

Agreement for the Provision of KCOM PIA

Schedule 4: Survey, Plan and Build

1. Handling of Requests

1.1 The CP must make Requests in accordance with the Operations Manual and subject to any requirements set out therein.

1.2 As an essential element of the Request, the CP must include full information on the work to be undertaken.

1.3 A Request will be rejected if:

- (a) any information is illegible, inaccurate, incomplete or incorrect (except where minor or typographical in nature and may be readily understood);
- (b) it is a duplicate Request;
- (c) it is outside the Hull Area; or
- (d) as set out in paragraph 14 below

and KCOM will notify the CP of the rejection and the reason for the rejection. Any Requests on a Sensitive Area are subject to clause 11.3 and 14.5.

1.4 All requests received by KCOM will be processed in the order they are received. The CP must place Requests in good faith and with the reasonable expectation of completing their work within the specified Build Period.

1.5 In some cases, the CP may require KCOM to attend at a Site including where the CP requires or encounters (as the case may be):

- (a) locked lids for access to secure jointing chambers;
- (b) KCOM exchange manholes;
- (c) KCOM exchange cable chamber and any connecting infrastructure to and within the KCOM exchange;
- (d) any Physical Infrastructure where KCOM requires specific security requirements;
- (e) joint site surveys, e.g. for aerial pole loading; and
- (f) Coop and Ancillary Works,

and if this is the case it will be subject to additional charges available on request from KCOM.

1.6 Upon receipt of a Request from the CP, KCOM will, subject to paragraph 1.7, acknowledge receipt of that Request but KCOM does not represent or warrant that there

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is or will be capacity in the Physical Infrastructure the subject of that Request and any cost or other liability incurred by the CP in respect of that Request is entirely at the CP's own expense and risk.

- 1.7 KCOM reserves the right to postpone acknowledging a Request if acting in good faith, it reasonably believes there are or may be issues related to the Request, or if it needs further information and clarifications from the CP regarding the Request. In such cases, KCOM will promptly communicate any requests for additional information or clarification to the CP.

2. Surveys

- 2.1 Subject to paragraphs 3, 4 and 5 below, if the CP intends to install a Facility and/or CP Apparatus in the Physical Infrastructure, it may, and is advised to carry out its own full visual inspection of the Physical Infrastructure it intends to use to help identify the true nature and characteristics of the Physical Infrastructure including whether there are any locked and/or welded lids or other security measures for which the CP may require keys or attendance or deactivation by KCOM and to check the loading and other characteristics of a Pole.
- 2.2 The CP must comply with the Whereabouts Requirements when conducting any survey that includes the lifting of lids, inspection of chambers or any activity that includes the opening of the KCOM Network in any way.
- 2.3 The CP shall not use, connect and/or install Customer Apparatus on or in Physical Infrastructure and/or conduct any form of intrusive survey on or in Physical Infrastructure including rodding and/or roping, use of cameras etc. without a Request for that item of Physical Infrastructure.
- 2.4 In conducting any survey work the CP is responsible for:
- (a) compliance with all relevant legislative requirements and local authority authorisations required in connection with the survey work it carries out including, but not limited to Applicable Laws;
 - (b) compliance with any instructions contained in the Operations Manual and Engineering Principles and compliance with the terms of this Agreement;
 - (c) ensuring all CP Personnel involved in work under this Schedule are accredited in accordance with the provisions of Schedule 2; and
 - (d) the acts and omissions of all CP Personnel in connection with surveying of the Physical Infrastructure.
- 2.5 It is acknowledged by the parties that because of security issues, locked lids and other security measures are not recorded on electronic maps provided by the KCOM Software and/or Network Plans or readily identifiable at ground or surface level. If the CP encounters a locked lid or other security measures during survey, it shall be dealt

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with in accordance with the Operations Manual.

- 2.6 If the CP cancels a scheduled joint survey less than twenty four (24) hours prior to the proposed start of a survey, the CP shall pay the full charges for the joint survey as set out in the Price List.

3. CP Responsibilities in respect of Survey Work

- 3.1 The CP will notify KCOM in writing prior to commencement of any Physical Survey work, to be no less than two (2) Working Days' notice.

- 3.2 Subject to paragraph 3.3, the CP should only carry out Intrusive surveys (as described in the Operations Manual) during daylight and within Working Hours, unless agreed otherwise in writing in advance with KCOM such agreement not to be unreasonably withheld or delayed and may carry out Non-Intrusive surveys (as described in the Operations Manual) at any time.

