

Agreement for the Provision of KCOM PIA

Schedule 5: Network Adjustments

1. Introduction

- 1.1 This Schedule sets out the terms that apply where a CP places a Request for a Network Adjustment.

2. Definitions

For the purposes of this Schedule the following terms shall have the meanings set out below:

“Self-Provide Request” means a Request for a Network Adjustment where the CP will carry out the work itself.

“Self-Provide Terms” means the supplemental terms which apply to a Self-Provide Request as set out in the Annex to this Schedule.

“Response Notice” means a response to a Self-Provide Request.

3. Network Adjustment Qualification

- 3.1 The CP may only submit a Self-Provide Request for a Network Adjustment where:
- (a) it has a valid and accepted Request for the Physical Infrastructure which is the subject of the Request for a Network Adjustment; and
 - (b) it provides as part of the Request the information set out or referred to in the Operations Manual.
- 3.2 A Self-Provide Request for Network Adjustments may be rejected if any information is inaccurate, incomplete or incorrect, or if it is a duplicate Request.
- 3.3 Prior to submitting any Self-Provide Request for a Network Adjustment, the CP must have taken reasonable steps to use the Physical Infrastructure and have explored reasonable alternative options including alternative routes and engineering options using Good Industry Practice. The CP shall provide such information and assistance as KCOM may reasonably require to confirm the exact nature and details of the Network Adjustment, the options and alternatives considered and the steps taken to attempt to use the Physical Infrastructure.
- 3.4 KCOM may refuse to accept a Self-Provide Request for Network Adjustments where:
- (a) the CP is the subject of a breach notice and has failed to rectify the breach within

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the time period specified by KCOM in the breach notice; or

- (b) KCOM does not reasonably believe the Network Adjustment meets the Network Adjustment Criteria.

4. Scope of Network Adjustments

- 4.1 KCOM sets out in the Operations Manual a number of engineering scenarios and whether they may qualify as Network Adjustments. The CP acknowledges and accepts that it is or will be more efficient and timely to undertake any underground Network Adjustment under a Self-Provide Request and must use reasonable endeavours and aim to complete all underground Network Adjustments as a Self-Provide Request.
- 4.2 KCOM will only accept a Self-Provide Request for Network Adjustments where it reasonably believes they meet the Network Adjustment Criteria and where they have or are reasonably expected to achieve permanent benefits to the Physical Infrastructure. Without prejudice to paragraph 6.1 below KCOM may provide a qualified acceptance using a Response Notice which is subject to conditions and if this occurs the acceptance will only apply and be valid where the CP accepts the conditions and they are met within any time period specified by KCOM.
- 4.3 Network Adjustments do not include any work which KCOM considers to be outside its current Physical Infrastructure footprint or which require new duct, new chambers or new poles unless, in the case of new poles, KCOM considers it necessary to resolve the issues referred to at paragraph 7.8(a) or (b) below.
- 4.4 Network Adjustments do not include:
 - (a) any work within a building; or
 - (b) any work to remove obstructions in, on or close to the Physical Infrastructure which are temporary in nature including the removal of silt, water, branches or foliage of any kind.

5. Self-Provide Requests for Adjustment Services

- 5.1 If KCOM provides a Response Notice which accepts a Request for a Network Adjustment then the CP must submit a Self-Provide Request provided the Network Adjustment is something that KCOM allows the CP to do itself as set out in the Operations Manual.

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- 5.2 The CP may not submit a Self-Provide Request unless and until KCOM provides a Response Notice which accepts the Request for the Network Adjustment.
- 5.3 Any Self-Provide Request will be subject to the Self-Provide Terms.
- 5.4 Subject to paragraph 7 below, the CP will be liable for costs for work under a Self-Provide Request.
- 5.5 If KCOM provides a Response Notice which accepts a Self-Provide Request for a Network Adjustment then:
- (a) whilst KCOM may have considered the original Network Adjustment to be valid, subsequent requirements for additional work including but not limited to additional duct blockages may result in the Network Adjustment for the additional work being rejected by KCOM (acting reasonably) on the basis the original work and the additional work now means it is no longer feasible and efficient to conduct the repair and KCOM will not be liable for any costs or charges in respect of the additional work relating to the Network Adjustment; and
 - (b) the CP must confirm the Self-Provide Request it wants to place under paragraph 5.1 within five (5) Working Days of the date the Response Notice is sent to the CP after which time the Response Notice will expire and if this occurs the CP will need to re-submit a new Self-Provide Request for a Network Adjustment and the CP will be liable to pay a Network Adjustment Verification Charge.

