

City of London - MDU - Building Wide Wayleave

DATED: 22/02/2022

THE MAYOR AND COMMONALTY AND CITIZENS OF THE CITY OF LONDON

and

BRITISH TELECOMMUNICATIONS PLC

WAYLEAVE AGREEMENT

**in respect of the installation of electronic communication
apparatus at buildings listed in Schedule 1**



WAYLEAVE AGREEMENT

DATE 22/02/2022

PARTIES

- (1) THE MAYOR AND COMMONALTY AND CITIZENS OF THE CITY OF LONDON of PO Box 270 Guldhall London EC2P 2EJ (the "Grantor" which expression will include the Grantor's successors in title); and
- (2) BRITISH TELECOMMUNICATIONS PLC (incorporated and registered in England and Wales under company registration number 1800000), the registered office of which is at 81 Newgate Street, London EC1A 7AJ (the "Company" which expression will include any entity to whom this wayleave agreement may be transferred pursuant to clause 7).

RECITALS

- (A) This agreement is made pursuant to Part 2 of Schedule 3A of the Act (as defined in clause 1).
- (B) The Company benefits from powers under the Code.
- (C) The Grantor is the owner of the freehold estate in the Property (as defined in clause 1) or has a leasehold interest in the Property of greater than one year.

IT IS AGREED AS FOLLOWS:

1. DEFINITIONS AND INTERPRETATION

1.1 In this agreement (unless the context otherwise requires) the following words have the following meanings:

"Act" means the Communications Act 2003, as amended by the Digital Economy Act 2017;

"Code"

means the Electronic Communications Code as set out in Schedule 3A to the Act as amended by the Digital Economy Act 2017;

"Customers"

means any tenant and/or undertenant(s) and/or lawful occupiers of the Property which have a contract for any Electronic Communications Service fulfilled via the Permitted Apparatus;

"Electronic Communications Service" means an electronic communications service as defined in section 32 of the Act;

"Operational Land"

means the part of the Property which comprises a strip one metre or thereabouts in width running over and to either side of the Permitted Apparatus;

"Permitted Apparatus"

means any Electronic Communications Apparatus (as defined by paragraph 5 of Part 1 of the Code):

- (a) approved by the Grantor in accordance with clause 3.1 and which is to be supplied by the Company for use in the supply of an Electronic Communications Service to Customers; and
- (b) installed at the Property prior to the date of this agreement (including pursuant to the Pre-Existing Wayleave Agreements) and which has been supplied by the Company for use in the supply of an Electronic Communications Service to Customers (the **"Pre-Existing Permitted Apparatus"**),

and if applicable includes such apparatus as substituted or upgraded pursuant to clause 2.1 or relocated pursuant to clause 4;

"Pre-Existing Wayleave Agreements"

means the pre-existing wayleave agreements signed before the date of this agreement granting rights to the Company in the Property (if any);

"Property" means the property described in **Schedule 1**;

"SSRAMS"

means the document or documents consisting of Site Specific Risk Assessments and Method Statements detailing any proposed Works to be carried out at the Property by the Company;

"Works"

means any works to the Property necessary to install, use, keep, operate, maintain, repair, substitute and remove the Permitted Apparatus, including any works carried out under clause 2.1 or any other provision of this agreement.

1.2 Reference to any statute or statutory provision includes a reference to the statutory provision as from time to time amended, extended or re-enacted.

1.3 Reference to a clause, paragraph or schedule is to a clause or paragraph of or a schedule to this agreement and a reference to this agreement includes its schedules.

1.4 Reference to the alteration of the Permitted Apparatus includes reference to the moving or relocation of the Permitted Apparatus or any part of it but does not include reference to the removal of the Permitted Apparatus.

2. RIGHTS OF THE COMPANY

It is agreed by the Grantor that the Company, and its duly authorised agents will be entitled to exercise the following ("the Rights"):

- 2.1 to install, use, keep, operate, maintain, repair, substitute, upgrade, share and remove the Permitted Apparatus in, on, under or over the Property;
- 2.2 for the purpose of clause 2.1 to enter into and upon the Property at reasonable times giving the Grantor prior reasonable notice (except in the case of emergency) with or without workmen, vehicles (where appropriate), plant equipment or machinery to carry out the Works; and
- 2.3 to use the Permitted Apparatus for the purpose of providing an electronic communication service (as defined by the Code) to the occupiers of the Property only, until the termination of this agreement in accordance with clause 6 or otherwise by agreement.