- 3.3 The CP will when conducting a Physical Survey:

- (a) notify KCOM and comply with the Whereabout Requirements;
- (b) carry out all obligations under Applicable Laws, including the New Roads & Street Works Act (or equivalent);
- (c) be responsible for addressing any operational issues encountered during its survey work including but not limited to:
 - i. presence of residual gas in a chamber;
 - ii. presence of sewage in a chamber;
 - iii. presence of water (contaminated or otherwise) in a chamber;
 - iv. obstructive objects on top of a chamber;
 - v. electrical cables in a chamber or on a pole;
 - vi. trees preventing poles being adequately surveyed; and
 - vii. presence of any other contaminants including but not limited to hydrocarbons

and will promptly notify KCOM of any defects, anomalies or incidents in relation to the KCOM infrastructure noted or experienced during survey in accordance with paragraph 5 below; and

- (d) be responsible for sealing up and securing any of the KCOM Network that it opens such that it complies with Applicable Laws and KCOM's own requirements as more fully described in the Operations Manual.

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- 3.4 Any Network Adjustments required are subject to a Request as set out in the Operations Manual and subject to the terms set out in Schedule 5.

4. CP Disclosure of Survey Results

- 4.1 The CP shall not provide any information about the KCOM Network including survey results to any third party except where necessary:

- (a) to use the Services pursuant to the terms of this Agreement;
- (b) to communicate information about the availability of its services to an end customer.

- 4.2 KCOM does not give any warranty or assurance as to the accuracy of any information provided by the CP to any third party under paragraph 4.1 above.

5. Defects, Anomalies and Incidents Noted during Survey Work

- 5.1 The CP must:

- (a) to the extent necessary to allow it access to the relevant underground jointing chambers, notify KCOM if the frame and jointing chamber buffers need to be repositioned after the jointing chamber is re-sealed and the CP must leave site protection equipment in place as necessary until KCOM is able to address work required to rectify the situation;
- (b) report any low wires on KCOM poles and leave site protection equipment in place as necessary until KCOM is able to address work required to rectify the situation;
- (c) ensure it complies with all environment and other Applicable Laws in relation to the removal of water from the KCOM Network when conducting its survey work;
- (d) when reporting any defects (in accordance with the Operations Manual), anomalies or incidents to the KCOM Network or existing cables therein, provide Photographic Evidence as soon as reasonably practicable of the affected area;
- (e) immediately inform KCOM of any accidents or incidents that occur during survey work of the Physical Infrastructure whether involving CP Personnel or third parties; and
- (f) assume responsibility for safety as necessary until KCOM is able to address the issue as further described in the Operations Manual.

6. Build Period

- 6.1 The Request for Physical Infrastructure Access is subject to the Build Period. The CP must inform KCOM in writing of its Build Period which shall not extend beyond twelve (12) months from the date of the Request unless an extension is agreed between the

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CP and KCOM up to a maximum of 6 months from the date of the Request, consent for such an extension to be requested before the expiry of the Build Period and any extension thereof with consent not be unreasonable withheld. A Build Period shall not exceed eighteen (18) months except in the case of an Excused Delay. In the Build Period the CP must complete its installation of CP Apparatus in the Physical Infrastructure which was the subject of the Request. If the CP is (in relation to a particular Request and item of Physical Infrastructure in that Request) subject to an Excused Delay then KCOM will extend the Build Period by an amount equivalent to the period of the Excused Delay provided the CP:

- (a) promptly notifies KCOM in writing of any Excused Delay together with full details of the Excused Delay;
- (b) uses reasonable endeavours to mitigate the cause or effect of such Excused Delay; and
- (c) keeps KCOM informed as to the progress of the Request so delayed

6.2 The Build Period will continue until the earliest of:

- (a) the Licence Completion Date;
- (b) cancellation of the Request by the CP; or
- (c) expiry of the Build Period whereupon KCOM will cancel the Request, subject to any extension agreed as set out in paragraph 6.1.

