of the period of three days beginning with the day after that on which the relevant installation is completed.

It must be attached, in a secure and durable manner, to every major item of apparatus installed or, if no major item of apparatus is installed, to the nearest major item of electronic communications apparatus to which the apparatus that is installed is directly or indirectly connected. It must also be attached in a position where it is reasonably legible.

STATUTORY NOTICE

NOTICE OF OBJECTION TO ELECTRONIC COMMUNICATIONS APPARATUS KEPT ON, UNDER OR OVER TIDAL WATER OR LAND UNDER THE ELECTRONIC COMMUNICATIONS CODE

Paragraph 77(1) of Part 12 of Schedule 3A of the Communications Act 2003

1. This is a statutory notice pursuant to paragraph 77(1) of the electronic communications code, set out in Schedule 3A to the Communications Act 2003 (the “Code”).¹ [see note (a)]
2. The purpose of this notice is to inform you, [Insert name of Code operator], that [I/we], [Insert name of objector(s)], object to electronic communications apparatus installed by you on, under or over [tidal water / tidal lands]. [see note (b)]

THE APPARATUS

3. The apparatus to which this notice relates is kept [on / under / over] [tidal water / tidal lands] at [Insert address / description of location of tidal water or lands] (the “Apparatus”).
4. [A map which identifies the approximate location of the Apparatus and the [tidal water / tidal lands] [on / under / over] which the Apparatus is kept is provided in the Annex to this notice.] [see note (c)]
5. [I/We] [[am/are] an occupier of / have an interest in] that tidal water or lands.

MY OBJECTION

6. [I/We] object to the Apparatus on the ground that it materially prejudices [my/our] enjoyment of, or interest in, the tidal water or lands. In particular, [explain why the Apparatus materially prejudices your enjoyment of, or interest in, the tidal water or lands and in what way the Apparatus should be altered].

[OR - delete appropriate version of paragraph 6] [see note (d)]

6. [I/We] object to the Apparatus on the ground that it is necessary to alter the Apparatus to enable [me/us] to carry out a proposed improvement of the tidal water or lands. In particular, [explain what proposed improvements you would like to make, why these are necessary and in what way the Apparatus should be altered].
7. For all future correspondence on this matter, please contact me: [Insert relevant contact details (post, phone, email)].

[Insert date of Notice]

¹ A copy of the Communications Act 2003 is available online at www.legislation.gov.uk.

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[ANNEX

APPROXIMATE LOCATION OF THE APPARATUS

[Insert map and mark, as closely as possible, where the Apparatus is located].]

NOTES FOR COMPLETING THIS NOTICE

You may wish to obtain independent legal advice before completing this notice.

- (a) This notice should be **delivered by hand** or sent by **registered post** or **recorded delivery** to the operator at:
- the address for service (if any) that the operator has given to you for the purposes of the Code; or
 - if no such address has been given to you, at the address given by section 394 of the Communications Act 2003 (available online at www.legislation.gov.uk).

Please note that you will also need to make a separate application to the court (in addition to giving this notice) if you want to have your objection upheld. You can apply to the court to have your objection upheld after the end of the period of two months beginning with the date on which this notice is given, but before the end of the period of four months beginning with that date.

For example, if you give your notice of objection to the Code operator on 1 November 2017, you will only be entitled to apply to the court to have your objection upheld between 2 January 2018 and 1 March 2019.

- (b) You will only have a right to object to the Apparatus, under paragraph 76(1) of the Code, if:
- a. you are an occupier, or have an interest in, the tidal water or lands;
 - b. you are not bound by a Code right enabling the Code operator to keep the Apparatus installed on, under or over the tidal water or lands; and
 - c. you are not a person with the benefit of a Crown interest in the tidal water or lands.

You **will not** however have a right to object, even if the above criteria are satisfied, if the Apparatus:

- a. replaces any electronic communications apparatus which is not substantially different from the Apparatus; and
 - b. is not in a significantly different position.
- (c) You are not required to provide a map showing the approximate location. However, you may find this helpful, particularly if you think that the Code operator may find it difficult to identify the relevant apparatus from the address / description given in paragraph 3 above.
- (d) If your objection is made **within 12 months** of the Apparatus being installed, you should choose the first version of paragraph 6. This is because the court must be satisfied, amongst other things, that the Apparatus appears materially to prejudice your enjoyment of, or interest in, the tidal water or lands before it can uphold your objection. See paragraphs 78(4) and (5) for the conditions which must be met before the court will uphold your objection.

