

KCOM Accommodation Services

Schedule 3: Co-location

1 DEFINITIONS

- 1.1 In this Schedule, a reference to a paragraph, unless stated otherwise, is to a paragraph of this Schedule.

2 GENERAL

- 2.1 This Schedule contains requirements for forecasting and ordering by the CP and procedures for the provision by KCOM to the CP of services and facilities for Co-location.

3 FORECASTS

- 3.1 As soon as reasonably practicable and in any event and not less than 20 Working Days prior to a Quarter, the CP will provide to KCOM an Advance Capacity Planning Forecast (ACPF) for Co-location.
- 3.2 It is acknowledged by the CP that ACPF will be used by KCOM for planning sufficient service resources to meet subsequent requirements of all CPs.
- 3.3 ACPF for Co-location will be provided by the CP to KCOM on a rolling basis setting out the ordering intentions of the CP for a period of twelve months commencing on the first day of a Quarter, and will show the WFLLA Sites where the CP intends to request Co-location together with an indication of the CP's own priority for each proposed order.
- 3.4 KCOM will respond to the CP's ACPF for Co-location no later than 12 Working Days from submission of such ACPF confirming whether Co-locations is already available and if so detailing KCOM's proposed timetable for receipt of CP orders as follows:
- 3.4.1 for the Quarter, a weekly list of proposed orders for WFLLA Sites at which Co-location facilities are requested; and
- 3.4.2 for the subsequent nine months, and subject to revisions necessary as a result of future aggregated forecasts, a quarterly list of the remaining WFLLA Sites at which Co-location facilities have been requested within the CP's ACPF.
- 3.5 The CP will notify KCOM no later than 3 Working Days from receipt of KCOM's proposal under paragraph 3.3 whether it wishes to:
- 3.5.1 accept KCOM's proposed ordering pattern; or
- 3.5.2 submit orders in accordance with its originally submitted ACPF.

Such notification will be the committed weekly ordering pattern of the CP's Co-location orders to be submitted under paragraph 4 for the Quarter. If the CP fails to give such notification to KCOM within the required time, the CP's ACPF will be void. If the CP notifies KCOM that it wishes to submit orders in accordance with its originally submitted ACPF, the CP acknowledges that KCOM may not be able to meet required timescales and Schedule 4 will not apply to the ordering or provision of the Co-location facilities pursuant to such ACPF.

- 3.6** If the CP fails to provide an ACPF by the required date set out in paragraph **Error! Reference source not found.**, KCOM cannot guarantee to respond to orders placed during the following Quarter.
- 3.7** The Parties agree that if at any time the summation of forecasts for Service requests submitted by the industry to KCOM exceeds what is logistically reasonably achievable by KCOM, then KCOM will meet with the industry to agree what action will be taken (including the appropriate scaling down of forecasts for requests). KCOM will ensure that the CP has reasonable advance notice of any such meeting. The CP will comply with the reasonable ordering procedures notified by KCOM from time to time following such meeting.

4 ORDERS AND SURVEYS

- 4.1** Subject to the CP having complied with the forecasting provisions in paragraph 3, the CP will submit to KCOM a PCR1 no later than 0000 hours on the first Working Day of the week agreed as the order week for submission of a PCR1 for that WFLLA Site under paragraph 3.5. If the CP submits the PCR1 later than 0000 hours, KCOM may process the order but the CP acknowledges that KCOM may not be able to meet required timescales and Schedule 4 will not apply to the ordering or provision of the Co-location facilities pursuant to such order. If a PCR1 submitted by the CP includes an order which is not in accordance with or wholly outside the committed weekly order pattern under paragraph 3.5, KCOM will inform the CP that such order will not immediately be progressed in accordance with paragraph 4.2 but that if the CP wishes such order to proceed:
- 4.1.1** if a Third Party Communications Provider has included in its committed weekly order pattern an order for Co-location facilities at that WFLLA Site during that Quarter and it is practicable for KCOM to consolidate the CP's requirement with a Third Party Communications Provider's order, KCOM will ask the CP to resubmit its order at the appropriate time; or
- 4.1.2** if a request for Co-location facilities at that WFLLA Site is included in a Third Party Communications Provider's agreed plans during the nine month period following that Quarter, KCOM will request that the CP includes its requirements within the CP's next ACPF if the CP so wishes; or

- 4.1.3** if no Third Party CP has included a requirement for Co-location facilities at that WFLLA Site in its ACPF, KCOM will either:
- (i) ask the CP to resubmit such order within a future ACPF if the CP so wishes; or
 - (ii) inform the CP that it is able to proceed with such additional order in accordance with paragraph 4.2 provided that the CP acknowledges that KCOM may not be able to meet required timescales and Schedule 4 will not apply to the ordering or provision of the Co-location facilities pursuant to such order.
- 4.2** If the CP orders Co-location facilities the CP will be liable for the payment of all charges relating to the provision of such Co-location facilities (including costing and survey charges and for the cost of the Works) subject only to the provisions of this Schedule. For the avoidance of doubt, the survey fee is payable in the event that an offer of Co-location Services is made by KCOM to the CP using a PCR3 pursuant to paragraph 4.8 and the CP rejects such offer. The CP will also pay the charges for the requests for information calculated in accordance with the charges specified from time to time in, and within the time specified in, the Price List. For the avoidance of doubt, KCOM reserves the right to make an administrative charge for orders for Co-location facilities and requests for information that it has rejected because of incomplete or erroneous information.
- 4.3** For each WFLLA Site KCOM will provide to the CP no later than 10 Working Days from the first Working Day of the week following the week agreed as the order week for submission of a PCR1 for that WFLLA Site under paragraph 3.5 a notification based on availability of Co-location that:
- 4.3.1** subject to full survey (including indicative costs), and to any necessary consents, the CP's request for Co-location can be met; or
 - 4.3.2** insufficient space is available to meet the CP's request, in which case KCOM will state how much space is available and offer such space to the CP for Co-location; or
 - 4.3.3** KCOM is unable to meet the CP's requirements and will provide reasons why Co-location is not available.
- 4.4** If the CP wishes to proceed on the basis of the space to be made available pursuant to paragraph 4.3.2, the CP will amend its order accordingly and notify KCOM within 10 Working Days of notification by KCOM under paragraph 4.3.
- 4.5** If the reasons provided by KCOM pursuant to paragraph 4.3.2 or 4.3.3 indicate that there is insufficient, limited or no space for Co-location in the relevant WFLLA Site, the CP may, provided the CP does so within 5 Working Days of such notification, visit the relevant WFLLA Site at a reasonable time agreed with KCOM at a charge equivalent to the charge for an Escorted Access site visit as specified from time to time in the Price List.

