

# Agreement for the Provision of KCOM PIA

## Schedule 6: Licence

### 1. Order Handling

- 1.1 This Schedule 6 contains the terms and conditions under which the CP occupies each and every Facility in respect of which a Licence has been granted.
- 1.2 Prior to the Licence Completion Date the CP shall provide to KCOM the Build Completion Pack detailing the construction of the Facility which is the subject of a Request. Upon receipt of the Build Completion Pack KCOM will, subject to paragraph 1.3, confirm the Licence Completion Date provided that any acknowledgment or confirmation from KCOM shall in no way imply, warrant or represent that KCOM has checked and approved the details of the Build Completion Pack or any work by CP Personnel at, on or in the Facility.
- 1.3 KCOM may upon receipt of the Build Completion Pack request information and assistance from the CP to understand and ensure the extent to which the CP has met their obligations under the Agreement. The CP must provide reasonable information and assistance in response to a reasonable request from KCOM on or relating to the Build Completion Pack.
- 1.4 Notwithstanding the confirmation of Licence Completion Date KCOM reserves the right to audit and check the Facility and require the CP to provide reasonable information and reasonable assistance (at the CP's cost and expense) to explain any work by CP Personnel at the Facility which is the subject of the Licence.
- 1.5 The CP shall maintain (and ensure that the CP's Personnel shall maintain) throughout the period of each and every Licence compliance with all Applicable Laws or other requirements relating to access or the carrying out of KCOM's reasonable access requirements, reasonable working practices, reasonable instructions and any other reasonable local instructions each as published and notified to the CP by KCOM from time to time.

### 2. Licence

- 2.1 Subject to the terms and conditions of this Agreement and in consideration of each respective Licence Fee KCOM grants to the CP a Licence in respect of each Facility with effect from the Licence Completion Date which grant provides consent to the CP:
  - (a) in common with KCOM and all others authorised by KCOM (including the employees of KCOM, KCOM's sub-contractors and agents (and each of their employees, sub-contractors and agents)) to inspect, keep, maintain or repair, the Facility; and
  - (b) to the exclusive use of the Facility to install, inspect, keep, maintain, adjust,

## **Agreement for the Provision of KCOM PIA**

repair, alter, replace or remove CP Apparatus;

for the Permitted Use.

- 2.2 The CP shall start paying KCOM the Licence Fee in relation to the relevant Facility from the Licence Completion Date, whether or not the CP takes occupation on that date.
- 2.3 The CP shall (and shall ensure that the CP's Personnel shall) access only those parts of the Physical Infrastructure necessary for the purposes of this Agreement.

### **3. KCOM's Obligations**

3.1 KCOM shall:

- (a) not interfere with any Facility or CP Apparatus or the operation of any CP Apparatus except where specifically permitted by the terms of this Schedule 6, clause 14.6 of the Agreement or the audit process set out in the Operations Manual; and
- (b) maintain and repair the Physical Infrastructure in accordance with Good Industry Practice and the terms of this Agreement so that the rights granted in a Licence can be exercised for the duration of the Licence in relation to the Facility in question;
- (c) shall indemnify the CP against all losses, costs, claims (including claims from third parties), expenses, liabilities and demands ("liabilities") in relation to physical damage to property arising directly out of a breach of the Licence or negligence on the part of KCOM. KCOM's liability under this indemnity is limited to the property damage cap set out in clause 24.5; and

Nothing in paragraph 3.1(c) above shall restrict or limit KCOM's or the CP's general obligation at law to mitigate a loss it may suffer or incur as a result of an event that may give rise to a claim under the indemnity.

### **4. CP's Obligations**

4.1 The CP shall:

- (a) pay to KCOM the Licence Fee in respect of each Facility from the Licence Completion Date;
- (b) pay any rates and/or taxes which shall be properly charged assessed or imposed upon the rights granted by a Licence or upon the CP's occupation of the relevant Facility or upon any CP Apparatus or in the event that they are not separately assessed to pay on demand a fair proportion of those rates and/or taxes levied on KCOM such amount or proportion to be assessed by KCOM whose decision shall be final and binding save in case of manifest error;
- (c) for the duration of the Licence, comply in all respects with the requirements set

## Agreement for the Provision of KCOM PIA

out in this Agreement in relation to any work carried out at the Facility;

