

**Appendix 15.2 – DNO Connection Offers**

**Appendix 15.2.2 – Telecoms DNO Connection Offer: BT Openreach\***

*\*Note – Cost sensitive information has been removed from all relevant appendices*



# Agreement for New Sites NSI –BJA/057

THIS AGREEMENT IS MADE ON

07 March 2017

BETWEEN:

**BRITISH TELECOMMUNICATIONS plc** whose registered office is at BT Centre, 81 Newgate Street, London EC1A 7AJ and registered number is 1800000 ("BT") through its division Openreach

AND

**Ashfield Land** whose registered office is St. Catherine's Court Berkeley Place Clifton, Bristol, BS8 1BQ and whose registered number is ("the Developer")

## I. Party Representatives

The representatives for each party are:

	Operational Contact	First Level Dispute	Second Level Dispute
BT	BT NewSites Representative  RICHARD JONES 07801034447	For the full Escalations Process please refer to: <a href="http://www.newdevelopments-openreach.co.uk/developers-and-architects/HowToEscalate.aspx">http://www.newdevelopments-openreach.co.uk/developers-and-architects/HowToEscalate.aspx</a>	See First Level Dispute
The Developer	Name: Title: Contact:	Name: Title: Contact:	Name: Title: Contact:

## II. Site

The Site is located at Rail Central, Off A43 Towcester Road, Milton Malsor, NN7 3AA

## III. Developer Works

The Developer Works comprise all relevant civils infrastructure at the Site, including draw rope, cable, tube, ducts and chambers, using Materials provided by BT and through which BT will install and provide its electronic communications network and any services provided by BT to its customers.

## IV. BT Works

The BT Works comprise the provision of Specifications and Materials for the Site, inspection of the Developer Works and completion of the BT Works, including the installation of BT equipment in the Plot.

Signed on behalf of **British Telecommunications plc**

Signature: ... 

Position: BT Newsites Planning/Design

Date: 07 March 2017

Signed on behalf of **Ashfield Land [the Developer]**

Signature: .....

Position: .....

Date: .....

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### INTRODUCTION

- A. BT is a public electronic communications network operator.
- B. The Developer is undertaking the demolition, new build, conversion and/or refurbishment works at the Site either directly or through its subsidiaries.
- C. In this Agreement: (a) the Developer agrees to undertake the relevant works to build part of BT's infrastructure for the electronic communications network at the Site; and (b) BT agrees to undertake the relevant works to build the remaining parts of BT's infrastructure which will be used by BT for the provision of its electronic communications network.

It is agreed as follows:

### 1. INTERPRETATION

- 1.1 Any reference in this Agreement to any provision of a statute or legislation shall be construed as a reference to that provision as amended re-enacted or extended at the relevant time.
- 1.2 The headings in this Agreement are for convenience only and shall not affect its interpretation.
- 1.3 The terms "party" or "the parties" shall mean BT and/or the Developer.
- 1.4 The following words in this Agreement have the meanings set out below:

**Agreement** means this agreement together with its annexures;

**Apparatus** means BT's electronic communications apparatus comprising the equipment documented on the plans attached to the Specification and the approximate position of which is shown on such plans;

**BT Works** means the works to be undertaken by BT;

**BT's Representative** means the BT representative referred to on the cover page of this Agreement;

**Developer Requirements** means the requirements set out by the Developer;

**Developer Works** means the works to be undertaken by the Developer;

**Information Request Sheet** means the document provided by BT to the Developer and which sets out the key requirements at the Site including any phases and number of plots;

**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;

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

**Notify / Notified / Notice** means information communicated to the one party by the other in accordance with the process set out in Clause 23;

**Openreach New Sites Application Form** means the document to be completed by the Developer and provided to BT as set out in Clause 4;

**Openreach Price List** means the document containing a list of BT's charges and terms that apply and which can be seen at the "Service Product Pricing" section of the list provided at <http://www.openreach.co.uk/orpg/home/products/pricing/loadPricing.do> (or any other on-line address that BT may advise the Developer);

**Plot** means any residential dwelling (whether a single flat, single house or other type of single dwelling) or a single commercial, office, retail or educational building on the Site;

**Programme** means the programme for the Developer Works and the BT Works agreed between the parties in accordance with Clauses 6.3 and 6.4;

**Quality Certificate** means the certificate given to the Developer by BT when the Developer has completed the whole or the relevant part of the Developer Works;

**Site** means the site identified on the cover page of this Agreement;

**Site Layout Plans** means the correct scale 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 Clause 4.2;

**Site Start Date** means the date on which the Developer will commence development of the Site, including the Developer Works;

**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, including, but not limited to, duct routes, joint boxes, man holes and site boundary point to be provided in accordance with Clause 4.2;
- (b) CN Diagrams (i.e. cable network diagram) provided by BT for the applicable Site;
- (c) the latest versions of the Developers' Guides are available on the New Sites website <http://www.newdevelopments-openreach.co.uk/Developers-and-architects/DevelopersHandbook.aspx> throughout the time you carry out the Work; and
- (d) Bill of BT Materials provided by BT; and

**Wayleave Agreement** means the form of wayleave agreement in Appendix 1 (England and Wales) or Appendix 2 (Scotland), as appropriate.