4.6 If either:

4.6.1 the CP does not proceed or amend its order under paragraph 4.4; or

4.6.2 KCOM is not able to meet the CP's requirements under paragraph 4.3.3;

the CP will be liable only for the payment of the charge for physical Co-location order rejection as specified from time to time in the Price List.

4.7 If after KCOM has carried out initial indication costing relating to the CP's order the estimated cost of Co-location Works to the CP is greater than £50,000, KCOM will:

4.7.1 not proceed to work on a full survey; and

4.7.2 cancel the CP's order for Co-location facilities at the WFLLA Site; and

4.7.3 inform the CP and provide to the CP information on the initial indicative estimated costs on the PCR3 for information purposes only.

The CP will be liable only for the payment of the charge for a physical Co-location order cancellation as specified from time to time in the Price List except where the CP has ordered a bespoke CP Equipment Room and wishes to proceed at such WFLLA Site, in which case it will notify KCOM within 10 Working Days of notification by KCOM under this paragraph 4.7 and KCOM will provide a full survey to the CP. If the CP fails to give such notification to KCOM or if the CP's order is for a Co-location Hostel, the CP's order will be discontinued.

4.8 No later than 40 Working Days from receipt of a PCR1, KCOM will provide to the CP a PCR3 and:

4.8.1 if the estimated cost of the Works to the CP for Co-location facilities is equal to or less than £33,000, such PCR3 will be for information purposes only and KCOM will proceed with the Works and the CP will be liable for the payment of the cost of the Works;

4.8.2 if the estimated cost of Works for a Co-location Hostel is greater than £33,000 but equal to or less than £50,000 then the CP's order is for a Co-location Hostel and:

(i) such PCR3 will be a graded offer which will provide an estimate of the cost of the Works together with an indication of how those estimated costs may vary if not all Third Party Communications Providers accept this offer and the CP will be liable for payment of a full survey as specified from time to time in the Price List; and

(ii) KCOM will provide to the CP a list of those Third Party Communications Providers whose Co-location Hostels at such WFLLA Site are so affected and the Parties agree that the CP and such Third Party Communications Providers are granted the authority under Clause 10.6(a) of the main body of this Agreement to discuss whether to commit to the relevant offer and for no other purpose.

The CP will inform KCOM no later than 10 Working Days after receipt of the PCR3 whether it accepts KCOM's offer, but if it fails to do so within the required time the CP's order will be discontinued and the CP will be liable for payment of a full survey fee as specified from time to time in the Price List. If the CP states within the required timescale that it wishes to proceed, it will be liable for the payment of the charges for the CP's proportion of the costs of the Works at the level of the graded offer which corresponds to the number of operators (including the CP) which respond within the required timescale to KCOM stating they wish to proceed.

- 4.8.3** if the estimated cost of Works to the CP for Co-location facilities is greater than £50,000 and the CP's order is for a Co-location Hostel, such PCR3 offer will be conditional on the CP and all Third Party Communications Providers notifying KCOM no later than 10 Working Days from such offer that such offer is accepted. In such circumstances, the order will proceed. If the order does not proceed such order will be discontinued and the CP will only be liable for the payment of the charges for a full survey as specified from time to time in the Price List.
- 4.8.4** if the estimated cost of Works to the CP for Co-location facilities exceeds £33,000 and the CP's order is for a bespoke CP Equipment Room, KCOM will provide a full survey to the CP and the CP will be liable for the payment of the charge for a full survey as specified from time to time in the Price List. If the CP notifies KCOM no later than 10 Working Days from such offer that such offer is accepted, such order will proceed and the CP will be liable for the payment of the cost of the Works for such CP Equipment Room. If the CP fails to notify KCOM within such time, the CP's order will be discontinued.
- 4.9** For the avoidance of doubt, if the CP's request results at this stage in the potential provision of a single Co-location Hostel under paragraph 4.7 or 4.8, such request will be treated as though it were for a bespoke CP Equipment Room.
- 4.10** If the CP fails to submit a minimum of 80 per cent of the PCR1s in any calendar year commencing on the date of the first Quarter notified under this Agreement or anniversary thereof the CP will be liable to pay to KCOM the charges set out in Schedule 4.
- 4.11** If the CP accepts the results of a survey and offer pursuant to this paragraph 4, KCOM will, if requested by the CP, commence provision of services and facilities required under the CP's PRC3.
- 4.12** If KCOM provides to the CP a PCR3 under paragraph 4.8 KCOM will also provide to the CP a Target Date. Such Target Date will normally be no later than 4 months from the date that the PCR3 is issued (if the estimated cost of the Works is equal to or less than £33,000) or is accepted by the CP (if the estimated cost of the Works is greater than £33,000). If in any case KCOM specifies a later Target Date KCOM will provide the CP with written justification for such Target Date.

