

Contents

1. Interpretation
  2. Commencement and Termination
  3. Responsibilities of the Parties
  4. Insurance
  5. Materials
  6. Connection of equipment to the Infrastructure Service
  7. Access, Safety & Compliance, and Site regulations
  8. Use of the Infrastructure Service
  9. Warranty
  10. Intellectual Property Rights and BT Corporate Marks
  11. Confidentiality
  12. Marketing and misrepresentation
  13. Charges, payments and deposits
  14. Limitation of liability
  15. Matters beyond the reasonable control of either party
  16. Conduct of indemnified events
  17. Escalation and dispute resolution
  18. Changes to this Contract
  19. Transfer of rights and obligations
  20. Entire agreement
  21. Wayleave Agreement
  22. Notices for this Contract
  23. Waiver
  24. Severability
  25. Law
  26. Anti-Bribery and Modern Slavery
- 
- Schedule 1      Service, Site Registration & Connectivity Assessments
- Schedule 2      Wayleave Agreement – England & Wales or Scotland

**NOW, THEREFORE**, in consideration of mutual covenants set forth herein, and for other good and valuable consideration, including the payment of £1 by BT to the Developer, the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

## **1 INTERPRETATION**

### 1.1 In this Contract:

**“Brownfield”** means a location where there is existing BT Network infrastructure or a location where there is an existing building or structure which will be demolished, replaced, repurposed, converted, refurbished or otherwise altered or amended

**“BT”** means British Telecommunications plc of One Braham, 1 Braham Street, London E1 8EE registered in England No. 1800000;

**“BT Network”** means BT’s Public Electronic Communications Network;

**“BT Website”** means the website located at URL <https://www.openreach.com> and <https://www.bt.com/about/bt/policy-and-regulation> or such other website or URL as BT may notify the Developer from time to time;

**“BT Works”** means the provision of Specifications and Materials for the Site, and inspection of the Developer Works;

**“Conditions”** means the terms set out in this document but excluding the Schedules;

**“Contract”** means the Conditions, the Schedules, the relevant sections of the Openreach Price List, the Site Registration Form, and the Wayleave Agreement(s);

**“Developer”** means the person who enters into this Contract with BT and is a person who is developing a Site;

**“Developer Portal”** means the website provided by BT and available for Developers at <https://www.developers.openreach.co.uk/developerportal/index>;

**“Developer Works”** means the relevant civils infrastructure for the BT Network at the Site, including draw rope, cable, tube, ducts and chambers, using Materials provided by BT;

**“Developer’s Requirements”** means the Developer’s rules and policies in relation to the Site which shall be communicated to BT from time to time;

**“Developer’s Handbook and Guides”** means the appropriate product description document and business process document containing information about the relevant Infrastructure Service in force at the date of this Contract as set out in Schedule 1;

**“Documents”** means any drawings, plans, models, specifications, schedules, reports, calculations and other works (including any items retained on or in any computer software or other electronic medium) which shall include the Specification which have been or will be prepared by or on behalf of BT in the course of carrying out its obligations under this Contract whether in existence or to be made or produced and including all amendments and additions to them;

**“Force Majeure”** means a matter beyond a party’s reasonable control including, but not limited to, act of God, lightning, flood, exceptionally severe weather, subsidence, fire, explosion, war, civil disorder, national or local emergency, industrial disputes (other than by the party seeking to rely on this clause or a Group Company of such party), acts of local or of central government or of other competent authorities (other than where requested or instigated by the party seeking to rely on this clause) ;

**“Greenfield”** means a location where no BT Network has previously been deployed or a location which has no existing development or building;

**“Group Company”** means any direct or indirect subsidiary or any direct or indirect holding company or any such subsidiary of any such holding company or any such holding company of such subsidiary, “subsidiary” and “holding company” having the meanings defined in Section 1159 of the Companies Act 2006 as amended;

**“Handover Date”** means the date on which BT provides the Developer with a Quality Certificate for the Developer Works;

**“Infrastructure Service”** means the provision of the Developer Works and the BT Works, as applicable;

**“Intellectual Property Rights”** means any patent, petty patent, copyright, design right, community design right, database right, semiconductor topography right, registered design, rights in know-how, or any similar right in any part of the world and shall include any application for the registration of any patents or registered designs or similar rights capable of registration in any part of the world;

**“Materials”** means the materials provided to the Developer by BT for the Developer Works as set out in the Bill of Materials provided by BT;

**“New Sites”** means any new sites and developments (Greenfield or Brownfield) to be developed by the Developer following the commencement of this Contract.

**“Normal Working Hours”** means from 0800 to 1800, Monday to Friday excluding UK bank and public holidays;

**“Ofcom”** means the Office of Communications or its competent successor body or authority;

**“Openreach Price List”** means the document containing a list of BT’s charges and terms that apply to the Infrastructure Service and which was in force and published at <https://www.openreach.co.uk/cportal/products/pricing> as at the date of this Contract;

**“Quality Certificate”** means the certificate given to the Developer by BT when the Developer has completed the whole or, if applicable, the relevant part of the Developer Works at the Site;

**“Schedules”** means schedule 1 and 2, and 3 as appended to this document;

**“Site(s)”** means a place which may be either Brownfield or Greenfield and at which the Developer will install the infrastructure only components of the BT Network but which excludes any infrastructure as part of the development of residential and/or commercial premises, as set out under 'Site Details' on the front page of these Conditions;

**“Site Layout Plans”** means the agreed scale and format site layout plans provided by the Developer in respect to the Site and as further defined in the Openreach New Sites Application Form, as referred to in paragraph 3.5 of Schedule 1;

**“Site Registration”** means the process by which the Developer requests and BT agrees to register the Site for inclusion in this Contract as set out in Schedule 1;

**“Site Registration Form”** means the form used by the parties to confirm the provision of BT Network to the Site in accordance with Schedule 1;

**“Site Start Date”** means the date on which the Developer will commence development of the core infrastructure build at the Site (which shall exclude any infrastructure as part of the development of residential and/or commercial premises);

**“Specification”** means the plans, drawings and specifications set out in the following documents:

- (a) Plans and drawings setting out BT’s design of its network infrastructure for the applicable Site(s), including, but not limited to, duct routes, joint boxes, man holes and site boundary point to be provided in accordance with paragraph 3.5 of Schedule 1;
- (b) CN Diagrams (i.e. cable network diagram) provided by BT for the applicable Site(s);
- (c) the latest versions of the Developers’ Guides are available on the Developer Portal throughout the time the Developer carries out the Work; and
- (d) Bill of BT Materials provided by BT;

**“Wayleave Agreement”** means the wayleave agreement in Schedule 2 (England and Wales or Scotland); and

**“Working Day”** means any day other than Saturdays, Sundays, public or bank holidays in the United Kingdom.

- 1.2 Any reference in this Contract to any provision of a statute shall be construed as a reference to that provision as amended re-enacted or extended at the relevant time.
- 1.3 The headings in this Contract are for convenience only and shall not affect its interpretation.
- 1.4 Words importing singular include plural and vice versa.
- 1.5 The terms “party” or “the parties” shall mean BT and/or the Developer.
- 1.6 Any words which follow the terms “including”, “include”, “in particular”, “for example” or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.
- 1.7 If there is a conflict between the Conditions, the Schedules and/or the Developer’s Handbook and Guides, the order of precedence shall be as follows:
  - (a) the Conditions;
  - (b) Schedules 1 and 2;
  - (c) the relevant sections of the Openreach Price List;
  - (d) the Site Registration Form; and
  - (e) the elements of the Developer’s Handbook and Guides that are incorporated by reference into this Contract.

