



COMMERCE COMMISSION

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

**SCHEDULE 2
MOBILE CO-LOCATION SERVICE LEVEL TERMS
PUBLIC VERSION**

25 July 2008

Table of contents

1	Introduction.....	1
2	Scope.....	2
3	Service Levels.....	2
4	Exclusions.....	2
5	Access Seeker Forecasts	3
6	Reporting on Service Levels	3
7	Service Levels Defaults.....	4
8	Performance Penalties	4
	Performance Penalties for individual Service Level Defaults	4
	Performance Penalties for cumulative delay days as a result of Service Level Defaults for the same Relevant Facilities.....	4
	Performance Penalties prior to completion of Soft Launch	5
9	Reconciliation of Performance Penalties	5
Appendix 1.....	6
	Interference Desktop Study	6
	Multi-Site Application	6
	Site Desktop Assessment.....	9
	Initial Site Application and Detailed Site Design	9
	Final Site Application	10
	Final Site Approval.....	11
	Project Plan	12
	Planned and Unplanned Outages.....	12
	Fault Management for Mobile Co-location Service	13
	Operational Support System SLTs for Mobile Co-location.....	14
Appendix 2.....	16
	Performance Penalties for individual Service Level Defaults	16
Appendix 3.....	19
	Performance Penalties for cumulative delay days	19

1 Introduction

- 1.1 These Service Level Terms (SLT) are part of the Mobile Co-location Terms, which set out the rights and obligations of the Access Provider and the Access Seeker in relation to the Mobile Co-location Service.
- 1.2 The operational requirements for the Mobile Co-location Service are set out in the Mobile Co-location Operations Manual.
- 1.3 References to clauses or sections are references to clauses and sections of this SLT unless stated otherwise. The definitions set out in the Mobile Co-location General Terms and the Mobile Co-location Operations Manual apply to the extent that they are not expressly modified by or inconsistent with the context of this SLT. The additional definitions set out in clause 1.4 apply to this SLT.

1.4 **Definitions:** In this SLT:

<u>Access Seeker Document</u>	<u>means a Proposed Solution, Multi-Site Application, Site Data Pack Application, Initial Site Application, Design Notes, Full Site Application, Preliminary Notice, Project Plan or amended Project Plan.</u>
Business Hours	means 8.00am to 5.00pm on any Working Day (where the first Business Hour in a Working Day is consecutive to the last Business Hour in the preceding Working Day).
Determination Date	means the date on which the Mobile Co-location Standard Terms Determination comes into force.
Future Service Level Deliverable	means any deliverable that is added to this SLT in accordance with the change mechanism set out in section 9 of the Mobile Co-location General Terms.
Future Service Levels	is the means by which the Access Provider's performance of a Future Service Level Deliverable will be measured.
Half Contract Year	means a 6 month period ending on 31 March and a 6 month period ending on 30 September.
Performance Penalty	means the amount that the Access Seeker is entitled to claim in the event of a Service Level Default, calculated in accordance with section 8 and Appendices 2 and 3.
Receipt Time	means, the time that an Access Seeker Document a Proposed Solution, Multi Site Application, Site Data Pack Application, Initial Site Application, Design Notes, Full Site Application, Preliminary Notice, Project Plan or amended Project Plan is received by the Access Provider (which shall be the time of notification of receipt by the Access Provider as provided for in clause 13.7.2 of the Mobile Co-location Operations Manual <u>(with clause 13.7 being read as if each Access Seeker Document was an Application)</u>), provided that where these Access Seeker Documents applications are <u>deemed to be</u> received by the Access Provider outside Business Hours <u>under clause 13.7.2 of the Mobile Co-location Operations Manual</u> , the Receipt Time will be the start of the first Business Hour of the following Working Day.
Service Level Deliverables	means those deliverables performed by the Access Provider pursuant to this SLT, as set out in Appendix 1.

