

Reference Offer for the Provision of Accommodation Services

Schedule 2: The Licence

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 the terms and conditions under which each and every Licence of a Specified Floor Area is granted.

3 GRANT OF CONSENT

- 3.1 Subject to the obligations agreements and declarations contained in this Schedule 2 and in consideration of each respective Licence Fee KCOM grants to the CP in respect of each Specified Floor Area consent:-

3.1.1 in common with KCOM and all others authorised by KCOM to install, inspect, keep, maintain, adjust, repair, alter, replace, or remove Compliant Equipment within the Specified Floor Area which is used for the provision by the CP of communications services to End Users by means of the WFLLA Services terminated at the WFLLA Site where the relevant Specified Floor Area is located;

3.1.2 to pass and repass over and along the entrances and access routes of each WFLLA Site to the Specified Floor Area for the purpose of installing, inspecting, maintaining, adjusting repairing, altering, replacing, or removing the Compliant Equipment within that Specified Floor Area and for no other purpose provided that KCOM will have absolute discretion as to the route or routes used to gain access to the Specified Floor Area.

4 OBLIGATIONS OF THE CP

- 4.1 The CP will:

4.1.1 pay to KCOM the Licence Fee in respect of each Specified Floor Area (subject to the provisions for review in Annex 2 of this Schedule) yearly in advance on the anniversary of the Licence Completion Date the first such payment being a sum in respect of the period

from the Licence Completion Date up to the first anniversary of the Licence Completion Date being payable on the Due Date;

- 4.1.2** pay any charges, duties, assessments, or outgoings (but not business rates) which will be properly charged, assessed, or imposed upon the rights granted by a Licence or upon the CP's occupation of the relevant Specified Floor Area or upon any Compliant Equipment or in the event that they are not separately assessed to pay on demand a fair proportion of those charges levied on KCOM such amount or proportion to be assessed by KCOM whose decision will be final and binding save in case of manifest error;
- 4.1.3** pay to KCOM on demand for electricity used by Compliant Equipment and/or in the Specified Floor Areas (or in the event of other Communications Providers as well as the CP having equipment in the WFLLA Site in question a due proportion of the electricity used by, or for the benefit of, the CP and such other Communications Providers in the relevant WFLLA Site such proportion to be assessed by KCOM whose decision will be final and binding) at the standard rate of the relevant electricity supply company such payment in the absence of any meter reading to be properly assessed by KCOM whose decision will be final and binding except in case of manifest error;
- 4.1.4** pay to KCOM the Service Charge on demand;
- 4.1.5** pay to KCOM in addition to any sums payable by the CP to KCOM hereunder and on the Due Date for payment of the sum so demanded Value Added Tax which sums will for the avoidance of doubt include any costs for any taxable supplies made by any Third Party to KCOM where the CP reimburses KCOM for its costs in relation to those supplies and (where KCOM cannot itself recover the Value Added Tax) the Value Added Tax on such costs and to keep KCOM fully and effectively indemnified in respect thereof and KCOM will issue to the CP a Value Added Tax invoice immediately following receipt of such sums and the Value Added Tax thereon;
- 4.1.6** if the CP fails to pay a Licence Fee or any other sum due under or pursuant to a Licence within ten Working Days of the Due Date whether formally demanded or not, pay to KCOM interest at the Interest Rate on the Licence Fee or other such sum;
- 4.1.7** give at least three Working Days' notice of delivery to any WFLLA Site of any Compliant Equipment which is to be used for the provision by the CP of communications services to End Users by means of the WFLLA Service terminating at that WFLLA Site provided that the requirement to give such notice will be waived in respect of small items which can be delivered into a Specified Floor Area by a CP's authorised representative;
- 4.1.8** install all Compliant Equipment to the full satisfaction of KCOM;