## **2. COMMENCEMENT AND TERMINATION**

- 2.1 This Contract begins on the date it is signed by duly authorised representatives of BT and the Developer and shall continue thereafter until terminated in accordance with this Contract.
- 2.2 Either party may terminate this Contract immediately upon serving written notice on the other party where the other party:
  - (a) is in material breach of the terms of this Contract (and where the breach is capable of remedy, the party has not remedied the breach within 30 Working Days of receiving notice requiring the breach to be remedied or such other reasonable time period agreed between the parties);
  - (b) persistently breaches the terms of this Contract and is served more than three notices of material breach in an operating year and such persistent breaches have a material adverse impact on the party serving notice;
  - (c) ceases or threatens to cease to carry on business;
  - (d) is, or is deemed to be, unable to pay its debts as they fall due or is insolvent, suspends making payments on any debts or announces an intention to do so, commences negotiations with one or more of its creditors with a view to rescheduling any of its indebtedness by reason of actual

or anticipated financial difficulties, has a moratorium declared in respect of any of its indebtedness, ceases or threatens to cease to carry on business, applies for an interim order under Section 252 of the Insolvency Act 1986, has appointed in respect of it or any of its assets a liquidator, trustee in bankruptcy, judicial custodian, supervisor, compulsory manager, receiver, administrative receiver, administrator or similar officer (in each case whether out of court or otherwise), takes or suffers any similar action in any jurisdiction or any step is taken (including, without limitation, the making of an application or the giving of any notice) by it in respect of any of these circumstances;

- (e) has suspended the performance of its obligations under this Contract for a period longer than six months due to Force Majeure in accordance with clause 15 of this Contract.
- 2.3 Termination or expiry of this Contract shall not be deemed a waiver of a breach of any term or condition of this Contract and shall be without prejudice to a party's rights, liabilities or obligations that have accrued prior to such termination or expiry.
- 2.4 Each of the parties' rights to terminate or suspend performance is without prejudice to any other rights or remedies available to either party.
- 2.5 The parties acknowledge that following the date of this Contract, the Developer may notify BT of any New Sites that require similar Infrastructure Services and subject to BT's consent for each New Site, the parties may agree a further contract for such Infrastructure Services for each New Site that will be based on the terms and provisions of this Contract provided always that such new contract shall include any necessary site specific amendments agreed by the parties.
- 2.6 The parties acknowledge that the Developer Works covers the core infrastructure at the Site and does not extend to the development of residential and/or commercial premises. The parties agree that, notwithstanding anything to the contrary, in the event that residential and/or commercial development is to be carried out at the Site (either by the Developer or any third party developer) BT shall have a non-exclusive right to install BT's network infrastructure at the Site including at any residential and/or commercial premises. The Developer shall use reasonable endeavours to provide reasonable and necessary assistance to BT to co-ordinate the relationship between with BT and any third party developers including providing reasonable assistance in relation to appropriate agreements being executed between the relevant parties. For the avoidance of doubt, BT shall not be required to provide any connections or installation of cabling under this Contract.

### **3. RESPONSIBILITIES OF THE PARTIES**

#### **GENERAL**

- 3.1 The parties will use the processes set out in the Schedules, and the Developer's Handbook and Guides.

#### **BT'S RESPONSIBILITIES**

- 3.2 BT shall:
- (a) provide the Developer with the Infrastructure Service on the terms of this Contract;
  - (b) exercise and have exercised in the performance of the Infrastructure Services all the reasonable skill, care and diligence to be expected of a properly qualified and competent communications provider experience in carrying out services similar to the Infrastructure Services for sites of a similar size, scope, value, character and complexity to the Site in designing and providing the Infrastructure Service and if required, in determining how best to provide the Infrastructure Service to the Site; and
  - (c) grant the Developer a non-exclusive non-transferable right to use the Infrastructure Service for the sole purpose of enabling the Developer Works up to the Handover Date.

3.3 In carrying out the BT Works, BT shall:

- (a) carry out a health and safety risk assessment solely in respect to the BT Works and issue to the Developer a Site specific method statement for the carrying out by BT of the BT Works at the Site prior to commencing the BT Works including that any Developer Works have been completed to the agreed standard. If BT, acting reasonably, identifies any potential health and safety issues which are part of the Developer Works, BT will notify the Developer and the Developer must repair or otherwise remedy the problem before BT will commence the BT Works;
- (b) ensure that each of its employees, agents or subcontractors intending to carry out the BT Works on the Site attend the health and safety induction for the Site and put all necessary health and safety precautions in place before commencing any works in accordance with the Developer Requirements;
- (c) comply with any reasonable requirements and/or instructions of the Developer with regard to BT's methods of carrying out any of the BT Works;
- (d) avoid obstruction to or interference with works being undertaken by other contractors on the Site and/or other users of the Site and avoid damage to the Site or any structures thereon or drains or other services thereunder and make good any such damage to the Developer's reasonable satisfaction;
- (e) comply with such reasonable requirements with regard to security and method of access to the Site as set out in the Developer Requirements or as notified to BT in writing from time to time;
- (f) ensure that the Site is kept in a clean and tidy condition whilst carrying out the BT Works and upon their completion, remove and dispose of all rubbish and waste in connection with the BT Works in accordance with the Developer Requirements and all relevant laws and regulations relating to the handling, transportation, storage and disposal of waste and/or hazardous waste in connection with this Contract.

#### **DEVELOPER'S RESPONSIBILITIES**

3.4 It is the Developer's responsibility to:

- (a) install the relevant BT Materials, in accordance with the Specification, which will form the BT infrastructure at the Site;
- (b) exercise its reasonable skill and care; and
- (c) comply with any reasonable instructions from BT on or relating to the Developer Works;
- (d) use its reasonable endeavours to undertake the Developer Works in accordance with the Developer's programme but all dates are estimates and the Developer has no liability to BT for failure to meet any date.