5 WORKS

5.1 KCOM will (either itself or by instructing outside consultants on its behalf) use its reasonable endeavours to obtain all necessary planning and building regulation approvals and all other necessary consents for the Works and for the proposed occupation of a CP Equipment Room. The CP will pay on demand the whole or (where on completion of the Works occupation is to be by more than one operator) a due proportion of the costs of obtaining such approvals and consents. For the avoidance of doubt, the CP will not make any application for planning permission in respect of any WFLLA Site except as provided for under paragraph 5.2.

5.2 If preliminary indications from a request to the planning authority indicate that planning consent may not be granted, the Works will be suspended and the Parties will meet to agree a course of action and if:

5.2.1 the Parties agree modifications to the CP's order and as a result of such modifications planning consent is granted, the Works will proceed and the Target Date will be amended accordingly; or

5.2.2 planning consent is not granted, whether the Parties agree modifications or agree to make no changes to the planning application, the order will be discontinued and the CP will pay KCOM's reasonable costs, including reinstatement if necessary; or

5.2.3 the CP changes location within the same WFLLA Site and this has no material effect on costs, and as a result of such change planning consent is granted, the Works will proceed and the Target Date will be amended accordingly; or

5.2.4 the CP changes location within the same WFLLA Site and this has a material effect on costs or if the CP changes its order to another WFLLA Site, the current order will be discontinued and the CP will pay KCOM's reasonable costs, including reinstatement if necessary. Such change to order will be treated as a new order. On refusal of planning consent KCOM will notify the CP and the CP may make an application for planning permission at such WFLLA Site. If the CP chooses to do so, KCOM will make available to the CP all information in relation to the planning application made by KCOM in relation to the CP's order.

In the event of the planning consent referred to in paragraph 5.1 being refused KCOM will not be obliged to submit a planning appeal against such refusal.

5.3 KCOM will (subject as hereinafter mentioned and subject to all bye-laws, consents, building regulations and other consents permissions or approvals required for the Works having been obtained and remaining unrevoked) carry out or procure the carrying out of the Works in a good and workmanlike manner in accordance with all planning building regulations and other consents that may be required in so far as they relate thereto subject to such modifications of the Works:

- 5.3.1** as would not materially affect the CP's intended use and enjoyment of the Specified Floor Area and may be required by the local planning authorities or other relevant bodies or authorities; or
- 5.3.2** as may be necessary to give effect to any of their requirements; or
- 5.3.3** as may be required by circumstances or by matters beyond the control of KCOM; or
- 5.3.4** as may be otherwise agreed by the CP (whose agreement will not be unreasonably withheld refused or delayed); or
- 5.3.5** to the extent that it is required to comply with any statutory regulations or requirements or the requirements of any public authority;

and will promptly notify the CP of any such change and any increase in costs as a result of such change or otherwise.

- 5.4** Prior to the RFI Date the precise area of the Specified Floor Area to be the subject of the Licence will be measured by KCOM in accordance with the Code of Measuring Practice and will be accepted by KCOM and the CP so long as it falls within a tolerance of 5% either way of the gross internal area specified in the PCR 3.
- 5.5** If the RFI Date will not have occurred within 42 Working Days of the Target Date the CP may at any time thereafter serve notice on KCOM to terminate the provisions of this Part forthwith (insofar as they relate to the relevant WFLLA Site only) but without prejudice to the rights of either Party in respect of any antecedent breach of any agreement or condition herein contained and without prejudice to the obligation on the part of the CP under paragraph 10.
- 5.6** If the RFI Date will not have occurred within 42 Working Days of the Target Date KCOM may at any time thereafter serve notice on the CP to terminate the provisions of this Schedule forthwith (insofar as they relate to the relevant WFLLA Site only) if the carrying out or continuation of the Works is being prevented because:
 - 5.6.1** there is some defect or deficiency in the relevant WFLLA Site that renders the Works impracticable or means the Works can only be undertaken at a cost that is unreasonable in the circumstances;
 - 5.6.2** the Works are prevented by war, act of God, government action; or
 - 5.6.3** of the occurrence of any circumstances beyond KCOM's reasonable control;

but without prejudice to the rights of either Party in respect of any antecedent breach of any agreement or condition herein contained and without prejudice to the obligation on the part of the CP under paragraph 10.