3. THE COMPANY'S COVENANTS

The Company covenants with the Grantor that it will:

- 3.1 prior to carrying out any Works obtain the approval of the Grantor to the SSRAMs applicable to them (such approval not to be unreasonably withheld or delayed) and will not carry out any Works nor install any Electronic Communications Apparatus at or to the Property prior to obtaining such approval;
- 3.2 carry out the Works in accordance with the SSRAMs approved by the Grantor in accordance with clause 3.1 in a proper and workmanlike manner taking all reasonable precautions to avoid obstructions or interference with the use of the Property or any adjoining property and so as to cause as little damage, nuisance and inconvenience as possible to the Grantor and any tenants or occupiers of the Property and any adjoining property;
- 3.3 prior to carrying out any works obtain all statutory and other consents and permits that may be necessary for the Works;
- 3.4 carry out and complete the Works and use and operate the Permitted Apparatus in accordance in all respects with all relevant legislation (including without limitation the guidelines covering electronic communications apparatus provided by the Health Protection Agency and the International Commission for Non-Ionizing Radiation Protection or any successor agencies);
- 3.5 use best endeavours not to use any part of the Property other than the Operational Land for the carrying out of the Works save where it would be impossible not to use some part of the Property in addition to the Operational Land and for which the Grantor's prior approval has been obtained (such approval not to be unreasonably withheld or delayed);
- 3.6 as soon as possible make good to the reasonable satisfaction of the Grantor all damage caused to the Property or any adjoining property arising as a result of the carrying out of the Works or any related works to which the Grantor has consented pursuant to this agreement;
- 3.7 maintain and keep the Permitted Apparatus in good repair and condition and so as not to be a danger to the Grantor, its employees or property, or the tenants or occupiers of the Property;

3.8 give to the Grantor not less than fourteen days' prior written notice (except in case of emergency when such length of notice as is reasonably practicable will be given) of its intention to install, repair, substitute, renew or remove the Permitted Apparatus;

3.9 maintain insurance with a reputable insurance company against public liability and other third party liability in connection with any injury, death, loss or damage to any persons or property belonging to any third party arising out of the exercise by the Company, its employees, agents or any person under its control of the rights hereby granted, and will provide details of such insurance to the Grantor upon request and evidence that it is in force; and

3.10 indemnify the Grantor against all losses, actions, claims, demands, compensation, damages, costs and expenses and increased costs and expenses up to a maximum amount of ten million pounds (£10,000,000), relating to or arising from the installation of the Permitted Apparatus, the retention and use of it; and/or it remaining in or on the Property after the termination of this agreement including (without limitation) any such:

3.10.1 arising from delay to or abandonment of or re-design of works to repair, renew, redevelop, refurbish, alter, improve or change the use of the Property or any adjoining property or any part thereof or plant and machinery serving it and/or loss of rent and/or the difference between the value of the Grantor's interest in the Property with the Permitted Apparatus installed on it and the value of that interest with the Permitted Apparatus removed from it; and

3.10.2 arising out of any breach of any obligation owed by the Company under this agreement.

4. ALTERATIONS TO PERMITTED APPARATUS

4.1 If the Grantor requires the alteration of the Permitted Apparatus or part thereof to enable the Property or any part of it to be repaired, renewed, redeveloped, refurbished, altered, improved, added to or the use of it changed or to permit plant and machinery serving the Property to be installed or renewed or replaced; the Company agrees to alter the Permitted Apparatus at the Company's sole cost as detailed in and upon not less than three months' written notice from the Grantor pursuant to clause 4.2 below.

4.2 Following service of a notice under clause 4.1 the Grantor will consult with the Company to find a suitable alternative location for the Permitted Apparatus within the Property reasonably satisfactory to both parties and taking into account the Company's reasonable requirements, which do not hinder, prevent or impede or increase the cost of the works referred to in clause 4.1. The Company will not be obliged to alter the Permitted Apparatus under this clause 4 if no suitable alternative location can be provided within the Property, subject to clause 4.5 below.

