



# Reference Offer for the Provision of Ancillary Services

## Schedule 4: Co-location

### 1. DEFINITIONS

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

### 2. GENERAL

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

2.2 Co-location provided pursuant to this Schedule will be a Co-location Hostel which allows for the CP and additional Communications Providers to locate their equipment in an Exchange Site and the provisions of paragraph 5.11 and 5.12 will apply when calculating the sum payable by the CP to KCOM for construction of a Co-location facility.

### 3. FORECASTS

3.1 As soon as reasonably practicable and in any event and not less than 20 Working Days prior to a Quarter, the CP will provide to KCOM an Advance Capacity Planning Forecast (ACPF) for Co-location.

3.2 It is acknowledged by the CP that ACPF will be used by KCOM for planning sufficient service resources to meet subsequent requirements of all Communications Providers.

3.3 ACPF for Co-location will be provided by the CP to KCOM on a rolling basis setting out the ordering intentions of the CP for a period of twelve months commencing on the first day of a Quarter, and will show the Exchange Sites where the CP intends to request Co-location together with an indication of the CP's own priority for each proposed Order.

3.4 KCOM will respond to the CP's ACPF for Co-location no later than 12 Working Days from submission of such ACPF confirming whether or not Co-location has already been provided at an Exchange Site and detailing KCOM's proposed timetable for receipt of CP orders as follows:

3.4.1 for the Quarter, a weekly list of proposed orders for Exchange Sites at which Co-location facilities are requested; and



**3.4.2** for the subsequent nine months, and subject to revisions necessary as a result of future aggregated forecasts, a quarterly list of the remaining Exchange Sites at which Co-location facilities have been requested within the CP's ACPF.

**3.5** The CP will notify KCOM no later than 3 Working Days from receipt of KCOM's proposal under paragraph 3.4 whether it wishes to:

**3.5.1** accept KCOM's proposed ordering pattern; or

**3.5.2** submit Orders in accordance with its originally submitted ACPF.

Such notification will be the committed weekly ordering pattern of the CP's Co-location Orders to be submitted under paragraph 4 for the Quarter. If the CP fails to give such notification to KCOM within the required time, the CP's ACPF will be void. If the CP notifies KCOM that it wishes to submit Orders in accordance with its originally submitted ACPF, the CP acknowledges that KCOM may not be able to meet required timescales and Schedule 2 will not apply to the ordering or provision of the Co-location facilities pursuant to such ACPF.

**3.6** If the CP fails to provide an ACPF by the required date set out in paragraph 3.1, KCOM cannot guarantee to respond to Orders placed during the following Quarter.

**3.7** The parties agree that if at any time the ACPFs collectively submitted by Communications Providers to KCOM for Services exceeds what is reasonably achievable by KCOM, then KCOM will meet with all relevant Communications Providers to agree what action will be taken (including the appropriate scaling down of forecasts for requests). However, if the relevant Communications Providers cannot reach agreement on the action to be taken KCOM reserves the right to allocate the available space to the Communications Providers in priority order based on the date on which their ACPFs were received by KCOM. KCOM will ensure that the CP has reasonable advance notice of any such meeting. The CP will comply with the reasonable ordering procedures notified by KCOM from time to time following such meeting.

#### **4. ORDERS AND SURVEYS**

**4.1** Subject to the CP having complied with the forecasting provisions in paragraph 3, the CP will submit to KCOM a PCR1 no later than 23:59 hours on the last Working Day of the week prior to the order week for submission of a PCR1 for that Exchange Site under paragraph 3.5. If the CP submits the PCR1 later than 23:59 hours, KCOM may process the Order but the CP acknowledges that KCOM may not be able to meet required timescales and Schedule 2 will not apply to the ordering or provision of the Co-location facilities pursuant to such Order. If a PCR1 submitted by the CP includes an Order which is not in accordance with or is wholly outside the committed weekly order



pattern under paragraph 3.5, KCOM will inform the CP that such Order will not immediately be progressed in accordance with paragraph 4.2 but that if the CP wishes such Order to proceed:

- 4.1.1** if a Third Party Communications Provider has included in its committed weekly order pattern an Order for Co-location facilities at that Exchange Site during that Quarter and it is practicable for KCOM to consolidate the CP's requirement with a Third Party Communications Provider's order, KCOM will ask the CP to resubmit its Order at the appropriate time; or
- 4.1.2** if a request for Co-location facilities at that Exchange Site is included in a Third Party Communications Provider's agreed plans during the nine month period following that Quarter, KCOM will request that the CP includes its requirements within the CP's next ACPF if the CP so wishes; or
- 4.1.3** if no Third Party Communications Provider has included a requirement for Co-location facilities at that Exchange Site in its ACPF, KCOM will either:
  - (i) ask the CP to resubmit such Order within a future ACPF if the CP so wishes; or
  - (ii) inform the CP that it is able to proceed with such additional Order in accordance with paragraph 4.2 provided that the CP acknowledges that KCOM may not be able to meet required timescales and Schedule 2 will not apply to the ordering or provision of the Co-location facilities pursuant to such Order.
- 4.2** If the CP orders Co-location facilities the CP will be liable for the payment of all Charges relating to the provision of such Co-location facilities (including costing and survey charges and for the cost of the Works) subject only to the provisions of this Schedule. For the avoidance of doubt, the survey fee is payable in the event that an offer of Co-location Services is made by KCOM to the CP using a PCR3 pursuant to paragraph 4.8 and the CP rejects such offer. For the avoidance of doubt, KCOM reserves the right to make an administrative charge for Orders for Co-location facilities and requests for information that it has rejected because of incomplete or erroneous information.
- 4.3** For each Exchange Site KCOM will provide to the CP no later than 10 Working Days from the first Working Day of the week following the week agreed as the order week for submission of a PCR1 for that Exchange Site under paragraph 3.5 a notification based on availability of Co-location that:
  - 4.3.1** subject to full survey (including indicative costs), and to any necessary consents, the CP's request for Co-location can be met; or
  - 4.3.2** insufficient space is available to meet the CP's request, in which case KCOM will state how much space is available and offer such space to the CP for Co-location; or



- 4.3.3** KCOM is unable to meet the CP's requirements and will provide reasons why Co-location is not available.
- 4.4** If the CP wishes to proceed on the basis of the space to be made available pursuant to paragraph 4.3.2, the CP will amend its Order accordingly and notify KCOM within 10 Working Days of notification by KCOM under paragraph 4.3.
- 4.5** If the reasons provided by KCOM pursuant to paragraph 4.3.2 or 4.3.3 indicate that there is insufficient, limited or no space for Co-location in the relevant Exchange Site, the CP may, provided the CP does so within 5 Working Days of such notification, visit the relevant Exchange Site at a reasonable time agreed with KCOM at a charge equivalent to the charge for an Escorted Access site visit as specified from time to time in the Price List.
- 4.6** If either:
- 4.6.1** the CP does not proceed or amend its Order under paragraph 4.4; or
  - 4.6.2** KCOM is not able to meet the CP's requirements under paragraph 4.3.3;
- the CP will be liable only for the payment of the charge for physical Co-location Order rejection as specified from time to time in the Price List.
- 4.7** If pursuant to paragraph 4.3.3 KCOM indicates Co-location is not available at an Exchange Site then the parties shall enter into negotiations to identify alternative solutions for the provision of Co-location facilities for the relevant Exchange Site.
- 4.8** No later than 40 Working Days from receipt of a PCR1, KCOM will provide to the CP a PCR3 and:
- 4.8.1** if the estimated cost of the Works to the CP for Co-location facilities is equal to or less than £50,000, such PCR3 will be for information purposes only and KCOM will proceed with the Works and the CP will be liable for the payment of the cost of the Works;
  - 4.8.2** if the estimated cost of Works to the CP for Co-location facilities is greater than £50,000 such PCR3 offer will be conditional on the CP and all other relevant Third Party Communications Providers notifying KCOM no later than 10 Working Days from such offer that such offer is accepted. In such circumstances, the Order will proceed. If the Order does not proceed such Order will be discontinued and the CP will only be liable for the payment of the Charges for a full survey as specified from time to time in the Price List.
- 4.9** KCOM will provide to the CP a list of those Third Party Communications Providers whose Co-location facilities at such Exchange Site are so affected and the parties agree that the CP and such Third Party Communications Providers are granted the authority under Clause 10.6(a) of the main body of this Agreement to discuss whether to commit to the relevant offer under paragraph 4.8.2 and for no other purpose.