- 5.7** KCOM will subject to being paid its reasonable copying and administration charges supply as soon as reasonably practicable to the CP upon a request made by the CP such documentation as is reasonable to demonstrate how the cost of the Works are to be structured and calculated. This documentation will, where appropriate, include such tender documentation together with the contractor's tender reply that is not subject to any confidentiality undertaking required by the contractor.
- 5.8** KCOM shall respond promptly to the CP's reasonable requests for information on the specification or progress of works. If KCOM fails to do so, KCOM shall allow the CP to communicate directly to any sub-contractor of KCOM contracted to do the work to obtain such information.
- 5.9** KCOM will when informing the CP of the Anticipated Date under paragraph 6.1 notify the CP of KCOM's best estimate (calculated where relevant pursuant to paragraph 5.11) of the sum payable by the CP in respect of the Works. Such sum will be paid by the CP to KCOM on or before completion of the Licence and KCOM will give the CP ten Working Days' notice of all payments properly due pursuant to the Building Contract (including stage payments required under the Building Contract where KCOM can demonstrate that it has been reasonably required to make such payments) and also in connection with the completion of the Works and the CP will pay and reimburse to KCOM all such sums as cleared funds on the date and in the same amount as KCOM is required to pay the same.
- 5.10** As soon as reasonably practicable after payment of the last sum to be paid under paragraph 5.9, KCOM will notify the CP of the actual final sum payable by the CP in respect of the Works. The amount due to KCOM will be adjusted accordingly by the amount over or under paid by the CP under paragraph 5.9. Any payment due to KCOM will be made in accordance with Clause 8 of the main body of this Agreement. Any refund due to the CP will be made as soon as reasonably practicable together with interest on such refund at the OFCOM Interest Rate from the date of payment by the CP under paragraph 5.9 to the date of payment by KCOM to the CP. To the extent that the CP disagrees with the final sum in respect of the Works and is unable to resolve such disagreement with KCOM, either Party will be entitled to refer such Dispute to an Independent Expert for determination under Clause 18 of the main body of this Agreement.
- 5.11** Where the Works have consisted in the construction of a Co-location Hostel (or other CP Equipment Room designed to house more than one operator), the CP will pay KCOM a sum calculated as follows:

$$A = B \div C$$

where

A = the sum payable

B = the total cost of the Works

C = the number of operators committed under PCR3 (including the CP) to that Co-location Hostel (or other CP Equipment Room as aforesaid) adjusted for the relative Specified Floor Area occupied by the operators.

5.12 If following completion of the Licence in respect of any Co-location Hostel (or other CP Equipment Room as aforesaid) the number of operators (including the CP) is less than or greater than C (as defined in paragraph 5.11) the sum payable by the CP will be recalculated as follows:

$$E = (F \div G) - H$$

where

E = the sum payable

F = total cost of the Works (equal to B in paragraph 5.11 above)

G = the numbers of operators who have entered into a licence adjusted to take account of the relative Specified Floor Area occupied by the operators

H = the sum paid by the CP pursuant to paragraph 5.11.

If E will be greater than A after such recalculation the CP will pay to KCOM within 30 calendar days of demand, the difference between A and E. However, if A is greater than E after such recalculation KCOM will require within 30 calendar days that any additional operators make payment direct to the CP their proportion of the difference between A and B.

5.13 KCOM will have the full right and liberty at any time after the date hereof at the cost of the CP (payable on demand) to enter into such party wall drainage or other agreements with any adjoining or adjacent owner or occupier the local authority the highway authority or any statutory undertaker as will to be necessary to carry out the Works.

6 TIMING AND COMPLETION OF WORKS

6.1 Not less than 15 Working Days prior to the date upon which the Representative anticipates the Works will be completed (hereinafter referred to as "the Anticipated Date") KCOM will inform the CP and arrange a meeting on the Anticipated Date at which meeting the Representative and the CP and/or their respective representatives will attend. KCOM will afford the CP and/or their representative the opportunity of making representations to it regarding the Works and completion of the same and will procure that the Representative takes into consideration in determining whether the Works are completed pursuant to the provisions of the Building Contract any such representations made by or on behalf of the CP.

- 6.2** In the event of KCOM or the Representative notifying the CP as in paragraph 6.3.2 below the procedures provided for in paragraph 6.1 will be repeated as many times as necessary until the RFI Date has occurred but the Representative will not be required to give the CP more than four Working Days' notice of the Anticipated Date and will only be required in order to convene a meeting pursuant to paragraph 6.1 to give not less than two Working Days' notice.
- 6.3** Upon the Anticipated Date the Representative will forthwith either:
- 6.3.1** certify both to KCOM and to the CP that date to be the RFI Date in which case if there are any works of a minor or unfinished nature KCOM will procure that (where they are within the construction element of the Works) the same are rectified as soon as possible and in any event within six months of the RFI Date and such certificate will be final and binding upon both KCOM and the CP; or
- 6.3.2** not certify the RFI Date but will notify KCOM and the CP in writing of a list of items to be completed and/or defects to be remedied before the RFI Date can be certified.
- 6.4** KCOM will promptly provide to the CP (at the CP's cost) details of all significant variations to the Works and/or to the total cost of the Works or to the CP's proportion of the total cost of the Works.
- 6.5** Where it becomes apparent to the Representative that the total cost of the Works to the CP will exceed the cost anticipated as set out in the PCR3 by more than 10 percent (and for any subsequent increases by 10 percent), KCOM will by written notice served on the CP within 5 Working Days advise the CP of its best estimate of revised costs including full cost justification. After discussion with the CP, KCOM will revise the PCR3 cost estimate and supply a copy to the CP.
- 6.6** As soon as it becomes apparent to the Representative that the Target Date as set out in the PCR3 may change by more than 5 Working Days, KCOM will by written notice served on the CP within 5 Working Days advise the CP of its best estimate of a revised Target Date. If such Target Date is deferred for reasons other than those set out in the definition of Target Date in Schedule 1, the initial target date shall still be the date from which fixed compensation, if any, is payable under Schedule 4.
- 6.7** Where it becomes apparent to the Representative that the total estimated cost of the Works to the CP will exceed the cost anticipated as set out in the PCR3 by more than 50 percent:
- 6.7.1** KCOM will by written notice served on the CP within 5 Working Days advise the CP of its best estimate of revised costs.
- 6.7.2** The CP may within 5 Working Days of receipt of the notice referred to in paragraph 6.7.1 serve written notice to terminate the provisions of this Schedule in relation to the PCR3 in

question and paragraph 10 will apply, (unless the CP has notified KCOM of a Dispute under Clause 18 of the main body of this Agreement, failing which the CP will be responsible for the cost as so increased.