## **2. AGREEMENT**

2.1 If a party fails to or delays exercising its rights at the time they arise, that failure or delay does not prevent that party from exercising those rights at a later time. If a party decides not to exercise one of its rights on a particular occasion, then that decision applies only to that occasion.

2.2 This Agreement shall continue unless and until terminated by either party in accordance with Clause 3.

## **3. TERMINATION**

3.1 Either party may terminate this Agreement immediately upon serving written notice on the other party where the other party is:

- (a) in material breach of the terms of this Agreement and such breach has a material adverse impact on the party serving notice (and where the breach is capable of remedy, the party has not remedied the breach within a reasonable time of receiving notice requiring the breach to be remedied);
- (b) persistently breaches any or all terms of this Agreement in a material way and such persistent material 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.

#### 4. THE WORKS AND SPECIFICATION

- 4.1 No later than 6 months prior to the proposed Site Start Date, the Developer will notify BT of the proposed works and 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, the parties will discuss any requirements which will involve:

- (a) provision of “network in advance” at the Site, such as lift lines, show homes and lines to the site office;
- (b) siting of access roads, Section 278 of the Highways Act 1980 requirements, or potential repayments work at the Site; and
- (c) number of dwelling on each 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 Clause 4.1 is provided for information purposes only and is subject to any planning permissions or changes. Provision of the information in this Clause 4.1 is not binding on either party unless or until it has been agreed as part of the Specification.

- 4.2 No later than 8 weeks before Site Start Date, the Developer will provide the Openreach New Sites Application Form, including the Site Layout Plans, to BT. On receipt of the Site Layout Plans, BT will provide the Developer with an Information Request Sheet for completion by the Developer. The Developer will complete and return the Information Request Sheet no later than 4 weeks before the Site Start Date. On receipt of the completed Information Request Sheet, BT shall use its reasonable endeavours to provide the Developer with the Specification for the Site on or before the Site Start Date and in accordance with the Developer’s Guide. The Specification shall include plans for the required layout of the electronic communications infrastructure. If the Developer:

- (a) provides the Openreach New Sites Application Form (including any preliminary address information) less than 20 working days before the Site Start Date; or
- (b) requests any changes to the Specification provided by BT;

BT will charge the Developer Time Related Charges as set out in the Openreach Price List. Any request for a change to the Specification by the Developer must be provided to BT’s nominated representative and agreed in writing by the parties.

- 4.3 If the Developer requires “network in advance” options including the provision of services to a temporary site office, show homes or service to lifts on the site and such requirements have not been previously discussed by the parties in accordance with Clause 4.1 above, the Developer shall notify BT of such requirements during the discussions about the Site Layout Plans and Specification. The provision of temporary services is subject to separate terms and conditions as set out in the *Agreement for Customer Network Services* document which can be provided on request to the BT Representative. Materials

provided under this Agreement must not be used for any network in advance requirements agreed by BT for example the network in advance requirements will form part of the permanent infrastructure. If the Developer has placed any order(s) for “network in advance” options with their nominated communications provider then the Developer will promptly confirm the relevant order references to BT.

4.4 The Developer agrees to carry out the Developer Works in accordance with the Specification or any reasonable alternative instructions provided to the Developer by BT in writing. If BT seeks to amend the Specification (in whole or in part) or give an alternative instruction and, in the Developer’s reasonable opinion, any such instructions result in or are likely to result in:

- (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 property comprised in that development; and/or
- (c) material additional cost and/or expense;

BT, on application in writing by the Developer, may consent to a withdrawal or variation or amendment to such instructions, such consent not to be unreasonably withheld or delayed.

4.5 It is the Developer’s responsibility to:

- (a) in relation to the Site and any third party premises or land, obtain all necessary consents and permissions to do the BT Works and the Developer Works including permission to cross other people’s land or permission to put BT equipment on their property;
- (b) prepare the Plot and provide a suitable place, conditions, connection points and electricity for BT equipment at the Plot(s) in accordance with BT’s reasonable instructions, if any;
- (c) provide a suitable place and conditions for BT equipment at a Plot including connection points required by BT and electricity; and
- (d) provide accurate address information for the Site no later than 10 working days before the first occupancy date. If there are any changes to the address details for the Site, the Developer will provide the updates to BT and acknowledges that any error in the address information or delay in provision of such information may delay the provision of the Service by BT.

If, in order to perform an obligation under this Agreement including the BT Works and any inspections, it is necessary for BT to obtain access to the Plot, the Developer shall provide BT with reasonable access.

4.6 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. BT shall procure 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.

4.7 The Developer shall complete, to the standard set out in the Developers’ Handbook, 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.