- 4.10** If the CP accepts the results of a survey and offer pursuant to paragraphs 4.8.2 and 4.9, KCOM will, if requested by the CP, commence provision of services and facilities required under the CP's PCR3.
- 4.11** If KCOM provides to the CP a PCR3 under paragraph 4.8 KCOM it will also provide to the CP a Target Date. Such Target Date will normally be no later than 4 months from the date that the PCR3 is issued (if the estimated cost of the Works is equal to or less than £50,000) or is accepted by the CP (if the estimated cost of the Works is greater than £50,000). If in any case KCOM specifies a later Target Date KCOM will provide the CP with written justification for such Target Date.

## **5. WORKS**

- 5.1** KCOM will (either itself or by instructing outside consultants on its behalf) use its reasonable endeavours to obtain all necessary planning and building regulation approvals and all other necessary consents for the Works and for the proposed occupation of a CP Equipment Room. The CP will pay on demand the whole or (where on completion of the Works occupation is to be by more than one Communications Provider) a due proportion of the costs of obtaining such approvals and consents. For the avoidance of doubt, the CP will not make any application for planning permission in respect of any Exchange Site.
- 5.2** If preliminary indications from a request to the planning authority indicate that planning consent may not be granted, the Works will be suspended and the parties will meet to agree a course of action and if:
- 5.2.1** the parties agree modifications to the CP's Order and as a result of such modifications planning consent is granted, the Works will proceed and the Target Date will be amended accordingly; or
  - 5.2.2** planning consent is not granted, whether the parties agree modifications or agree to make no changes to the planning application, the Order will be discontinued and the CP will pay KCOM's reasonable costs, including reinstatement if necessary; or
  - 5.2.3** the CP changes location within the same Exchange Site and this has no material effect on costs, and as a result of such change planning consent is granted, the Works will proceed and the Target Date will be amended accordingly; or
  - 5.2.4** the CP changes location within the same Exchange Site and this has a material effect on costs or if the CP changes its Order to another Exchange Site, the current Order will be discontinued and the CP will pay KCOM's reasonable costs, including reinstatement if



necessary. Such change to an Order will be treated as a new Order. On refusal of planning consent KCOM will notify the CP.

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

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

**5.3.1** as would not materially affect the CP's intended use and enjoyment of the Specified Floor Area and may be required by the local planning authorities or other relevant bodies or authorities; or

**5.3.2** as may be necessary to give effect to any of their requirements; or

**5.3.3** as may be required by circumstances or by matters beyond the control of KCOM; or

**5.3.4** as may be otherwise agreed by the CP (whose agreement will not be unreasonably withheld, refused or delayed); or

**5.3.5** to the extent that it is required to comply with any statutory regulations or requirements or the requirements of any public authority;

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

**5.4** Prior to the RFI Date the precise area of the Specified Floor Area to be the subject of the Licence will be measured by KCOM in accordance with the Code of Measuring Practice and will be accepted by KCOM and the CP so long as it falls within a tolerance of 5% either way of the gross internal area specified in the PCR3.

**5.5** If the RFI Date will not have occurred within 42 Working Days of the Target Date the CP may at any time thereafter serve notice on KCOM to terminate the provisions of this Schedule forthwith (insofar as they relate to the relevant Exchange Site only) but without prejudice to the rights of either party in respect of any antecedent breach of any agreement or condition herein contained and without prejudice to the obligation on the part of the CP under paragraph 10.

**5.6** If the RFI Date will not have occurred within 42 Working Days of the Target Date KCOM may at any time thereafter serve notice on the CP to terminate the provisions of this Schedule forthwith (insofar



as they relate to the relevant Exchange Site only) if the carrying out or continuation of the Works is being prevented because:

**5.6.1** there is some defect or deficiency in the relevant Exchange Site that renders the Works impracticable or means the Works can only be undertaken at a cost that is unreasonable in the circumstances;