- (d) comply with the Whereabouts Requirements where CP Personnel visits the Facility or any part of it in accordance with the requirements of this Agreement;
- (e) install all CP Apparatus in accordance with Good Industry Practice and the terms of this Agreement and ensure it is connected to a PECN within the Build Period as set out in paragraph 7.1(c) of Schedule 4 and remains connected thereafter;
- (f) maintain the CP Apparatus and how it is installed in or on the Physical Infrastructure in good and proper repair and working order in accordance with Good Industry Practice and the terms of this Agreement;
- (g) ensure that the CP Apparatus or the installation or operation of the CP Apparatus at the Facility shall not put any person in danger of death or injury or cause any damage or interruption to the KCOM Network or to other KCOM property or to telecommunication apparatus operated by KCOM or by any third party and shall not impair the quality of service provided by KCOM or any third party by such telecommunication apparatus;
- (h) label the Facility with the CP's name and maintain the records provided to KCOM under this Agreement as to the identity of CP Apparatus comprised in the Facility;
- (i) comply in all respects (and ensure the CP's Personnel comply in all respects) with the provisions of all Applicable Laws including without limitation statutes relating to the environment, health and safety at work, carrying out street works, the handling, transportation, storage and disposal of waste and special waste, any regulations or orders made under such statutes and further, without limitation, with KCOM's reasonable access requirements, reasonable working practices, reasonable instructions, Engineering Principles, Accreditation Guidelines, and any other safety instructions each as published and notified by KCOM from time to time so far as the same relate to or affect any Facility, CP Apparatus or the consents granted under a Licence.
- (j) ensure that the CP's Personnel are issued with passes bearing the photograph and signature of the holder in accordance with Schedule 2;
- (k) not use or permit the use of a Facility or any CP Apparatus otherwise than for the Permitted Use and in compliance with the provisions of this Agreement and a Licence;
- (l) subject to the rights granted by KCOM to the CP herein, not impede or interfere with KCOM's rights of possession and control of the KCOM Network;
- (m) not obstruct or interfere with (and ensure the CP's Personnel do not obstruct or interfere with) any fire or other safety equipment installed in any KCOM Network or the operation of any such equipment;
- (n) forthwith to report (and ensure the CP's Personnel forthwith report) to KCOM any accidents occurring at a Facility or within the KCOM Network;

## Agreement for the Provision of KCOM PIA

- (o) not to make any application for planning permission in relation to the Facility occupied under the terms of a Licence;
- (p) not to (and to ensure that the CP's Personnel do not) deposit or leave rubbish or waste in or around the KCOM Network;
- (q) 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 the Agreement or this Schedule 6, not to display any signs notices manufacturers motifs or advertising material of any kind on or at any Facility;
- (r) on request from KCOM and where KCOM reasonably believes that an end CP at a Premise wants to take service from KCOM or another communications provider confirm in writing to KCOM if it has any Inactive Drop Wire to that Premise and if it has and on notice from KCOM remove the Inactive Drop Wire in the same time period as KCOM removes its Inactive Drop Wires;
- (s) indemnify and hold harmless KCOM against all losses, costs, claims (including claims from third parties), expenses, liabilities and demands ("liabilities") in relation to interruption to service arising directly out of a breach of the Licence or negligence on the part of the CP;
- (t) indemnify KCOM against all losses, costs, claims (including claims from third parties), expenses, liabilities and demands ("liabilities") in relation to physical damage to property arising directly out of a breach of the Licence or negligence on the part of the CP. The CP's liability under the indemnity is limited to the property damage cap set out in clause 24.5.

Nothing in paragraphs 4.1(s) or 4.1(t) above shall restrict or limit KCOM's or the CP's general obligation at law to mitigate a loss it may suffer or incur as a result of an event that may give rise to a claim under the relevant indemnity.

4.2 Each Licence is personal to the CP and the CP shall not assign or transfer a Licence or the benefit of the rights granted under a Licence either in whole or in part nor grant any sub-licence or agreement except in accordance with paragraphs 4.3 - 4.5 below.

4.3 The CP may, subject to the provisions for termination in this Schedule 6, request that a Licence 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 Facility.