If, in order to perform an obligation under this Contract including the BT Works and any inspections, it is necessary for BT to obtain access to the Site, the Developer shall provide BT with reasonable access provided that BT complies with the relevant Developer Requirements when accessing the Site.

3.5 The Developer shall complete, to the standard set out in the Developer's Handbook and Guides, the Developer Works in a proper and workman-like manner in accordance with the Specification, ensuring that all Developer Works, including ducting, chambers and any associated requirements, have been finished to the appropriate standards.

#### **4. INSURANCE**

4.1 Both parties shall at their own cost have and keep in place, insurance which covers its obligations in this Contract up to the point BT issue a Quality Certificate to the Developer or if terminated before a Quality Certificate is issued, up to the point this Contract is terminated. The insurance must include the following:

- (a) Employer's Liability insurance in accordance with the Employer's Liability (Compulsory Insurance) Act 1969;

- (b) Public Liability insurance cover in the sum of at least £10,000,000 (ten million pounds) for any one event to cover loss of or damage to property or the death of or personal injury to any person arising from activity in relation to this Contract.
- (c) Professional indemnity insurance cover in the sum of at least £10,000,000 (ten million pounds) for any one event and in the annual aggregate.

4.2 Not used.

4.3 Each party must provide evidence of the insurance cover if so requested by the other.

## **5 MATERIALS**

5.1 BT will at its own cost provide the Developer with the Materials for the Developer Works in accordance with the Specifications. It is the responsibility of the Developer to ensure that they have given BT sufficient time to provide any Materials and the Developer should, where possible, give BT 20 working days' notice of any upcoming request for Materials to be received on the Site. BT will provide the Materials in phases for larger developments.

5.2 All Materials provided by BT belong to BT and remain BT's property at all times.

5.3 If the Developer identifies any defects in the Materials the Developer must tell BT's Representative (or any alternative contact provided by BT's Representative) within 20 (twenty) Working Days of receiving them. The Materials provided by BT shall be new (i.e. not previously used), of good quality and comply with all relevant legislation, British Standards and codes of practice and/or equivalent EU approval.

5.4 The Developer must keep the Materials secure and in good condition and is liable for any loss or damage to the Materials until a Quality Certificate is issued by BT. The Developer must store them appropriately and to the satisfaction of BT's Representative, acting reasonably. They must be clearly identifiable as the property of BT and, where possible, the Developer must store them away from other materials so that they can be easily identified by BT's Representative.

5.5 The Developer must only use the Materials for the Developer Works.

5.6 The Developer must ensure that neither the Developer nor anyone who works for the Developer or on the Developer's behalf, provides the Materials as security for any debt. The Developer must tell BT immediately if anyone threatens to, tries to or does take the Materials as security for a debt owed. The Developer must make it clear to anyone who does this, that the Materials are owned by BT.

5.7 On completion of the Site, BT may collect any Materials (at BT's cost) which the Developer does not use to carry out the Developer Works. The Developer will dispose of the Materials or take them to another of the Developer's development sites at the Developer's own cost and in accordance with the process set out in the Developers' Guide.

5.8 The Developer must comply (and ensure anyone who works for the Developer or on the Developer's behalf complies) with the reasonable instructions of BT and all relevant laws and regulations relating to the handling, transportation, storage and disposal of waste and/or hazardous waste in connection with the Developer Works.

5.9 Subject to the limitation in clause 14, the Developer indemnifies BT against all losses, costs, damages, expenses, liabilities and claims caused to and made against BT which would not have been caused or made had the Developer complied with the Developer's obligations in relation to the disposal of the Materials and any waste generated in connection with this Contract.

## **6 CONNECTION OF EQUIPMENT TO THE INFRASTRUCTURE SERVICE**

6.1 Unless agreed otherwise in writing by BT, the Developer must not connect any equipment to the Infrastructure Service.

- 6.2 BT will not be liable for failure to meet any Infrastructure Service level or other obligations under this Contract to the extent that the failure is caused by equipment found to be connected otherwise than in accordance with this clause 6.

## **7. ACCESS, SAFETY & COMPLIANCE, AND SITE REGULATIONS**

### **ACCESS**

- 7.1 If the Developer requires BT to work outside its Normal Working Hours, then the Developer must pay the additional charges set out in the Openreach Price List.
- 7.2 If in order to perform an obligation under this Contract it is necessary for BT to obtain access to the Site, the Developer shall take reasonable steps to ensure that the Developer provides BT with access during Normal Working Hours provided that such person accessing the Site on behalf of BT abides by the Developer Requirements and any reasonable site specific access requirements notified to them by the Developer.

### **SAFETY & COMPLIANCE**

- 7.3 BT will observe the Developer Requirements, acting reasonably and any other reasonable Site(s) safety and security requirements made known and brought to the attention of the BT personnel at the Site by the Developer.
- 7.4 The Developer will take reasonable steps to provide a suitable and safe working environment for BT at the Developer’s Site(s). The Developer will indemnify BT against all losses, damages, costs and expenses arising or incurred in respect of any actions, claims or legal proceedings which are brought or threatened against BT where the Developer is in breach of this clause provided that BT is under a duty to mitigate such loss.

### **REGULATIONS**

- 7.6 The Developer will keep a progress report in relation to the Developer Works which will be available for BT to inspect during Normal Working Hours.
- 7.7 Each party shall comply with all laws and regulations which are relevant to their respective works under this Contract.
- 7.8 Each party is responsible for protecting the health and safety of the people involved in carrying out their respective works required by this Contract. This means that each party must take all reasonable steps to protect people from harm in respect to their respective works identified in this Contract.
- 7.9 The Developer shall comply with all reasonable health and safety instructions relating to the Developer Works given to the Developer by or on behalf of BT and BT shall comply with all reasonable health and safety instructions relating to the BT Works given to BT by or on behalf of the Developer.
- 7.10 In addition to the general health and safety requirements above each party must take special note and carry out appropriate checks for the presence of:
- (a) electricity cables, gas and water pipes, other electronic communications infrastructure and other services;
  - (b) the flammable, explosive and asphyxiating gases that build up in underground networks; and
  - (c) high pressure pipelines
- and take appropriate action if found.