**5.6.2** the Works are prevented by war, act of God, government action; or

**5.6.3** of the occurrence of any circumstances beyond KCOM's reasonable control;

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

- 5.7** KCOM will, subject to being paid its reasonable copying and administration charges, supply as soon as reasonably practicable to the CP upon a request made by the CP such documentation as is reasonable to demonstrate how the cost of the Works are to be structured and calculated. This documentation will, where appropriate, include such tender documentation together with the Contractor's tender reply that is not subject to any confidentiality undertaking required by the Contractor.
- 5.8** KCOM shall respond promptly to the CP's reasonable requests for information on the specification or progress of Works. If KCOM fails to do so, KCOM shall allow the CP to communicate directly to any sub-contractor of KCOM contracted to do one or more part(s) of the Works to obtain such information.
- 5.9** KCOM will when informing the CP of the Anticipated Date under paragraph 6.1 notify the CP of KCOM's best estimate (calculated where relevant pursuant to paragraph 5.11) of the sum payable by the CP in respect of the Works. Such sum will be paid by the CP to KCOM on or before completion of the Works as instructed by KCOM and prior to KCOM issuing the Licence. KCOM will give the CP ten Working Days' notice of all payments properly due pursuant to the Building Contract (including stage payments required under the Building Contract where KCOM can demonstrate that it has been reasonably required to make such payments) and also in connection with the completion of the Works and the CP will pay and reimburse to KCOM all such sums as cleared funds so as to enable KCOM to meet its payment obligations under the Building Contract.
- 5.10** As soon as reasonably practicable after payment of the last sum to be paid under paragraph 5.9, KCOM will notify the CP of the actual final sum payable by the CP in respect of the Works. The amount due to KCOM will be adjusted accordingly by the amount over or under paid by the CP



under paragraph 5.9. Any payment due to KCOM will be made in accordance with Clause 8 of the main body of this Agreement. Any refund due to the CP will be made as soon as reasonably practicable together with interest on such refund at the Interest Rate from the date of payment by the CP under paragraph 5.9 to the date of payment by KCOM to the CP. To the extent that the CP disagrees with the final sum in respect of the Works and is unable to resolve such disagreement with KCOM, either party will be entitled to refer such Dispute to an Independent Expert for determination under Clause 18 of the main body of this Agreement.

**5.11** In paragraphs 5.12 to 5.15 the following words shall have the following meanings;

“Multi-user Facility” means a Co-location Hostel (or other CP Equipment Room) designed to accommodate more than one Communications Provider or such facility that is at any time occupied by more than one Communications Provider.

“Occupied Space” means, with respect to any Multi-user Facility, the aggregate amount of space that is taken as Specified Floor Area under Licence by Communications Providers from time to time (so, for example, if a Multi-user Facility has a total area of 100m<sup>2</sup> and is occupied by two Communications Providers taking Specified Floor Area of 25m<sup>2</sup> each with the remaining space being unoccupied, the total Occupied Space for that Multi-user Facility is 50m<sup>2</sup> and each of the two Communications Providers occupies 50% of the Occupied Space at that Multi-user Facility).

“Occupying CP” means, with respect to any Multi-user Facility, a Communications Provider that takes Specified Floor Area under a Licence at that Multi-user Facility.

“Original Occupying CP” means, with respect to any Multi-user Facility, the first Communications Provider to take Specified Floor Area under a Licence at that Multi-user Facility (and if more than one Communications Provider takes Specified Floor Area under Licences at the same time and, together, are the first Communications Providers to take Specified Floor Area under Licence at that Multi-user Facility, each of those Communications Providers shall be an Original Occupying CP).

“Subsequent Occupying CP” means, with respect to any Multi-user Facility, a Communications Provider that takes Specified Floor Area under a Licence at that Multi-user Facility after Specified Floor Area has already been taken at that Multi-user Facility by an Original Occupying CP.

“Original Works Cost” means, with respect to any Multi-user Facility, the actual final sum payable by a CP in respect of the Works for that Multi-user Facility (in accordance with paragraphs 5.9 and 5.10).

“Carrying Works Cost” means, with respect to any Multi-user Facility at any time, the Original Works Cost for that Multi-user Facility, less any deductions to the same that have been made in





accordance with sub-paragraph 5.13(b).

“Cost Contribution Charge” means a sum payable by an Occupying CP by way of a contribution to the cost of the Works for a Multi-user Facility, as specified in paragraphs 5.12 and 5.13.

**5.12** Where a Multi-user Facility has been constructed and there is more than one Original Occupying CP, each Original Occupying CP will pay KCOM a Cost Contribution Charge calculated as follows:

$$A = B \times C$$

where

A = the individual Cost Contribution Charge payable by each Original Occupying CP

B = the Original Works Cost

C = the percentage of the Occupied Space taken under a Licence by each Original Occupying CP

For the avoidance of doubt if there is only one Original Occupying CP at a Multi-user Facility, that Communications Provider shall pay the whole of the Original Works Cost in accordance with paragraphs 5.9 and 5.10.

