



COMMERCE COMMISSION

**STANDARD TERMS DETERMINATION FOR  
TELECOM'S UNBUNDLED COPPER LOCAL LOOP  
NETWORK CO-LOCATION SERVICE**

**SCHEDULE 5  
ACCESS TERMS  
PUBLIC VERSION**

**7 November 2007**

## Table of contents

<b>ACCESS TERMS</b> .....	<b>1</b>
<b>1 Definitions</b> .....	<b>1</b>
<b>2 Interpretation</b> .....	<b>1</b>
<b>3 General</b> .....	<b>2</b>
<b>4 Basic rights and obligations</b> .....	<b>2</b>
Use of the exchange.....	3
<b>5 Things the Access Seeker must not do</b> .....	<b>3</b>
<b>6 Things the Access Seeker must do</b> .....	<b>3</b>
Installation and maintenance .....	3
No danger to others .....	3
Rubbish .....	3
Compliance.....	4
Consents and permits.....	4
Access Seeker Equipment.....	4
Notice .....	4
Health and safety.....	4
<b>7 Things Telecom may do or will do</b> .....	<b>5</b>
<b>8 Suspension</b> .....	<b>6</b>
<b>9 Relocation</b> .....	<b>6</b>
<b>10 Termination</b> .....	<b>6</b>
Termination under the Co-location General Terms.....	6
Early termination.....	7

## ACCESS TERMS

### 1 Definitions

1.1 Except where expressly provided otherwise, in the Access Terms:

<b>Access Seeker Equipment</b>	means all equipment of the Access Seeker on a Telecom Site pursuant to the Co-location Terms (where <b>Telecom Site</b> means any exchange or other part of Telecom's Network as the context requires).
<b>Authority</b>	includes a government, statutory or regulatory authority.
<b>Building Services</b>	means all of the services supplied by Telecom to the Access Seeker on an exchange in accordance with the Co-location Operations Manual (including air conditioning, DC power, security, seismic bracing, earthing, cable trays and lighting).
<b>Core Network</b>	means any equipment used to provide a centralised service capability to multiple customers where no physical part of the equipment is dedicated to a single specific customer.
<b>Footprint</b>	means a space at any Telecom exchange that is allocated to the Access Seeker for the installation of its equipment but excludes any space occupied by the Access Seeker's tie cables.
<b>HDP</b>	Handover Distribution Point on the Telecom local telephone exchange main distribution frame.
<b>HSE Act</b>	means the Health and Safety in Employment Act 1992.
<b>Invitee</b>	includes any employee, agent, contractor, subcontractor or visitor.
<b>Lease</b>	means the relevant lease in relation to any leasehold exchange.
<b>Notice</b>	means a notice in writing provided in accordance with section 46 of the Co-location General Terms.
<b>Permitted Use</b>	means operating and installing, maintaining, repairing, altering, removing and/or replacing the Access Seeker Equipment exclusively for the purpose of access to, and interconnection with, the Local Loop Network pursuant to the UCLL Service.
<b>UCLL Service</b>	means the service supplied pursuant to the standard terms determination made by the Commission under section 30M of the Act in relation to Telecom's unbundled copper local loop service.

### 2 Interpretation

2.1 References to clauses or sections are references to clauses or sections in the Access Terms unless expressly provided otherwise.

### **3 General**

- 3.1 Section 1 sets out definitions for terms used in the Access Terms that are not defined in the Co-location General Terms, otherwise, the definitions set out in the Co-location General Terms apply.
- 3.2 The Access Terms apply in addition to the Co-location General Terms. If there is any conflict between the Access Terms and the Co-location General Terms, the General Terms will prevail.
- 3.3 The Access Terms are drafted in the singular but apply equally and severally to each supply of the Co-location Service to the Access Seeker in respect of every Footprint, including where the Access Seeker Equipment is moved from one Footprint to another.

