



COMMERCE COMMISSION

**DRAFT STANDARD TERMS DETERMINATION FOR
CO-LOCATION ON CELLULAR MOBILE
TRANSMISSION SITES**

**SCHEDULE 4
MOBILE CO-LOCATION ACCESS TERMS
PUBLIC VERSION**

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MOBILE CO-LOCATION ACCESS TERMS

1 Definitions

1.1 Except where expressly provided otherwise, in the Mobile Co-location Access Terms:

Authority	includes a government, statutory or regulatory authority.
HSE Act	means the Health and Safety in Employment Act 1992.
Invitee	includes any employee, agent, contractor, subcontractor or visitor.
Landlord	Means: <u>(a) the grantor of the relevant right of Relevant Occupation;</u> <u>and</u> <u>(b) any other person whose consent is required in order to obtain the necessary rights to carry on the Permitted Use on the Relevant Facilities (which may include without limitation the head lessor or head licensee in the case of a sub-lease or sub-licence respectively, or a mortgagee).</u> -but, for the avoidance of doubt, does not include the Access Provider-
Permitted Use	means operating and installing, maintaining, repairing, altering, removing and/or replacing the Access Seeker Equipment exclusively for the purpose of using the Mobile Co-location Service in accordance with the Mobile Co-location Terms.

2 Interpretation

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

3 General

3.1 Section 1 sets out definitions for terms used in the Mobile Co-location Access Terms that are not defined in the Mobile Co-location General Terms or the Mobile Co-location Operations Manual, otherwise the definitions set out in the Mobile Co-location General Terms and the Mobile Co-location Operations Manual apply.

3.2 The Mobile Co-location Access Terms apply in addition to the Mobile Co-location General Terms. If there is any conflict between the Mobile Co-location Access Terms and the Mobile Co-location General Terms, the Mobile Co-location General Terms will prevail.

3.3 The Mobile Co-location Access Terms are drafted in the singular but apply equally and severally to each supply of the Mobile Co-location Service to the Access Seeker in respect of all Relevant Facilities.

4 Basic rights and obligations

- 4.1 For the time that the Access Seeker is supplied with the Mobile Co-location Service under the Mobile Co-location Terms, the Access Seeker has a non-exclusive right:
- 4.1.1 to gain access to the Relevant Facilities for the purposes of the Permitted Use on the Relevant Facilities; and
 - 4.1.2 to use the access track (referred to in section 38 of the Mobile Co-location Operations Manual) solely for the ingress and egress to and from a Site for the Permitted Use, where that access track begins at a public road and ends at the Site, to the extent that the Access Provider is lawfully able to provide the Access Seeker with such a right.
- 4.2 The Access Seeker's right under the Mobile Co-location Access Terms is subject to the Mobile Co-location Terms.
- 4.3 The Mobile Co-location Access Terms do not:
- 4.3.1 give the Access Seeker any interest or estate in the Access Seeker Space or the Relevant Facilities;
 - 4.3.2 confer on the Access Seeker any right to the exclusive possession of any part of the Relevant Facilities; or
 - 4.3.3 make the Access Provider responsible in any way for the Access Seeker's business.
- 4.4 The Access Provider is entitled to grant additional rights in connection with the Relevant Facilities to any third parties.

Use of the Relevant Facilities

- 4.5 The Access Seeker will access and use the Relevant Facilities for the Permitted Use and for no other purposes.
- 4.6 The Access Seeker will ensure that any access to the Relevant Facilities by the Access Seeker or its Invitees is in accordance with the access and security procedures set out in the Mobile Co-location Operations Manual and in compliance with any additional reasonable request and direction of the Access Provider.

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 Relevant Facilities for any purpose other than the Permitted Use;
 - 5.1.2 impede or interfere with the Access Provider's rights of possession and control of the Relevant Facilities;
 - 5.1.3 obstruct or interfere with the Access Provider's Network or the operation of the Access Provider's Network on or around the Relevant Facilities;
 - 5.1.4 access any part of the Relevant Facilities not strictly necessary for the Permitted Use; or
 - 5.1.5 interfere with any third party's use, occupation or enjoyment of the Relevant Facilities,
- subject to any radio frequency interference that does not amount to Unacceptable Performance Degradation permissible under the Mobile Co-location Interference Management and Design document.