Service Levels	is the means by which the Access Provider's performance of a Service Level Deliverable is measured (except as may be otherwise provided) on a calendar monthly basis, as set out in Appendix 1. A Service Level is subject to the exclusions specified in this SLT.
Service Level Default	means a failure by the Access Provider to meet the Service Level corresponding to a particular Service Level Deliverable.
Specified Date	means in respect of Future Service Levels, the date agreed under the change mechanism set out in section 9 of the Mobile Co-location General Terms.
Tolerance Level	means the minimum acceptable level of performance of a Service Level for a Service Level Deliverable, expressed as a percentage in Appendix 1.

2 Scope

- 2.1 This SLT:
 - 2.1.1 sets out the quality and performance of the Service Level commitments of the Access Provider to the Access Seeker for the delivery of the Mobile Co-location Service; and
 - 2.1.2 provides for a penalty mechanism where the Access Provider fails to meet its Service Levels.
- 2.2 This SLT may be changed in accordance with the change mechanism set out in section 9 of the Mobile Co-location General Terms.
- 2.3 The change mechanism (set out in section 9 of the Mobile Co-location General Terms) will apply in the event that any changes to this SLT are proposed by the Access Seeker or the Access Provider.

3 Service Levels

- 3.1 The Access Provider will provide the Deliverables in accordance with this SLT.
- 3.2 [Except in the case of the Soft Launch Applications \(as that term is defined in the Mobile Co-location Implementation Plan\), the Service Levels apply from the Determination Date.](#)
- 3.3 Any Future Service Levels will apply from the Specified Date.
- 3.4 The nature of any Future Service Levels, including their respective Tolerance Levels, will be set via the change mechanism process under section 9 of the Mobile Co-location General Terms.
- 3.5 If the Access Seeker updates or changes an Application pursuant to the process set out under the Mobile Co-location Operations Manual, the Service Levels applicable to that Application (as updated or changed) will be measured from the Receipt Time of that updated or changed Application.

4 Exclusions

- 4.1 The Service Levels will not apply where:
 - 4.1.1 a Service Level Default is due to a Force Majeure Event;

- 4.1.2 a Service Level Default is due to the Access Seeker failing to comply with an express obligation under the Mobile Co-location Terms;
- 4.1.3 it is expressly stated so in the Mobile Co-location Operations Manual or the Mobile Co-location General Terms;
- 4.1.4 a Service Level Default is a direct result of:
- (a) a fault that is the Access Seeker's responsibility under the Mobile Co-location Terms; or
 - (b) anything (including any fault) caused by the telecommunications network or equipment of a third party or the Access Seeker's Network or the Access Seeker's Equipment,

[except to the extent that anything referred to in paragraphs (a) and (b) above arises as a result of the act or omission of the Access Provider or any person for whom the Access Provider is responsible, except where that in turn was caused by the Access Seeker or any person for whom the Access Seeker is responsible];
- 4.1.5 a fault is reported and no fault for which the Access Provider is responsible is detected when the service is tested from end to end;
- 4.1.6 a Service Level Default is due to a failure by the Access Seeker to allow access to the Access Seeker Space, ~~or~~ Access Seeker Equipment or Access Seeker Building when reasonably requested;
- 4.1.7 remedying a Service Level Default would result in a material health and safety risk for an Access Provider employee or agent, the avoidance of which could not have been realistically predicted by the Access Provider; ~~or~~
- 4.1.74.1.8 an Access Seeker Document that relates to a Service Level Deliverable is invalid under the terms of the Mobile Co-location Operations Manual; or
- 4.1.84.1.9 agreed between the Access Provider and the Access Seeker.

4.2 Further exclusions and limitations to the Access Provider's liability in respect of specific Service Levels are set out in Appendix 1. The exclusions and limitations provided in Appendix 1 are in addition to the general exclusions set out in this section 4 and in no way limit the exclusions set out in this section 4.

4.3 Where the Access Provider makes a decision that a Service Level Default has not occurred because one or more of the exclusions or limitations apply, the details of the exclusion or limitation are to be recorded and reported in the Access Provider's monthly performance report provided in accordance with clause 6.1.

5 Access Seeker Forecasts

5.1 The Access Seeker will provide Mobile Co-location Forecasts to the Access Provider in accordance with the procedures and time frames set out in the Mobile Co-location Operations Manual. The consequences of the Access Seeker failing to provide Mobile Co-location Forecasts or failing to provide accurate Mobile Co-location Forecasts will be as set out in clauses 8.1.9 and 8.4 of the Mobile Co-location Operations Manual.