**5.13** Where, with respect to any Multi-user Facility, an Occupying CP reduces the amount of Specified Floor Area it takes by either varying or terminating its Licences(s) for that Multi-user Facility, then;

(a) that Occupying CP shall not be entitled to a refund of any Cost Contribution Charges it has already paid with respect to the space it has relinquished at the Multi-user Facility as a result of the variation or termination of its Licences(s); and

(b) an amount equal to the aggregate amount of the Cost Contribution Charges that have been paid by that Occupying CP with respect to the space it has relinquished at that Multi-user Facility (less any refunds of the same given to that Occupying CP under paragraph 5.14) shall be deducted from the Original Works Cost or Carrying Works Cost (as appropriate) for the purpose of calculating the Carrying Works Cost for that Multi-user Facility going forward.

**5.14** Where, with respect to any Multi-user Facility;

(a) an Occupying CP takes additional Specified Floor Area at that Multi-user Facility by varying or entering into a Licence for the same; or

(b) a Subsequent Occupying CP takes Specified Floor Area at that Multi-user Facility by entering into a Licence for the same

then;



- (c) KCOM shall give a refund to each Occupying CP at that Multi-user Facility of an amount equal to the aggregate amount of the Cost Contribution Charges already paid by that Occupying CP with respect to that Multi-user Facility (less any refunds of the same already given to that Occupying CP under this paragraph 5.14); and
- (d) each Occupying CP at that Multi-user Facility and (where relevant) the Subsequent Occupying CP shall pay a new Cost Contribution Charge calculated as follows;

$$A = B \times C$$

where

A = the new Cost Contribution Charge payable by the Occupying CP or Subsequent Occupying CP

B = the Carrying Works Cost

C = the percentage of the Occupied Space taken under Licence by each Original Occupying CP or Subsequent Occupying CP

Where a refund is due to be given to an Occupying CP by KCOM under sub-paragraph (c), above, the amount of that refund shall be netted off against the new Cost Contribution Charge payable under sub-paragraph (d), above, and KCOM shall issue an appropriate invoice and/or credit note to the Occupying CP reflecting the same.

When an Occupying CP or Subsequent Occupying CP enters into a Licence to take Specified Floor Area at a Multi-user Facility, KCOM shall confirm the value of the Carrying Works Cost and the net Cost Contribution Charge that will be due prior to the completion of the Licence.

- 5.15** With respect to each Multi-user Facility; the provisions of paragraphs 5.12 to 5.14 shall no longer apply with effect from the tenth anniversary of the date on which the Original Occupying CP(s) first took Specified Floor Area under a Licence at that Multi-user Facility; so that with effect from this date;
- (a) no further Cost Contribution Charges shall be due from any Occupying CPs or Subsequent Occupying CPs with respect to that Multi-user Facility; or
- (b) no further refunds of Cost Contribution Charges shall be given to any Occupying CPs with respect to that Multi-user Facility

## **6. TIMING AND COMPLETION OF WORKS**

- 6.1** Not less than 15 Working Days prior to the date upon which the Representative anticipates the Works will be completed (hereinafter referred to as "the **Anticipated Date**") KCOM will inform the



CP and arrange a meeting on the Anticipated Date at which meeting the Representative and the CP and/or their respective representatives will attend. KCOM will afford the CP and/or their representative the opportunity of making representations to it regarding the Works and completion of the same and will procure that the Representative takes into consideration in determining whether the Works are completed pursuant to the provisions of the Building Contract any such representations made by or on behalf of the CP.

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



initial Target Date shall still be the date from which fixed compensation, if any, is payable under Schedule 4.