- 7.11 In respect to the carrying out of the Developer Works, the Developer must comply with the New Road and Street Works Act 1991 as if the Developer were the “Undertaker” referred to in the Act. This includes any codes of practice and regulations which relate to that Act including the specification entitled “Specification for the Reinstatement of Openings in the Highway”.
- 7.12 Subject to the limitation in clause 14, the Developer indemnifies BT against all loss, damage, injury, costs and expenses arising or incurred in respect of any actions, claims or legal proceedings which are brought or threatened against BT caused by the Developer’s breach of this clause 7 provided that BT is under a duty to mitigate any such loss.
- 7.13 Subject to the limitation in clause 14, BT indemnifies the Developer against all loss, damage, injury, costs and expenses arising or incurred in respect of any actions, claims or legal proceedings which are brought or threatened against the Developer caused by BT’s breach of this clause 7 provided that the Developer is under a duty to mitigate such loss.

## **8. USE OF THE INFRASTRUCTURE SERVICE**

- 8.1 The infrastructure for BT’s electronic communications network and any services provided by BT to its customers, including anything incorporated or comprised in the Developer Works, is BT’s property at all times and is for the sole use of BT through its division Openreach.
- 8.2 If BT notifies the Developer or if the Developer is aware that it or any third party has used the Infrastructure Service in breach of clause 8.1 then the Developer will take all reasonable steps to cooperate with BT and disconnect any connected services and/or equipment immediately. If the Developer or any third party continues to use the Infrastructure Service in breach, it will be disconnected by BT.
- 8.3 The Developer shall indemnify BT against all loss, damages, costs, liabilities and expenses arising or incurred in respect of any actions, claims or legal proceedings which are brought or threatened against BT by a third party if the Infrastructure Service is used in breach of clauses 8.1 and 8.2 above provided that BT is under a duty to mitigate any such loss.

## **9. WARRANTY**

- 9.1 From the date of practical completion of the Developer Works and for the period set out in clause 9.3 below, the Developer warrants that provision of the Developer Works will be:
- (a) free from defects (including defects which arise after provision of the Quality Certificate as a result of work undertaken by the Developer on the Site);
  - (b) conform with all specifications, standards, regulations, drawings and instructions; and
  - (c) free from defects in design (where the design has been undertaken by the Developer).
- 9.2 The warranty set out in clause 9.1 above shall apply to any defects which appear during the guarantee specified in any code of practice, regulation, instrument or specification that may be issued or approved, or any amendments thereto issued or approved from time to time, in accordance with:
- (a) in England and Wales, section 71, of the New Roads and Street Works Act 1991;
  - (b) in Scotland, section 130, of the New Roads and Street Works Act 1991; and
  - (c) in Northern Ireland, section 31 of The Street Works (Northern Ireland) Order 1995.
- 9.3 The Developer shall warrant the structures of jointing chambers for a period of ten (10) years and all installed duct for a period of five (5) years. This shall be independent of any associated New Roads and Street Works guarantee period. Where no other warranty or guarantee period exists or is stated, then a warranty period of two (2) years shall apply.
- 9.4 Defects in the work which arise from faulty or incorrect materials, workmanship or performance standards shall be resolved at the Developer’s own expense (by replacement, repair or reconstruction, at the option of BT) in a timescale designated by BT acting reasonably.

- 9.5 The Developer shall maintain accurate and comprehensive records of all re-work required or undertaken which will be provided to BT on reasonable request.

## **10 INTELLECTUAL PROPERTY RIGHTS**

- 10.1 The Specifications contain content which is the copyright and confidential information of BT or its licensors. The Developer must keep confidential all information which is confidential in nature or marked or stated as confidential. The Developer may only use such information for the purpose of and strictly in accordance with this Contract.

- 10.2 BT grants to the Developer an irrevocable, royalty-free, non-exclusive licence to use copy and reproduce the Documents for any purpose whatsoever connected with the Infrastructure Service and/or the Site. This licence shall continue in force notwithstanding any termination of this Contract and carries the right to grant sub-licences and shall be transferable to third parties provided that such third parties are bound by equivalent confidentiality and copyright provisions as to those set out in clause 10.1. The Developer

If the Developer makes any copies of the Specification it shall reproduce all BT copyright and confidentiality markings clearly on any copies of the Document provided to third parties. The Developer must not modify or adapt the Specifications or allow anyone else to do so without BT's prior written consent.

- 10.4 BT warrants that the use of the Documents for the purposes of the Infrastructure Services and/or the Site pursuant to the licence granted pursuant to clause 10.2 shall not infringe the rights of any third party.

## **11 CONFIDENTIALITY**

- 11.1 The parties agree to keep in confidence any information (whether written or oral) of a confidential nature obtained under or in connection with this Contract or the Infrastructure Service. The parties agree not, without the written consent of the other party, to disclose that information to any person other than:

- (a) their employees or professional advisers;
- (b) in the case of BT, the employees of a BT Group Company or its or their suppliers; and
- (c) in the case of the Developer, the employees of a Developer Group Company or its or their sub-contractors or Developers or resellers or any third party that acquires a freehold or long leasehold interest in the Site or part of the Site.

Any disclosure in (a) to (c) above can only be made in order for the party to fulfil its obligations under this Contract or in relation to this Contract.

- 11.2 The parties agree not to, without the written consent of the other party, use information of a confidential nature referred to in clause 11.1 above, for the commercial advantage of their retail businesses.

- 11.3 Clause 11.1 will not apply to:

- (a) any information which has been published other than through a breach of this Contract;
- (b) information lawfully in the possession of the recipient before the disclosure under this Contract took place;
- (c) information obtained from a third party who is free to disclose it; and
- (d) information which a party is required by law to disclose or by any order, authority or court of competent jurisdiction provided that prior to such disclosure the party required to disclose the information shall consult with the other as to the proposed form, nature and purpose of the disclosure.

- 11.4 This clause 11 will remain in effect for 5 years after the termination of this Contract.

**12. MARKETING AND MISREPRESENTATION**

- 12.1 The parties undertake that in relation to their obligations under this Contract they will not:
- (a) represent themselves as each other; or
  - (b) misrepresent their relationship with each other; or
  - (c) misrepresent the nature and/or effect of their contracts; or
  - (d) assert that they have any authority to provide or promote any products or services on behalf of each other.

**13. CHARGES, PAYMENTS AND DEPOSITS****CHARGES**

- 13.1 The Developer may be liable to pay Time Related Charges, Abortive Visit Charges and any supplementary charges (i.e. per visit charges) in accordance with the additional terms and conditions which expressly apply to those charges and which are set out in the Openreach Price List and/or the Developer Portal. The circumstances when these charges will apply are set out or referred to on the Developer Portal and include:
- (a) Where a contribution cost is required for the provision of fibre infrastructure in accordance with paragraph 6.1 of Schedule 1;
  - (b) Supplementary work to carry out work outside Normal Working Hours;
  - (c) Additional hours necessary to provide amendment to Specifications in accordance with paragraph 5.2 of Schedule 1 including any on-site visits which may be required;
  - (d) Repairing faults or additional work which is required to bring the network infrastructure to the relevant standard as set out in the Specification;
  - (e) The provision of plant location maps and searches;
  - (f) Any replacement Materials required by the Developer except where the Developer has identified and notified BT of a defect in the original Materials provided by BT in accordance clause 5 of this Contract; and
  - (g) Site visits where the Developer has requested a Quality Certificate but BT has identified issues with the Developer Works in accordance with paragraph 7.8 of Schedule 1.
- 13.2 The charges may change from time to time and the charges which shall apply are those which are shown on the Openreach Price List.
- 13.3 The Developer must pay the charges within 30 calendar days of the month end in which the invoice is received from BT. All charges exclude Value Added Tax which is payable at the applicable rate.
- 13.4 This clause 13 shall continue in force after the termination or expiry of this Contract.