4.8 Subject to Clause 6.1 of this Agreement, BT may 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 the Developer. The parties shall use their reasonable endeavours to agree an inspection after the Developer’s notification to BT and no later than 10 working days before the first occupancy date. If the parties cannot agree a date for inspection, BT will attend the Site and provide a summary to the Developer. For the Developer Works comprising:

- (a) fewer than 25 plots and/or apartments, BT will inspect the Developer Works on completion as advised to BT by the Developer; and
- (b) 25 plots and/or apartments or more, the Developer may request that BT will inspect the Developer Works in either:
  - (i) batches of 25 plots and/or apartments; or
  - (ii) the entire Site;

as agreed by the parties before commencement of the Developer Works.

If the Site is being completed in batches, the Developer must ensure that BT has all necessary access to the Plots in order to deliver service and, if appropriate, that the road level lines and levels are formed.

4.9 The Developer shall request a Quality Certificate within 4 weeks of completion of either the whole of the Developer Works or the relevant batch of plots and/or apartments referred to in Clause 4.8.

4.10 Subject to Clause 7, if:

- (a) BT is satisfied that the Developer Works have been completed to the agreed quality as set out in the Specification, BT will provide the Developer with a Quality Certificate; or
- (b) BT is not satisfied that the Developer Works have been completed to the agreed quality as set out in the Specification, 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 as agreed by the parties and, when the remedial work has been completed, request a site visit from BT. BT will charge the Developer for any subsequent visit(s) to 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;

If the Developer fails to complete the snagging list of issues on the Site within a reasonable time, and such delay or failure to complete the work impacts on BT's ability to deliver its services, BT may amend the delivery date for services for a duration consistent with the period of any delay or failure and will complete any works reasonably necessary to finish the installation to the relevant standard and charge the Developer for the additional works undertaken.

4.11 BT agrees to carry out the BT Works at its own cost in accordance with the Specification or any reasonable alternative instructions provided to BT by the Developer in writing. If the Developer seeks to amend the Specification (in whole or in part) in accordance with Clause 4.2 or give an alternative instruction and, in BT's reasonable opinion, any such instructions result in or are likely to result in:

- (a) delay to the completion of any part of the development being undertaken at the Site by up to 20 working days; and/or
- (b) material additional cost and/or expense;

The Developer, on application in writing by BT, may consent to a withdrawal or variation or amendment to such instructions, such consent not to be unreasonably withheld or delayed.

4.12 In carrying out the BT Works, BT agrees to:



- 4.12.1 carry out a health and safety risk assessment and issue to the Developer a site specific method statement for the carrying out 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 (for example, that all ducting has been sawn off leaving no jagged edges). If BT 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;
  - 4.12.2 ensure that each of its employees, agents or sub-contractors 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;
  - 4.12.3 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;
  - 4.12.4 unless agreed otherwise by the parties, carry out the BT Works within the hours referred to in Clause 16.1;
  - 4.12.5 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;
  - 4.12.6 comply with applicable legislation, regulations and rules, and with the terms of any planning permissions and consents in relation to the Developer's Works and BT's Works;
  - 4.12.7 comply with such reasonable requirements with regard to security and method of access to the Site as the Developer shall notify to BT in writing from time to time;
  - 4.12.8 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 Agreement.
- 4.13 Subject to the limitation in Clause 11, BT indemnifies the Developer against all losses, costs, damages, expenses, liabilities and claims caused to and made against the Developer which would not have been caused or made had BT complied with BT's obligations in relation to the disposal of the Materials and any waste generated in connection with this Agreement.

## **5. MATERIALS**

- 5.1 BT will 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 The Developer must insure the Materials from the date BT delivers them to the Site, to the earlier of either the date BT provides the Developer with the Quality Certificate or the Materials are returned to BT.
- 5.4 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 of good quality, comply with all relevant legislation, British Standards and codes of practice and/or equivalent EU approval.

- 5.5 The Developer must keep the Materials secure and in good condition. The Developer must store them appropriately and to the satisfaction of BT's Representative, acting reasonably. They must be clearly marked 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.
- 5.6 The Developer must only use the Materials for the Developer Works. The Developer must not use them for anything else.
- 5.7 The Developer must ensure that neither the Developer nor anyone who works for the Developer or on the Developer's behalf, does not provide 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.
- 5.8 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. If BT does not collect the unused Materials, the parties agree that 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.
- 5.9 If the Developer is responsible for disposing of any unused Materials and/or all waste generated in connection with the Developer Works, 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.
- 5.10 Subject to the limitation in Clause 11, 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 Agreement.