4.4 KCOM may refuse the CP's request under paragraph 4.3 if:

- (a) the third party Communications Provider is not willing to take over the CP's obligations which relate to the Facility; or
- (b) 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

## **Agreement for the Provision of KCOM PIA**

- (c) the CP is not willing to enter into a new Licence of the remainder of the Facility and shall notify the CP of such refusal and the reasons for refusal.

4.5 If KCOM notifies the CP that the CP's request under paragraph 4.3 is acceptable:

- (a) KCOM shall offer the third party Communications Provider a licence of the whole or part of the Facility, as appropriate, on KCOM's standard terms, conditions and charges for physical infrastructure access available on or via the KCOM Website;
- (b) if a part only of a Facility is to be granted to a third party Communications Provider KCOM shall grant to the CP a new Licence of the remainder of the Facility at a licence fee reviewed and determined in accordance with the charges set out in the Price List;
- (c) the CP shall discharge all obligations concerning the payment of monies accrued and invoiced in relation to the Facility 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 shall be released;
- (d) prior to the date of such completion, the CP shall pay KCOM's charges 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 as set out in the Price List;
- (e) any Network Adjustment Fund which relates to the Facility will be cancelled and set to zero (£0) for any future Network Adjustments which may arise in respect of the Facility; and
- (f) the CP and the third party Communications Provider shall comply with the KCOM novation process and execute any documents that KCOM reasonably requires to give effect to the request.

4.6 In the event that a Licence is terminated pursuant to this Schedule 6 the CP shall discharge all obligations concerning the payment of moneys accrued in relation to the relevant Facility up to the date of removal of CP Apparatus.

## **5. Agreements and Declarations**

5.1 KCOM and the CP agree and declare that Licences are granted in pursuance of the provisions of Physical Infrastructure Access and the Agreement and the CP shall not have or exercise any rights it may otherwise have in respect of the use and occupation of the Facility other than for the Permitted Use.

5.2 KCOM does not give any warranty or assurance that the use of a Facility authorised under a Licence is or will continue to be authorised under any planning statute or other planning legislation. KCOM will, however, use its reasonable endeavours to provide such information it receives which may affect the Facility or CP Apparatus.

## Agreement for the Provision of KCOM PIA

- 5.3 KCOM may at any time and from time to time temporarily suspend access to any part of the Physical Infrastructure and/or access to the Facility and CP Apparatus or any part of it for safety reasons for such periods as it may reasonably 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 shall give the CP reasonable notice (where possible not less than five (5) Working Days) of such suspension and liaise with the CP to minimise the effect such suspension might have on the CP. Where prior notice cannot be given in any emergency KCOM shall advise the CP as soon as reasonably possible giving reasons for the suspension and shall re-open the Physical Infrastructure and/or access to a Facility and CP Apparatus as soon as reasonably practicable. Where the CP has been notified or advised of a suspension and the CP has the appropriate controls in place in accordance with any Applicable Law to safely access the affected part of the Physical Infrastructure and/or access to the Facility and CP Apparatus or any part of it, it shall notify KCOM and the parties shall work together to agree the extent of any access necessary for the CP to exercise any rights granted under a Licence.
- 5.4 The CP shall, if reasonably required, demonstrate to KCOM's reasonable satisfaction that, before entry to any part of the Physical Infrastructure, the CP's Personnel comply in all relevant respects with the terms of this Agreement and the Accreditation Guidelines and have the appropriate qualifications, skills and competence in all respects acceptable to KCOM and in compliance with all Applicable Laws including without limitation those relating to the environment, health and safety at work, carrying out street works, the handling, transportation, storage and disposal of waste and special waste, any regulations or orders made under such Applicable Laws and further, without limitation, with KCOM's reasonable access requirements, reasonable working practices instructions, Engineering Principles, and any other reasonable local instructions each as published by KCOM from time to time so far as the same relate to or affect any Facility, CP Apparatus or the, consents granted under a Licence. KCOM shall have the right, acting reasonably to refuse admittance and re-admittance to or order removal from any part of the Physical Infrastructure of any of the CP Personnel who in the opinion of KCOM (which shall be final and conclusive) is not conforming to all safety, security and works regulations and such other local instructions or is not a fit person to have access to the Physical Infrastructure. Action taken under this paragraph 5.4 shall be notified in writing to the CP by KCOM.
- 5.5 The CP shall provide a Facility and any CP Apparatus at its own expense and at its own risk. CP Apparatus shall be the property of the CP at all times.
- 5.6 Any waiver by either party of a breach of any provision of this Schedule 6 shall be limited to the particular breach and shall 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 shall be deemed a waiver of that breach.
- 5.7 Nothing in any Licence or this Schedule 6 or done under it shall create any tenancy of any part of any of the KCOM Network or confer upon the CP any right to the exclusive

## Agreement for the Provision of KCOM PIA

possession or use of any part of the KCOM Network other than as expressly provided in this Schedule 6.

