**COUNTER-NOTICE PURSUANT TO PARAGRAPH 20 (2) OF THE ELECTRONIC COMMUNICATIONS CODE (TELECOMMUNICATIONS ACT 1984 SCHEDULE 2 AS AMENDED BY SCHEDULE 3 TO THE COMMUNICATIONS ACT 2003): Notice of refusal to carry out alterations to electronic communications** **apparatus**

TO: **[NAME OF ADDRESSEE]**

re: **[NAME AND ADDRESS OF PROPERTY]** ("the property")

**[NAME OF APPLICANT]**:-

(1) HEREBY acknowledges receipt of your notice dated **[DATE OF NOTICE]** pursuant to paragraph 20(1) of the Electronic Communications Code requiring it to alter certain electronic communications apparatus upon the Property.

(2) HEREBY GIVES YOU as Freeholder/Lessee/Occupier **[delete as appropriate]** of the land upon which the Property stands NOTICE that **[APPLICANT]** is not willing to comply with your request to carry out the requested works.

Your attention is drawn to the explanatory notes as to the effect of paragraph 20 of the Electronic Communications Code, as set out below.

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

**……… [SIGNATURE] ………**

For and on behalf of

**[NAME OF APPLICANT]**

**[ADDRESS OF APPLICANT]**

Explanatory Notes

(a) "Land" includes buildings (Schedule 1 to the Interpretation Act, 1978).

(b) **[APPLICANT]** is a person to whom the Electronic Communications Code applies by a direction under section 106 of the Communications Act 2003. In accordance with the provisions of the Electronic Communications Code, **[APPLICANT]** has installed electronic communications apparatus on the Property and has the right to retain it thereon. If within 28 days of the giving of a notice under paragraph 20(1) requiring alteration of the apparatus **[APPLICANT]** serves a counter-notice stating that **[APPLICANT]** is not willing to comply with such notice and make such alteration, you may not enforce compliance with your notice without an order of the County Court. In that case the County Court shall decide whether **[APPLICANT]** shall be required to alter the apparatus in accordance with your notice.

(c) The County Court may only make an Order under paragraph 20 if it is satisfied that such an Order is necessary to enable improvements to be carried out to the Property and that such alteration will not substantially interfere with the service provided by **[APPLICANT]**’s network. The County Court will only make an Order if it considers that **[APPLICANT]** has, or can obtain by exercising its powers under the Electronic Communications Code, all rights as may be appropriate for the purposes of making the alteration.

(d) In certain circumstances **[APPLICANT]** is entitled to state in such counter-notice that **[APPLICANT]** is willing to comply with your request but subject to the condition that you reimburse **[APPLICANT]** reasonable expenses. If you do not agree to reimburse **[APPLICANT]** reasonable expenses incurred in making the alteration **[APPLICANT]** will not make such alteration unless and until an appropriate Order to such effect is issued by the County Court.

(e) 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.

(f) 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.

1. Copies of the Code (Schedule 2 to the Telecommunications Act, 1984 as amended by Schedule 3 to the Communications Act 2003) may be obtained from Ofcom at the following address: Ofcom Contact Centre, Riverside House, 2a Southwark Bridge Road, London SE1 9HA (Tel: 0300 123 3333).
2. 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 an unincorporated body or association the notice may be given or sent to a member of the governing body of the body or association.

(i) 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 (h) 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.

(j) 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 any interest in the land (describing both the interest and the land) and either 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.