6.3 If the Request is cancelled by the CP pursuant to paragraph 6.2(b) or the Request is cancelled by KCOM pursuant to paragraph 6.2(c) above then the CP must at its cost and expense:

- (a) promptly remove any CP Apparatus from the Physical Infrastructure;
- (b) pay, repay any and all costs and charges for any Network Adjustments on that Physical Infrastructure;
- (c) reinstate and make good the KCOM Network

and any use of the Physical Infrastructure beyond a period of seven (7) Working Days (or such longer period if agreed to in writing by KCOM) from the date when the Request was terminated or cancelled will be deemed Unauthorised Use of the KCOM Network and any subsequent Request placed by the CP for use of the Physical Infrastructure in the original Request may (at KCOM's absolute discretion) be deemed invalid.

7. Build Installation in or on Physical Infrastructure

7.1 Subject to the terms of this Schedule, the CP may install a Facility and/or CP Apparatus in the Physical Infrastructure provided that the CP:

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- (a) has a valid and acknowledged Request for the Physical Infrastructure in and/or on the total relevant route that is the subject of the installation activity;
 - (b) advises KCOM when it wishes to commence work, in accordance with the Whereabouts Requirements set out in the Operations Manual;
 - (c) connects any CP Apparatus to a Public Electronic Communications Network within the Build Period. Any CP Apparatus which is not connected to a Public Electronic Communications Network within the Build Period must be removed from the Physical Infrastructure promptly and on notice from KCOM where there is congestion in the Physical Infrastructure and subject to the process set out in the Operations Manual; and
 - (d) achieves Build Completion within the Build Period or any extension agreed as set out in paragraph 6.1.
- 7.2 Subject to clause 12, nothing in this Agreement removes the need for the CP to obtain any necessary wayleave, permission or consent from any person or body which may be required for the installation or construction of a Facility and the installation and maintenance of the CP Apparatus. The CP will obtain all such permissions and consents before any work is carried out under this Agreement. The CP will comply with the terms set out in the Annex to this Schedule where it wants to benefit from the right to share under paragraph 17 or 17A of the Electronic Communications Code (“the Sharing Right”). The CP shall indemnify and hold harmless KCOM against all losses, costs, claims (including claims from third parties), expenses, liabilities and demands (“liabilities”) in relation to a failure to comply with terms set out in the Annex or negligence in connection with the exercise of the Sharing Right on the part of the CP. The CP’s liabilities under this indemnity fall within the liability cap set out in clause 24.4 of the Agreement.
- 7.3 The CP may use space within KCOM’s manholes and joint boxes in relation to the Physical Infrastructure which is the subject of an existing Request provided there is sufficient space available and subject to the Engineering Principles and the terms of the Agreement.
- 7.4 The CP is responsible for ensuring that all work carried out is in accordance with environmental and health and safety legislation and regulations and all other Applicable Legislation.
- 7.5 If the CP wants to deploy multiple cables, then the following terms shall apply:
 - (a) the Network Adjustment Fund will be calculated as set out in Schedule 5;
 - (b) KCOM does not represent or give any assurance or warranty that space will be available for any subsequent installation of future cables at the same location and

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the CP will still be liable for any Licence Fees payable under the terms of this Agreement notwithstanding the fact that there may no longer be any space for any subsequent cable installation;

- (c) the CP must record and provide details of the individual cables and their diameter as part of the Build Completion;
- (d) any additional cables will only benefit from this arrangement to the extent they follow the same route as the original cable;
- (e) the CP will need to restate cable diameters on reservations that were previously recorded as 25mm diameter;
- (f) the Minimum Licence Period will be calculated based on Licence Completion Date for the original cable; if the CP uses more space than it has declared in the Build Completion Pack and where the space is above the relevant measurement point upon which Licence Fees are calculated and payable ("excess use") then the excess use will be included in the calculation of Minimum Unauthorised Use and the CP will pay compensation to KCOM for excess use calculated by KCOM by multiplying the Licence Fees for the excess use by sixty months (60) and the CP will also be liable to pay ongoing Licence Fees and any excess use does not qualify for Network Adjustments and may not be used to calculate the Network Adjustment Fund.