6. Network Adjustment Costs

- 6.1 A Self-Provide Request for a Network Adjustment will enable the CP, subject to the rules and process set out in the Operations Manual, to do the work itself at its own cost and expense, subject to the provisions of paragraph 7.
- 6.2 Any work excluded from Self-Provide must be undertaken by KCOM at cost to the CP except where paragraph 7.8 applies.
- 6.3 KCOM will verify each Network Adjustment and where KCOM reasonably believes:
- (a) that the Network Adjustment is unnecessary when assessed against the Network Adjustment Criteria; or

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- (b) works by the CP fail to meet the Engineering Principles or safety requirements set out in this Agreement; or
- (c) that the costs incurred by the CP in carrying out Network Adjustment works are excessive or disproportionate;

then in the case of (a) the Self-Provide Request will be suspended until KCOM is satisfied (acting reasonably) that the work has been rectified and in the case of (b) the Self-Provide Request will be rejected and in both cases the CP will be liable to pay KCOM the Network Adjustment Verification Charge as set out in the Price List and in the case of (c) KCOM may request evidence of costs incurred by the CP in carrying out Network Adjustment works and/or costs may be verified against the costs KCOM would have incurred had it carried out such works.

6.4 If a Self-Provide Request for a Network Adjustment is rejected by KCOM and the CP still wants to proceed with the work then it may, subject to the rules and process set out in the Operations Manual:

- (a) do the work itself at its cost and expense; or
- (b) request KCOM (at KCOM's sole discretion) to do the work at the CP's sole cost and expense

and the terms set out at paragraph 7 below will not apply.

6.5 In the case of 6.4(b) above, KCOM will provide a quote for the cost to the CP prior to carrying out any work and will not carry out any work until such quote has been approved by the CP in writing.

6.6 The CP will be liable to pay the Network Adjustment Verification Charge if it cancels or otherwise fails to complete a Self-Provide Request.

6.7 Any miscellaneous charges (that KCOM may incur relating to the Network Adjustment) or any costs KCOM incurs as set out in clause 6.5 above, will be payable by the CP for the Network Adjustment in full and where there are sufficient amounts remaining deducted from the relevant Network Adjustment Fund. For the avoidance of doubt, such charges and costs shall be payable by the CP in their entirety and no contribution will be made by KCOM.

7. Network Adjustment Fund

7.1 For the purposes of this paragraph:

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- (a) the “Network Adjustment Fund” is calculated by KCOM by multiplying the total kilometres of Spine Duct in a Request for Physical Infrastructure Access by seven hundred pounds (£700). In the event that the amount of Spine Duct in a Request for Physical Infrastructure Access is less than one kilometre the Network Adjustment Fund will be subject to a pro rata calculation;
 - (b) “Network Adjustment Cap” a maximum seven hundred pounds (£700) cost per Network Adjustment.
- 7.2 Any calculation of distances for the purposes of paragraph 7.1(a) will be based on KCOM’s records at the time of the Request for Physical Infrastructure Access and upon receipt of the Build Completion Pack.
- 7.3 The CP may only benefit from the Network Adjustment Fund:
 - (a) where the Request for Physical Infrastructure Access which is the subject of the Network Adjustment includes Spine Duct which in KCOM’s reasonable opinion directly relates to the Network Adjustment;
 - (b) in the case of a Lead-In Duct, where that Lead-in Duct is subsequent to a Request for Physical Infrastructure Access and connected (directly or indirectly) to Spine Duct in that Request for Physical Infrastructure Access; and
 - (c) where each individual Network Adjustment does not exceed the Network Adjustment Cap.
- 7.4 KCOM will make available to the CP, the Network Adjustment Fund in respect of each Request for Physical Infrastructure Access. The Network Adjustment Fund will be the maximum value of the value available to the CP for the entirety of the area subject to each Request for Physical Infrastructure Access, and each individual Network Adjustment shall be subject to the Network Adjustment Cap.
- 7.5 The CP will be liable for any and all costs arising from a Network Adjustment that exceed the Network Adjustment Cap. KCOM shall only make a maximum 50% (£350) contribution to the cost of the Network Adjustment subject to such Network Adjustment not exceeding the Network Adjustment Cap. Where it is expected that the cost of a Network Adjustment will exceed the Network Adjustment Cap, the CP shall provide an estimate of those charges in the Self-Provide Request.
- 7.6 The CP and KCOM will be entitled to draw down on the Network Adjustment Fund until the value has reached zero (£0).
- 7.7 Subject to paragraph 7.5, the CP and KCOM shall each be liable to pay 50% of the costs for work under a Request for Network Adjustment up to the value of the Network

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Adjustment Fund. Once the value of the Network Adjustment Fund in relation to a Request for Physical Infrastructure Access has reached zero (£0), the CP shall be solely liable to pay in full for any further Network Adjustments works required in respect of the applicable Request for Physical Infrastructure Access.