6 Reporting on Service Levels

6.1 The Access Provider will provide the Access Seeker and the Commission with a performance report each month. The report will be delivered or made available to the Access Seeker and Commission within 10

Working Days of the end of each calendar month in both hard-copy and electronic format. The report will detail the Access Provider's performance and compliance with each of the Service Levels over the preceding month, including the total number of Applications received and completed in relation to each Service Level Deliverable. The format and content of the performance report will be proposed by the Access Provider within 20 Working Days of the Determination Date for approval by the Commission.

- 6.2 The performance report provided in accordance with clause 6.1 must be made publicly available on the Access Provider's website at the same time as it is provided to the Access Seeker and the Commission.

7 Service Levels Defaults

- 7.1 In the event of a Service Level Default, the Access Provider will provide a report to the Access Seeker and the Commission detailing:

- 7.1.1 the cause of and procedure for correcting such Service Level Default;
- 7.1.2 the steps taken by the Access Provider to remedy the Service Level Default and the effectiveness of those steps; and
- 7.1.3 any previous Service Level Defaults in respect of that Service Level Deliverable occurring during the current and preceding Half Contract Year.

The report will be provided each month until the Service Level Default is remedied, at the same time as the Access Provider provides its report under clause 6.1.

- 7.2 The performance report provided in accordance with clause 7.1 must be made publicly available on the Access Provider's website at the same time as it is provided to the Access Seeker and the Commission.

8 Performance Penalties

~~Performance Penalties for individual Service Level Defaults~~

- ~~8.1 Subject to section 4, in the event of an individual Service Level Default for a specific Service Level, the Access Seeker will receive a Performance Penalty from the Access Provider. The Performance Penalty will be that set out in Appendix 2.~~

Performance Penalties for cumulative delay days as a result of Service Level Defaults for the same Relevant Facilities

- ~~8.2.1~~ Subject to section 4, the Access Seeker will receive a Performance Penalty where the Access Provider exceeds the cumulative number of days to deliver the following Service Levels set out in Appendix 1 for the same Relevant Facilities:

~~8.2.18.1.1~~ Item Number 2 (Interference Desktop Study);

~~8.2.28.1.2~~ Item Number 7 (Issue of Site Data Pack);

~~8.2.38.1.3~~ Item Number 10 (Confirmation of Access Seeker's Site Design Notes);

~~8.2.48.1.4~~ Item Number 12 (Preliminary Site Approval);

~~8.2.58.1.5~~ Item Number 14 (Final Site Approval);

~~8.2.68.1.6~~ Item Number 16 (Approval to Build); and

~~8.2.78.1.7~~ Item Number 17 (Approval to Build – amended Project Plan).

~~8.38.2~~ The Tolerance Levels as set out in Appendix 1 will not apply in the calculation of the cumulative number of delay days associated with Items outlined in clause ~~8.2 8.1~~.

8.3 The Performance Penalty for cumulative delay days will be calculated in accordance with the formula set out in Appendix 32.

8.4 The Performance Penalties for any calendar month shall not exceed 7% of the Charges in respect of the relevant Service Level Deliverables for that calendar month.

~~8.5~~ ~~For avoidance of doubt, the Performance Penalties for cumulative delay days set out in Appendix 3 are in addition to the Performance Penalties for individual Service Level Defaults set out in Appendix 2;~~

Performance Penalties prior to completion of Soft Launch

~~8.68.5~~ Notwithstanding clauses ~~8.1 and 8.2 8.1~~, the Access Seeker will not be entitled to receive Performance Penalties for Service Level Defaults on Service Level Deliverables that are part of the Soft Launch, as provided for in the Mobile Co-location Implementation Plan.

9 Reconciliation of Performance Penalties

9.1 Within 10 Working Days after the end of each calendar month (**Relevant Month**), the Access Provider will provide a summary report to the Access Seeker that will detail the total amount of Performance Penalties imposed for Service Level Defaults in accordance with section 8 during the Relevant Month, detailed by Service Level, and also listing any Performance Penalties for cumulative delay days on a site by site basis.