### **4 Basic rights and obligations**

- 4.1 For the time that the Access Seeker is supplied with the Co-location Service under the Co-location Terms, the Access Seeker has a non-exclusive right to:
- 4.1.1 gain access to the exchange for the purposes of the Permitted Use on the Footprint; and
  - 4.1.2 gain escorted access to the exchange for the purpose of inspecting any Access Seeker Equipment on the exchange outside of the Footprint,
- 4.2 Where the Footprint is in the exchange, for the time that the Access Seeker is supplied with the Co-location Service under the Co-location Terms, the Access Seeker also has a non-exclusive right to:
- 4.2.1 install a tie cable connecting the Access Seeker Equipment within the Footprint to the HDP; and
  - 4.2.2 install a tie cable connecting the Access Seeker Equipment within the Footprint to either:
    - (a) a network fibre cable for backhaul; or
    - (b) ancillary backhaul equipment installed within a Footprint on an exchange.
- 4.3 Where the Footprint is on the exchange, for the time that the Access Seeker is supplied with the Co-location Service under the Co-location Terms, the Access Seeker also has a non-exclusive right to install a tie cable connecting the Access Seeker Equipment within the Footprint to another Footprint in the exchange that is supplied to the Access Seeker under the Co-location Terms.
- 4.4 The Access Seeker's right under the Access Terms is subject to:
- 4.4.1 the Co-location Terms.
- 4.5 The Access Terms do not:
- 4.5.1 give the Access Seeker any interest or estate in the Footprint or the exchange;
  - 4.5.2 confer on the Access Seeker any right to the exclusive possession of any part of the exchange;
  - 4.5.3 give the Access Seeker a right to unescorted access to any cable or other thing outside of the Footprint;
  - 4.5.4 give the Access Seeker a right to fix or install any cable or other thing outside of the Footprint other than by procuring Telecom to do so on the Access Seeker's behalf; or
  - 4.5.5 make Telecom responsible in any way for the Access Seeker's business.

4.6 Telecom is entitled to grant additional rights in connection with the exchange to any third parties.

#### **Use of the exchange**

4.7 The Access Seeker will access the exchange and use the Footprint on the exchange for the Permitted Use and for no other purposes.

4.8 The Access Seeker will ensure that any access to the exchange by the Access Seeker or its Invitees is in accordance with the access and security procedures set out in the Co-location Operations Manual and in compliance with any additional reasonable request and direction of Telecom.

## **5 Things the Access Seeker must not do**

5.1 The Access Seeker must not and will ensure that its Invitees will not do any of the following:

- 5.1.1 use the exchange for any purpose other than the Permitted Use;
- 5.1.2 impede or interfere with Telecom's rights of possession and control of the Footprint or the exchange;
- 5.1.3 obstruct or interfere with Telecom's Network or the operation of Telecom's Network on the exchange;
- 5.1.4 access any part of the exchange not strictly necessary for the Permitted Use; or
- 5.1.5 interfere with any third party's use, occupation or enjoyment of the exchange.

## **6 Things the Access Seeker must do**

6.1 The Access Seeker must do and ensure its Invitees do all of the following at the Access Seeker's own expense:

#### **Installation and maintenance**

- 6.1.1 Carry out any installation, maintenance, repair, alteration, removal and/or replacement of the Access Seeker Equipment in accordance with the Co-location Operations Manual.
- 6.1.2 To the reasonable satisfaction of Telecom, maintain any Access Seeker Equipment installed in the Footprint in good and proper repair and working order and employing suitably qualified people to do so.

#### **No danger to others**

- 6.1.3 Take all reasonable steps to ensure that no part of the Access Seeker Equipment becomes a danger to the safety of Telecom, Telecom's Invitees or third parties to whom Telecom has granted similar rights.
- 6.1.4 At all times take all practical and proper precautions to the reasonable satisfaction of Telecom for the prevention of risks at the exchange.

#### **Rubbish**

- 6.1.5 Remove all rubbish from the exchange resulting from the Access Seeker's use of the exchange.

### **Compliance**

- 6.1.6 Comply in all respects with:
- (a) any law or requirement of any Authority that applies in relation to anything that is done or to be done by the Access Seeker (including the Resource Management Act 1991), or its Invitees, under the Access Terms, or that relates to the Access Seeker's or the Access Seeker's Invitees' use of the exchange;
  - (b) the Resource Management Act 1991, and any relevant district plan or regional plan and the terms of any resource consent and any other applicable law;
  - (c) the Co-location Terms; and
  - (d) the Access Terms.
- 6.1.7 Co-operate with any reasonable request made by Telecom in relation to inspections, maintenance of Telecom's Network, and general repairs and maintenance undertaken in connection with the exchange.
- 6.1.8 In respect of any exchange that is leasehold, the Access Seeker will not and will ensure that its Invitees do not permit or do any act or thing on or in relation to the exchange which would or may cause Telecom to be in breach of its covenants as tenant or the conditions contained in the Lease or which if done by Telecom would or may constitute a breach of the Lease.