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 Mobile Co-location Operations Manual.
- 6.1.2 To the reasonable satisfaction of the Access Provider, maintain any Access Seeker Equipment installed on or with the Relevant Facilities 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 the Access Provider, the Access Provider's Invitees or third parties to whom the Access Provider has granted similar rights.
- 6.1.4 At all times take all practical and proper precautions to the reasonable satisfaction of the Access Provider for the prevention of risks at the Relevant Facilities.

Rubbish

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

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 and the Building Act 2004), or its Invitees, under the Mobile Co-location Access Terms, or that relates to the Access Seeker's or the Access Seeker's Invitees' use of the Relevant Facilities;
 - (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 Mobile Co-location Terms; and
 - (d) the Mobile Co-location Access Terms.
- 6.1.7 Co-operate with any reasonable request made by the Access Provider in relation to inspections, installation, maintenance, repairs, alterations, removals and/or replacements in connection with the Access Provider's Network or the Relevant Facilities.

Consents and permits

- 6.1.8 In addition to complying with its obligations under section 8, obtain and comply with any other additional consent or permit required for the installation, operation and use of the Access Seeker Equipment on or with the Relevant Facilities.

Access Seeker Equipment

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

Notice

- 6.1.10 The Access Seeker will promptly advise the Access Provider in writing on becoming aware of any:
 - (a) material damage to the Relevant Facilities, the Access Provider's Network, or any property of any third party on or around the Relevant Facilities;
 - (b) accident or serious harm to any person caused by the condition of the Relevant Facilities or the Access Provider's Network; or

- (c) potential hazards, safety issues or other matters likely to affect the integrity or security of the Relevant Facilities or the Access Provider'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 or around the Relevant Facilities. If the Access Provider asks, the Access Seeker must give the Access Provider details of those procedures and of how they are being implemented.
- 6.3 [Subject to the Mobile Co-location General Terms,]any access to the Relevant Facilities 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 or around the Relevant Facilities which its Invitees could encounter.

7 Things the Access Provider will do

- 7.1 The Access Provider will:
 - 7.1.1 not impede or interfere with any Access Seeker Equipment or the operation of any Access Seeker Equipment except where specifically permitted under the Mobile Co-location Terms;
 - 7.1.2 in accordance with, and subject to, section 8 and the provisions of the Mobile Co-location Operations Manual, 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 Mobile 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; and
 - 7.1.3 promptly advise the Access Seeker in writing on becoming aware of any:
 - (a) material damage to the Relevant Facilities, the Access Seekers' Equipment, or any property of any third party on or around the Relevant Facilities;
 - (b) accident or serious harm to any person caused by the condition of the Relevant Facilities or Access Seekers' Equipment; or
 - (c) potential hazards, safety issues or other matters likely to affect the integrity or security of the Relevant Facilities or Access Seekers' Equipment.
- 7.2 The Access Provider shall give not less than one calendar month's Notice to the Access Seeker of its intention to undertake any of the following actions if those actions are likely to have any material effect on the Access Seeker's rights under the Mobile Co-location 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 Relevant Facilities;
 - 7.2.3 maintaining and repairing the Relevant Facilities; and
 - 7.2.4 modifying, expanding or altering the Relevant Facilities.
- 7.3 The Access Provider must do and ensure its Invitees do all of the following:
 - No danger to others**
 - 7.3.1 Take all reasonable steps to ensure that no part of the Access Provider Equipment becomes a danger to the safety of the Access Seeker, or the Access Provider's Invitees
 - 7.3.2 At all times take all practical and proper precautions to the reasonable satisfaction of the Access Seeker for the prevention of risks at the Relevant Facilities.

Compliance

- 7.3.3 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 Provider (including the Resource Management Act 1991 and the Building Act 2004), or its Invitees, under the Mobile Co-location Access Terms, or that relates to the Access Provider's or the Access Seeker's Invitees' use of the Relevant Facilities;
 - (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 Mobile Co-location Terms;
 - (d) the Mobile Co-location Access Terms;

7.4 ~~Where the Access Provider is required to do so under the Mobile Co-location Terms, the Access Provider will c~~Co-operate with any reasonable request made by the Access Seeker in relation to inspections, installation, maintenance, repairs, alterations, removals and/or replacements in connection with the Access Seeker's Network or the Relevant Facilities.