7.6 The CP must:

- (a) observe the requirements in relation to accreditation under this Agreement at all times;
- (b) carry out installation work only in or on the Physical Infrastructure that is the subject of a valid Request that has been acknowledged and approved by KCOM under the terms of this Agreement and Operations Manual;
- (c) inform KCOM where installation and other work on or in the Physical Infrastructure is to be carried out, when that work is to be carried out and by whom in accordance with the Whereabouts Requirements outlined in the Operations Manual;
- (d) immediately notify KCOM by email to wsoc247@kcom.com of any safety issues, defects or damage to the Physical Infrastructure observed either prior to, during or after completion of work. The CP must not carry out any work in or on any damaged or defective Physical Infrastructure or where the item of Physical Infrastructure has any form or type of guarding, taping or similar without obtaining KCOM's prior written consent to use that item of Physical Infrastructure (such consent not to be unreasonably withheld or delayed);
- (e) carry out the work, ensure the CP Personnel carry out the work in accordance with KCOM's specifications as published in the Engineering Principles within the Operations Manual on the KCOM Website and notified to the CP from time to time, and ensure there is no disruption to other cables in the Physical Infrastructure. Any work performed by the CP or on behalf of the CP shall be in accordance with the latest standards, Good Industry Practice and all applicable regulations and Applicable Law;

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- (f) observe KCOM's allocation of space rules and technical requirements, as further described in the Engineering Principles:
 - i. in relation to sub-ducts and tubing;
 - ii. in relation to jointing chamber generally;
 - iii. ducts generally; and
 - iv. poles generally.
- (g) ensure that the Facility and the CP Apparatus it deploys in the Physical Infrastructure comply with the relevant specifications as notified from time to time by KCOM, including but not limited to breaking tolerances for aerial cables as further described in the Engineering Principles;
- (h) comply with the Traceability Requirements in respect of any CP Apparatus in or on the Physical Infrastructure;
- (i) ensure that the Facilities it deploys are anchored to support brackets in boxes and manholes so that:
 - i. the Facilities and CP Apparatus are arranged in such a manner to avoid blocking access to existing plant; and
 - ii. access to spare duct bores is not unduly restricted by the routing of CP Apparatus across duct mouths in jointing chambers.
- (j) when working on poles, observe reasonable instructions as provided by KCOM from time to time regarding circumstances under which poles should not be climbed and thus necessitating the use of an elevated platform, also referred to as a 'cherry picker', in particular if a pole is decayed, shallow and/or where low wires already exist;
- (k) ensure that all Physical Infrastructure at a Site is left safe and secure at all times when the immediate area is not attended and in cases of underground access points ensure that all covers are replaced and are secure; and
- (l) notify KCOM in the event that it is unable to comply with Engineering Principles and can evidence and properly demonstrate as such. The parties agree that any deviation from the Engineering Principles is at KCOM's sole discretion and is subject to KCOM's advance written consent.

7.7 The CP must not:

- (a) pass voltages or signals other than those used for telecommunications signalling through its cables and will ensure that these signals will not be used or so designed

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as radiation medium for wireless telegraphy purposes or otherwise deviate from the ANFP;

- (b) pass mains or other dangerous voltages through any part of the CP Apparatus;
 - (c) install in the Facility any apparatus or cables that in the Physical Infrastructure that have been reported as damaged and requiring repair or where notified KCOM has notified the CP that such part of the Physical Infrastructure is damaged and requires repair;
 - (d) use CP Apparatus such that it causes interference or harm to the KCOM Network or other services (including third party communications providers' services) as set out in clause 15.1. If any such interference is experienced, the CP must rectify the situation on notice from KCOM. If the CP fails to do so, KCOM may take immediate action to remove such CP Apparatus without any liability to the CP;
 - (e) install any Customer Apparatus on or in any item of Physical Infrastructure that KCOM has identified as subject to network re-arrangement and/or repayments as notified to the CP by KCOM from time to time.
- 7.8 The CP may subject to paragraph 7.9 below, conduct at its own cost and expense those items of enabling works limited to the installation of new joint chambers and undertaking of Joint Box breakthrough.
- 7.9 The CP must ensure where it conducts enabling works under paragraph 7.8 above that:
- (a) it complies with the terms of the Agreement including, but not limited to, training and accreditation as set out at Schedule 2;
 - (b) it complies with the Whereabouts Requirements and provides to KCOM, notice prior to commencing any enabling works;
 - (c) it provides full details of the nature of the enabling works including Photographic Evidence (before, during and completion photographs) and the specific location and the dates they will be conducting the enabling work;
 - (d) it makes clear that it is doing the work or is having the work done on its behalf including, but not limited to, in any discussions with any local or highways authority or planning department;
 - (e) the enabling works are done in accordance with Good Industry Practice and the Engineering Principles; and
 - (f) it provides to KCOM upon completion of the enabling works such information and assistance as KCOM may reasonably require to verify the enabling works including but not limited to Photographic Evidence of and the highways reference for the work.
- 7.10 If the CP fails to comply with paragraph 7.9 above or starts but fails to complete the enabling works within a reasonable period of time then KCOM will notify the CP and provide a reasonable period within which the CP must rectify or complete the work failing which KCOM reserves the right to charge the CP the reasonable costs to complete the

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enabling works to meet the relevant requirements.