### 6. Diversionary Works

- 6.1 If the landowner, highway authority or other appropriate body requires the relocation of network apparatus, the CP agrees that it will move its Facility and CP Apparatus in the affected area and will pay a proportion of the costs (which costs shall not include any costs to move the Physical Infrastructure and which may be properly recoverable from the landowner, highway authority or other appropriate body) in relation to the percentage of occupancy of the relevant part of the Physical Infrastructure. The CP will also be liable to pay any additional costs as a result of its action or inaction in relation to such diversionary works.
- 6.2 The CP is entitled to reinstall its Facility and CP Apparatus in the new allocated section of the Physical Infrastructure. KCOM will give the CP as much notice as possible prior to the date of the anticipated Physical Infrastructure alteration. If the CP chooses not to reinstall its Facility and CP Apparatus in the new allocated section of the Physical Infrastructure then it must notify KCOM as soon as possible that it wants to terminate the relevant Licence and in those cases KCOM will not seek to apply any early termination charges.
- 6.3 If KCOM itself wishes to make an alteration to the Physical Infrastructure that may affect the CP's Facility or CP Apparatus, it will give the CP reasonable written notice prior to the date of the anticipated Physical Infrastructure alteration as set out in the Operations Manual. The notice shall specify the details and the anticipated date of the Physical Infrastructure alteration. Following such notification, KCOM shall supply the CP such information as the CP may reasonably request. The CP shall notify KCOM as soon as practicable after receipt of such notice, of any alterations to the CP Apparatus as a result of the proposed Physical Infrastructure alteration and, subject to paragraph 6.4 below, a quotation for the cost of such alterations on the basis of the minimum cost consistent with good engineering practice. The CP shall not be entitled to reimbursement if and to the extent that those costs have been reimbursed under other agreements between KCOM and the CP. Where the parties are unable to agree the costs, the matter shall be referred to the escalation and dispute resolution process set out in clause 27. KCOM will make suitable arrangements where alterations are made to the Physical Infrastructure so that where the CP is required to relocate CP Apparatus the CP may benefit to the same extent as under the current Licence as set out in the Operations Manual and will not be the subject of additional charges to the extent those additional charges arise as a direct result of Physical Infrastructure alteration being made by KCOM pursuant to this paragraph. The parties shall agree a plan and carry out such alterations in accordance with the agreed plan. For the avoidance of doubt this paragraph will only apply where KCOM wants to make an alteration to the Physical Infrastructure and not to any alteration required by a third party under paragraph 6.1 or as a direct result of damage to the Physical Infrastructure.

## Agreement for the Provision of KCOM PIA

- 6.4 Each party shall pay its own costs arising out of the network alteration if:
- (a) the parties agree in writing to carry out their respective alterations for their mutual benefit; or
  - (b) the network alteration is lawfully directed by Ofcom which also lawfully directs each party to pay its own costs; or
  - (c) the Licence Completion Date is later than the date on which KCOM notifies the CP pursuant to paragraph 6.3 above that it proposes to carry out a network alteration in that part of the Physical Infrastructure in which the CP has placed an Order.
- 6.5 KCOM accepts no liability for any interruption of the CP's services under this paragraph 6. If the CP has installed CP Apparatus in Physical Infrastructure or has a licence to use the Physical Infrastructure and KCOM reasonably believes that the item of Physical Infrastructure must be replaced due to damage or relocated pursuant to paragraphs 6.1 and 6.3 then both parties must comply with the process set out or referred to in the Operations Manual. For the avoidance of doubt and notwithstanding any other term to the contrary KCOM reserves the right to remove CP Apparatus from the item of Physical Infrastructure and dispose of it without any liability to the CP in circumstances where the CP fails to remove the CP Apparatus from the item of Physical Infrastructure on or prior to any reasonable dates set by KCOM pursuant to the process set out or referred to in the Operations Manual.