## **6. PROGRAMME OF WORKS AND TIMESCALES**

- 6.1 The Developer agrees to complete the Developer Works to the agreed quality at least 40 working days' before the first occupancy date for the Site so that the Quality Certificate can be issued and so that BT can complete any BT Works to enable connection of the Site (or, if the Site is being constructed in batches, the Developer agrees to complete the applicable part of the Developer Works). It is the responsibility of the end user to order any electronic communications services from their nominated communications provider using BT's electronic communications network.
- 6.2 Where BT receives a demand from an electronic communications services provider to deliver service to an occupier of the Site before the Developer has completed the Developer Works and the Developer has failed to complete the Developer Works in accordance with Clause 6.1, the Developer agrees to take all reasonable steps to carry out the work forming part of the Developer Works required in order to connect the line including implementing any temporary solution as reasonably directed by BT.
- 6.3 The Developer will:
  - (a) provide BT with a monthly rolling forecast of plots which are going to be completed in the following two months;
  - (b) agree the number of plots to be completed by the Developer in any forecast period with BT, such agreement not to be unreasonably withheld by BT;
  - (c) give 15 working days' Notice to BT when a Plot is ready for cable installation.

- 6.4 Subject to Clauses 6.1 and 6.3 and on provision of all necessary access by the Developer, BT aims to commence the cable installation at each Plot within 15 working days of the expiry of the notice period referred to in Clause 6.3(c).
- 6.5 The parties have agreed that their respective obligations under this Agreement initially relate to the number of plots at the Site as set out in the Specification, but that the Developer has the option to increase or otherwise amend the rollout of the number of plots within the scope of this Agreement by issuing Notice thereof to BT provided that the Developer will notify BT as soon as practicable of any proposed changes to the number or location of any Plot(s) which will impact on the Specification or forecast and rollout timetable (as set out in Clause 6.3). If there is a change required to the Specification and/or the forecast or rollout timetable, both parties must consent to the changes such consent not to be unreasonably withheld.

## **7. WARRANTY**

- 7.1 The Developer warrants that provision of the Developer Works will be:

- (a) free from defects;
- (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);

from the provision by BT to the Developer of the Quality Statement.

- 7.2 The warranty set out in Clause 7.1 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, in England and Wales, section 71, and in Scotland, section 130, of the New Roads and Street Works Act.
- 7.3 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.
- 7.4 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.
- 7.5 The Developer shall maintain accurate and comprehensive records of all re-work required or undertaken which will be provided to BT on reasonable request such consent not to be unreasonably withheld or delayed.

## **8. SAFETY AND COMPLIANCE**

- 8.1 Each party agrees to comply with all laws and regulations which are relevant to their respective works under this Agreement.
- 8.2 Each party is responsible for protecting the health and safety of the people involved in carrying out their respective works required by this Agreement. This means that each party must comply with all legal requirements and each party must take all reasonable steps to protect people from harm in respect to their respective works identified in this Agreement.
- 8.3 The Developer agrees to 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 agrees to comply with all reasonable health and safety instructions relating to the BT Works given to BT by or on behalf of the Developer.

8.4 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.

8.5 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”.

8.6 Subject to the limitation in Clause 10, 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 8.

8.7 Subject to the limitation in Clause 10, 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 8.

## **9. FORCE MAJEURE**

Neither party shall be liable to the other party for any reasonable delay in carrying out its obligations under this Agreement 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.

## **10. LIMITATION OF LIABILITY**

10.1 Neither party excludes or restricts its liability for:

- (a) death or personal injury caused by its negligence or that of its employees, subcontractors or agents acting in the course of their employment or agency;
- (b) fraudulent misrepresentation or misstatement; or
- (c) any liability that may not otherwise be limited or excluded by law.

10.2 Except as set out in sub-Clause 10.1, neither party shall be liable whether based on a claim in contract, tort (including negligence), breach of statutory duty, misrepresentation or otherwise arising out of, or in relation to this Contract, for:

- (a) loss of profit (whether direct or indirect);
- (b) loss of revenue (whether direct or indirect);
- (c) loss of time (whether direct or indirect);
- (d) wasted expenditure (whether direct or indirect);
- (e) loss of anticipated savings (whether direct or indirect);
- (f) loss of opportunity (whether direct or indirect);

- (g) loss and/or corruption of data (whether direct or indirect); or
- (h) any indirect or consequential loss whatsoever (even if the other party has been advised of the possibility of such loss).

10.3 Any liability arising out of or in relation to this Agreement, in contract, tort (including negligence), breach of statutory duty or otherwise for direct loss or damage howsoever arising shall not exceed, for a Site of:

- (a) 1 – 10 plots, £25,000;
- (b) 11 - 50 plots, £100,000;
- (c) 51 - 150 plots, £300,000; or
- (d) 151 or more plots, £1 million.

10.4 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.

10.5 This Clause 10 shall continue in force after the termination or expiry of this Agreement.

## **11 CONDUCT OF INDEMNIFIED EVENTS**

11.1 Either party's liability under any indemnity is limited to £50,000 for any one event or series of connected events and £100,000 for all events (connected or unconnected) in the 12 calendar months immediately preceding either the relevant event (single or unconnected) or in the case of a series of connected events, the first event. The indemnified party has a duty to mitigate its loss in the circumstances covered by the indemnity.

11.2 The indemnified party must notify the indemnifying party of any related claims or legal proceedings and use its reasonable endeavours to do so within 10 working 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.

11.3 The indemnifying party may assume conduct of the claim providing it notifies the indemnified party of such intention within 5 working days of receipt of the notification in Clause 11.2. 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.