### **Consents and permits**

- 6.1.9 Obtain and comply with any additional consent or permit required for the installation, operation and use of the Access Seeker Equipment on the exchange.

### **Access Seeker Equipment**

- 6.1.10 Ensure that the Access Seeker Equipment complies in all respects with the Co-location Operations Manual.

### **Notice**

- 6.1.11 The Access Seeker will promptly advise Telecom in writing on becoming aware of any:
- (a) material damage to the exchange, Telecom's Network, or any property of any third party on the exchange;
  - (b) accident or serious harm to any person caused by the condition of the exchange or Telecom's Network; or
  - (c) potential hazards, safety issues or other matters likely to affect the integrity or security of the exchange or Telecom's Network.

### **Health and safety**

- 6.2 The Access Seeker must comply with its obligations under the HSE Act and all approved codes of practice under the HSE Act. In particular, the Access Seeker must establish procedures to ensure compliance with the HSE Act for anything it does and/or allows to be done on the exchange. If Telecom asks, the Access Seeker must give Telecom details of those procedures and of how they are being implemented.

- 6.3 Any access to the exchange by Invitees of the Access Seeker is at the sole risk of the Access Seeker and the Access Seeker has the sole responsibility for identifying and advising its Invitees of all existing and potential hazards on the exchange which its Invitees could encounter.

## **7 Things Telecom may do or will do**

- 7.1 Telecom will:
- 7.1.1 not interfere with any Access Seeker Equipment or the operation of any Access Seeker Equipment except where specifically permitted under the Co-location Terms;
  - 7.1.2 provide or procure the provision of the Building Services in accordance with the Co-location Operations Manual; and
  - 7.1.3 where necessary, provide the Access Seeker with reasonable assistance in obtaining any third party authorisation, licence or consent necessary or prudent for the occasion to be supplied with the Co-location Service (such as resource management or building consents) other than authorisations, licences or consents required generally by the Access Seeker to operate its network.
  - 7.1.4 Telecom will promptly advise the Access Seeker in writing on becoming aware of any:
    - (a) material damage to the exchange, the Access Seekers' Equipment, or any property of any third party on the exchange;
    - (b) accident or serious harm to any person caused by the condition of the exchange or Access Seekers' Equipment; or
    - (c) potential hazards, safety issues or other matters likely to affect the integrity or security of the exchange or Access Seekers' Equipment
- 7.2 Telecom has the right to do anything Telecom reasonably believes necessary in relation to any of the following, providing Telecom has given not less than one calendar month's Notice to the Access Seeker of its intention to undertake such actions if those actions are likely to have any material effect on the Access Seeker's rights under the Access Terms:
- 7.2.1 complying with any law or any requirement of any Authority;
  - 7.2.2 viewing the state of repair of the exchange;
  - 7.2.3 maintaining and repairing the exchange; and
  - 7.2.4 modifying, expanding or altering the exchange.
- 7.3 If any of the exchange is leasehold, then Telecom will:
- 7.3.1 if required, provide the Access Seeker with a copy of the Lease no later than on the first day the Access Seeker is entitled to gain access to the exchange under the Co-location Terms; and
  - 7.3.2 observe and perform all the covenants as tenant under the Lease; and
  - 7.3.3 if Telecom believes that a copy of the Lease is not required, it will notify the Access Seeker in writing to explain why.

## 8 Suspension

- 8.1 Where Telecom suspends supply of the Co-location Service under the Co-location General Terms, the Access Seeker's rights under the Access Terms are extinguished for the duration of that suspension, and, for the same duration:
- 8.1.1 the Access Seeker ceases to have any right to use the Access Seeker Equipment to provide services to Access Seeker Customers;
  - 8.1.2 the Access Seeker must allow and facilitate Telecom to disable the power supply to Access Seeker Equipment so that it cannot be used to provide services to Access Seeker Customers;
  - 8.1.3 Telecom will allow the Access Seeker reasonable escorted access on the exchange for the purpose of remedying the Access Seeker's default.