### 7. Duration

- 7.1 Each Licence shall commence on the Licence Completion Date and shall continue until terminated thereafter under the terms contained in a Licence.

### 8. Termination

- 8.1 Every Licence will terminate where this Agreement is terminated but in any such case without prejudice to the respective rights of either party in respect of any antecedent claim or breach of contract.
- 8.2 The CP may terminate a Licence on not less than six (6) months' notice expiring at any time on or after the expiry of the Minimum Licence Period provided that the CP will not be liable to pay early termination charges where it terminates the Service in response to an Inactive Drop Wire under 4.1(r) above.
- 8.3 KCOM may terminate a Licence:
- (a) on not less than twelve (12) months' notice expiring at any time on or after the expiry of the Minimum Licence Period if KCOM is no longer required to provide Physical Infrastructure Access;
  - (b) on reasonable (and in any event not less than one (1) month's) notice expiring at any time if:
    - (i) KCOM is required by law or lawful instruction of any competent authority



## Agreement for the Provision of KCOM PIA

to regain occupation of a Facility; or

- (ii) Ofcom directs that a Licence of one or more Facility shall be terminated.
- (c) on reasonable (and in any event not less than (1) one month's) notice if the CP:
  - (i) is prohibited from providing telecommunications service(s) by Ofcom and/or ceases to be a communications provider as defined by section 405(1) of the Communications Act 2003, such termination to be in accordance with the timescales set out in Ofcom's direction. KCOM may immediately reject Orders for Service under such circumstances; or
  - (ii) purports to transfer the benefit and/or burden of a Licence without KCOM's prior written consent; or
  - (iii) fails or ceases to use a Facility as part of a PECN and there is congestion in the KCOM Network at the location and/or for a period and in the circumstances set out in the Operations Manual.

8.4 The provisions of this Schedule 6 (insofar as they relate to an individual Licence) shall (without prejudice to any pre-existing right of action of either party in respect of any breach by the other party of its obligations hereunder) immediately terminate on expiry of the relevant notice and cease to have effect and the parties shall be released from any further liability under this Schedule 6 (insofar as it relates to that individual Licence).

8.5 In the event of:

- (a) a breach on the part of the CP of its obligations in this Schedule 6 which is not remedied within a reasonable time after notice from KCOM; or
- (b) recurring or persistent breaches on the part of the CP of its obligations in respect of a Licence which give KCOM a right to issue a notice requiring remedy (including, without limitation, repeated late payment of sums due),

then the provisions of this Schedule 6 (insofar as they relate to an individual Licence) shall (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) once they have complied with paragraph 9 below immediately terminate on written notice and cease to have effect and the Parties will be released from any further liability under this Schedule 6 (insofar as it relates to that individual Licence).

8.6 In the event of:

- (a) a material breach on the part of KCOM of its obligations in this Schedule 6 which is not remedied within a reasonable time after notice from the CP; or
- (b) recurring or persistent material breaches on the part of KCOM of its obligations in respect of a Licence which give the CP a right to issue a notice requiring remedy,

## **Agreement for the Provision of KCOM PIA**

then the provisions of this Schedule 6 (insofar as they relate to an individual Licence) shall (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) once they have complied with paragraph 9 below immediately terminate on written notice and cease to have effect and the Parties will be released from any further liability under this Schedule 6 (insofar as it relates to that individual Licence).

### **9. Consequences of Termination**

9.1 On the termination (for whatever reason) of a Licence:

- (a) title and risk in the Facility shall pass to KCOM;
- (b) the CP shall forthwith remove all CP Apparatus and make good all damage caused by such removal to KCOM's reasonable satisfaction;
- (c) the CP shall pay to KCOM, if applicable, the Termination Charges; and
- (d) the CP shall pay to KCOM upon demand:
  - (i) the costs properly and reasonably incurred by KCOM in removing the CP Apparatus if the CP fails to do so within a reasonable time following reasonable notice by KCOM; and
  - (ii) costs properly and reasonably incurred by KCOM in reinstating the Facility and in the event that KCOM carries out such reinstatement (which it may or may not do at its absolute discretion).