However, if your objection is made **later than 12 months** after the Apparatus was installed, you should choose the second version of paragraph 6. This is because the court must be satisfied, amongst other things, that the Apparatus needs to be altered to enable you to carry out a proposed improvement of the tidal water or lands before it can uphold your objection. See paragraph 79(3) for the conditions which must be met before the court may uphold your objection.

STATUTORY NOTICE

NOTICE OF OBJECTION TO A LINE INSTALLED OVER LAND UNDER THE ELECTRONIC COMMUNICATIONS CODE

Paragraph 77(1) of Part 12 of Schedule 3A of the Communications Act 2003

1. This is a statutory notice pursuant to paragraph 77(1) of the electronic communications code, set out in Schedule 3A to the Communications Act 2003 (the “Code”).¹ [see note (a)]
2. The purpose of this notice is to inform you, [Insert name of Code operator], that [I/we], [Insert name of objector(s)], object to a line installed over land by you pursuant to paragraph 73 of the Code. [see note (b)]

THE APPARATUS

3. The line to which this notice relates has been installed over land at [Insert address] (the “Line”).
4. [A map which identifies the approximate location of the Line and the land over which it has been installed is provided in the Annex to this notice.] [see note (c)]
5. [I/We] [[am/are] the occupier of / have an interest in] that land.

MY OBJECTION

6. [I/We] object to the Line on the ground that it materially prejudices [my/our] enjoyment of, or interest in, the land. In particular, [explain why the Line materially prejudices your enjoyment of, or interest in, the land and in what way the Line should be altered].

[OR - delete appropriate version of paragraph 6] [see note (d)]
6. [I/We] object to the Line on the ground that it is necessary to alter the Line to enable [me/us] to carry out a proposed improvement of the land. In particular, [explain what proposed improvements you would like to make, why these are necessary and in what way the Line should be altered].
7. For all future correspondence on this matter, please contact [me/us]: [Insert relevant contact details (post, phone, email)].

[Insert date of Notice]

¹ A copy of the Communications Act 2003 is available online at www.legislation.gov.uk.

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[ANNEX

APPROXIMATE LOCATION OF THE LINE

[Insert map and mark, as closely as possible, where the Line is located].]

NOTES FOR COMPLETING THIS NOTICE

You may wish to obtain independent legal advice before completing this notice.

- (a) This notice should be **delivered by hand** or sent by **registered post** or **recorded delivery** to the operator at:
- the address for service that the operator has given to you for the purposes of the Code; or
 - if no such address has been given to you, at the address given by section 394 of the Communications Act 2003 (available online at www.legislation.gov.uk).

Please note that you will also need to make a separate application to the court (in addition to giving this notice) if you want to have your objection upheld. You can apply to the court to have your objection upheld after the end of the period of two months beginning with the date on which this notice is given, but before the end of the period of four months beginning with that date.

For example, if you give your notice of objection to the Code operator on 1 November 2017, you will only be entitled to apply to the court to have your objection upheld between 2 January 2017 and 1 March 2018.

- (b) You will only have a right to object to the Line, pursuant to paragraph 76(3) of the Code, if:
- a. you are an occupier, or have an interest in, the land over which it has been installed; and
 - b. you are not bound by a Code right enabling the Code operator to keep the Line installed over the land.

You **will not** however have a right to object, even if the above criteria are satisfied, if the Line:

- a. replaces any line which is not substantially different from the Line; and
- b. is not in a significantly different position.

- (c) You are not required to provide a map showing the approximate location. However, you may find this helpful, particularly if you think that the Code operator may find it difficult to identify the relevant apparatus from the address / description given in paragraph 3 above.

- (d) If your objection is made **within 12 months** of the Line being installed, you should choose the first version of paragraph 6. This is because the court must be satisfied, amongst other things, that the Line appears materially to prejudice your enjoyment of, or interest in, the land before it can uphold your objection. See paragraphs 78(4) and (5) for the conditions which must be met before the court will uphold your objection.