11.4 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.

## **12 INSURANCE**

12.1 Both parties shall have and keep in place, insurance which covers its obligations in this Agreement up to the point BT issue a Quality Certificate to the Developer or if terminated before a Quality Certificate is issued, up to the this Agreement 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 to cover loss of or damage to property or the death of or personal injury to any person arising from an act or omission by either party or its employees, agents or subcontractors in relation to the performance of this Agreement.

12.2 The insurance in 12.1 (b) must have a maximum limit on the cover it provides of at least £5 million for each and every claim with no cap on the number of claims that can be made.

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

### **13 PAYMENT**

13.1 If the Developer is eligible for payment under the House Builders Federation Scheme or Homes for Scotland, then the Developer must obtain a Quality Certificate in order to claim any payment from BT. Residential sites comprising 10 plots or fewer, and business sites are not eligible for payment. The Developer must claim any payments owed to the Developer by BT within 12 months of the date of the Quality Certificate issued. For Developer Works comprising:

- (a) fewer than 25 plots and/or apartments, the Developer will claim any payment using one invoice; and
- (b) 25 plots and/or apartments or more, the Developer may claim any payment in either (i) batches of 25 or more plots and/or apartments or (ii) the entire Site; as agreed by the parties before commencement of the Developer Works.

13.2 The Developer must, where applicable, ensure that each invoice is a valid VAT invoice for the purposes of the Value Added Tax Act 1994 (or any similar or replacement legislation).

13.3 If the Developer is raising an invoice in relation to a batch of plots as part of the Developer's development, the Developer must ensure that each invoice includes only those plots which have been successfully inspected by BT and a Quality Certificate issued.

13.4 The invoice must specify:

- a) the appropriate Purchase Order and contract number, where applicable;
- b) the Openreach NSI reference number;
- c) a full description of the Work to which the invoice relates (as set out in the Purchase Order);
- d) the portion of the Work for which payment is being claimed including, if applicable, the number of plots and the unit cost per plot. Line items should be presented in the same order and format as the Purchase Order to which they relate;
- e) an identifying number;
- f) the relevant period and, if different, date of issue;
- g) Total charge exclusive of VAT and the rate of VAT
- h) Any discount including rate of discount; and
- i) Total VAT payable.



- 13.5 The Developer must raise a separate invoice for each Purchase Order reference number. BT or BT's accounts payable service provider may reject any invoice if it is for multiple purchase order reference numbers or otherwise does not comply with this Clause 13.
- 13.6 The Developer must supply BT Accounts Payable with all the Developer's relevant information associated with HMRC's CIS scheme (Construction Industry Scheme) including the Developer's Unique Tax Reference (UTR) details.
- 13.7 BT may offset all or part of any money owed to the Developer against any amounts due to BT under this Agreement or properly claimed from the Developer by BT which has not been paid by the Developer.
- 13.8 Subject to Clause 13.7, BT will pay the invoiced amounts properly due to the Developer within 30 working days of the date of the Developer's invoice.

#### **14. CHARGES**

- 14.1 The Developer must pay charges in certain circumstances. A full list of Time Related Charges, Abortive Visit Charges and any supplementary charges (i.e. per visit charges) additional terms and conditions which expressly apply to those charges is set out in the Openreach Price List, including:
- (a) Supplementary work to carry out work outside Normal Working Hours;
  - (b) Additional hours necessary to provide amendment to Specifications in accordance with Clause 4 including any on-site visits which may be required;
  - (c) Repairing faults or additional work which is required to bring the network infrastructure to the relevant standard as set out in the Specification; and
  - (d) The provision of plant location maps and searches;
  - (e) 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 5.4 of this Agreement;
  - (f) site visits where the Developer has requested a Quality Certificate but BT has identified issues with the Developer Works in accordance with Clause 4.10(b) of this Agreement.
- 14.2 The charges may change from time to time and the charges which shall apply are those which are shown on the Openreach Price List.
- 14.3 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.
- 14.4 The Developer may offset all or part of any money owed to BT against any amounts due to the Developer under this Agreement or properly claimed from BT by the Developer which has not been paid by BT.

#### **15 CONFIDENTIALITY AND IP RIGHTS**

- 15.1 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 Agreement.
- 15.2 The Developer may make copies of the Specifications strictly as necessary to carry out the Developer Works. The Developer may supply copies to the Developer's subcontractors and professional advisors who need to use such copies for those purposes but only if such subcontractors and advisors are bound by equivalent confidentiality and copyright provisions. The Developer must reproduce all BT copyright and

confidentiality markings clearly on such copies. The Developer must not modify or adapt the Specifications or allow anyone else to do so without BT's prior written consent.

- 15.3 On BT's written request, on completion of the Developer Works the Developer must use reasonable endeavours to collect all copies of the Specifications the Developer has and has made and return them to BT or at BT's option to destroy them provided that the Developer shall be entitled to retain a copy of the Specification for its records.