6.7.3 Unless notice is served by the CP pursuant to paragraph 6.7.2 KCOM is obliged to continue to carry out the Works in a diligent and timely manner in accordance with its obligations in this Schedule but subject to paragraph 5.5.

6.8 The CP and its representatives may by prior arrangement with the Representative enter (but not more than twice) the WFLLA Site in order to inspect and view the state and progress of the Works and the materials used and the CP and its representatives will comply with all and any requirements that the Contractor may impose with regard to such inspections.

6.9 The CP and its representatives in inspecting the WFLLA Site may not impede or obstruct the progress of the Works nor issue any instructions to the Contractor but will address any requirement or complaint to the Representative.

6.10 KCOM will pay due regard to the requirements of the CP which are consistent with the relevant PCR3 and the terms of this Agreement.

6.11 KCOM will make good any defects in the Works properly notified in writing by the CP within the defects liability period of the Building Contract as soon as possible to the extent that KCOM is able to enforce the defects liability provisions in the Building Contract. If KCOM is required to take proceedings to enforce the defects liability provisions, such action will be at the CP's expense.

6.12 In relation to this paragraph 6.12 and without prejudice to the generality of KCOM's obligations in paragraph 5.3, KCOM will use its reasonable endeavours to enforce the Representative's duties and obligations to exercise the degree of skill and care set out within the terms of its appointment with KCOM to manage the Works efficiently and to ensure that RFI is achieved on or before the Target Date.

7 LICENCE COMPLETION

7.1 Subject to paragraph 9, a Licence relating to the Specified Floor Area and the CP Equipment Room which are the subject of the relevant PCR3 will be granted with effect from the Licence Completion Date.

7.2 The CP will commence to pay to KCOM the Licence Fee in relation to the relevant Specified Floor Area on and from the Licence Completion Date whether or not the CP is permitted to take occupation on that date.

8 TITLE

- 8.1 The CP will assume the right of KCOM to grant a Licence and will not require any evidence of or raise any objection requisition or enquiry in respect of KCOM's title to an WFLLA Site.

9 NO POSSESSION

- 9.1 The CP will not be entitled to occupation of any part of an WFLLA Site and a Licence of a Specified Floor Area will not be granted until:

- 9.1.1 the sums payable against the best estimate in respect of the Works under paragraph 5.7 have been paid save for the purposes of inspecting the CP Equipment Room and its facilities in accordance with this Part; and
- 9.1.2 pursuant to Clause 12.5 of the main body of this Agreement the CP has either provided evidence of policies of insurance or, where the CP has not provided such evidence, has informed KCOM that it is unable to do so in order that KCOM may effect insurance.

10 TERMINATION

- 10.1 In the event of:

- 10.1.1 a material breach on the part of the CP of its obligations in this Schedule which is not remedied within a reasonable time after notice from KCOM; or
- 10.1.2 KCOM issuing a notice to the CP that planning permission and all other necessary consents and approvals all reasonably required have not been obtained by the date three months from the date of acceptance of the PCR3 by the CP; or
- 10.1.3 termination in accordance with paragraph 5.5, 5.6 or 6.7;

then the provisions of the Schedule (insofar as they relate to the WFLLA Site) will (without prejudice to any pre-existing right of action of any Party in respect of any breach by any other Party of its obligations hereunder) immediately terminate on written notice and cease to have effect and the Parties will be released from any further liability under this Part (insofar as it relates to the WFLLA Site) save that the CP will pay to KCOM upon demand

- (i) any costs properly incurred by KCOM hereunder up to the date of such termination; and
- (ii) the costs properly incurred by KCOM in reinstating the CP Equipment Room to the state in which it was prior to the acceptance by the CP of PCR3 in the event that KCOM carries out such reinstatement (which it may or may not do at its absolute discretion).

11 NON-MERGER

11.1 To the extent that they remain to be observed and performed all the provisions of this Schedule will continue in full force and effect notwithstanding the completion of the Licence.

12 INTEREST ON LATE PAYMENTS

12.1 If KCOM or the CP will fail to pay any sum due to the other under or pursuant to this Schedule on the date on which payment was due whether formally demanded or not KCOM or the CP will pay to the other interest at the Interest Rate on such sum.

13 FURTHER INFORMATION

13.1 KCOM will provide to the CP on reasonable request a floor plan of the relevant part of an WFLLA Site. Subject to reasonable confidentiality provisions, such floor plan will show the space (if any) which may, at the time the floor plan is produced, be available for Co-location (if any) and the space used or planned to be used by KCOM and the space used or planned to be used by Third Party Communications Providers. If the layout of the WFLLA Site has changed materially since the floor plan was compiled, KCOM will in addition provide a commentary on such changes. For the avoidance of doubt, the space used or planned to be used by KCOM and Third Party Communications Providers will show the area only and not the nature or function of any equipment occupying or planned to occupy such space. KCOM will provide to the CP on reasonable request information on the amount and configuration (the location and siting of connections and facilities) of space available for Co-location at an WFLLA Site at a charge specified from time to time in the Price List.