However, if your objection is made **later than 12 months** after the Line was installed, you should choose the second version of paragraph 6. This is because the court must be satisfied, amongst other things, that the Line needs to be altered to enable you to carry out a proposed improvement of the land before it can uphold your objection. See paragraph 79(3) for the conditions which must be met before the court may uphold your objection.

STATUTORY NOTICE

NOTICE OF OBJECTION TO ELECTRONIC COMMUNICATIONS APPARATUS KEPT ON OR OVER LAND UNDER THE ELECTRONIC COMMUNICATIONS CODE

Paragraph 77(1) of Part 12 of Schedule 3A of the Communications Act 2003

1. This is a statutory notice pursuant to paragraph 77(1) of the electronic communications code, set out in Schedule 3A to the Communications Act 2003 (the “Code”).¹ [see note (a)]
2. The purpose of this notice is to inform you, [Insert name of Code operator], that [I/we], [Insert name of objector(s)], object to electronic communications apparatus kept by you on or over land for the purposes of your network. [see note (b)]

THE APPARATUS

3. The apparatus to which this notice relates has been installed [on / over] land at [Insert address] (the “Apparatus”).
4. [I/we] [occupy / have an interest in] neighbouring land at [Insert address] (the “neighbouring land”).
5. [A map which identifies the approximate location of the Apparatus, the land [on / over] which the Apparatus is kept, and the neighbouring land is provided in the Annex to this notice.] [see note (c)]

MY OBJECTION

6. [I/we] object to the Apparatus on the ground that it materially prejudices [my/our] enjoyment of, or interest in, the neighbouring land. In particular, [explain why the Apparatus materially prejudices your enjoyment of, or interest in, the neighbouring land and in what way the Apparatus should be altered].

[OR - delete appropriate version of paragraph 6] [see note (d)]

6. [I/we] object to the Apparatus on the ground that it is necessary to alter the Apparatus to enable [me/us] to carry out a proposed improvement of the neighbouring land. In particular, [explain what proposed improvements you would like to make, why these are necessary and in what way the Apparatus should be altered].
7. For all future correspondence on this matter, please contact [me/us]: [Insert relevant contact details (post, phone, email)].

[Insert date of Notice]

¹ A copy of the Communications Act 2003 is available online at www.legislation.gov.uk.

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[ANNEX

APPROXIMATE LOCATION OF THE APPARATUS

[Insert map and mark, as closely as possible, where the Apparatus is located].]

NOTES FOR COMPLETING THIS NOTICE

You may wish to obtain independent legal advice before completing this notice.

- (a) This notice should be **delivered by hand** or sent by **registered post** or **recorded delivery** to the operator at:
- the address for service that the operator has given to you for the purposes of the Code; or
 - if no such address has been given to you, at the address given by section 394 of the Communications Act 2003 (available online at www.legislation.gov.uk).

Please note that you will also need to make a separate application to the court (in addition to giving this notice) if you want to have your objection upheld. You can apply to the court to have your objection upheld after the end of the period of two months beginning with the date on which this notice is given, but before the end of the period of four months beginning with that date.

For example, if you give your notice of objection to the Code operator on 1 November 2017, you will only be entitled to apply to the court to have your objection upheld between 2 January 2018 and 1 March 2018.

- (b) You will only have a right to object to the Apparatus, under paragraph 76(5) of the Code, if:
- a. the whole or any part of the Apparatus is at a height of three metres or more above the ground;
 - b. you are an occupier, or have an interest in, any land neighbouring the land on which the apparatus is kept; and
 - c. because of the nearness of the neighbouring land to the land on or over which the Apparatus is kept:
 - i. the enjoyment of the neighbouring land is capable of being prejudiced by the Apparatus; or
 - ii. any interest in that land is capable of being prejudiced by the Apparatus.

You **will not** however have a right to object, even if the above criteria are satisfied, if the Apparatus:

- a. replaces any electronic communications apparatus which is not substantially different from the Apparatus; and
 - b. is not in a significantly different position.
- (c) You are not required to provide a map showing the approximate location. However, you may find this helpful, particularly if you think that the Code operator may find it difficult to identify the relevant apparatus from the address / description given in paragraph 3 above.