## **16 WORK RECORDS AND ACCESS TO THE SITE(S)**

- 16.1 Subject to the obligations set out in Clause 8 above (Safety and Compliance), the Developer agrees that BT or anyone authorised by BT may access the Site(s) and telecommunications infrastructure at any reasonable time during Normal Working Hours provided that such person abides by any reasonable site specific access requirements notified to them by the Developer.
- 16.2 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.

## **17 CHANGES TO THIS AGREEMENT**

- 17.1 Either party may request a change to this Agreement at any time by written notice to the other party.
- 17.2 Changes to the Developers' Guide will be Notified to the Developer via the Openreach Website at [www.newdevelopments-openreach.co.uk](http://www.newdevelopments-openreach.co.uk). 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.

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

- 18.1 Neither party may transfer any of their rights or obligations under this Agreement without the written consent of the other, such consent not to be unreasonably withheld or delayed, except that BT may transfer its rights or obligations (or both) without the Developer's consent, to any:
- (a) company in the BT Group of companies from time to time; or
  - (b) third party which by purchase, lease, outsourcing agreement or otherwise, assumes the operation, administration and/or management of any substantial portion of the business of BT affected by this Agreement;

providing that BT notifies the Developer that it has done so.

## **19. SEVERABILITY**

If a court holds any provision of either this Agreement invalid, illegal or unenforceable for any reason that provision shall be severed and the remainder of its provisions will continue in full force and effect as if this Agreement, as applicable, had been agreed with that provision omitted.

## **20. ENTIRE AGREEMENT**

- 20.1 This Agreement contains the whole agreement between the parties and supersedes all previous understandings, commitments, agreements or representations whatsoever, whether written or oral relating to its subject matter.
- 20.2 The parties acknowledge and agree that:



- (a) the parties have not been induced to enter into this Agreement by, nor have relied on any statement representation, warranty or other assurance not expressly incorporated into it; and
- (b) in connection with this Agreement the only rights and remedies of the parties in relation to any statement, representation, warranty or other assurance are for breach of 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 party to this Agreement has no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Agreement, but this does not affect any right or remedy of a third party which exists or is available apart from that Act.

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

## **21 NO SALE OF BT NETWORK EQUIPMENT**

The sale of any network terminating equipment and associated internal equipment for installation and/or re-sale by the Developer is not included in this Agreement.

## **22 WAYLEAVE AGREEMENT**

22.1 A Wayleave Agreement is granted by the Developer for each plot at the Site as set out in Appendix 1 (England and Wales) or Appendix 2 (Scotland), as appropriate.

22.2 The Developer is the occupier of the Site or, if this is not the case, the Developer must tell BT if consent is required across property belonging to someone else and the Developer will make reasonable efforts to provide the relevant contact information of any third party at commencement of this Agreement, in order to provide the Site with infrastructure for BT's electronic communications network.

## **23 NOTICES**

23.1 Notices relating to this Agreement must be in writing and must be sent as follows:

If to the Developer: [ ]

If to BT: Openreach New Sites (Legal) team  
Kelvin House  
123 Judd Street  
London, WC1H 9NP

or to such other addresses as one party may from time to time notify the other.

23.2 Notice under this Agreement shall be duly served if:

- (a) delivered by post, 4 working days after the day of posting; or
- (b) delivered by email, at the time of delivery; or
- (c) delivered by hand, at the time of actual delivery.

## **24 ESCALATION AND DISPUTE RESOLUTION**

- 24.1 The parties nominated representatives and the people to whom a dispute must be escalated at the first and second levels are set out in Recital I of this Agreement, as amended from time to time by the parties in writing.
- 24.2 If any dispute arises between BT and the Developer or its representatives, the parties will use their reasonable endeavours to settle the dispute in accordance with the following:
- 24.2.1 any dispute which has not been settled by the nominated representatives of both the Developer and BT within 28 days of the matter being raised, may be escalated to the first level, by notice in writing to the other party; and
  - 24.2.2 if the dispute is not resolved at the first level within 21 days of the escalation, either party may refer to the second level.
- 24.3 If a dispute is not resolved within 14 days of the matter being raised to the second level (as set out in the procedures set out in Clause 24.2 above) then either party shall have the option of:
- (a) referral of the dispute to a mediator in accordance with sub-Clause 24.4; or
  - (b) referral of the dispute for early neutral evaluation; or
  - (c) pursuing any other dispute resolution option which the parties agree is appropriate.
- 24.4 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 Agreement.
- 24.5 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 Agreement.

## **24 LAW AND JURISDICTION**

This Agreement is governed by English law and subject to the exclusive jurisdiction of the English courts save for any relevant Wayleave which is entered into under Appendix 2 which is governed by Scottish law.

## APPENDIX 1 Wayleave Agreement (England and Wales)

### 1 Our rights

We have the following rights ('our rights'). We may:

- install our apparatus on, under, or over your property;
- inspect our apparatus;
- repair or alter our apparatus;
- remove our apparatus;
- add further cables in existing duct.