13.2 If the floor plan requested in paragraph 13.1 is newly compiled as a result of such request, the CP will pay the charge for the supply of such floor plan at a charge specified from time to time in the Price List.

13.3 On reasonable request by the CP, KCOM will make available to the CP the result of a full survey carried out for a Third Party Communications Provider at a charge specified from time to time in the Price List which charge will be an administrative charge. If, however, the CP requires further work to be carried out as a result of a request by the CP for further information, the CP will pay KCOM's reasonable charge for preparing such additional information.

13.4 The CP acknowledges and agrees that KCOM may make available to a Third Party Communications Provider survey results provided to the CP pursuant to paragraph 4.

14 CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999

14.1 The following definitions will apply for the purposes of this paragraph 14:

“**1999 Act**” means the Contracts (Rights of Third Parties) Act 1999;

“**Hostel Set-up Costs**” means the total cost of Works where the Works to the CP involve the construction of a Co-location Hostel;

“**Initial CP**” means a person who has entered into an agreement (“the Initial CP Agreement”) with KCOM on substantially similar terms to this Agreement for the provision of access network facilities at the WFLLA Site but who is not a party to this Agreement and has paid, or paid a proportion of, the Hostel Set-up Costs in respect of any WFLLA Site under the terms of Schedule 3 of the Initial CP Agreement or has contributed to the Hostel Set-up Costs as a Paying CP under the Initial CP Agreement;

“**Paying CP**” means any person who occupies space in a Co-location Hostel at an WFLLA Site where one or more Initial CPs also occupy such Hostel but such person has not paid or contributed towards any Hostel Set-up Costs in respect of such Hostel;

“**Right**” means the right of any Initial CP to enjoy the benefit of and to enforce any obligation under this Agreement of a Paying CP to pay sums to such Initial CP.

- 14.2** If the CP is, in relation to any WFLLA Site, a Paying CP, the CP will pay to any Initial CP having an agreement in substantially similar form to this Agreement in respect of that WFLLA Site a proportion of the Hostel Set-up Costs which such Initial CP has paid in relation to that WFLLA Site such proportion to be calculated in accordance with paragraph 14.6 to be payable within 30 days of the date on which the CP occupies the relevant Co-location Hostel.
- 14.3** If the CP is a Paying CP and has paid the sums due under this paragraph 14 to any Initial CP the CP will then be treated as an Initial CP for the purposes of any agreement on substantially similar terms to this Agreement entered into subsequently by any Paying CP in relation to the relevant WFLLA Site.
- 14.4** If the CP is an Initial CP, the CP will not be entitled to any refund in respect of any payment otherwise due to an Initial CP if the CP reduces the space the CP occupies or vacates any WFLLA Site unless such refund is specified in paragraph 14.6.
- 14.5** The Right will expire immediately upon payment by a Paying CP to any relevant Initial CP in accordance with paragraph 14.2 but until such time will be enforceable in accordance with the 1999 Act.
- 14.6** In relation to the enforcement of the Right it is agreed as follows:
- 14.6.1** The entitlement of any Initial CP to enforce a Right pursuant to this Agreement will not be affected by any rescission or variation of this Agreement that would, but for the provisions of this paragraph 14.6.1, extinguish or alter the relevant Initial CP’s entitlement to such Right

provided that such entitlement has accrued before such rescission or variation takes effect. Without prejudice to Clause 19.13 of the main body of this Agreement, in the event of any rescission or termination of this Agreement, this Agreement will be deemed to continue in force in so far as it applies to the entitlement of any Initial CP to enforce any Right. Pursuant to section 2(3)(a) of the 1999 Act, the consent of an Initial CP entitled to enforce a Right will not be required for the purposes of any such rescission or variation of this Agreement;

14.6.2 Pursuant to section 3(5) of the 1999 Act, the defences, rights of set-off or counterclaim which would be available to a Paying CP under Sections 3(2) and 3(4) of the 1999 Act will not be available under this Agreement;

14.6.3 For the purposes of section 5 of the 1999 Act, it is agreed that any sums recoverable pursuant to a Right which are in fact recovered from a Paying CP by another party will forthwith be paid by that other party to the Initial CP entitled to the Right, provided that the other party will not be obliged to enforce the Right.

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ANNEX 1

Site Access

1 Definitions

1.1 In this Annex, a reference to a paragraph, unless stated otherwise, is to a paragraph of this Annex.

2 Description of service

2.1 KCOM will provide the CP with access to the CP Equipment Room and the Specified Floor Area. KCOM will, where reasonably practicable, provide dedicated entrance facilities for a CP Equipment Room, but where it is not reasonably practicable to provide such facilities KCOM will provide to the CP alternative facilities as set out in this Annex.

2.2 For the avoidance of doubt, if Unescorted Access facilities to a CP Equipment Room are available, the CP Equipment Room will, where reasonably practicable, be situated on ground floor level with an external access onto a public highway to enable Unescorted Access to the CP Equipment Room for the CP and/or the CP's employees, agents and contractors.

2.3 KCOM Escorted Access services

Where Unescorted Access facilities to a CP Equipment Room are not available, the KCOM Escorted Access service comprises the provision of KCOM staff to escort the CP's employees, agents or contractors to the Specified Floor Area. The following types of site visits will be available:

2.3.1 Planned access, during KCOM's Normal Working Hours;

2.3.2 Planned access outside KCOM's Normal Working Hours;

2.3.3 Unplanned access during KCOM's Normal Working Hours;

2.3.4 Unplanned access outside KCOM's Normal Working Hours.

Each of the above four services will include Escorted Access to and from the CP Equipment Room.