7.8 KCOM will not charge the CP for a Network Adjustment which it considers is necessary:

- (a) to provide capacity on a Pole to facilitate the provision of a drop wire;
- (b) to replace a Defective Pole used for drop wires,

provided that the CP is and will remain liable for any charges to disconnect and re-connect CP Apparatus on a Pole and on a Defective Pole.

7.9 The Network Adjustment Fund is based on the CP's actual use of the Spine Duct. KCOM reserves the right to retrospectively amend the Network Adjustment Fund at any time and recover charges from the CP based on the revised Network Adjustment Fund where the actual amount of Spine Duct comprised in the Build Completion Pack is less than the amount included in the original Request for Physical Infrastructure Access. If the CP has declared Spine Duct in the Build Completion Pack which it has not actually used then notwithstanding any other term to the contrary any Network Adjustments which relate to that Build Completion Pack will be paid for in full by the CP on demand from KCOM.

7.10 Subject to paragraph 7.2, if the CP wants to deploy multiple cables up to the relevant point upon which Licence Fees are calculated, then the Network Adjustment will be calculated once only and on the basis of the CP's first use and installation in that item of Physical Infrastructure.

7.11 The Network Adjustment Limit may only be transferred in its entirety as part of a novation of the entire Agreement made pursuant to clause 29.1(a).

7.12 KCOM reserves the right to recover from the CP any costs or amounts incurred by it in respect of a Request for a Network Adjustment if the CP fails to use the Physical Infrastructure which was the subject of the Network Adjustment for the Permitted Use and/or provide a Build Completion Pack on or prior to the expiry of the Build Period.

7.13 Any miscellaneous charges (as set out in the Price List) that KCOM may incur relating to the Network Adjustment will be added to the charges payable by the CP for the Network Adjustment and where there are sufficient amounts remaining deducted from the relevant Network Adjustment Fund.

8. Cancellation

8.1 If the CP cancels a Network Adjustment, it will be liable to pay as compensation, any costs that KCOM incurs in respect of the Network Adjustment.

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Annex

Self-Provide Terms

1. Introduction

- 1.1 The terms set out in this Annex apply where:
- (a) a CP places a Request for a Network Adjustment;
 - (b) that Request is accepted by KCOM; and
 - (c) the CP is authorised by KCOM to carry out the Network Adjustment itself.
- 1.2 The CP must comply with any reasonable requirements from KCOM relating to Self-Provide Requests as set out in the Operations Manual.
- 1.3 Self-Provide Requests will not be available for some Network Adjustments including the replacement of a Defective Pole and the removal of redundant KCOM cables. Details of those Network Adjustments which will not qualify for Self-Provide Requests are set out in the Operations Manual and may be subject to additional charges by KCOM.

2. Self-Provide Requests

- 2.1 If KCOM provides a Response Notice which accepts a Request for a Network Adjustment then it will provide to the CP information to enable it to submit a Self-Provide Request pursuant to paragraph 5.1 of this Schedule including:
- (a) the method the CP must adopt to provide the Network Adjustment; and
 - (b) the date by which the CP must complete the Network Adjustment subject to the CP's ability to amend the date pursuant to paragraph 2.4 below.
- 2.2 KCOM reserves the right acting reasonably to reject any Self-Provide Request where the CP has previously failed to comply with paragraph 2.5 below in respect of previous Self Provide Requests, provided such issues have been brought to the attention of the CP by KCOM and the CP has failed to rectify such issues.
- 2.3 Subject to paragraph 2.4 below if the CP fails to complete or complete in accordance with paragraph 2.5(d) any work which is the subject of a Self-Provide Request by the date referred to in paragraph 2.1(b) of this Annex then KCOM reserves the right to complete the work at the CP's cost.
- 2.4 KCOM will be prepared to amend the date referred to in paragraph 2.1(b) ("Self-Provide Date") where the CP provides written notice prior to the Self-Provide Date at its discretion.

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- 2.5 The CP will ensure that when conducting any work pursuant to a Self-Provide Request it will:
- (a) comply with the terms of the Agreement including but not limited to training and accreditation as set out at Schedule 2;
 - (b) obtain any necessary permissions, consents or wayleaves;
 - (c) make clear to relevant third parties including in any discussions with or submissions to any local or highways authority, land owner or planning department that it is doing the work or is having the work done on its behalf; and
 - (d) do the works in accordance with Good Industry Practice and the Engineering Principles and any other standards referred to in or from the Operations Manual.

3. Completion of the Self-Provide

- 3.1 Once the CP completes the works the subject of the Self-Provide Requests it shall provide to KCOM:
- (a) the Highways reference for the work;
 - (b) full details of the work done to provide the Network Adjustment;
 - (c) full details of the location;
 - (d) Photographic Evidence both before and after the work;
 - (e) engineering drawing to the standard set out in the Operations Manual; and
 - (f) such information and assistance as KCOM may reasonably require to verify the work and the standard to which it has been carried out.