**NOTICE PURSUANT TO PARAGRAPH 12(7) OF THE ELECTRONIC COMMUNICATIONS CODE (TELECOMMUNICATIONS ACT 1984 SCHEDULE 2 AS AMENDED BY SCHEDULE 3 TO THE COMMUNICATIONS ACT 2003) Notice as to commencement of works on land used as a Railway, Canal or Tramway**

TO: **[NAME OF ADDRESSEE]**

## **[NAME OF APPLICANT]** hereby gives you notice that it has commenced works ("the emergency works") \*in accordance with the attached plan and section or attached description, at **[address of land]** ("the relevant land")/\* in accordance with a notice dated **[insert earlier date]** under paragraph 12(4)(a) of the Electronic Communications Code in respect of the works at **[address of land]** ("the relevant land") **[\*delete as appropriate]** as follows:

### installation of electronic communications apparatus comprising **[description of apparatus]** on/under/over\* the relevant land; or\*

### maintenance, adjustment, repair or alteration of electronic communications apparatus comprising **[description of apparatus]** already installed on, under or over the relevant land.\*

**[\*delete (a) or (b) as appropriate]**

and that the works are emergency works as defined in paragraph 1(1) of the Electronic Communications Code because the execution of the works is requisite in order to put an end to or prevent the arising of circumstances now existing or imminent which are likely to cause:

* + 1. danger to persons or property;
    2. the interruption of any service provided by the **[APPLICANT’s]** electronic communications network; or
    3. substantial loss to the **[APPLICANT]**

**[\*delete as appropriate]**

Your attention is drawn to the explanatory notes as to the effect of paragraphs 12, 13 and 14 of the Electronic Communications Code, set out on the following pages.

DATED: **[DAY MONTH 200\_]**

**……… [SIGNATURE] ………**

For and on behalf of

**NAME OF APPLICANT**

**ADDRESS OF APPLICANT**

**Explanatory Notes**

1. "Land" includes buildings (Schedule 1 to the Interpretation Act 1978).
2. "Railway" includes a light railway.
3. "Emergency works" in relation to **[APPLICANT]** means works the execution of which at the time it is proposed to execute them is requisite in order to put an end to, or prevent, the arising of circumstances then existing or imminent which are likely to cause:

#### danger to persons or property; or

#### the interruption of any service provided by **[APPLICANT’s]** network; or

#### substantial loss to **[APPLICANT]**; and

#### such other works as in all the circumstances it is reasonable to execute with those works.

### (d) The alteration of electronic communications apparatus also includes its moving, removal or replacement.

### (e) With regard to the first paragraph of the above notice, a description of the proposed works may be provided in lieu of a plan and section only if the person with control of the relevant land has agreed to accept that description for this purpose.

### (f) For the purposes of paragraphs 12, 13 and 14 of the Electronic Communications Code, the person with control of the relevant land is defined as the person carrying on the railway, canal, or tramway undertaking in question.

### (g) **[APPLICANT]** is obliged by paragraph 12(7) of the Electronic Communications Code (“the Code”) to give the person with control of the land i.e. the person carrying on a railway, canal, or tramway undertaking notice as soon as reasonably practicable after commencing emergency works in order to cross the land in question with a line or cable. If the emergency works entail the installation of electronic communications apparatus (including a line or cable), that apparatus must not interfere with the traffic of the undertaking controlling the land.

### (h) Any line (or cable) installed as a result of these proceedings must not cross the relevant land by any route which, in the horizontal plane, exceeds by more than 400 metres the shortest route from the point at which the line enters the relevant land.

### (i) You (as the person carrying on the railway, canal or tramway undertaking in question) may give **[APPLICANT]** notice, at any time within 28 days of the delivery of this notice requiring him to pay compensation in respect of loss or damage sustained in consequence of the carrying out of the emergency works in question. Any question as to the amount of compensation shall in default of agreement be referred to arbitration of a single arbitrator appointed either by agreement between the parties or (in default of agreement) by the President of the Institution of Civil Engineers (paragraphs 12(8) and 13(1) of the Code).

### (j) The arbitrator has the power to direct **[APPLICANT]** or you (as the person who requires the payment of compensation) to furnish him with such information and to comply with such other requirements as he thinks requisite for the purposes of the arbitration.

(k) In making an award the arbitrator shall have regard to all the circumstances and to the principle that no person shall unreasonably be denied access to an electronic communications network or to electronic communications services.

### The arbitrator may treat compliance by **[APPLICANT]** or you (as the person who requires payment of the compensation) with any requirement the arbitrator may think requisite for the purposes of the arbitration as a condition of his making an award.

### (m) The arbitrator must award to you (as the person requiring the payment of compensation) such sum (if any) as the arbitrator may determine in respect of the loss or damage sustained by you in consequence of the carrying out of the emergency works in question (paragraph 13(3)(b) of the Code).