- 4.1.9** maintain in good and proper repair and working order and to the full satisfaction of KCOM the Compliant Equipment installed in each Specified Floor Area;
- 4.1.10** label each piece of Compliant Equipment with the CP's name, the manufacturer's name and the identity of such piece of Compliant Equipment;
- 4.1.11** comply in all respects with the provisions of any statutes already or hereafter to be passed and with any regulations or orders made under such statutes so far as the same relate to or affect any Compliant Equipment or the consents granted under a Licence;
- 4.1.12** ensure that the CP's Visitors are issued with passes bearing the photograph and signature of the holder. Such passes will be worn by the holders at all times whilst on any WFLLA Site. The CP will submit at KCOM's request a list of the CP's Visitors' names and produce satisfactory evidence as to their identity and bona fides;
- 4.1.13** not use or permit the use of any Compliant Equipment otherwise than in compliance with the provisions of this Agreement and the Licence of a Specified Floor Area;
- 4.1.14** subject to the rights granted by KCOM to the CP herein, not impede or interfere with KCOM's rights of possession and control of any WFLLA Site;
- 4.1.15** observe and comply with such reasonable regulations and directions as may from time to time be made by KCOM in respect of any WFLLA Site for the purposes of good estate management and to ensure that the CP's Visitors entering upon any WFLLA Site will at all times observe and comply with such regulations and directions;
- 4.1.16** not obstruct or interfere with any fire safety equipment installed in any WFLLA Site or the operation of any such equipment;
- 4.1.17** if any WFLLA Site is specified as a leasehold WFLLA Site in Annex 1, not permit or permit to be done by CP or any CP Visitor any act or thing on or in relation to that WFLLA Site which would, or might cause KCOM to be in breach of the covenants on the tenant's part or the conditions contained in the lease or which if done by KCOM would or might constitute a breach of such lease a copy of which, or of the relevant covenants and conditions therein, will be produced to the CP within ten calendar days of acceptance by the CP of the full survey and offer pursuant to Schedule 3;
- 4.1.18** forthwith to report to KCOM any accidents occurring at any WFLLA Site;
- 4.1.19** upon termination of any Licence relating to a Specified Floor Area forthwith to remove all Compliant Equipment and make good all damage caused by such removal to KCOM's reasonable satisfaction;

- 4.1.20** at all times to take all practicable and proper precautions to the full satisfaction of KCOM for the prevention of fire risks on any WFLLA Site and in particular and without prejudice to the generality of the foregoing not to obstruct any means of ingress or egress to or from any WFLLA Site;
- 4.1.21** not to make any application for planning permission;
- 4.1.22** not to deposit or leave rubbish in or on any WFLLA Site or Specified Floor Area;
- 4.1.23** save for such warning and safety notices and signs as the CP may by law be required to install or as the CP may reasonably require for the purposes of health and safety or as the CP may be required to display under this Schedule 2, not to display any signs notices manufacturers motifs or advertising material of any kind on or at any WFLLA Site or Specified Floor Area;
- 4.1.24** not use an amount of electricity from any one intake in any WFLLA Site or Specified Floor Area exceeding the rates from time to time permitted by KCOM provided that the rates permitted will not be reduced below the rates agreed between KCOM and the CP on or before the grant of a Licence without the consent of the CP which consent will not be unreasonably withheld or delayed;
- 4.1.25** in the event of a fault within a Specified Floor Area or any other part of a WFLLA Site in which equipment belonging to another Communications Provider is situated activating the fuse to the electricity supply serving (whether solely or not) the Specified Floor Area or any of the Compliant Equipment in it, KCOM will reconnect the supply as soon as reasonably practicable after the CP or any other such Communications Provider has notified KCOM that the fault has been rectified.
- 4.2** Each Licence of a Specified Floor Area is personal to the CP who will not assign or transfer any Licence or the benefit of the rights granted by a Licence either in whole or in part nor grant any sub-licence or agreement to any other person except in accordance with the provisions of this paragraph 4.2.