- 6.7** Where it becomes apparent to the Representative that the total estimated cost of the Works to the CP will exceed the cost anticipated as set out in the PCR3 by more than 50 percent:
- 6.7.1** KCOM will by written notice served on the CP within 5 Working Days advise the CP of its best estimate of revised costs.
- 6.7.2** The CP may within 5 Working Days of receipt of the notice referred to in paragraph 6.7.1 serve written notice to terminate the provisions of this Schedule in relation to the PCR3 in question and paragraph 10 will apply, (unless the CP has notified KCOM of a Dispute under Clause 18 of the main body of this Agreement, failing which the CP will be responsible for the cost as so increased.)
- 6.7.3** Unless notice is served by the CP pursuant to paragraph 6.7.2 KCOM is obliged to continue to carry out the Works in a diligent and timely manner in accordance with its obligations in this Schedule but subject to paragraph 5.5.
- 6.8** The CP and its representatives may by prior arrangement with the Representative enter (but not more than twice) the Exchange Site in order to inspect and view the state and progress of the Works and the materials used and the CP and its representatives will comply with all and any requirements that the Contractor may impose with regard to such inspections.
- 6.9** The CP and its representatives in inspecting the Exchange Site may not impede or obstruct the progress of the Works nor issue any instructions to the Contractor but will address any requirement or complaint to the Representative.
- 6.10** KCOM will pay due regard to the requirements of the CP which are consistent with the relevant PCR3 and the terms of this Agreement.
- 6.11** KCOM will make good any defects in the Works properly notified in writing by the CP within the defects liability period of the Building Contract as soon as possible to the extent that KCOM is able to enforce the defects liability provisions in the Building Contract. If KCOM is required to take proceedings to enforce the defects liability provisions, such action will be at the CP's expense.
- 6.12** In relation to this paragraph 6.12 and without prejudice to the generality of KCOM's obligations in paragraph 5.3, KCOM will use its reasonable endeavours to enforce the Representative's duties and obligations to exercise the degree of skill and care set out within the terms of its appointment with KCOM to manage the Works efficiently and to ensure that RFI is achieved on or before the Target Date.



## 7. LICENCE COMPLETION

- 7.1** Subject to paragraph 9, a Licence relating to the Specified Floor Area and the CP Equipment Room which are the subject of the relevant PCR3 will be granted with effect from the Licence Completion Date.
- 7.2** The CP will commence to pay to KCOM the Licence Fee in relation to the relevant Specified Floor Area on and from the Licence Completion Date whether or not the CP is permitted to take occupation on that date.

## 8. TITLE

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

## 9. NO POSSESSION

- 9.1** The CP will not be entitled to occupation of any part of an Exchange Site and a Licence of a Specified Floor Area will not be granted until:
- 9.1.1** the sums payable against the best estimate in respect of the Works under paragraph 5.7 have been paid save for the purposes of inspecting the CP Equipment Room and its facilities in accordance with this Part; and
- 9.1.2** pursuant to Clause 12.5 of the main body of this Agreement the CP has either provided evidence of policies of insurance or, where the CP has not provided such evidence, has informed KCOM that it is unable to do so in order that KCOM may effect insurance.

## 10. TERMINATION

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

then the provisions of the Schedule (insofar as they relate to the Exchange Site) will (without prejudice to any pre-existing right of action of any party in respect of any breach by any other party of its obligations hereunder) immediately terminate on written notice and cease to have effect and



the parties will be released from any further liability under this Schedule (insofar as it relates to the Exchange Site) save that the CP will pay to KCOM upon demand

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



## **11. NON-MERGER**

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

## **12. FURTHER INFORMATION**

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

**12.2** If the floor plan requested in paragraph 12.1 is newly compiled as a result of such request, the CP will pay the charge for the supply of such floor plan at a charge specified from time to time in the Price List.

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

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

## **13. EXISTING CO-LOCATION FACILITIES**

**13.1** To the extent KCOM has already provided a CP Equipment Room enabling Co-Location at an Exchange Site, KCOM reserves the right to apply the provisions of this paragraph 13 in order to modify the application of the remainder of this Schedule 4.

**13.2** KCOM may from time to time specify Charges in the Price List for CPs to utilise Co-Location in the CP Equipment Room at an Exchange Site enabled as described in paragraph 13.1.





**13.3** If the CP places an Order against the Charges in the Price List specified in paragraph 13.2, then KCOM will notify the CP within 10 Working Days whether the provisions of this paragraph 13 shall modify the application of the paragraphs of this Schedule 4 referred to below, as follows (and for the avoidance of doubt, any paragraphs and annexes not referred to shall be read unamended):

**13.3.1** sub-paragraph 2.2 shall be read so that the wording from ‘and the provisions of...’ to the end of that sub-paragraph is deleted;

**13.3.2** sub-paragraph 4.1 shall be read so that the words ‘in accordance with paragraph 4.2’ at the head wording of sub-paragraph 4.1, and within sub-paragraph 4.1.3(ii) is deleted;