(n) Loss shall in relation to any person carrying on a railway, canal or tramway undertaking include references to any increase in expenses of carrying on that undertaking.

### (o) As the person carrying on the railway, canal or tramway undertaking in question, you may give notice at any time to **[APPLICANT]** requiring it to alter, move, remove, or replace any of its electronic communications apparatus (including a line or cable) kept installed on, under or over the relevant land if it interferes (or is likely to interfere) either with the carrying on of the undertaking or with anything done or to be done for the undertaker's purpose. If you do so, **[APPLICANT]** must comply within a reasonable time and to your reasonable satisfaction, unless within a period of 28 days beginning with your giving notice it serves you with a counter-notice specifying the respects in which it is not prepared to comply. If **[APPLICANT]** gives such a counter-notice, you may then apply to the County Court for an Order requiring the alteration or removal (etc.) of the specific electronic communication apparatus. The County Court is required to consider all the circumstances, including the principle that no person shall unreasonably be denied access to an electronic communications network or to electronic communications services and will not make an order unless satisfied that the apparatus in question interferes (or is likely to interfere) with the carrying on of the relevant undertaking or anything done or to be done for its purposes. The Order may take such form and be on such terms as the County Court thinks fit, and may impose on **[APPLICANT]** or yourself whatever condition or directions the County Court thinks necessary to resolve the differences between the parties and to protect their respective interests.

(p) A notice given by **[APPLICANT]** under the Code must be in a form approved by the Office of Communications (“Ofcom”) as adequately indicating to the recipient the effect of the notice and of so much of the Code as is relevant to it and to the steps that may be taken in respect of it by that person under the Code. In any proceedings under the Code, a certificate issued by Ofcom and stating that a particular form of notice has been so approved by them will be accepted in a Court of Law as conclusive evidence of the matter certified: the form of the present notice has been approved.

### (q) These notes are intended to provide a simple and readily understandable explanation of the effect of the notice, of the relevant parts of the Code, and of the action in response to the notice which is available to you under the Code, as required by paragraph 24(1) of the Code. However, you are strongly advised to consult the Code itself (particularly paragraphs 12, 13, 14 and 24) as soon as possible after the receipt of this notice, and if necessary to obtain legal advice on the matters referred to in the previous sentence.

### (r) Copies of the Code (Schedule 2 to the Telecommunications Act 1984, as amended by Schedule 3 to the Communications Act 2003) may be obtained free of charge from Ofcom at the following address: Ofcom Contact Centre, Riverside House, 2a Southwark Bridge Road, London SE1 9HA (Tel: 0300 123 3333).

1. Your attention is drawn to sections 394 to 396 of the Communications Act 2003 and paragraphs 2 and 2A of Schedule 2 to the Telecommunications Act 1984 as amended by Schedule 3 to the Communications Act 2003. A notice given under the Code may be delivered (in person) to the addressee, or left at his proper address, or sent by a registered post service or by recorded delivery: in the case of a body corporate, the notice may be given or sent to the secretary or clerk of that body. In the case of a firm the notice may be given or sent to partner in the firm or a person having the control or management of the partnership business. In the case of a firm the notice may be given or sent to partner in the firm or a person having the control or management of the partnership business. In the case of an unincorporated body or association the notice may be given or sent to a member of the governing body of the body or association.

(t) Pursuant to Paragraph 2A of the Code, the proper address of any person is defined (for the purposes of section 394 of the Communications Act 2003 and the application of section 7 of the Interpretation Act 1978 in relation to that section) as:-

(i) (where applicable) the address with which you have furnished **[APPLICANT]** for service under the Code; or

(ii) the address given by section 394 of the Communications Act 2003 i.e. in the case of a body corporate, the address of the registered or principal office of the body; in the case of a firm, unincorporated body or association, the address of the principal office of the partnership, body or association; in the case of a person to whom the notice is given or sent in reliance on any of sub-sections (4) to (6) of section 394 of the Communications Act 2003, the proper address of the body corporate, firm or (as the case may be) other body or association in question; and in any other case, the last known address of the person in question.

Your attention is drawn to sections 395 and 396 of the Communications Act 2003 which relate to notices transmitted electronically. For such transmission to be deemed to be delivery of the notice the recipient or the person on whose behalf the recipient receives the notice must have indicated to the person making the transmission the recipient’s willingness to receive such notices in electronic form. Paragraph (s) above and this paragraph are not intended to be a guide to, or definitive interpretation of, the Communications Act 2003 nor the Code and you are strongly advised to consult the Communications Act 2003 and the Code itself in relation to the requirements for notices given under the Code and to seek your own legal advice if necessary.

(u) Where it has not been practicable after reasonable enquiries to ascertain your name and address, the notice may be addressed to the “occupier” of the land (describing it) or, where appropriate, to the “owner” of the any interest in the land (describing both the interest and the land) and either to be delivered to some person on the land or (in the absence of any such person) be affixed (either directly or by means of a copy) to some conspicuous object on the land.