 - 4.2.1** The CP may, subject always to the provisions for termination contained in this Schedule 2, request that the Licence of a Specified Floor Area be terminated as a result of the CP agreeing with a Third Party Communications Provider that the Third Party Communications Provider will take a licence of all or part of the Specified Floor Area. For the avoidance of doubt, KCOM will not be entitled to be informed as to the terms of such agreement between the CP and the Third Party Communications Provider.
 - 4.2.2** KCOM may refuse the CP's request where:

- (i) the Third Party Communications Provider is not willing to take over the CPs' obligations which relate to the relevant Specified Floor Area; or
- (ii) the Third Party Communications Provider would, on the grant of a new licence, immediately be in breach of its obligations to KCOM under the terms of an agreement similar to this Agreement; or
- (iii) on termination of part of the Specified Floor Area the area to be the subject of a new Licence to the CP and the area to be granted to the Third Party Communications Provider are not economically severable units of not less than 10m² capable of being used separately and granted under separate licences or where sub-division is not practicable; or
- (iv) the CP is not willing to enter into a new Licence of the remainder of the Specified Floor Area

and will notify the CP of such refusal and the reasons for refusal.

4.2.3 If KCOM notifies the CP that the CP's request under paragraph 4.2.1 is acceptable:

- (i) KCOM will offer to the Third Party Communications Provider a licence of the whole or part of the Specified Floor Area, as appropriate, on the terms of the Third Party Communications Provider's agreement with KCOM and at a Licence Fee reviewed and determined in accordance with Annex 2; and
- (ii) where a part only of a Specified Floor Area is to be granted to a Third Party Communications Provider KCOM will grant to the CP a new Licence of the remainder of the Specified Floor Area at a Licence Fee reviewed in accordance with Annex 2; and
- (iii) the CP will discharge all obligations concerning the payment of moneys accrued and invoiced in relation to the relevant Specified Floor Area up to the date of completion of the new licence to the Third Party Communications Provider and the grant of any new Licence to the CP, prior to the date of such completion and on completion the CP will be released; and
- (iv) prior to the date of such completion, the CP will pay the reasonable costs of KCOM in relation to the grant of a new licence to the Third Party Communications Provider and the grant of any new Licence to the CP.

5 OBLIGATIONS OF KCOM

5.1 KCOM will:

- 5.1.1** not interfere or permit others to interfere with any Compliant Equipment or the operation of any Compliant Equipment except where specifically permitted by the terms of this Schedule 2;
- 5.1.2** provide or procure the provision of the Property Services to;
- (i) a reasonable level of service; or
 - (ii) any level specified in any service level offer made by KCOM and agreed by the parties or determined by OFCOM; or
 - (iii) the level at which KCOM provided those services to itself at the relevant WFLLA Site whichever is the higher.
- 5.1.3** observe and perform all covenants subject to which KCOM holds the WFLLA Site and (where the WFLLA Site is leasehold) the covenants on the part of the tenant contained in the lease under which KCOM holds the WFLLA Site.

6 AGREEMENTS AND DECLARATIONS

- 6.1** KCOM and the CP agree and declare that the Licences are granted in order to enable the CP to use KCOM's WFLLA Service and the CP will not have or exercise any rights it may otherwise have in respect of the use and occupation of the Specified Floor Area other than those contained in this Schedule 2.
- 6.2** It is agreed that KCOM may at any time require Compliant Equipment in any Specified Floor Area to be relocated to an alternative position in the same WFLLA Site at the cost of KCOM (which cost will be reasonable and proper) provided that, in such relocation, as little disruption as practicable will be caused to the CP and KCOM will ensure that the new Specified Floor Area and Property Services to it will be reasonably equivalent to and adequate for the CP's purposes.
- 6.3** KCOM does not give any warranty or assurance that the use of a Specified Floor Area authorised under a Licence is or will continue to be authorised under any planning statute or other planning legislation and KCOM may at any time and from time to time temporarily close any WFLLA Site and / or access to the Compliant Equipment or any part of it for safety reasons for such periods as it may deem necessary without incurring liability to the CP or any third party in respect of any disturbance or reduction in or loss of business consequent thereon KCOM will give the CP reasonable notice but in any event not less than five Working Days of such closure and liaise with the CP to minimise the effect such closure might have on the CP. Where notice cannot be given in an Emergency, KCOM will advise the CP as soon as possible giving reasons for the closure and will re-open the WFLLA Site and/or access to Compliant Equipment as soon as reasonably practicable.