PLEASE SEE OVERLEAF

NOTES FOR COMPLETING THIS NOTICE (CONTINUED)

(d) If your objection is made **within 12 months** of the Apparatus being installed, you should choose the first version of paragraph 6. This is because the court must be satisfied, amongst other things, that the Apparatus appears materially to prejudice your enjoyment of, or interest in, the neighbouring land before it can uphold your objection. See paragraphs 78(4) and (5) of the Code for the conditions which must be met before the court will uphold your objection.

However, if your objection is made **later than 12 months** after the Apparatus was installed, you should choose the second version of paragraph 6. This is because the court must be satisfied, amongst other things, that the Apparatus needs to be altered to enable you to carry out a proposed improvement of the neighbouring land before it can uphold your objection. See paragraph 79(3) of the Code for the conditions which must be met before the court may uphold your objection.

STATUTORY NOTICE

REQUIRING [A TREE TO BE LOPPED / VEGETATION TO BE CUT BACK] PURSUANT TO THE ELECTRONIC COMMUNICATIONS CODE

Paragraph 81(3) of Part 13 of Schedule 3A of the Communications Act 2003

IMPORTANT NOTICE

If you object to the works proposed in this notice, you should send a counter notice within 28 days

1. This is a statutory notice pursuant to paragraph 81(3) of the electronic communications code, set out in Schedule 3A to the Communications Act 2003 (the “Code”).¹
2. We [Insert name of Code operator] are giving you, [Insert name], this notice because we understand that you are the occupier of land at [Insert address and any other relevant details] (the “Land”).
3. We are concerned that [a tree / vegetation] growing on the Land is overhanging a [street / road] and [obstructing / will or may obstruct / interferes with / will or may interfere with] electronic communications apparatus [installed / about to be installed] by us and which is [used / to be used] for the purposes of our network. Further details on the [tree / vegetation] to which this notice relates are set out in the Annex to this notice.
4. The purpose of this notice is to require you to [lop the tree / cut back the vegetation] to prevent the [obstruction / interference] referred to above. We ask that you do this on or before [Insert date].

YOUR OPTIONS

5. In response to this notice, you may:
 - a. comply with this notice and therefore [lop the tree / cut back the vegetation] by the deadline specified above;²
 - b. within the period of 28 days beginning with the day on which this notice is given, give us a counter-notice under paragraph 81(4) of the Code objecting to the [lopping of the tree / cutting back of the vegetation]. If you do submit such a notice, we will only be entitled to [lop the tree / cut back the vegetation] in pursuance of an order of the court; or [see note (a)]
 - c. do nothing. If you do nothing, we will be entitled to cause the [tree to be lopped / vegetation to be cut back] after the expiry of the 28-day period referred to above (i.e. without an order of the court).³

¹ A copy of the Communications Act 2003 is available online at www.legislation.gov.uk.

² If you do so and sustain any loss or damage or incur any expenses as a result, you will be entitled under paragraph 81(9) of the Code to apply to the court for an order requiring us to pay such compensation as the court thinks fit.

³ Paragraph 81(7) of the Code requires us to carry out any such works in a husband-like manner and in such a way as to cause the minimum damage to the tree or vegetation. This is also the case if we obtain an order of the court entitling us to carry out the works ourselves. Where we cause the tree to be lopped or vegetation to be cut back and you sustain any loss or damage as a result, you will be

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6. Please submit any counter-notice pursuant to paragraph 5b. above to us in writing as soon as possible and, in any event, before the end of 28 days beginning with the day on which this notice is given.
7. To be effective, such notification must be **delivered by hand** or sent by **registered post** or **recorded delivery** to the following address:
[*Insert address details*]
8. If you have any questions about this notice, please do not hesitate to contact us via telephone (*Insert number*) or e-mail (*insert email address*).

[*INSERT DATE OF NOTICE*]

entitled under paragraph 81(9) of the Code to apply to the court for an order requiring us to pay such compensation as the court thinks fit.

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ANNEX

THE [TREE / VEGETATION] TO WHICH THIS NOTICE RELATES

[Insert further details, such as a map showing the precise location of the tree/vegetation and the precise works which you consider need to be carried out in order to prevent the obstruction or interference with your apparatus].