Health and safety

~~7.5 The Access Provider must comply with its obligations under the HSE Act and all approved codes of practice under the HSE Act. In particular, the Access Provider must establish procedures to ensure compliance with the HSE Act for anything it does and/or allows to be done on or around the Relevant Facilities. If the Access Seeker asks, the Access Provider must give the Access Seeker details of those procedures and of how they are being implemented.~~

8 Rights of Relevant Occupation

- 8.1 The provisions of the Mobile Co-location Operations Manual set out the processes which must be followed in relation to securing the appropriate consents necessary for the Access Seeker to be able to carry on the Permitted Use on the Relevant Facilities and receive the Mobile Co-location Service.
- 8.2 The Access Seeker shall obtain the necessary consents from the Landlord in the manner set out in the Mobile Co-location Operations Manual. If all necessary consents of the Landlord cannot be obtained by the Access Seeker, then the Access Seeker must not install, repair, test, operate, maintain or remove the Access Seeker Equipment on or with the Relevant Facilities.
- 8.3 In respect of any Relevant Facilities subject to a Relevant Occupation, the Access Provider must:
- 8.3.1 if required ~~and the Access Provider is not restricted from doing so for confidentiality reasons~~, provide the Access Seeker with a copy of the lease, licence or other document no later than on the first day the Access Seeker is entitled to gain access to the site under the Mobile Co-location Terms (unless the relevant documentation has been already provided under clause 17.2 of the Mobile Co-location Operations Manual);
 - 8.3.2 observe and perform all covenants relevant to it under the Relevant Occupation; and
 - 8.3.3 if the Access Provider believes that a copy of the Relevant Occupation documentation is not required ~~or is not able to be provided for confidentiality reasons~~, it will notify the Access Seeker in writing to explain why.
- 8.4 In respect of any Relevant Facilities that are located on land that is subject to a right of Relevant Occupation and subject to the Access Provider having made known to the Access Seeker the ~~relevant~~ terms of the Access Provider's rights of occupation of the Relevant Facilities, 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 Relevant Facilities which would or may cause the Access Provider to be in breach of its covenants or the conditions contained in the terms of any right of Relevant Occupation or which if done by the Access Provider would or may constitute a breach of the terms of any right of Relevant Occupation.

9 Decommissioning

9.1 In relation to Relevant Facilities that are located on land that is subject to a right of Relevant Occupation, if:

9.1.1 the Access Provider:

(a) intends to decommission the Relevant Facilities; and

~~(a)(b)~~ does not intend to use the Relevant Facilities for other purposes; and

9.1.2 the Access Seeker wishes to use those Relevant Facilities and to continue to use those Relevant Facilities,

then the Access Provider must use all commercially reasonable endeavours to ensure the Access Seeker may continue to use and enjoy those Relevant Facilities, but only where the right of Relevant Occupation permits. Where the right of Relevant Occupation permits, these commercially reasonable endeavours including:

9.1.3 giving the first Access Seeker to use the Mobile Co-location Service at the Relevant Facilities an opportunity to take up all or any lease or license arrangements for the right of Relevant Occupation; and

9.1.4 giving the first Access Seeker to use the Mobile Co-location Service at the Relevant Facilities an opportunity to purchase all or any of the Relevant Facilities owned by the Access Provider on commercial terms agreed by the Parties, subject to the Access Provider's pre-existing contractual obligation to third parties.

9.2 If commercial terms are not agreed with the first Access Seeker to be supplied the Mobile Co-location Service at the Relevant Facilities, then the Access Provider must give an opportunity to purchase or take up the rights associated with the Relevant Facilities to the next Access Seeker to be supplied the Mobile Co-location Service at the Relevant Facilities in accordance with this section 9, until all Access Seekers supplied the Mobile Co-location Service at the Relevant Facilities have been given an opportunity to purchase or take up those rights.

9.3 The Access Provider, using its commercially reasonable endeavours to assist the Access Seeker to continue to use those Relevant Facilities, must:

9.3.1 release the Access Seeker from the relevant agreement between the Access Seeker and the Access Provider created in relation to, and which is subservient to, the right of Relevant Occupation (**sub-lease agreement**), and, following vacation of the Relevant Facilities by the Access Provider, release the Access Seeker from all obligations (except for any accrued liabilities) under the Mobile Co-location Terms in relation to those Relevant Facilities;

9.3.2 where there is more than one Access Seeker sharing the Relevant Facilities, and where permitted to do so under the right of Relevant Occupation, the first Access Seeker to share the Relevant Facilities allow all other Access Seekers to use such Relevant Facilities, on the same terms as these Access Terms, which shall be deemed to apply between them; and

~~9.3.2~~ 9.3.3 indemnify the Access Seeker against any claims by the Landlord or any third party in respect of the Access Provider's use of the Relevant Facilities or otherwise relating to the period prior to the date of assignment or novation to the Access Seeker (except to the extent that liability arises out of acts or omissions of the Access Seeker).