## 9 Relocation

- 9.1 Where Telecom's own requirements for expansion of Core Network or building services infrastructure require the relocation of the Access Seeker Equipment, Telecom must give the Access Seeker three calendar months' Notice of the requirement to relocate the Access Seeker Equipment from its existing Footprint to a different Footprint, provided that:
- 9.1.1 Telecom makes available to the Access Seeker another Footprint which is as near as reasonably possible to being equally suitable for the installation and operation of the Access Seeker Equipment;
  - 9.1.2 Telecom ensures that the relocation has no material impact on the operation or performance of the Access Seeker;
  - 9.1.3 Telecom pays the Access Seeker's reasonable costs associated with the relocation; and
  - 9.1.4 Telecom's Core Network or building services infrastructure expansion will only require the relocation of the Access Seeker Equipment if the technical requirements of the expansion are such that it must use space that either is:
    - (a) wholly or partially occupied by the Access Seeker Equipment; or
    - (b) in a position that would have a negative operational impact upon the Access Seeker Equipment.

## 10 Termination

### Termination under the Co-location General Terms

- 10.1 Where the Access Seeker or Telecom terminates supply of the Co-location Service under the Co-location General Terms (other than pursuant to clauses 10.4 to 10.5), or the Co-location Terms come to an end:
- 10.1.1 the Access Seeker will allow Telecom to take the Footprint over; and
  - 10.1.2 the Access Seeker will, within 20 Working Days of the date the Co-location Service is terminated or the Co-location Terms come to an end, at the Access Seeker's cost and to Telecom's satisfaction:
    - (a) remove the Access Seeker Equipment from the exchange;

- (b) make good any damage resulting from that removal; and
- (c) leave the exchange in good clean order, repair and condition.
- (d) reinstate the affected parts of the exchange as near as reasonably possible to their condition as at the first day the Access Seeker gained access to the exchange under the Co-location Terms, fair wear and tear excepted.

and for these purposes the access rights in these Access Terms continue to apply.

- 10.2 If the Access Seeker has not removed the Access Seeker Equipment from the exchange within 40 Working Days from the date the Co-location Service is terminated or the Co-location Terms come to and end, Telecom will be entitled to treat the Access Seeker Equipment as its own and may retain or dispose of all or any part of it as Telecom sees fit.
- 10.3 The Access Seeker will reimburse Telecom for any reasonable cost Telecom incurs in removing and disposing of all or any part of the Access Seeker Equipment the Access Seeker leaves behind including the cost of making good any damage resulting from that removal. Telecom will not be liable for any loss as a result.

#### **Early termination**

- 10.4 If at any time any of the following events occur:
- 10.4.1 Telecom at any time becomes under notice to quit the exchange pursuant to any Lease and Telecom is unable to renew or extend the Lease on reasonable commercial terms;
  - 10.4.2 the exchange or the use of the exchange is rendered unlawful by any competent Authority;
  - 10.4.3 the exchange or any substantial part of the exchange is destroyed or so materially damaged by fire, earthquake or other cause as to require reconstruction or as to be rendered unfit for use and occupation and Telecom does not intend in its discretion to reinstate the exchange;
  - 10.4.4 Telecom's legal interest in the exchange is materially affected by any other event or circumstance beyond Telecom's reasonable control,
- then Telecom will advise the Access Seeker at the earliest practical date and may terminate the Co-location Service at the affected exchange by giving Notice to the Access Seeker, in which case Telecom will use its all reasonable endeavours to give not less than three calendar months' prior Notice of the date of termination. Such Notice will not discharge the Access Seeker from any liability under the Co-location Standard Terms accrued up to the date that the Access Seeker vacates the Footprint.
- 10.5 Where the Co-location Service is terminated under clause 10.4, the Access Seeker must allow Telecom to take the Footprint over and clause 10.3 applies.
- 10.6 Subject to section 20 of the Co-location General Terms, Telecom shall be liable to the Access Seeker for any cost, liability, loss, damage or expense that the Access Seeker incurs or suffers as a direct result of the termination of the Co-location Service by Telecom pursuant to clause 10.4, where the termination is a result of:
- 10.6.1 a breach by Telecom of the Lease; and/or
  - 10.6.2 any other unlawful act by Telecom which resulted in the termination of the Lease.