7.11 The CP is responsible for:

- (a) ensuring that all work is completed in accordance with the Engineering Principles, including reinstating gas seals and other safety measures;
- (b) installing CP Apparatus by the most appropriate method in the circumstances, whilst ensuring any such installation is in accordance with the Engineering Principles and Good Industry Practice; and
- (c) de-silting of the Physical Infrastructure during its programme of work at its own cost to the extent such de-silting is necessary to enable the CP to safely install the CP Apparatus in the Physical Infrastructure.

7.12 When installing a Facility and/or CP Apparatus in the Physical Infrastructure, the CP should use sub-duct or other tubing as agreed in order to physically separate its cables from those of KCOM and other communications providers. The CP may deploy cable or blown fibre tubing without a sub-duct provided that any such cable or tubing is and remains clearly marked in accordance with the Traceability Requirements.

7.13 The CP may build a joint chamber, using KCOM approved materials, over any existing section of Spine Duct (excluding sections of multiway duct with a manhole on each end) in accordance with any requirements set out in the Operations Manual.

8. KCOM and CP Responsibilities – Installation Works

8.1 Subject to paragraph 8.2 below KCOM may inspect the CP's installation work at any time to ensure that the CP and the CP Personnel are complying with all requirements including, but not limited to: Site regulations, Accreditation Requirements, compliance with Engineering Principles and the Specification. If KCOM notes any failures it will inform the CP and may at its sole discretion take action under any of the relevant provisions of this Agreement including clause 2.6 as shall be reasonable under the circumstances.

8.2 Without prejudice to KCOM's rights at paragraphs 8.3 and/or 13.7 below KCOM will not unreasonably interfere with or cause damage to any CP Apparatus when inspecting any work by the CP on or in the Physical Infrastructure.

8.3 KCOM reserves the right to remove and re-attach CP Apparatus on a Pole to relieve congestion provided this does not cause any damage to the CP Apparatus and/or interruption to existing services and the CP shall provide such information and assistance as KCOM may require to enable it to do this work. The details of the process and the steps KCOM will take to move and re- attach CP Apparatus to make best use

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of space in the KCOM Network are set out in the Engineering Principles.

- 8.4 The CP is permitted to use spare faces on any KCOM stand-off bracket attached to a Pole in accordance with the process set out in the Operations Manual. Where the CP wishes to use a spare face on a stand-off bracket that is clearly labelled as having been installed by and belonging to another Communications Provider, the CP must contact that Communications Provider for permission to attach before commencing any work to use the relevant bracket face, as more particularly described in the Operations Manual.

9. Build Completion

- 9.1 The CP must achieve Build Completion in respect of a Request within the Build Period or any agreed extension thereof as set out at paragraph 6 above.
- 9.2 On Build Completion the CP will in respect of the Request, submit to KCOM promptly a Build Completion Pack within 10 Working Days following the Build Period. The CP warrants and represents the accuracy of the information in the Build Completion Pack. The CP may not submit a partial Build Completion Pack for a Request.
- 9.3 KCOM reserves the right, acting reasonably and in good faith and as further set out in the Operations Manual, to inspect any work carried out by the CP to verify that it has been carried out in accordance with this Agreement including the Engineering Principles and Good Industry Practice prior to or at any time after the granting of a Licence to the CP under Schedule 6.
- 9.4 Subject to paragraph 9.8 the CP must not connect or provide services over, via or using the Facility during the Build Period.
- 9.5 KCOM's notice of the Licence Completion Date does not in any way assert, imply, warrant or represent that KCOM has or will check the CP's Facility but KCOM reserves the right at any time subject to paragraph 9.3 above to audit and check the work done by CP Personnel on or in the KCOM Network to check that it complies with the terms of this Agreement and is consistent with the information set out in the Build Completion Pack.
- 9.6 The CP agrees that its use and occupation of the Facility will be governed by the terms of the Licence and subject to the Minimum Licence Period.
- 9.7 The process for connecting CPs using Lead-in Duct and drop wires is as set out in the Operations Manual.
- 9.8 The CP may connect and provide services over, via or using the Facility during the Build Period subject to the following terms:

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- (a) the Facility comprises items of Physical Infrastructure properly declared by the CP in accordance with Schedule 7 (Forecasting);
- (b) the CP must accurately record and provide to KCOM, no later than the end of the calendar month from the date when the CP uses the Lead-in Duct and/or connects the drop wire to the Pole, the details of the end CP connections including, for each end CP connection, the distance, object ID and UPRN using the CP process set out in the Operations Manual;
- (c) the relevant Build Completion Pack is submitted in a timely fashion and within the Build Period;
- (d) Licence Fees for the end CP connection will commence and be payable from the date the CP uses the Lead-in Duct and/or connects the drop wire to the Pole (the details of which the CP must confirm to KCOM pursuant to paragraph (b) above);
- (e) KCOM will remove and replace this facility once it makes available the ability for CPs of the Services to submit partial build details for a Request.

10. Wayleaves

10.1 If the Physical Infrastructure is not in the public highway:

- (a) other than as set out in clause 12, the CP is responsible for ensuring that it obtains all necessary wayleaves, consents and permission for the installation and maintenance of its CP Apparatus and is responsible for all associated costs;
- (b) subject to KCOM's charges (as set out in the Price List) and in accordance with the Operations Manual, KCOM will provide the CP with reasonable assistance in obtaining such wayleaves; and
- (c) KCOM does not give any warranty or assurance as to the accuracy of any information provided to the CP by KCOM under sub-paragraph 10.1(b) above. KCOM will however make reasonable efforts to provide the CP with such information and assistance under this paragraph 10.

11. Joint-Box Break Through

11.1 The CP acknowledges that it is not permitted to conduct or place Requests for joint-box break through at an exchange manhole or within a Sensitive Area of the Physical Infrastructure. Any such request must be made in accordance with the Operations Manual.

11.2 Subject to paragraph 11.1 the CP must include the full details, in any Request, where it wishes to conduct joint-box break through and must ensure that any such work is done in accordance with the process and standards set out in the Operations Manual and Engineering Principles.

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- 11.3 The CP may request KCOM to carry out joint-box break through as part of its programme of work within its plans by following the process as set out in the Operations Manual. The parties will agree a programme of work under which KCOM will carry out such work.

12. Third Party Damage affecting Telecommunications Services within a Section of the Physical Infrastructure

- 12.1 Third party damage of the Physical Infrastructure will be addressed in accordance with the Operations Manual.
- 12.2 Each party will be responsible for its own claims for compensation from the third party which caused the damage.

13. Repair and Maintenance

- 13.1 The CP is responsible for the repair and maintenance of its CP Apparatus.
- 13.2 If the CP wishes to inspect, maintain or repair its Facility or CP Apparatus, it will provide as much notice as reasonably practicable to KCOM by following the process set out in the Operations Manual. The CP must observe all requirements set out in paragraph 7 above when carrying out any work on the Facility or CP Apparatus.
- 13.3 If, during repair of CP Apparatus or at any other time, the CP uses a laser system, it will ensure that it and CP Personnel work in accordance all Applicable Laws.
- 13.4 If either party notices any damage to the other party's apparatus, it will inform the other party as soon as reasonably practicable by following the process set out in the Operations Manual.
- 13.5 For the avoidance of doubt, KCOM is responsible for the repair and maintenance of its Physical Infrastructure. The CP may not remove or modify any apparatus that is not owned by the CP itself.
- 13.6 If KCOM needs to replace a Defective Pole with a new Pole then the parties will comply with the process set out in the Operations Manual for joint site visits to remove their apparatus from the Defective Pole and re-attach to the new Pole.
- 13.7 If KCOM provides an appointment date pursuant to the process set out in the Operations Manual to replace a Defective Pole and the CP fails to attend on the date and time then:
- (a) the CP will be liable to pay compensation for the missed appointment as set out in the Price List; and
 - (b) KCOM will use reasonable endeavours to remove the CP Apparatus from the

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Defective Pole and re-attach to the new Pole and the CP will be liable to pay compensation and KCOM will have no liability to the CP in respect of the removal and re-attachment of the Customer Apparatus.