10 Security at Relevant Facilities

- 10.1 The Mobile Co-location Operations Manual sets out the provisions in relation to the necessary accreditation and security clearance of an Access Seeker and its representatives prior to accessing any Relevant Facilities.

11 Suspension

- 11.1 Where the Access Provider suspends supply of all or part of the Mobile Co-location Service under the Mobile Co-location General Terms, the Access Seeker's rights under the Mobile Co-location Access Terms are extinguished for the duration of that suspension for that particular part ~~(or site)~~ of the Mobile Co-location Service, and, for the same duration:
- 11.1.1 the Access Seeker ceases to have any right to use the Access Seeker Equipment to provide services to Access Seeker Customers;
 - 11.1.2 the Access Seeker must promptly allow and facilitate the Access Provider to disable the power supply to Access Seeker Equipment so that it cannot be used to provide services to Access Seeker Customers; and
 - 11.1.3 the Access Provider will allow the Access Seeker reasonable escorted access on or around the Relevant Facilities for the purpose of remedying the Access Seeker's default.

12 Relocation

- 12.1 The Mobile Co-location Operations Manual sets out the provisions in relation to the relocation of Access Seeker Equipment.

13 Termination

Termination under the Mobile Co-location General Terms

- 13.1 Where the Access Seeker or the Access Provider terminates supply of the Mobile Co-location Service under the Mobile Co-location General Terms (other than pursuant to clause 13.4), or the Mobile Co-location Terms come to an end:
- 13.1.1 the Access Seeker will promptly allow the Access Provider to take over the Access Seeker Space; and
 - 13.1.2 the Access Seeker will, within 20 Working Days of the date the Mobile Co-location Service is terminated or the Mobile Co-location Terms come to an end, at the Access Seeker's cost and to the Access Provider's satisfaction:
 - (a) remove the Access Seeker Equipment from the Relevant Facilities;
 - (b) make good any damage resulting from that removal;
 - (c) leave the Relevant Facilities in good clean order, repair and condition; and
 - (d) reinstate the affected parts of the Relevant Facilities as near as reasonably possible to their condition as at the first day the Access Seeker gained access to the Relevant Facilities under the Mobile Co-location Terms, fair wear and tear excepted,and for these purposes the access rights in these Mobile Co-location Access Terms continue to apply.
- 13.2 If the Access Seeker has not removed the Access Seeker Equipment from the Relevant Facilities within 40 Working Days from the date the Mobile Co-location Service is terminated or the Mobile Co-location Terms come to an end, the Access Provider 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 the Access Provider sees fit.

- 13.3 The Access Seeker will reimburse the Access Provider for any reasonable cost the Access Provider 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. The Access Provider will not be liable for any loss as a result.

Early termination

- 13.4 If at any time any of the following events occur:
- 13.4.1 the Access Provider at any time becomes under notice to quit the Relevant Facilities pursuant to any right of Relevant Occupation and/or the Access Provider is unable to renew or extend the right of Relevant Occupation on reasonable commercial terms;
 - 13.4.2 the Relevant Facilities or the use of the Relevant Facilities is rendered unlawful by any competent Authority;
 - 13.4.3 the Relevant Facilities or any substantial part of the Relevant Facilities 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 the Access Provider does not intend in its discretion to reinstate the Relevant Facilities; or
 - 13.4.4 the Access Provider's legal interest in the Relevant Facilities is materially affected by any other event or circumstance beyond the Access Provider's reasonable control,
- then the Access Provider will advise the Access Seeker at the earliest practical date and may terminate the Mobile Co-location Service at the affected Relevant Facilities by giving Notice to the Access Seeker, in which case the Access Provider 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 either party from any liability under the Mobile Co-location Terms accrued up to the date that the Access Seeker vacates the Relevant Facilities.
- 13.5 Where the Mobile Co-location Service is terminated under clause 13.4, the Access Seeker must allow the Access Provider to take the Access Seeker Space over and clause 13.3 applies.
- 13.6 Subject to section 17 of the Mobile Co-location General Terms, the Access Provider 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 Mobile Co-location Service by the Access Provider pursuant to clause 13.4, where the termination is a result of:
- 13.6.1 a breach by the Access Provider of the terms of any right of Relevant Occupation; and/or
 - 13.6.2 any other unlawful act by the Access Provider which resulted in the termination of the right of Relevant Occupation.