Wayleave agreement for British Telecommunications plc -

BT reference: WL360192

Notice

- This is an agreement pursuant to Schedule 3A of the Communications Act 2003, otherwise known as the Electronic Communications Code ('the Code'). For more information about the Code, see http://www.legislation.gov.uk/ukpga/2017/30/pdfs/ukpga_20170030_en.pdf
- By signing this agreement, you allow us to place apparatus on your property and keep it there.
- We recommend you keep this agreement with your title deeds.

This agreement is between you,

HORSHAM DISTRICT COUNCIL (your name)
of (your address or registered or main office)
PARK NORTH, NORTH STREET,
HORSHAM
WEST SUSSEX
RH12 1RL

and us, **British Telecommunications plc** whose registered office is One Braham, 1 Braham Street, London, E1 8EE. (Registered in England No 1800000)

The term 'us' includes anyone who takes over our business, and our contractors. The term 'you' also refers to any others who are bound by this agreement under the terms of the code.

WL360192

Property the agreement relates to

OPPOSITE WHISPERS TEA ROOMS, 64 HIGH STREET, BILLINGSHURST, WEST SUSSEX, RH14 9NY

('**your property**')

Description of our apparatus

APPROXIMATELY 6 METRE(s) OF UNDERGROUND DUCT AND CABLES

('our apparatus')

If there is a plan attached to this agreement, it shows the approximate position of our apparatus.

Payment
If we are making a payment to you under this agreement, it is set out here.

[redacted]
(This is a one-off payment).

Your signature:	Please print name

Our signatur [redacted]	Please print name Paul Fowle

For office use only
Date of agreement

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 substitute our apparatus;
- remove our apparatus;
- upgrade our apparatus;
- share 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 and our limits on our liability

We will take reasonable care not to cause damage to your property, including:

- taking all reasonable precautions to avoid obstructions or interference with the use of the Property or any adjoining property;
- maintaining and keeping the Permitted 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;
- carrying out and completing our works and use and operate the Permitted Apparatus in accordance in all respects with all relevant legislation;
- 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;

We will use the reasonable skill and care of a competent communications provider in doing any of these things including the location of the apparatus.

If our negligence causes death or personal injury, we accept responsibility and there is no limit to our liability. We also accept responsibility for our fraud, fraudulent statements or any other liability that the law does not allow us to exclude or limit.

In relation to property damage, if we do damage your property, we will accept responsibility for damage to your property and at our option we will either (a) pay you up to £1,000,000.00 in total for all events occurring in a calendar year; or (b), or repair it to your reasonable satisfaction.

We will indemnify (compensate) you up to £5,000,000.00 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;
- you use reasonable endeavours to mitigate any losses, damages or liability;
- you let us take control over any claim if and when we ask; and
- you get our permission in writing before you make any payments or admit liability.

Apart from what we have mentioned above (for anything else) we won't pay you more than £500,000.00 in compensation in a calendar year.

Please note that apart from liability for death or personal injury and fraud, fraudulent statements or other liability that cannot be excluded under law, we're not responsible for and will not indemnify you for any (direct or indirect) loss of profit, revenue, business, goodwill, anticipated savings, wasted expenditure, wasted time, opportunity, contracts or data, nor are we responsible for any special, indirect or consequential loss.

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 any notices under this agreement and/or the Code is set out in the Code. For all notices relating to this agreement, the 'proper address' of the Company for service shall be the Company's registered address at Companies House as updated from time to time and any such notice shall be marked 'For the attention of Openreach Wayleaves Team'.

5 Who apparatus belongs to

Our apparatus belongs to us at all times.

6 Use of personal data for placement of apparatus

We collect and process the personal data set out in this wayleave 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/privacy-policy/**

7 Termination

7.1 Subject to the following clauses, this agreement will terminate automatically without notice in the event that we :
7.1.1 remove the Permitted Apparatus; or
7.1.2 cease to be a person to whom the Code is applied.
7.2 We may terminate this agreement by giving you three months' notice.
7.3 Subject always to clause 7.5 you can only terminate this agreement by giving us 18 months' written notice and only if,
a. you intend to redevelop the Property or land neighbouring and cannot reasonably do so unless this agreement comes to an end or
b. the prejudice caused to you by the agreement can no longer be compensated for by money and the public benefit likely to result from this agreement continuing no longer outweighs the prejudice to you
7.4 if we are in substantial breach of the agreement and
a. the breach is incapable of remedy or
b. we have failed to remedy the breach within 30 days after you have notified us of the breach;
7.5 your right to terminate this agreement is subject to paragraph 31 of the Electronic Communications Code.
7.6 you shall have the right to require removal of the Permitted Apparatus subject to Part 6 of the Code.

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.

Paragraph 11 of the Code says we must get the occupier's written permission to place apparatus on private land.

Paragraph 82 of the Code gives us the right to lop overhanging trees on the roadside that interfere with our apparatus.

Part 15 of the Code sets out the procedures for notices.