**14. LIMITATION OF LIABILITY**

- 14.1 Neither party excludes or restricts its liability for death or personal injury caused by its own negligence or that of its employees, subcontractors or agents acting in the course of their employment or agency or for fraud or to any extent not permitted by law.
- 14.2 Subject to express terms and conditions of this Contract to the contrary, neither party shall be liable to the other in contract, tort (including negligence), breach of statutory duty or otherwise for any direct loss which may arise out of or in relation to this Contract (whether or not the party concerned was advised in advance of the possibility of such loss or damage) for:
- (a) time;
  - (b) wasted expenditure;

- (c) anticipated savings;
- (d) opportunity;
- (e) data;
- (f) revenue;
- (g) profit.

- 14.3 Neither party shall be liable to the other in contract, tort (including negligence), breach of statutory duty, by reason of misrepresentation or otherwise for indirect or consequential loss whatsoever.
- 14.4 Not used.
- 14.5 Subject to clauses 14.2 and 14.3, each party's liability to the other arising out of or in relation to this Contract in contract, tort (including negligence), breach of statutory duty or otherwise, is limited for:-
- (a) property damage to £1,000,000 (one million pounds) for any one event or series of connected events; and
  - (b) £2,000,000 (two million pounds) for any one event or series of connected events not related to property damage.
- 14.6 Each provision excluding or limiting liability operates separately. If any provision (or part thereof) is held by a court to be unreasonable or inapplicable, the other parts shall continue to apply.
- 14.7 This clause 14 shall continue in force after the termination or expiry of this Contract.

## **15. MATTERS BEYOND THE REASONABLE CONTROL OF EITHER PARTY**

- 15.1 If either party is unable to carry out any of its obligations under the Contract due to a circumstance of Force Majeure, this Contract shall remain in effect but save as otherwise provided here in, both parties' obligations shall be suspended without liability for a period equal to the circumstance of Force Majeure provided that:
- (a) the party affected by the Force Majeure promptly gives the other Party written notice describing the circumstance of the Force Majeure (including the nature of the occurrence and its expected duration) and, where reasonably practicable, continues to furnish regular reports with respect thereto during the period of Force Majeure;
  - (b) the suspension of performance is of not greater scope and of no longer duration than is required by the Force Majeure;
  - (c) no obligations of either party that arose before the Force Majeure causing the suspension of performance are excused as a result of the Force Majeure; and
  - (d) the non-performing party uses all reasonable efforts to remedy its inability to perform.
- 15.2 Either party may terminate the Contract if a party's obligations are suspended under this Contract due to a Force Majeure event lasting for a period of more than six months.

Neither party shall be liable to the other party for any reasonable delay in carrying out its obligations under this Contract caused by an event beyond its reasonable control. Any timescale related to carrying out an obligation affected by an event beyond its reasonable control shall be extended to take account of the duration of an event beyond its reasonable control.

## **16. CONDUCT OF INDEMNIFIED EVENTS**

- 16.1 The indemnified party must notify the indemnifying party of any related claims or legal proceedings and use its reasonable endeavours to do so within 14 days of receipt and if it fails to do so, any additional cost reasonably incurred as a consequence of that failure may be deducted from the indemnified sum.

- 16.2 The indemnifying party may assume conduct of the claim providing it notifies the indemnified party of such intention within 5 days of receipt of the notification in clause 16.1. The indemnified party may re-assume conduct of the claim at any time if it reasonably believes a failure to do so would be prejudicial to its interests.
- 16.3 The party assuming conduct of the claim must:
- (a) actively consult with the other party regarding the conduct of any action and take their views into account; and
  - (b) make no admissions relating to any claims or legal proceedings without the consent of the other party, which shall not be unreasonably withheld; and
  - (c) not agree any settlement of such claims or legal proceedings nor make any payment on account of them without the consent of the other party, which shall not be unreasonably withheld.

## **17. ESCALATION AND DISPUTE RESOLUTION**

- 17.1 The parties nominated representatives and the people to whom a dispute must be escalated are set out under 'Party Representatives' on the front page of these Conditions, which may be amended from time to time by the parties in writing.
- 17.2 If any dispute arises between BT and the Developer or its representatives, the parties will use their reasonable endeavours to settle the dispute through the nominated representatives of both the Developer and BT. If such dispute has not be resolved within 28 days of the matter being raised it may be escalated using the escalation path set out in the front page of these Conditions, by notice in writing to the other party.
- 17.3 If a dispute is not resolved within 14 days of the matter being raised escalated (as set out in the procedure set out in clause 17.2 above) then either party shall have the option of:
- (a) referral of the dispute to a mediator in accordance with clause 17.4; or
  - (b) referral of the dispute for early neutral evaluation; or
  - (c) referral of a technical dispute to a relevant technical expert; or
  - (d) pursuing any other dispute resolution option which the parties agree is appropriate.
- 17.4 If the dispute is referred to a mediator:
- (a) the mediator will be appointed by agreement of the parties. If the parties fail to agree within 3 calendar days of a proposal by one party, the mediator will be appointed by the Centre for Dispute Resolution (CEDR);
  - (b) all negotiations connected with the dispute will be conducted in confidence and without prejudice to the rights of the parties in any further proceedings; and
  - (c) if the parties reach agreement on the resolution of the dispute, the agreement will be put in writing and once signed by the parties will be binding on them. Any such agreement will constitute confidential information for the purposes of the confidentiality provisions in this Contract.
- 17.5 If the parties are not prepared to agree to the dispute being referred to a mediator or fail to reach agreement within two months of the mediator being appointed, then either party may exercise any remedy that it has under this Contract or in law.

## **18. CHANGES TO THIS CONTRACT**

- 18.1 Either party may request a change to this Contract at any time by written notice to the other party.
- 18.2 Changes to the Developers' Guide will be notified to the Developer via the BT Website at <https://www.openreach.com/building-developers-and-projects/fibre-for-developers>. Changes will be identified by BT as either mandatory or optional and the date from which they come into effect. Changes

which are likely to be mandatory include changes appropriate to statutory, legal or other compliance matters. Unless there is a statutory, legal or other compliance obligation to do so or with the written agreement of the parties, changes to the Developers’ Guide will not apply retrospectively.