2.4 The notification and response times for each of the four services at paragraph 2.3 are as follows:

| Time of day: Note 1 | Notice Period | Response/Access Times |
|---|------------------------------------|-----------------------|
| Planned visit during KCOM's Normal Working Hours | 72 hours' (3 Working Days') notice | N/A |
| Planned visit outside KCOM's Normal Working Hours | 72 hours' (3 Working Days') notice | N/A |

| | | |
|---|-----|--|
| Unplanned visit during KCOM's Normal Working Hours | N/A | Response Time: [Note 2] Access Within: [Note 2] |
| Unplanned visit outside KCOM's Normal Working Hours | N/A | Response Time: [Note 2] Access Within: [Note 2] |

Note 1: "KCOM's Normal Working Hours" means 08.00 to 17.00, Monday to Friday inclusive (excluding Public and Bank Holidays).

Note 2: Response and access times will be as set out in the Price List.

2.5 Except where Unescorted Access facilities to a CP Equipment Room are made available such that a CP can separately access the CP Equipment Room, all planned CP site visits must be notified in writing to KCOM in advance by using the Escorted Access process.

2.6 KCOM will meet the response times shown above.

3 Security

3.1 Access to a CP Equipment Room that has dedicated external access and a solid internal perimeter may be controlled either by mechanical or electronic locking in conjunction with an access control system at KCOM's discretion.

3.2 The CP acknowledges that access to each WFLLA Site will be controlled at all times and will provide an audit trail.

3.3 The CP may access KCOM welfare areas only where this does not facilitate access to KCOM network areas.

3.4 KCOM will only permit access by the CP and/or the CP's employees, agents and contractors to the Specified Floor Area specific to the CP.

3.5 When at a WFLLA Site, all CP employees, agents or contractors must display a KCOM-approved form of photographic identity card. Where required for use with a KCOM managed access control system a suitable access card will be provided by KCOM.

3.6 The buildings within the KCOM estate fall into two main categories, each of which has specific security needs, as follows:

3.6.1 guarded buildings - are manned buildings which have receptionists and/or security guards at the access point(s) to control access.

3.6.2 unguarded buildings - are manned or unmanned buildings which have no people at the access point(s) to control access.

3.7 Access to Guarded Buildings

3.7.1 CP employees, agents or contractors will, on production and verification of their photographic identity card, be allowed entry to a WFLLA Site in order to access the CP Equipment Room. Access will be limited to those areas necessary to conduct CP business.

3.7.2 Access to a CP Equipment Room which has only internal access within guarded building, without electronic access control, will require formal entry/exit registration against a previously agreed list of named CP employees, agents or contractors held at the security post or reception desk.

3.8 Access to Unguarded Buildings

3.8.1 Access to unguarded buildings within the KCOM estate is controlled by one or more of the following methods:

- (i) Electronic access using an access card, and any associated PIN;
- (ii) Electronic access controlled remotely from the site;
- (iii) Access using a physical key.

3.8.2 Access to the CP Equipment Room which has only internal access within unmanned or part-time manned buildings will be restricted to those people issued with an access card programmed to allow entry at the designated building main entrance, and their supervised visitors.

3.9 Access Cards and PINs

3.9.1 In a WFLLA Site where access is provided by means of an electronic access control system using access cards and PINs, only CP employees, agents or contractors issued with an access card and a valid PIN programmed to allow entry will be allowed automatic entry into the building.

3.9.2 The CP must, without delay, report to KCOM the loss of any cards issued by KCOM to the CP in accordance with KCOM's instructions.

3.9.3 CP cardholders may host access to a CP Equipment Room only where this involves direct supervision by the cardholder.

3.9.4 All cards remain the property of KCOM and may be withdrawn or disabled by KCOM at any time.

3.10 Electronic Access Provided Remotely

3.10.1 KCOM will permit access by the CP's employees, agents or contractors to a WFLLA Site where access is provided by means of remote electronic access only if the person providing access remotely has validated the identification of the requestor and is satisfied with the reason for the request for access.

3.11 Access using keys

3.11.1 CP employees, agents or contractors will only be issued with keys which afford access to a CP Equipment Room, and not to any other part of a KCOM Exchange.

3.11.2 Lost keys issued to the CP by KCOM must be reported immediately to KCOM in accordance with instruction provided by KCOM at time of issue.

3.12 For the avoidance of doubt, the CP understands and accepts that Third Parties such as the emergency services, law enforcement agencies may have a legal right of entry to KCOM premises at any time including the CP Equipment Room and the Specified Floor Area.

4 Charges

4.1 The CP will pay KCOM the appropriate charges for any services provided under this Schedule by KCOM calculated in accordance with the charges specified from time to time in the Price List. For the avoidance of doubt, different charges will apply for the different types of site visits.

ANNEX 2

Provision of Standby Power ("Essential Services Supply")

1 Definitions

1.1 In this Annex, a reference to a paragraph, unless stated otherwise, is to a paragraph of this Annex.

2 Description of Product

2.1 KCOM will provide the CP with access to Essential Services Supply ("**ESS**") on request (by the CP or a Third Party Communications Provider within a Co-location Hostel), provided that sufficient non-assigned ESS power is available to meet demand within a Co-location Hostel.

2.2 For the avoidance of doubt KCOM will provide ESS on request and will not upgrade standby power installations in anticipation of demand for ESS capacity.