4.3 If the Permitted Apparatus is relocated, the provisions of this agreement will continue to apply to the Property and the Permitted Apparatus in their altered location but if the Grantor requires the Company will accept (and execute and deliver a counterpart of) a further wayleave agreement taking effect on the date of the relocation of the Permitted Apparatus on the same terms, provisions and conditions as this agreement with such amendments as required to describe the alterations that have been agreed between the parties.

4.4 If the Grantor does not require a new wayleave agreement to be entered into under clause 4.3 the Grantor and the Company will each sign a memorandum which will include details of the

alterations to the Permitted Apparatus and will each send the signed memorandum to the other party within one month of the date of alteration of the Permitted Apparatus.

4.5 If the parties are unable to agree upon an alternative location for the Permitted Apparatus by the expiry of the written notice made by the Grantor in accordance with clause 4.1, either party may refer the matter for determination under clause 8.

5. INTERFERENCE

If it is demonstrated by the Grantor that the Permitted Apparatus is materially interfering (electronically, electromagnetically, mechanically or otherwise) with the operation of other equipment now or at any time after the date of this agreement installed at the Property, all parties will co-operate and use reasonable endeavours in achieving a technical solution.

6. TERMINATION

6.1 This agreement will terminate automatically without notice in the event of the Company:

6.1.1 removing all Permitted Apparatus; or

6.1.2 ceasing to be a person to whom the Code is applied.

6.2 The Grantor may determine this agreement by giving the Company not less than 18 months' prior written notice under Paragraph 31 of the Code if:

6.2.1 the Grantor's land is required for or in connection with any demolition, redevelopment, renewal, refurbishment, improvement, alteration or change of use of the Property or any part of it and such demolition, redevelopment, renewal, refurbishment, improvement, alteration or change of use cannot reasonably be carried out without the removal of the Permitted Apparatus provided that an alteration under clause 4 above is not possible;

6.2.2 this agreement ought to come to an end as a result of substantial breaches by the company of our obligations under the agreement;

6.2.3 the Company has persistently delayed making payments due to you under the terms of this Agreement; or

6.2.4 the prejudice caused to the Grantor by the continuation of this Agreement is incapable of being adequately compensated by money and the public benefit likely to result from the continuation of the Agreement does not outweigh the prejudice to the Grantor

6.3 In the event that the Company is in breach of any of its obligations under this agreement and the Company fails to remedy such breach within 30 working days following receipt of written notice from the Grantor (provided that if the breach is a material breach relating to the health and safety of the occupiers of the Property or indeed works affecting the occupiers of the Property's enjoyment of the Property then such period shall be 30 days), the Grantor may

terminate this agreement by giving written notice to the Company, and on the service of this notice this agreement will terminate.

6.4 On determination of the Rights, the Company will as soon as reasonably practicable remove the Permitted Apparatus from the Property and make good any damage to the Property caused by its removal to the reasonable satisfaction of the Grantor.

7. ASSIGNMENT

7.1 The benefit of this agreement may be assigned to any operator in place of the Company pursuant to Paragraph 16 of the Code.

7.2 Any assignment may be subject to a condition that the Company enters into a guarantee agreement pursuant to Paragraph 16 of the Code.

8. DISPUTES

If any dispute or difference arises between the parties concerning the interpretation of this agreement or any part of it; or in connection with clause 4 of this agreement, such dispute or difference will be referred to a single arbitrator where the parties can agree on one, or otherwise to an arbitrator appointed by the President of the Royal Institution of Chartered Surveyors on the application of either party, and in any case the Arbitration Act 1996 or any statutory amendment or re-enactment will apply to the reference.

9. NO RESTRICTIONS ON USE

Nothing in this agreement will prevent or restrict the Grantor from altering, amending, developing or redeveloping the Property or any other buildings, property or land.

10. NOTICES

Any notice given by any party to this agreement will be in writing and will be deemed to have been made to the other if such notice is served by hand (in which case service will be deemed effective immediately) or if such notice is sent by registered or recorded post and addressed to the proper address of that party, in which case service will be deemed effective 48 hours after posting.