14. Unauthorised Use

- 14.1 The CP shall declare and provide full details of any case of Unauthorised Use of which it is or becomes aware.
- 14.2 In each case of Unauthorised Use the CP shall pay to KCOM by way of compensation the sum of one hundred pounds (£100) provided that this compensation shall not be payable where KCOM is unaware of the Unauthorised Use until the CP provides notice and full details under paragraph 14.1 above and where KCOM reasonably believes it does not need to attend the location to investigate.
- 14.3 Except as set out in paragraph 14.4 below in all cases of Unauthorised Use the CP shall promptly remove any and all CP Apparatus from the Physical Infrastructure the subject of the Unauthorised Use in accordance with the Engineering Principles and Good Industry Practice and make good the KCOM Network.
- 14.4 Subject to paragraph 14.7 below if KCOM reasonably considers the Unauthorised Use qualifies as Minimum Unauthorised Use then KCOM will allow the CP to place a retrospective order for the Physical Infrastructure provided the CP is liable to pay the Licence Fees for the Unauthorised Use from the date of the CP's Request which is, at the time, the physically closest to the Unauthorised Use (which must be within ten metres) and the CP will also be liable to pay ongoing Licence Fees for the Physical Infrastructure the subject of the Unauthorised Use.
- 14.5 The CP will not be permitted to use any Physical Infrastructure which is the subject of Unauthorised Use for Network Adjustments or to calculate the Network Adjustment Fund.
- 14.6 Subject to paragraph 14.4 above KCOM reserves the right acting reasonably to reject at any time any Request and/or Licence which contains Physical Infrastructure which is the subject of Unauthorised Use until the CP complies with the terms of paragraph 14.3 above and KCOM verifies this work and confirms to the CP in writing that it may now occupy the Physical Infrastructure and the CP pays, as compensation an additional (to the amount referred to in paragraph 14.1 above) one hundred pounds (£100)
- 14.7 For the avoidance of doubt KCOM Minimum Unauthorised Use does not apply to any use of Physical Infrastructure where the Request has been terminated or cancelled or which is part of a New Site or where CP Apparatus is not properly labelled in accordance with the Traceability Requirements. For the purposes of this paragraph the term 'New

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Site' means any new Physical Infrastructure that KCOM builds and which is part of a new development.

- 14.8 KCOM may allow any Physical Infrastructure which it reasonably believes qualifies as Minimum Authorised Use to calculate the Network Adjustment Fund.
- 14.9 Notwithstanding the terms of this paragraph if KCOM wants to repair damage to or re-arrange the KCOM Network and on investigation it finds Unauthorised Use in the KCOM Network at the location then the following will apply:
- (a) if the CP Apparatus is properly labelled in accordance with the Traceability Requirements then KCOM will contact the CP and the CP must comply with any reasonable instructions of KCOM to allow KCOM to repair the damage and/or re-arrange the KCOM Network and the CP will pay to KCOM and any other communication provider's reasonable costs incurred and an Abortive Visit Charge as set out in the Price List; and
 - (b) if the CP Apparatus is not properly labelled in accordance with the Traceability Requirements and KCOM is unable to reasonably identify the CP Apparatus then KCOM reserves the right to remove and dispose of any and all CP Apparatus which is the subject of Unauthorised Use without any liability to the CP.

15. Charges

- 15.1 The CP agrees to pay the Charges for services under this Schedule specified from time to time in the Price List.
- 15.2 In addition to the Charges specified from time to time in the Price List, the CP shall pay additional charges arising under this Schedule.
- 15.3 Charges for Network Adjustment will be payable on receipt and acceptance of the Build Completion Pack for the Request.
- 15.4 Charges for ancillary, miscellaneous or enabling works will be payable on completion of the work.
- 15.5 If the CP cancels any Service after the point of no cancellation (as set out or referred to in the Operations Manual) then it will still be liable for the Charges for the Service by way of compensation as more particularly set out in the Operations Manual and/or Price List.

16. Removal of Redundant Equipment

- 16.1 For the purposes of this paragraph 16:
- (a) "Redundant Drop Wire" means a manifestly clear and obvious redundant drop wire cable which is owned and controlled by KCOM but only where the cable is physically

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cut at the ring head and clearly just wrapped around the Pole and excluding any drop wires which are attached to premises.