We may come on to your property to do any of these things without giving you notice. However, we will try to contact you beforehand if possible. If we need to bring vehicles or heavy machinery onto your property, we will ask you first unless it is an emergency.

### 2 Our responsibilities

We will cause as little damage to your property as possible. If we do damage your property, we will repair it to your reasonable satisfaction.

As well as your normal legal rights we will indemnify (compensate) you up to £1,000,000 if someone makes a claim against you because of us installing or keeping our apparatus on your property as long as:

- you did not cause or contribute to the claim;
- you let us know straight away when you hear about a possible claim; and
- you get our permission in writing before you make any payments or admit liability.

### 3 Your responsibilities

You must not damage our apparatus or allow anyone else you are responsible for to damage our apparatus.

You 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.

### 4 Notices

The procedure for sending notices under this agreement is set out in the code. We will send notices to your address shown on page 1 of this agreement. You must send any notice to us at our registered office address.

### 5 Who apparatus belongs to

Our apparatus belongs to us at all times.

### 6 Ending this agreement

We may end this agreement by giving you three months' notice.

This agreement will end if we remove all our apparatus from your property.

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

The code is Schedule 2 to the Telecommunications Act 1984 (as amended). The code sets out our rights and responsibilities when we put apparatus on private property such as your property.

Paragraph 2 of the code says we must get the occupier's written permission to place apparatus on private land.

Paragraph 20 of the code gives you the right to ask us to change, move, or remove our apparatus if this is necessary so you can make an improvement to your property.

Paragraph 24 of the code sets out the procedures for notices.

## APPENDIX 2 Wayleave Agreement (Scotland)

### 1 Our rights

We have the following rights ('our rights').  
We may:

- install our apparatus on, under, or over your property;
- inspect our apparatus;
- repair or alter our apparatus;
- remove our apparatus;
- add further cables in existing duct.

We may come on to your property to do any of these things without giving you notice. However, we will try to contact you beforehand if possible. If we need to bring vehicles or heavy machinery onto your property, we will ask you first unless it is an emergency.

### 2 Our responsibilities

We will cause as little damage to your property as possible. If we do damage your property, we will repair it to your reasonable satisfaction.

As well as your normal legal rights we will indemnify (compensate) you up to £1,000,000 if someone makes a claim against you because of us installing or keeping our apparatus on your property as long as:

- you did not cause or contribute to the claim;
- you let us know straight away when you hear about a possible claim; and
- you get our permission in writing before you make any payments or admit liability.

### 3 Your responsibilities

You must not damage our apparatus or allow anyone else you are responsible for to damage our apparatus.

You 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.

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Paragraph 20 of the code gives you the right to ask us to change, move, or remove our apparatus if this is necessary so you can make an improvement to your property.

Paragraph 24 of the code sets out the procedures for notices.

## APPENDIX 3 New Sites Copper Commercial Flow Chart (Copper and Fibre Infrastructure)

### Timeline

- Black bullet indicates FTTP and Copper New Sites activity
- Blue bullet indicates FTTP New Sites only
- Red bullet indicates process development to be confirmed

#### Site Start Date (SSD)

##### 12 months to SSD

###### Pre registration

- Developer contacts Openreach Commercial Team months ahead of SSD
- Fibre request form and outline plan submitted
- Commercial decision around fibre
- Register interest at front end
- Land enquiries
- Purchase land
- Planning permission requested

##### 9 months to SSD

- Developer submits signed contract
- Developer to sign wayleaves

##### 8 weeks to SSD

###### Registration

- Register New Site 8 weeks before site start date
- Developer to complete information request sheet no later than 4 weeks before site start date. Including any preliminary address information
- Lift lines, show homes and site office lines ordered via CP
- Developer informed about Partial Copper Build

##### 4 weeks to SSD

###### Plan

- Proposals issued by Openreach designer
- Reviews proposals during Initial Site Meeting with the NSR
- Proposal Agreed - Site agent or developer representative & NSR agree site proposals. Developer signs the sign on sheet to confirm understanding and will meet the quality standards for each element and plot call off
- Developer can reject proposal and request a replan of proposal. A replan will add a 28 day delay

#### First Occupation Date (FOD)

##### 8 weeks to FOD

###### Build

- Developer addressing/council addressing provided - Openreach to be informed as soon as available but no later than 4 weeks before FOD
- Request stores from NSR a minimum of 21 working days before they are required
- Developer to take accountability of stores once delivered. Developer must advise Openreach of any defects within 21 working days of receipt (excluding bank holidays)
- Developer to complete on site work to a quality standard 40 working days (excluding bank holidays) prior to FOD