- 6.4** KCOM will have the right to refuse admittance to, or order removal from, any WFLLA Site the CP or any CP Visitor who in the opinion of KCOM is failing to abide by the Co-mingling Rules (KCOM's decision may be subject to Dispute by the CP and as such, refusal of admission to a WFLLA may be a temporary or permanent measure), or in the opinion of KCOM (which will be final and conclusive) is failing to abide by the Co-mingling Rules or is not a fit person to be on such WFLLA Site. Action taken under this paragraph will be notified in writing to the CP by KCOM.
- 6.5** Where KCOM passes are required to enable a CP Visitor to access any WFLLA Site (Escorted or Unescorted Access) KCOM will arrange for their issue to the CP's Visitors and access shall be arranged in accordance with any access arrangements as set out in the Co-Mingling Rules.
- 6.6** The CP will deliver Compliant Equipment to any WFLLA Site at its own expense and at its own risk. Compliant Equipment will be the property of the CP at all times.
- 6.7** Any waiver by either party of a breach of any provision of this Schedule 2 will be limited to the particular breach and will not operate in any way in respect of any future breach by that party, and no delay on the part of either party to act upon a breach will be deemed a waiver of that breach.
- 6.8** Nothing in any Licence or this Schedule 2 or done under it will create any tenancy of any part of any WFLLA Site or confer upon the CP any right to the exclusive possession of any part of any WFLLA Site.

7 DURATION

- 7.1** Each Licence of a Specified Floor Area will commence on the Licence Completion Date and will continue until termination under the terms of this Schedule 2.

8 TERMINATION

- 8.1** The CP may determine a Licence in respect of any one or more Specified Floor Area at any time by giving to KCOM not less than twelve calendar months' prior written notice to expire at any time and upon the expiry of any such notice the Licence of the relevant Specified Floor Area will immediately cease and determine but without prejudice to the respective rights of either party in respect of any antecedent claim or breach of Agreement.
- 8.2** Subject to the provisions of paragraph 8.4, KCOM may determine a Licence in respect of any one or more Specified Floor Area at any time before 1 January 2024 where:
- 8.2.1** KCOM has entered into a contract to dispose of or sell the WFLLA Site where the relevant Specified Floor Area is located; or
- 8.2.2** a WFLLA Site is specified as a leasehold WFLLA Site in Annex 1, and such leasehold is terminated; or

8.2.3 KCOM has entered into a contract with a third party to demolish or reconstruct the WFLLA Site where the relevant Specified Floor Area is located or a substantial part of that WFLLA Site or to carry out substantial work of construction to it or part of it and KCOM could not reasonably do so without terminating the Licence of the relevant Specified Floor Area; or

8.2.4 KCOM is required by law or lawful instruction of any competent authority to regain occupation of any CP Equipment Room;

by giving to the CP written notice to expire at any time and upon the expiry of any such notice the Licence of the relevant Specified Floor Area will immediately cease and determine but without prejudice to the respective rights of either party in respect of any antecedent claim or breach of Agreement.

8.3 Subject to the provisions of paragraph 8.3 KCOM may determine a Licence in respect of any one or more Specified Floor Area at any time after 1 January 2024 by giving to the CP written notice to expire at any time and upon the expiry of any such notice the Licence of the relevant Specified Floor Area will immediately cease and determine but without prejudice to the respective rights of either party in respect of any antecedent claim or breach of Agreement.