## **19. TRANSFER OF RIGHTS AND OBLIGATIONS**

19.1 Neither party may transfer any of their rights or obligations under this Contract, without the written consent of the other, such consent not to be unreasonably withheld or delayed, except that:

- (a) the Developer may transfer its rights or obligations (or both) to an eligible Developer Group Company or to any party which acquires a freehold interest in the Site or part of the Site.; and
- (b) BT may transfer its rights or obligations (or both) to a BT Group Company without consent provided that it first demonstrates, to the Developers' reasonable satisfaction, that the party to whom the obligations are transferred has the required technical, operational and customer services experience and has the required covenant strengths or parent company guarantees in place to assume all of BT's obligations under the Contract.

19.2 The parties shall provide all necessary assistance and enter into all required agreements, deeds, novation’s or any other documents in order to give effect to the provisions of this clause 19, provided that reasonable costs (including legal fees) in providing assistance and entering into agreements shall be paid by the party requesting the assistance.

## **20. ENTIRE AGREEMENT**

20.1 This Contract contains the whole agreement between the parties and supersedes all previous written or oral agreements relating to its subject matter.

20.2 The parties acknowledge and agree that:

- (a) the parties have not been induced to enter into this Contract by, nor have relied on any statement, representation, warranty or other assurance not expressly incorporated into it; and
- (b) in connection with this Contract the only rights and remedies of the parties in relation to any statement, representation, warranty or other assurance are for breach of this Contract and that all other rights and remedies are excluded.

20.3 Nothing contained in clauses 20.1 and 20.2 above shall affect the rights or remedies of the parties in respect of any fraudulent misrepresentation.

20.4 A person who is not a party to this Contract has no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Contract.

20.5 If there is any inconsistency between this Contract and any other document, agreement or understanding between BT and the Developer which relates to the subject matter of this Contract, the terms of this Contract shall prevail.

## **21. WAYLEAVE AGREEMENT**

21.1 The Parties agree and acknowledge that:

- (a) A Wayleave Agreement as set out in Schedule 2 (England and Wales or Scotland) is hereby granted by the Developer, as freeholder and/or occupier of the relevant Site(s);

- (b) Where the Developer is not a freeholder and/or occupier the Developer shall be responsible for confirming to BT in the Site Registration Form under 'Additional Notes' prior to entering into this Contract, if third party consent is required at the relevant Site(s) and the Developer is responsible for obtaining Wayleave(s) in accordance with the template at Schedule 2 from the freeholder or occupier and supplying same to BT as part of the Site Registration and further, the Developer shall be bound by the terms and obligations of this Contract including terms and obligations related to Schedule 1 and Schedule 2; and
- (c) The Developer indemnifies BT against all costs and expenses (including legal and professional fees) incurred and for all losses (including wasted expenditure, loss of revenue or profit and costs associated with removing or relocating apparatus) where the Developer has entered into this Contract and has not complied with clause 21.1 (b).

## **22. NOTICES FOR THIS CONTRACT**

22.1 Notices relating to this Contract must be in writing and must be sent as follows (unless otherwise notified by the other party):

If to the Developer: the Developer's registered office address

If to BT: Openreach New Sites Registration team  
2nd Floor, The Plaza  
100 Old Hall Street  
Liverpool  
Merseyside  
England  
L3 9QJ

22.2 A notice is duly served:

- (a) if delivered by hand, at the time of delivery;  
(b) if sent by first class post, three Working Days after the date of posting;  
(c) if sent by email, at the time of transmission.

## **23. WAIVER**

No failure to exercise nor any delay in exercising any right, power or remedy precludes any other or further exercise of that right, power or remedy. A waiver is not valid or binding on the party granting that waiver unless made in writing.

## **24. SEVERABILITY**

If any Court of competent jurisdiction holds any provision of this Contract invalid, illegal or unenforceable for any reason, such provision shall be severed and the remainder of its provisions will continue in full force and effect as if this Contract had been executed with the invalid, illegal or unenforceable provision omitted.

## **25. LAW**

The law of England and Wales governs this Contract and both parties submit to the exclusive jurisdiction of the English Courts save for any relevant Wayleave which is entered into under Schedule 3 which is governed by Scottish law.

**28. ANTI-BRIBERY AND MODERN SLAVERY**

Both Parties shall, in performing its obligations under this Contract:-

- (a) comply with all applicable laws, statutes, regulations and codes relating to anti-bribery and anti-corruption including the Bribery Act 2010; and
- (b) comply with all applicable anti-slavery and anti-human trafficking laws, statutes, regulation and codes from time to time in force including the Modern Slavery Act 2015.



## Schedule 1

### Service, & Site(s) Registration

#### 1. GENERAL AND INTRODUCTION

- 1.1 This Schedule 1 sets out work to be completed by BT and/or the Developer before commencement of any relevant civils infrastructure build and relates to the agreement by the parties of the infrastructure to be provided to the Site and the key roles and responsibilities of the parties in agreeing the relevant civils infrastructure requirements.
- 1.2 The infrastructure for BT’s electronic communications network and any services provided by BT to its customers, including anything incorporated or comprised in the Developer Works, is BT’s property at all times and is for the sole use of BT through its division Openreach.
- 1.3 BT is responsible for the installation of a communications system in the infrastructure that will meet the operational requirements of its customers, the UK communication providers, and their end user customers including any retail and non-retail occupiers of the Site in the provision of communications services.

#### 2. TECHNOLOGY SPECIFICATION(S)

The Infrastructure Service uses a fibre network infrastructure architecture to provide connection between a point of handover to the BT Network on the Site boundary and a point on the boundary of the individual phases within the Site as appropriate which will be delivered by means of BT’s fibre access network.

#### 3. SITE REGISTRATIONS

- 3.1 The parties will agree the proposed solution for the Site in accordance with this Schedule 1.

##### PROCESS TO REGISTER A SITE(S)

- 3.2 Using the online registration form, the Developer will register the Site no less than 9 months’ from the Site Start Date for fibre infrastructure. The Developer will provide sufficient notice to BT of the proposed works in order to facilitate the BT planning process and other activities which the parties may wish to agree prior to final agreement on the implementation of the Site.
- 3.3 The Developer will provide to BT the following:
- (a) Name and address of the Site and the relevant map coordinates;
  - (b) Anticipated number of premises (i.e. final anticipated number of residential and/or commercial premises);
  - (c) Site Start Date;
  - (d) If not completed, the date for submission of an application to the local authority for planning consent; and
  - (e) Any other information which BT may reasonably request in order to assess the commercial and technical viability of providing fibre infrastructure to the Site.
- 3.4 Using the information provided by the Developer, BT will input the Site on its systems and confirm to the Developer that the Site has been registered for inclusion in BT’s rollout plan. Provision of the information in this paragraph 3.4 is not binding on either party unless or until it has been agreed by the parties in writing.