STATUTORY NOTICE

COUNTER-NOTICE REGARDING THE [LOPPING OF A TREE / CUTTING BACK OF VEGETATION] UNDER THE ELECTRONIC COMMUNICATIONS CODE

Paragraph 81(4) of Part 13 of Schedule 3A of the Communications Act 2003

1. This is a statutory notice pursuant to paragraph 81(4) of the electronic communications code, set out in Schedule 3A to the Communications Act 2003 (the “Code”).¹ [see note (a)]
2. [I / We], [Insert name], have received a notice from you, [Insert name of Code operator], under paragraph 81(3) of the Code requiring us to [lop a tree / cut back vegetation] at [Insert address].
3. The purpose of this notice is to inform you that [I / we] object to the [lopping of the tree / cutting back of the vegetation] required by your notice. This is because [insert details of why you object]. [see note (b)]

[INSERT DATE OF NOTICE]

¹ A copy of the Communications Act 2003 is available online at www.legislation.gov.uk.

NOTES FOR COMPLETING THIS NOTICE

You may wish to obtain independent legal advice before completing this notice.

(a) *This notice should be **delivered by hand** or sent by **registered post** or **recorded delivery** to the operator at:*

- *the address for service that the operator has given to you for the purposes of the Code; or*
- *if no such address has been given to you, at the address given by section 394 of the Communications Act 2003 (available online at www.legislation.gov.uk).*

To be effective, this notice must be given to the operator within the period of 28 days beginning with the day on which the operator gave you a notice under paragraph 81(3) of the Code. If it is given by this deadline, the Code operator will not be able to require you to lop the tree or cut back the vegetation (or carry out these works itself) unless it has an order of the court to this effect.

(b) *You should explain as clearly as possible why you object to the works required by the Code operator. For example, do you require more time to complete the works? Do you think that the extent of the works requested by the Code operator is not necessary to ensure that the interference/obstruction to that operators' electronic communications apparatus is prevented (and, if so, why)?*

STATUTORY NOTICE
OF THE ASSIGNMENT OF AN AGREEMENT UNDER THE ELECTRONIC
COMMUNICATIONS CODE

Paragraph 15(5) of Part 3 of Schedule 3A of the Communications Act 2003

1. This is a statutory notice pursuant to paragraph 15(5) of the electronic communications code, set out in Schedule 3A to the Communications Act 2003 (the “Code”).¹
2. We [*Insert name of assignee Code operator*] (“we” or “us”) understand that you, [*Insert name of site provider*], are currently party to an agreement under Part 2 of the Code with [*Insert name of assigning Code operator*] (the “Operator” and the “Agreement”). Under the Agreement, you agreed to [*confer / be bound by*] a number of Code rights in order to facilitate the deployment by the Operator of its [*electronic communications network / infrastructure system*]. These Code rights relate to land occupied by you at [*Insert address*].
3. The purpose of this notice is to inform you that, on [*Insert date*], the Operator assigned the Agreement to us. This means that the Operator has transferred the benefit of the Code rights [*conferred by / binding on*] you under the Agreement to us, and that we are (from the date of the assignment) bound by the terms of the Agreement.
4. Please note that, from the date on which this notice has been given to you, the Operator will not be liable for any breach of a term of the Agreement (unless that breach took place before the date on which this notice was given to you). As a result, should you have any concerns in the future about the exercise of Code rights on your land, please contact us.
5. Our contact address is [*Insert*].
6. If you have any questions about this notice, please do not hesitate to contact us via telephone (*Insert number*) or e-mail (*insert email address*).

[*Insert date of Notice*]

¹ A copy of the Communications Act 2003 is available online at www.legislation.gov.uk.

STATUTORY NOTICE

REQUIRING A CHANGE TO THE TERMS OF AN AGREEMENT UNDER THE ELECTRONIC COMMUNICATIONS CODE

Paragraph 32(1) of Part 2 of Schedule 3A of the Communications Act 2003

1. This is a statutory notice pursuant to paragraph 32(1) of the electronic communications code, set out in Schedule 3A to the Communications Act 2003 (the “Code”).¹
2. The purpose of this notice is to require a change to the terms of an agreement between you, [Insert name of Code operator] and [us/me], [Insert name of site provider] under Part 2 of the Code. [I am/We are] seeking your agreement to this change.