- (b) "Redundant Equipment" means DAC units and cable TV equipment on Poles which are owned and controlled by KCOM and which are clearly and manifestly inactive and not being used to provide and/or facilitate service to a CP and where there are no cables entering/exiting the equipment from the CBT.

16.2 Subject to paragraph 16.3 and 16.4 the CP may, if it informs and obtains KCOM's prior written consent, (such consent not to be unreasonably withheld or delayed), remove any specific item of Redundant Equipment and/or Redundant Drop Wire provided such removal is necessary to relieve a capacity constraint on a Pole to facilitate attachment of CP Apparatus used for a drop wire.

16.3 If the CP removes Redundant Equipment and/or Redundant Drop Wire pursuant to paragraph 16.2 then the CP will be liable for any reasonable costs and liabilities:

- (a) to safely dispose of the Redundant Equipment and/or Redundant Drop Wire pursuant to Applicable Law including under the Waste Electrical and Electronic Equipment Regulations; and
- (b) incurred and/or suffered by KCOM where the CP incorrectly removes the wrong item of apparatus and/or damages other equipment and/or cables or interferes with or impacts existing communications services.

16.4 The CP acknowledges and accepts that in addition and without prejudice to KCOM's other rights under this Agreement the terms of this paragraph apply mutatis mutandis to CP Apparatus on and/or in Physical Infrastructure.

17. Removal of Bass Step on a Pole

17.1 Subject to paragraph 17.2, the CP may, where necessary to relieve congestion on a Pole to facilitate the provision of a CP owned drop wire, remove and replace the bass step on the Pole.

17.2 The right to remove a bass step on a Pole pursuant to paragraph 18.1 above is subject to all the following conditions:

- (a) the CP shall ensure that any work to remove the bass step is done in strict accordance with the Engineering Principles and Good Industry Practice; and
- (b) removal or repositioning of other steps and / or complete removal of any steps on the Pole is not permitted.

Annex

If the CP wants to benefit from the right to share under paragraph 17 or 17A of the Code then the following terms will apply:

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Post 2017:

The CP must comply with the conditions set out in paragraph 17 of the Code when seeking to use Physical Infrastructure on private land where KCOM has an agreement for the Physical Infrastructure that is post December 2017

Pre-2017 Wayleaves / Pre 2003 installation

The CP must comply with paragraphs 17 and 17A of the Code (depending on the date of any wayleave) and any noticing requirements set out in the Code where KCOM has an agreement for the Physical Infrastructure that is pre-December 2017 and/or has installed infrastructure pre-December 2003 and that Physical Infrastructure is Duct and not Poles.

To comply with the notice requirements the CP must only use a notice that has been approved in writing by KCOM and the relevant details for the notice must be completed by the CP fully and accurately. Notices should only be used where required by the Code.

KCOM reserves the right to withdraw the CP's use of such notices if it receives what it considers (acting reasonably) to be an unreasonable level of bona fide complaints from land owners/occupiers as to the CP's use of such notices.

The CP must have and maintain for eighteen (18) months from the date of the relevant noticing activity full and accurate records of when and where it uses such notices including (but not limited to) Photographic Evidence and must upon reasonable request provide to KCOM promptly copies of such records and the Photographic Evidence.

The CP shall provide to KCOM details of a point of contact for any queries and / or issues arising from their use of the notices.

In all cases, regardless of the agreement date, the CP must when using or seeking to use the Sharing Right on private land:

- (a) make clear in any and all dealing with owners and occupiers of private land that it is not acting for and on behalf of KCOM, that the CP is building their own network and will offer their own services using the physical infrastructure and that it (not KCOM) is liable for any

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damage and/or loss caused and/or occasioned by the CP and/or CP Personnel whilst on the land;

- (b) exercise all reasonable care and skill consistent with Good Industry Practice and use all reasonable endeavours to avoid causing any damage and/or loss to any third party;
- (c) not do or omit to do anything which may harm the reputation and/or goodwill of KCOM;
- (d) ensure the CP Apparatus has no adverse impact on the land and that sharing imposes no burden on any person with an interest in the land;
- (e) seek their own permission from the occupier (as defined in the Code) of the private land before entering the land to survey, install and maintain the CP Apparatus on or in the Physical Infrastructure; and
- (f) comply with the terms set out in the Product Security Telecommunications Infrastructure Act 2022 (as may be amended from time to time) when seeking to rely on a right to share the Physical Infrastructure on private land.