- 3.5 In addition, during that period, the parties will discuss any requirements which will involve:
- (a) provision of temporary or permanent communications services at the Site, such as lines to the Site office; and
  - (b) siting of access roads, Section 278 of the Highways Act 1980 requirements, or potential repayments work at the Site.

such that BT is able to consider the potential infrastructure requirements associated with such works as part of the Site Layout Plans. The parties acknowledge that any information provided under this paragraph 3.5 is provided for information purposes only and is subject to any planning permissions. Provision of the information in this paragraph 3.4 is not binding on either party unless or until it has been agreed by the parties in writing.

## **4 PLANNING AND PROVISION OF SPECIFICATION**

- 4.1 The parties will agree the Specification for the Site no later than 8 weeks before the Site Start Date.
- 4.2 The Specification can only be changed on agreement of both parties in writing. If a party wishes to amend the Specification (in part or in whole), the requesting party will set out their request in writing to the other party and ask for the receiving party's consent, such consent not to be unreasonably withheld or delayed. The receiving party will consider the request and respond in writing within 10 Working Days of receipt of the request. If the request will, or is likely to:
- (a) delay to the completion of any part of the development being undertaken at the Site; and/or
  - (b) delay to the sale of the whole or any part or parts of any sites comprised in that development; and/or
  - (c) material additional cost and/or expense on the receiving party;

the parties agree to reach an appropriate settlement which progresses the Site to the reasonable satisfaction of both parties.

## **5 COMPLETION OF WORKS ON A SITE**

### **COMMENCEMENT OF WORKS**

- 5.1 The Developer shall notify BT when it will commence the Developer Works and, unless agreed otherwise in writing by the parties, the Developer shall complete the Developer Works (or the relevant part if the Site is being constructed in batches) so that BT or third party, as appropriate, can connect to the infrastructure in order to build the relevant residential and/or commercial premises on the Site. The parties will work together, including with any relevant third party (as applicable), to agree a schedule for works which aligns the development of the Developer Works with the other Site phases.

### **INSPECTION OF INFRASTRUCTURE**

- 5.2 BT will inspect the Developer Works when the Developer notifies BT that the Developer has completed the whole Site or relevant part and on a date to be agreed with BT. The parties shall use their reasonable endeavours to agree an inspection after the Developer's notification to BT. If the parties cannot agree a date for inspection, BT will attend the Site on a day of its choosing, to inspect, and provide a summary to the Developer
- 5.3 If BT confirms to the Developer that it is satisfied that the Developer Works have been completed to the agreed quality as set out in the Specification, BT will automatically issue a Quality Certificate within 4 weeks of completion of the whole of the Developer Works.
- 5.4 If BT is not satisfied that the Developer Works have been completed to the agreed quality as set out in the Specification:

- (a) BT will provide the Developer with a snagging list of issues on the Site (or relevant part of the Site). The Developer will use its reasonable endeavours to correct the issues on the snagging list within a reasonable time, not exceeding thirty (30) calendar days after receiving the snagging list from BT and when the remedial work has been completed, the Developer shall request a site visit from BT for re-inspection.
- (b) BT will charge the Developer for any visit(s) to re-inspect the Developer Works based on either Time Related Charges or Abortive Visit Charges in accordance with the Openreach Price List. The Developer acknowledges that any delay in the successful completion of the Developer Works:
- (i) will delay the provision of a Quality Certificate;
  - (ii) may delay completion of the BT Works; and
  - (iii) may delay the connection of communications services to end user customers, including any retail and non-retail occupiers of the Site;
- (c) If the Developer fails to complete the snagging list of issues as provided by BT within the time specified at Clause 5.4 (a):
- i. Any such failure impacts BT’s ability to deliver its services and BT will be required to amend the delivery date for services for a duration consistent with the period of any delay or failure by the Developer; and
  - ii. BT may complete any works reasonably necessary to finish the installation to the relevant standard and charge the Developer by providing the Developer with and invoice for any such works undertaken and payment by the Developer shall be within thirty (30) calendar days after receiving the invoice .

## **6 CHANGES TO SITE REGISTRATION, SPECIFICATION, AND REGISTER**

### **GENERAL**

- 6.1 If either party wishes to make changes to information shared under this Schedule 1 including Site Registration details, or Specification, which will have a material effect on the roll out of the Infrastructure Service to the Site by either party, the parties will follow the change control requirements set out in this paragraph 6.

### **PROCESS TO REQUEST A CHANGE**

- 6.2 Either party may request a change at any time by written notice to the other party or, if applicable, at the relevant review meeting.
- 6.3 The requesting party will set out the details of the request, scope of the changes and the reason for their request. The receiving party will review the request and will:
- (a) accept the proposed change;
  - (b) partially accept the proposed change subject to any additional requirements to be agreed with the requesting party, such consent not to be unreasonably withheld;
  - (c) reject the proposed change.

If the receiving party either partially accepts or rejects a proposed change then they will, as part of their response, provide any reasons for such partial acceptance or rejection.

- 6.4 Any change must be agreed by the parties in writing.
- 6.5 The receiving party will respond to any request for a change in a reasonable time. Consent to a request for change will not be unreasonably withheld or delayed.

6.6 If the parties cannot reach an agreement the provisions in clause 24 of the Conditions will apply.

## **7 EXCLUSIONS AND LIMITATIONS**

### **PROVISION OF PERMANENT AND/OR TEMPORARY COMMUNICATIONS SERVICES**

7.1 This Contract does not include:

(a) the provision of products and/or services for the temporary or permanent provision of communications services (including but not limited to the provision of services to a temporary site office, on the Site during construction). BT provides its communications services to its communications provider customers who are responsible for the provision of communications products and/or services to their end user customers, including the Developer; or

(b) The provision of the infrastructure on those phases being developed for any residential and/or commercial premises.

7.2 If the Developer has placed any order(s) with their nominated communications provider then, in order to facilitate the provision of the services, the Developer may provide the relevant order references to BT.