**13.3.3** sub-paragraphs 4.2 to 4.11 inclusive shall be deleted and replaced with a new sub-paragraph 4.2, as follows: ‘If the CP orders Co-location facilities the CP will be liable for the payment of all Charges relating to the provision of such Co-location facilities (including costing and survey charges and for the cost of the Works) subject only to the provisions of this Schedule.’;

**13.3.4** sub-paragraphs 5.1 to 5.15 inclusive shall be deleted and replaced with a new sub-paragraph 5.1, as follows: ‘KCOM will (either itself or by instructing outside consultants on its behalf) use its reasonable endeavours to obtain all necessary planning and building regulation approvals and all other necessary consents for the Works and for the proposed occupation of a CP Equipment Room.’;

**13.3.5** sub-paragraphs 6.1 to 6.12 inclusive shall be deleted and replaced with new sub-paragraphs 6.1 to 6.6 inclusive, as follows:

#### **‘6. TIMING AND COMPLETION OF WORKS**

6.1 Subject to the CP making ACPFs in accordance with paragraph 3, and placing Orders in accordance with paragraph 4, where KCOM has already provided a CP Equipment Room enabling Co-Location at an Exchange Site in respect of such Orders, KCOM will deal with Orders in order of receipt.

6.2 As soon as reasonably practicable following receipt of an Order, the Representative will inform the CP about the extent of the Works and advise of the date upon which the Representative anticipates the Works will be completed (hereinafter referred to as “the **Anticipated Date**”) and, where applicable, any additional costs for the Works.

6.3 Within 10 Working Days of receipt of the information detailed in paragraph 6.2, the CP will advise whether it wants to proceed on the basis of the Anticipated Date and any additional costs quoted for the Works.

6.4 The nature of the Works required where KCOM already has a CP Equipment Room enabling Co-Location at an Exchange Site means that while KCOM will afford the CP and/or

their representative the opportunity of making representations to it on or before the Anticipated Date regarding the Works and completion of the same, the Representative shall, acting reasonably, have absolute discretion in determining whether the Works are completed.

6.5 Upon the Anticipated Date the Representative will forthwith either:

6.5.1 certify both to KCOM and to the CP that date to be the RFI Date in which case if there are any works of a minor or unfinished nature KCOM will procure that (where they are within the construction element of the Works) the same are rectified as soon as possible and in any event within six months of the RFI Date and such certificate will be final and binding upon both KCOM and the CP; or

6.5.2 not certify the RFI Date but will notify KCOM and the CP in writing of a list of items to be completed and/or defects to be remedied before the RFI Date can be certified.

6.6 KCOM (via the Representative) reserves the right to amend the Anticipated Date, provided that if the Anticipated Date is extended by forty or more Working Days from the initial Anticipated Date specified in paragraph 6.2, the CP has the right to withdraw the Order(s) concerned and receive a refund of the Charges it has paid to date.'

**13.3.6** sub-paragraph 7.1 shall be deleted and replaced with new sub-paragraph 7.1, as follows:

'Subject to paragraph 9, a Licence relating to the Specified Floor Area and the CP Equipment Room will be granted with effect from the Licence Completion Date.'

**13.3.7** sub-paragraph 10.1 shall be deleted and replaced with new sub-paragraph 10.1, as follows:

'In the event of a material breach on the part of the CP of its obligations in this Schedule which is not remedied within a reasonable time after notice from KCOM, then the provisions of this Schedule (insofar as they relate to the Exchange Site) will (without prejudice to any pre-existing right of action of any party in respect of any breach by any other party of its obligations hereunder) immediately terminate on written notice and cease to have effect and the parties will be released from any further liability under this Schedule (insofar as it relates to the Exchange Site) save that the CP will pay to KCOM upon demand:

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

**13.3.8** Sub-paragraph 12.4 shall be deleted and not replaced.



## ANNEX 1

### Site Access

#### 1. Definitions

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

#### 2. Description of service

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

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

#### 2.3 KCOM Escorted Access services

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

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

2.3.2 planned access outside KCOM's Normal Working Hours;

2.3.3 unplanned access during KCOM's Normal Working Hours;

2.3.4 unplanned access outside KCOM's Normal Working Hours.