BACKGROUND

3. We have entered into an agreement under Part 2 of the Code (the “Agreement”). Under the Agreement, [I/we] [have conferred on you / become bound by] certain rights under the Code. The purpose of these rights is to facilitate the deployment by you of your [electronic communications network and/or system of infrastructure] at [Insert address].
4. Paragraph 32 of the Code explains how a party to a Code agreement may require a change to the terms of an agreement which has expired. It provides that, in the first instance, the party seeking the change should provide notice to the other party of the change that it is seeking and the date on which that change would take place.

THE CHANGE WE ARE REQUESTING

5. [I/We] are asking you to agree, from the date set out in paragraph 6 below, that:
 - a. [the Agreement should have effect subject to the modified terms set out in Annex [X];]
 - b. [your existing Code right to [insert details of Code right] should no longer [be conferred by / bind] us;]
 - c. [the Agreement should also [confer on you / bind us to] [Insert details of additional Code right proposed];]
 - d. [the Agreement should be terminated and a new agreement should have effect between us on the terms set out in Annex [X].]
6. The day from which [I/we] propose that:
 - a. [the modified terms should have effect;]
 - b. [the Code right referred to in paragraph 5 above should no longer [be conferred by / bind] us;]
 - c. [the additional Code right referred to in paragraph 5 above should [be conferred by / bind] us;]
 - d. [the Agreement should be terminated, and from which the new agreement set out in Annex [X] should have effect]

is [Insert Date].^[see note (a)]

CONSEQUENCES OF NOT REACHING AGREEMENT

¹ A copy of the Communications Act 2003 is available online at www.legislation.gov.uk.

[SITE PROVIDER VERSION]

7. If, after the end of six months beginning with the day on which this notice is given, [I/we] have not reached agreement with you on the proposals in this notice, [I/we] may apply to the court for an order under paragraph 33 of the Code.

NEXT STEPS

8. Any notification confirming that you agree or disagree to the change requested above should be provided to [me/us] in writing as soon as possible and, in any event, before the end of six months beginning with the day on which this notice is given.
9. To be effective, such notification must be **delivered by hand** or sent by **registered post** or **recorded delivery** to the following address:
[Insert address details]
10. [If you have any questions about this notice, please do not hesitate to contact [me/us] via telephone (Insert number) or e-mail (insert email address).]

[INSERT DATE OF NOTICE]

NOTES AND SUPPLEMENTARY INFORMATION FOR THE SENDER OF THIS
NOTICE

You may wish to obtain independent legal advice before completing this notice.

- a) Paragraph 32(3) of the Code sets out rules about the earliest date on which you can request that a change to a Code agreement takes effect.

In particular, paragraph 32(3) provides that the day on which you propose that any change has effect must fall:

- after the end of the period of 6 months beginning with the day on which the notice is given; and
 - after the time at which, apart from paragraph 29 of the Code, the Code right to which the existing Code agreement relates would have ceased to be exercisable or to bind you or at a time when, apart from that paragraph, the Code agreement could have been brought to an end by you.
- b) The types of orders which the court may make under paragraph 33 of the Code include an order which has the effect of:
- modifying the terms of the Agreement;
 - modifying the terms of the Agreement so that one of the Code rights set out therein is no longer conferred by or binding on you;
 - modifying the terms of the Agreement so that it confers an additional Code right on the operator or provides that you are bound by an additional Code right;
 - terminating the Agreement and ordering the operator to enter into a new agreement which confers a Code right on that operator or provides for a Code right to bind you.
- c) In determining whether to make an order under paragraph 33, the court must have regard to all the circumstances of the case, and in particular to:
- the operator's business and technical needs;
 - the use that you are making of the land to which the existing code agreement relates;
 - any duties imposed on you by an enactment; and
 - the amount of consideration payable by the operator to you under the existing code agreement.
- d) If the court makes an order under paragraph 33, it may also order the operator to pay you consideration. See paragraph 33(14) for details of how the consideration should be calculated by the court in this case.