##### 4 weeks to FOD

###### Build

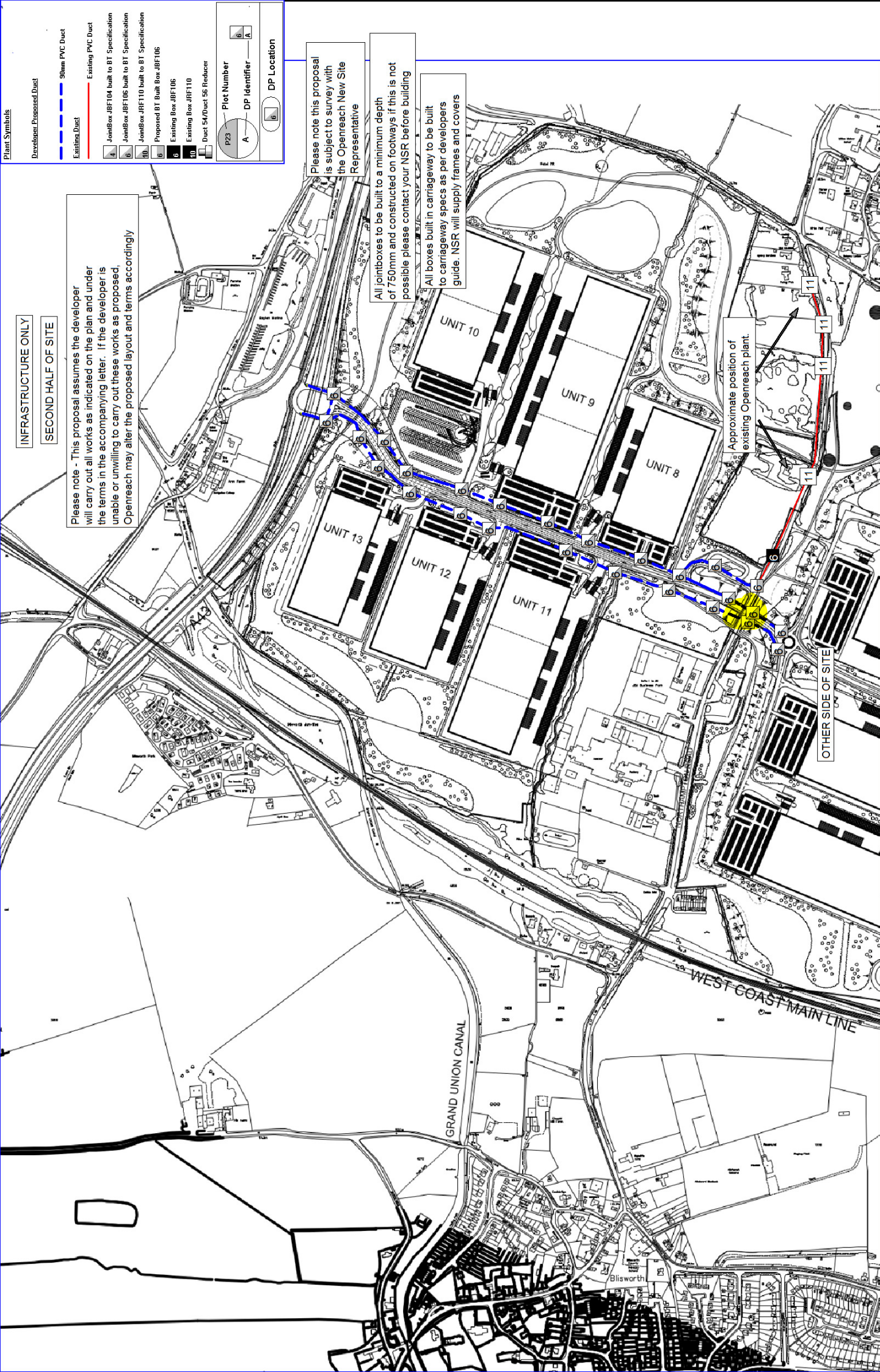
- Developer requests plot quality check- no later than 10 working days (excluding bank holidays) prior to plot FOD
- Developer receives snagging list for remedial work where required. The developer will endeavor to complete within 5 days

##### After FOD

###### Post Build

- Developer requests SOD payment on completion of successful quality check. Developer has 12 months from the date of certificate in which to claim the payment





INFRASTRUCTURE ONLY  
SECOND HALF OF SITE

Please note - This proposal assumes the developer will carry out all works as indicated on the plan and under the terms in the accompanying letter. If the developer is unable or unwilling to carry out these works as proposed, Openreach may alter the proposed layout and terms accordingly

Please note this proposal is subject to survey with the Openreach New Site Representative

All jointboxes to be built to a minimum depth of 750mm and constructed on footways if this is not possible please contact your NSR before building

All boxes built in carriageway to be built to carriageway specs as per developers guide. NSR will supply frames and covers

Approximate position of existing Openreach plant.

OTHER SIDE OF SITE

Plant on Map  
Job Description: Rail Central Off A43 Towcester Rd Milton Malsorn NN7 3AA

Important Notice - BT's joint boxes (JB & JUF) must be constructed in non carriageway situations only. If there is any deviation from this please contact your newSite Representative before work commences.

Certified by .....  
Date .....

Exchange Area: BLISWORTH  
Estimate Number: BJA/057  
Planned By: Jayne Gathercole  
NSI: BJA/057 Issue No: 1  
Map Reference: SP7255  
Date: 07/03/2017