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



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

Time of day: [Note 1]	Notice Period	Response/Access Times
Planned visit during KCOM's Normal Working Hours	72 hours (3 Working Days) notice	N/A
Planned visit outside KCOM's Normal Working Hours	72 hours (3 Working Days) notice	N/A
Unplanned visit during KCOM's Normal Working Hours	N/A	Response Time: [Note 2] Access Within: [Note 2]
Unplanned visit outside KCOM's Normal Working Hours	N/A	Response Time: [Note 2] Access Within: [Note 2]

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

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

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

2.6 KCOM will use its reasonable endeavours to meet the response and access times as set out in the table in paragraph 2.4 of this Annex.

### 3. Security

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

3.2 The CP acknowledges that access to each Exchange Site will be controlled at all times and KCOM will provide an audit trail of any access to such Exchange Sites.

3.3 The CP may access KCOM communal areas provided that this does not facilitate access to KCOM network areas.

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



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

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

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

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

### **3.7 Access to Guarded Buildings**

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

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

### **3.8 Access to Unguarded Buildings**

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

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

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

### **3.9 Access Cards and PINs**

**3.9.1** In an Exchange Site where access is provided by means of an electronic access control system using access cards and PINs, only CP employees, agents or contractors issued



with an access card and a valid PIN programmed to allow entry will be allowed automatic entry into an operational building at the Exchange Site.

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

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

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

### **3.10 Electronic Access Provided Remotely**

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

### **3.11 Access using keys**

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

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

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

## **4. Charges**

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



## ANNEX 2

### Provision of Standby Power ("Essential Services Supply")

#### 1. Definitions

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

#### 2. Description of Product

2.1 KCOM will provide the CP with access to Essential Services Supply ("ESS") within a Co-location Hostel.

#### 3. Provision of ESS Power

3.1 If the CP requires provision of ESS, the CP will request provision by means of the PCR1. On receipt of the PCR1, KCOM will check to see if there is sufficient spare unassigned ESS power at the relevant Exchange Site. If sufficient spare unassigned ESS power is available, at the site requested, the cooling and lighting throughout the Co-location Hostel will be linked to a standby power circuit together with the CP's Specified Floor Area within the Co-location Hostel.

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

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

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

3.5 If KCOM is able to identify the requirements of all the Third Party Communications Providers within an Exchange Site, KCOM will, within 60 Working Days, provide a time and cost estimate to all Third Party Communications Providers located at that Exchange Site. If KCOM does provide ESS power, the costs of so doing will be apportioned amongst all Third Party Communications Providers and the CP on the basis of the potential power load per kilowatt of power provided to each of the aforementioned.





**3.6** If the CP or one or more Third Party Communications Provider confirms within 10 Working Days of receipt of KCOM's estimated costs under paragraph 3.5 that installation of ESS power should proceed, such provision will be carried out. The CP acknowledges that installation of ESS power will entail a period of disruption to the Services. The parties will co-operate to minimise such disruption to the Services. For the avoidance of doubt, any such period of interruption to the Services shall be excluded from any calculations for compensation that might otherwise be payable pursuant to Schedule 2 of this Agreement.

#### **4. Charges**

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



## ANNEX 3

### KCOM Assisted Site Delivery Service (KASDS)

#### 1. Definitions

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

#### 2. Description of service

2.1 Subject to the provisions of this Annex KCOM will provide to the CP the KCOM Assisted Site Delivery Service (“KASDS”) at an Exchange Site to enable safe handling and transportation of the CP’s Compliant Equipment to the CP’s Specified Floor Area. The KASDS will be provided at an agreed time following completion of the Specified Floor Area pursuant to Schedule 3.

2.2 KCOM will provide KASDS for delivery of the CP’s Compliant Equipment to an Exchange Site if the CP has specified such requirement in its PCR1 pursuant to Schedule 3. If KASDS is unavailable at any Exchange Site because KCOM does not provide such a KASDS for itself, the CP may deliver Compliant Equipment providing the requisite notice has been provided to KCOM.

2.3 The CP will order KASDS not less than 10 Working Days prior to the CP’s required delivery date. KCOM will acknowledge such Order no later than 3 Working Days from receipt of the Order. If KCOM is unable to meet the CP’s required delivery date, KCOM will contact the CP as soon as reasonably practicable and the parties will agree a mutually acceptable revised date.

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

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

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

#### 3. Legal and site specific requirements

3.1 The CP will ensure that its employees, contractors, sub-contractors and agents comply with all regulations and practices applicable at the Exchange Site and as notified by KCOM to the CP from time to time.



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