**Schedule 2****Wayleave (England & Wales or Scotland)**

**This agreement** is made pursuant to Part 2 of Schedule 3A of the Communications Act 2003 (as amended by the Digital Economy Act 2017 and as further amended or modified from time to time) (the "**Code**") and, **is between you:**

- (1) **the Developer** (with the relevant details as set out in the Site Registration Form) (**the "Grantor" or "you" or "your"; and us**)
- (2) **BRITISH TELECOMMUNICATIONS PLC** (incorporated and registered in England and Wales under company registration number 1800000), the registered office of which is at One Braham, 1 Braham Street, London E1 8EE (the "**Company**" or "**we**" or "**us**" which expression will include any entity to whom this agreement may be transferred as set out in paragraph 16 of the Code)

We need your written permission to allow us to exercise our rights (set out below) under the Code in respect of the installation of apparatus, consisting of any Electronic Communications Apparatus (as defined by Paragraph 5 of Part 1 of the Code) and supplied by us which is already installed on your Property (defined below), or approved by you in accordance with the terms of this agreement (the "**Apparatus**"), at the property as set out in the Site Registration Form, the relevant site plans and/or as identified through the relevant NSI number (**the "Property"**).

**Grantor Declaration:**

The Developer hereby agrees to give BT permission to place the Apparatus on the Property in accordance with the terms and conditions stated overleaf.

**Access agreement for British Telecommunications plc****Terms and Conditions****1. Our Rights**

- 1.1. In consideration of our obligations under this agreement, you grant us, and our agents, the right to:
  - 1.1.1. install, use, operate, keep and inspect the Apparatus on, over or under the Property, and
  - 1.1.2. carry out work on the Property that is necessary to install, operate, use, maintain, adjust, inspect, alter, add to, connect to, replace or substitute, repair or remove the Apparatus, and
  - 1.1.3. share or upgrade the Apparatus, and
  - 1.1.4. enter the Property and access the Apparatus for any of these purposes.
- 1.2. If we need to access the Property we will try to give you as much notice as we reasonably can but in the case of an emergency you understand that no notice may be possible.

**2. Our responsibilities**

- 2.1. Prior to carrying out any installation works at your Property, where reasonably necessary, we will provide you with a plan for those works for your approval (with such approval not to be unreasonably withheld or delayed).
- 2.2. We will take reasonable care not to cause damage to your Property, including:
  - 2.2.1. taking all reasonable precautions to avoid obstructions or interference with the use of the Property or any adjoining property;
  - 2.2.2. Subject to Clause 4.4, maintaining and keeping the Apparatus in good repair and condition and so as not to be a danger to you, your employees or Property, or the tenants or occupiers of the Property;
  - 2.2.3. carrying out and completing our works and use and operate the Apparatus in accordance in all respects with all relevant legislation;
  - 2.2.4. maintaining 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 us, our employees, agents or any person under our control of the rights hereby granted, and will provide details of such insurance to you upon reasonable request.

**3. Limitation of Liability**

- 3.1. If we damage your Property, we will repair such damage subject to clause 3.3
- 3.2. If someone else (a third party) makes a claim against you because of something we have done in installing or keeping our Apparatus on your Property, we will subject to clause 3.3 indemnify (compensate) you, except to the extent your acts or omissions have caused or contributed to any such claim and, providing you:
  - 3.2.1. let us know immediately in writing when you hear or become aware of a possible claim; and
  - 3.2.2. you mitigate against any claim; and
  - 3.2.3. you get our express written permission before making any compromise, payments or admission of liability; and
  - 3.2.4. you co-operate and provide any assistance we reasonably require for purposes of assessing or defending any claim; and
  - 3.2.5. when requested you give us control over any claim for us to defend (acting diligently, using competent counsel and in such a way as not to bring your reputation into disrepute).
- 3.3. Please note that except for any liability that we cannot exclude in law (such as death or personal injury caused by our negligence), our total liability under this agreement shall be limited to ten million pounds (£10,000,000) and excludes any consequential or indirect loss.

**Your responsibilities**

- 3.4. You must not damage our Apparatus or allow anyone else you are responsible for to damage or interfere with our Apparatus.
- 3.5. You, or anyone else you are responsible for, must not place or build anything on your Property which would make it more difficult for us to get to our Apparatus. You must not plant a tree or shrub if the roots are likely to interfere with our Apparatus, unless you have to do this because of planning law.
- 3.6. Nothing in this agreement prevents or restricts you from altering, amending, developing or redeveloping the Property or any other buildings, property or land.
- 3.7. Where a repair to the Apparatus is required and the cable is buried in the wall, you are responsible for opening the wall cavity to provide us access and you are also responsible for making good any damage caused from opening the wall cavity. Instead, you may request that we complete the repair but leave the cable wall mounted.

**4. Notices**

- 4.1. The procedure for sending notices under this agreement is set out in the Code. Any notice given by any party to this agreement must 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.

**5. Who the Apparatus belongs to**

- 5.1. Our Apparatus belongs to us at all times.

**6. Use of personal data for placement of Apparatus**

- 6.1. We collect and process the personal data set out in this access agreement for the purposes set out in clause 1 of this agreement. The lawful basis for the collection and processing of the personal data is to meet our legitimate interests. For information on our obligations and your rights please see our privacy policy available at: <https://www.openreach.com/about/using-our-site/privacy-policy>

**7. Disputes**

- 7.1. If a dispute or difference arises between you and us concerning the interpretation of this agreement or any part of it, or in connection with this agreement, such dispute or difference will be referred to a single arbitrator (if agreed by both you and us) 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.

**8. Ending this agreement**

- 8.1. We may end this agreement by giving you three months' notice.
- 8.2. This agreement will end if we remove all our Apparatus from your Property.
- 8.3. You may end this agreement by giving us not less than 18 months' prior written notice if you intend to redevelop all or part of your Property and could not reasonably do so unless the agreement is ended.
- 8.4. This agreement will remain in force until the Apparatus is no longer required unless terminated in accordance with this agreement.

**9. General**

- 9.1. This agreement is governed by the laws of England and Wales and disputes not dealt with by clause 7, will be decided in the courts of England and Wales.
- 9.2. This agreement does not create a relationship of landlord and tenant between you and us.
- 9.3. You have obtained any necessary permissions or consents to enter into and give full effect to this agreement.
- 9.4. 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.
- 9.5. This agreement constitutes the entire agreement between you and us relating to the Apparatus at the Property.

9.6. If any provision of this agreement (or part of any provision) is or becomes illegal, invalid or unenforceable, the legality, validity and enforceability of any other provision of this agreement shall not be affected.

9.7. Each party agrees that upon completion of this agreement all Apparatus on the Property (whether pre-existing or new) shall be subject to the terms of this agreement.

**Important Notes (These notes do not form part of the agreement)**

- *The Electronic Communications Code is set out in Schedule 3A to the Communications Act 2003. The Code sets out our rights and responsibilities when we put apparatus on private property.*
- *We strongly recommend you keep this agreement with your title deeds.*