8.4 Any notice to be given by KCOM under paragraph 8.2 or 8.3 will contain a reasonable offer of suitable alternative accommodation available for occupation immediately on expiry of the notice such as to permit the CP to continue to serve those End Users served from that WFLLA Site without material disruption; and either

8.4.1 if KCOM has given to the CP not less than 12 calendar months' notice under paragraph 8.2 or 8.3 the CP will notify KCOM as soon as practicable (but in any event not more than one month after the receipt of the notice from KCOM) of any alterations to the CP Network which are necessary, for the provision by the CP of telecommunications services to End Users by means of the WFLLA Service terminating at the relevant WFLLA Site, required to relocate to the alternative accommodation to be provided -under this paragraph 8.4 and will, if the provisions of paragraph 8.5 do not apply, supply a quotation of the costs of such alterations calculated on the basis of the minimum cost consistent with good engineering practice; and

- (i) if the proposed alterations and the quotation are agreed the parties will agree a plan within 3 calendar months of the receipt of the notice under paragraph 8.2 or 8.3 to implement such alterations and the parties will carry out such alterations in accordance with the agreed plan and on completion of the alterations the CP will invoice KCOM and KCOM will pay an amount not exceeding the quotation; and

- (ii) if the provisions of paragraph 8.5 do not apply and KCOM does not agree the alterations and/or the quotation (if any) KCOM will notify the CP and the parties will refer the matter as a Dispute; or

8.4.2 if KCOM has given to the CP less than 12 calendar months' notice under paragraph 8.2 or 8.3 KCOM will in addition to the provision of such suitable alternative accommodation pay the costs of relocating the CP on a full indemnity basis.

8.5 Each party will pay its own costs arising out of a relocation to alternative accommodation if:

8.5.1 the parties agree in writing to change their respective telecommunications systems for their mutual benefit; or

8.5.2 the relocation or alteration required is lawfully directed by Ofcom who also lawfully directs each party to pay its own costs; or

8.5.3 the alterations required to relocate are agreed by an Independent Expert following a reference to him; or

8.5.4 where relocation is consistent with an upgrade path agreed by Ofcom or an Independent Expert.

8.6 Licences of Specified Floor Areas:

8.6.1 may be determined by KCOM on reasonable (and in any event not less than one month's) notice if:

- (i) the CP is no longer entitled to receive the WFLLA Service; or
- (ii) the CP purports to transfer the benefit and/or burden of a Licence to a Third Party Communications Provider otherwise than as provided under this Schedule 2; or
- (iii) the CP fails to use the WFLLA Service served by the Specified Floor Area in question or ceases to use the relevant Specified Floor Area for a continuous period of twenty six weeks (or thirteen weeks if the CP occupies the Specified Floor Area under a Licence which it took under the procedure set out in paragraph 4.2); or
- (iv) KCOM is no longer required to provide WFLLA; or
- (v) OFCOM directs that a Licence of one or more Specified Floor Areas will be determined; and

8.6.2 will immediately automatically determine if this Agreement is terminated under the provisions of the main body of this Agreement,

but in any such case without prejudice to the respective rights of either party in respect of any antecedent claim or breach of Agreement.

ANNEX 1
(Licences of Specified Floor Areas)

WFLLA Site	Leasehold Yes/No	Specified Floor Area Square footage/ percentage	Licence Fee (per annum)	Plan No.	Service Expenses and Fixed Sum per square metre

ANNEX 2 (Provisions for review of Licence Fees)