3 Provision of ESS Power

3.1 If the CP requires provision of ESS, the CP will request provision by means of the WOF. On receipt of the WOF, KCOM will check to see if there is sufficient spare unassigned ESS power at the relevant WFLLA Site. If sufficient spare unassigned ESS power is available, at the site requested, the cooling and lighting throughout the Co-location Hostel will be linked to a standby power circuit together with the CP's specified floor area within the Co-location Hostel.

3.2 If the CP or a Third Party Communications Provider located within the same Co-location Hostel requests ESS power, the cooling and lighting for the Co-location Hostel will be on the standby power circuit and the CP will pay KCOM a proportion of the charge for such provision.

3.3 If KCOM informs the CP that there is not sufficient unassigned ESS power to provide cooling and lighting, the CP may accept the Co-location Hostel without ESS power or may decline the offer. For the avoidance of doubt, if unassigned ESS capacity is insufficient to meet the total requested load of all the CPs within a Co-location Hostel, priority will be given to cooling and lighting, and ESS power will not be provided to individual specified floor areas within a Co-location Hostel.

3.4 If there is insufficient ESS power at a Co-location Hostel, the CP may request KCOM to provide a time and cost estimate to upgrade the ESS power output. On receipt of this request, KCOM will seek the views of all Third Party Communications Providers at the WFLLA Site.

3.5 If KCOM is able to identify the requirements of all the operators within a WFLLA Site, KCOM will, within 60 Working Days, provide estimated date and estimated costs to all operators located at that WFLLA Site. If KCOM does provide ESS power, the costs of so doing will be apportioned amongst all operators on the basis of the potential power load per kilowatt of power provided to each operator.

3.6 If the CP or one or more Third Party Communications Provider confirms within 10 Working Days of receipt of KCOM's estimated costs under paragraph 3.5 that installation of ESS power should proceed, such provision will be carried out. The CP acknowledges that installation of ESS power will entail a period of disruption to service. The Parties will co-operate to minimise such disruption to service.

4 Charges

4.1 The CP will pay KCOM the appropriate charges for services provided by KCOM pursuant to this Schedule calculated in accordance with this Agreement and the charges specified from time to time in the Price List.

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ANNEX 3

KCOM Assisted Site Delivery Service (KASIS)

1 Definitions

1.1 In this Annex, a reference to a paragraph, unless stated otherwise, is to a paragraph of this Annex.

2 Description of service

2.1 Subject to the provisions of this Annex KCOM will provide to the CP the KCOM Assisted Site Delivery Service (“**KASIS**”) at a WFLLA Site to enable safe handling and transportation of the CP’s equipment to the CP’s Specified Floor Area. This service will be provided at an agreed time following completion of Specified Floor Area pursuant to Schedule 3.

2.2 KCOM will provide KASIS for delivery of the CP’s Compliant Equipment to a WFLLA Site if the CP has specified such requirement in its PCR3 pursuant to Schedule 3. If KASIS is unavailable at any WFLLA Site because KCOM does not provide such a service for itself, the CP may deliver Compliant Equipment providing the requisite notice has been provided to KCOM.

2.3 The CP will order KASIS not less than 10 Working Days prior to the CP’s required delivery date. KCOM will acknowledge such order no later than 3 Working Days from receipt of the order. If KCOM is unable to meet the CP’s required delivery date, KCOM will immediately contact the CP and the Parties will agree a mutually acceptable date.

2.4 Subject to Clause 11 of the main body of this Agreement if the CP fails to meet the agreed delivery date, the CP will submit another order in accordance with paragraph 2.3. The CP will be liable for payment of the charges for the aborted delivery as set out in the Price List.

2.5 Risk in the Compliant Equipment will pass to KCOM when the Compliant Equipment passes into KCOM’s possession within the WFLLA Site. Risk will return to the CP on delivery to the CP’s Specified Floor Area. For the avoidance of doubt, KCOM will operate only KCOM equipment in the provision of KASIS. It is the CP’s responsibility to operate any equipment owned or hired by the CP for the delivery of the Compliant Equipment to the WFLLA Site.

2.6 The CP will be responsible for the removal of transshipment equipment or any packaging materials. The CP will remove such equipment or material as soon as reasonably practicable.

3 Legal and site specific requirements

3.1 The CP will ensure that its employees, contractors, sub-contractors and agents comply with all regulations and practices applicable at the WFLLA Site.

3.2 KCOM will keep the CP informed and give reasonable notice of changes to regulations and practices at or relevant to the WFLLA Site.

- 3.3 The CP will ensure that any road vehicles entering the WFLLA Site on its behalf comply with local statutory safety standards together with those standards generally applicable to the operation of the WFLLA Site, are road worthy and are in a fit and safe condition for loading and unloading. If the CP does not use KASIS, the CP acknowledges that KCOM cannot guarantee that space will be available for the unloading of Compliant Equipment from any vehicles at a WFLLA Site and that the handling and transportation of the CP's Compliant Equipment will solely be at the CP's risk.
- 3.4 KCOM has the right to reject road vehicles or drivers if they do not meet the safety and operational standards required at the WFLLA Site. Subject to Clause 12 of the main body of this Agreement, KCOM will not be liable for any costs, losses or expenses incurred by the CP as a result of such rejection.
- 3.5 The CP will comply with and ensure that its employees, agents and sub-contractors comply with all statutory and local health, safety and environmental requirements at or relevant to the WFLLA Site.

4 Charges

- 4.1 The CP will pay KCOM the appropriate charges for KASIS as specified from time to time in the Price List.