11. GOVERNING LAW

This agreement is governed by English law and disputes not dealt with by clause 8 will be decided in the English courts.

12. CONTRACTS (RIGHTS OF THIRD PARTIES) ACT

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

13. GENERAL

13.1 It is agreed that no relationship of landlord and tenant is created by this agreement between the Grantor and the Company;

13.2 The Grantor has obtained the consent of any landlord mortgagee, covenantee or other person necessary to enter into and give full effect to this agreement.

13.3 The Permitted Apparatus will at all times remain the property of the Company.

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- 13.4 This agreement will not apply to any part of the Property which is (or from the date of such adoption becomes) adopted as highway maintainable at the public expense.
- 13.5 This agreement is the entire agreement between the Grantor and the Company relating to the Permitted Apparatus at the Property.
- 13.6 Each covenant and provision of this agreement will be construed as a separate covenant or provision and if one or more of them is considered unenforceable or unlawful for whatever reason then that covenant or provision will be deemed deleted but the enforceability of the remainder of this agreement will not be affected.
- 13.7 This Code right will remain exercisable until the apparatus is no longer required unless determined in accordance with clause 6 above
- 13.8 Without prejudice to the rights of either party against the other for any antecedent breach of the Pre-Existing Wayleave Agreements, the parties agree that the Pre-Existing Wayleave Agreements shall be terminated as at the date of this agreement but the Company shall not be required to comply with any obligations under the Pre-Existing Wayleave Agreements to remove any Pre-Existing Permitted Apparatus and, going forwards, all matters concerning any Pre-Existing Permitted Apparatus shall be governed by this agreement.

SCHEDULE 1

Property

The property known as per the below schedule

ESTATE
Avondale Square Housing Estate, Old Kent Road, Southwark, London, SE1
Golden Lane Estate, Fann Street, London, EC1Y
Holloway Estate, Parkhurst Road, London, N7
Horace Jones House, Duchess Walk, London, SE1
Isleden House, Prebend Street, Islington, London, N1
Southwark Estates, London, SE1
Sydenham Hill Estate, 44 Sydenham Hill, London, SE26
Dron House, Adelina Grove, London, E1
Middlesex Street Estate, 1 Artizan Street, London, E1
William Blake Estate, Hercules Road, London, SE1
Windsor House, Wenlock Rd, London, N1
York Way Estate, Market Road, London, N7
City of London Almshouses, Ferndale Rd, Brixton, London, SW9
Barbican Estate, Barbican, London, EC2Y

SCHEDULE 2

Apparatus

A design document shall be produced by the Operator for each Individual Property for approval by the City.

SCHEDULE 3

[Text of the Statutory notice of the assignment of an agreement under the Electronic

Communications Code – Paragraph 16(5), Part 3 of Schedule 3A of the Communications Act 2003]

This is a statutory notice pursuant to paragraph 16(5) of the Electronics Communications Code in Schedule 3A to the Communications Act 2003 (the "**Code**").

We, *[insert name of the Operator]*, are currently party to an agreement under Part 2 of the Code with you The Mayor and Commonalty and Citizens of the City of London (the "**Agreement**"). Under the Agreement, you agreed to confer a number of Code rights in order to facilitate the deployment by us of our electronic communications network. These Code rights relate to land occupied by you at *[insert address]*.

The purpose of this notice is to inform you that, on *[insert date]*, we assigned the Agreement to *[insert name and address of assignee]* (the "**Assignee**"). This means that we have assigned the benefit of the Code rights conferred by you under the Agreement to the Assignee, and the Assignee is (from the date of the assignment) bound by the terms of the Agreement.

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.

The address of the Assignee is *[insert address]*.

If you have any questions about this notice, please do not hesitate to contact us via telephone (*[insert telephone number]*) or email (*[insert email address]*)

[insert date of notice]

City of London - MDU - Building Wide Wayleave

**Signed by a duly authorised signatory for and on behalf of THE MAYOR AND
COMMONALTY AND CITIZENS OF THE CITY OF LONDON**

.....

Signed for and on behalf of

BRITISH TELECOMMUNICATIONS PLC

.....

Authorised signatory