- 1 On each Review Date the Licence Fee will be reviewed in accordance with the provisions of this Annex.
- 2 Subject to paragraph 3 below the Licence Fee payable in respect of each Specified Floor Area will be the greater of such Licence Fee payable in the immediately preceding year and the original Licence Fee specified in Annex 1 multiplied by the Index for the month immediately preceding that Review Date and divided by the index figure for the month preceding the date of commencement of the period of the Licence in respect of the Specified Floor Area in question (the "Relevant Commencement Date") in accordance with the following formula:

$$RLF = ILF \times \frac{A}{B}$$

Where:

- RLF is the revised Licence Fee payable on the relevant Review Date;
- ILF is the initial Licence Fee at the Relevant Commencement Date(s) (being the yearly fee specified in Annex 1);
- A is the index value for the Index for the month preceding the relevant Review Date;
- and
- B is the index value for the Index for the month preceding the Relevant Commencement Date

For the avoidance of doubt there will be a separate calculation of the Licence Fee for each Specified Floor Area.

- 3 KCOM may elect that the Licence Fee in respect of any Specified Floor Area will be revised to the Open Market Value of the Consents in relation to the Licence of that Specified Floor Area from any Review Date by giving to the CP notice in writing to that effect at any time before that Review Date. If KCOM makes such an election the Licence Fee in respect of each WFLLA Site payable from the relevant Review Date will be the greater of:
 - 3.1.1 the relevant Licence Fee payable for the Specified Floor Area in the immediately preceding year; and
 - 3.1.2 the Open Market Value of the Consents

and if any contention or difference will arise between the parties then the provisions of Clause 18 of the main body of the Agreement will apply.

- 4 If the Licence Fee payable in respect of any Specified Floor Area on and from any Review Date has not been agreed by that Review Date then that Licence Fee will continue to be payable at the rate previously payable and forthwith upon the revised Licence Fee being ascertained the CP will pay to KCOM any shortfall between the Licence Fee previously payable and the revised Licence Fee together with interest on the shortfall at the base rate for the time being of National Westminster Bank Plc such interest to be calculated on a day to day basis from the relevant Review Date to the date of payment.

ANNEX 3 (The Property Services)

1 **Maintaining the WFLLA Site**

Maintaining and repairing the whole of the WFLLA Site to such standard as is adequate so that the rights hereby granted can be exercised for the duration of the Licence in relation to the Specified Floor Area in question.

2 **Cleaning the Specified Floor Area**

Cleaning and lighting the Specified Floor Area to a reasonable standard.

3 **Cooling and Ventilation**

Subject to the CP's Compliant Equipment fully complying with ETSI 300.019, supplying cooling and ventilation for the Compliant Equipment in each Specified Floor Area to such reasonable temperatures as conditions will determine from time to time.

4 **Security**

Taking all measures as may be reasonably necessary to ensure the security of the WFLLA Site and any security entry system installed by KCOM giving access to the WFLLA Site and/or the Specified Floor Area.

5 **Insurance**

Insuring the WFLLA Site in the full reinstatement cost from time to time against damage or destruction by the Insured Risks.

6 **Electricity**

To maintain a supply of a/c electricity to the Specified Floor Area and also (if KCOM in its absolute discretion considers it desirable) to provide:-

- 6.1 an emergency isolation device permitting power to the Specified Floor Area to be disconnected within the Specified Floor Area; and
- 6.2 final distribution boards and sub-meters to measure separately the electricity used by the CP in the Specified Floor Area and any other occupier or occupiers of any other part or parts of the WFLLA Site in question

provided that KCOM will not be liable for any breaks or fluctuations in the electricity supply and will be under no obligation to provide any back-up supply in the event of the failure of the electricity supply.

7 Maintenance of faults in Specified Floor Area

- 7.1** For the purposes of this paragraph 7, the terms Priority A and Priority B will have the meanings set out in Schedule 1.
- 7.2** KCOM will clear Priority A Faults within 5 hours of receipt of a fault report.
- 7.3** KCOM will clear Priority B Faults within 24 hours of receipt of a fault report.
- 7.4** This paragraph applies to faults reported relating to services or facilities supplied under this Annex.