9.2 Where the Access Seeker is entitled to receive payment of a Performance Penalty from the Access Provider, the Access Provider will set off the total amount of the Performance Penalties from the Charges due in the next invoice issued by the Access Provider to the Access Seeker in relation to the Mobile Co-location Service. If the Performance Penalties exceed the Charges due, then the Access Provider must pay the amount equivalent to the Performance Penalty, or that part of the Performance Penalty not so set off, to the Access Seeker within 20 Working Days of the end of the Relevant Month.

9.3 Within 10 Working Days after the end of each Half Contract Year, the Access Provider will provide a summary report to the Access Seeker that will include the following:

9.3.1 with respect to each Service Level Deliverable for which there was a Service Level Default during the preceding Half Contract Year:

(a) statistics on the Access Provider's average monthly performance of that Deliverable, detailed by calendar month, during that Half Contract Year; and

(b) the average of the Access Provider's average monthly performance of that Deliverable during that Half Contract Year;

9.3.2 the total amount of Performance Penalties imposed for individual Service Level Defaults and cumulative delay days in accordance with section 8, detailed by calendar month, during the preceding Half Contract Year.

9.4 Any Performance Penalty imposed under the provisions of this SLT is credited on the basis that:

9.4.1 there is no admission of liability by the Access Provider or the Access Seeker: and

9.4.2 any amount credited will be credited without prejudice to any right of either the Access Provider or the Access Seeker to claim for additional loss resulting from the Service Level Default.

Appendix 1

Interference Desktop Study

Item No.	Service Attribute	Deliverable	Service Level	Tolerance Level	Exclusions and Limitations
1.	Proposed Solution Acknowledgement	Access Provider will acknowledge receipt of the Proposed Solution	Provide acknowledgement to the Access Seeker within 4 Business Hours following the Receipt Time	99%	
2.	Interference Desktop Study	Access Provider will complete the desktop study of Interference and Performance Degradation	Access Provider will complete the Desktop Study within 10 Working Days from the Receipt Time of proposed solution	90%	

Multi-Site Application

Item No.	Service Attribute	Deliverable	Service Level	Tolerance Level	Exclusions and Limitations
3.	Multi-site Application Acknowledgement	Access Provider will acknowledge receipt of Multi-Site Application	Provide acknowledgement to the Access Seeker within 4 Business Hours following the Receipt Time	90%	

Item No.	Service Attribute	Deliverable	Service Level	Tolerance Level	Exclusions and Limitations
4.	Notification of the validity of the Multi-site Application	Access Provider will notify the Access Seeker whether the Multi-site Application complies with the Mobile Co-location Operations Manual	The Access Provider will notify the Access Seeker within 3 Working Days of receipt of its Multi-Site Application whether such Application complies or reject the Application	90%	

Item No.	Service Attribute	Deliverable	Service Level	Tolerance Level	Exclusions and Limitations
5.	Multi-Site Project Plan	Access Provider will provide a Multi-Site Project Plan to the Access Seeker	<p>Access Provider will provide the project plan within:</p> <ul style="list-style-type: none"> ▪ 5 Working Days of Receipt Time of the Multi-Site Application where it involves 10 Relevant Facilities; ▪ 10 Working Days of Receipt Time of the Multi-Site Application where it involves between 10 and 30 Relevant Facilities; or ▪ 15 15 Working Days of Receipt Time of the Multi-Site Application where it involves more than <u>between 30 and 50</u> Relevant Facilities; <u>or</u> ▪ <u>a further 5 Working Days where the Multi-Site Application involves up to a further 20 Relevant Facilities (with that rule repeating depending on the number of Relevant Facilities).</u> 	90%	

Site Desktop Assessment

Item No.	Service Attribute	Deliverable	Service Level	Tolerance Level	Exclusions and Limitations
6.	Site Data Pack Application Acknowledgement	Access Provider will acknowledge receipt of a Site Data Pack Application	Provide acknowledgement to the Access Seeker within 4 Business Hours following the Receipt Time	90%	
7.	Issue of Site Data Pack	Access Provider will issue Site Data Pack	Issue Site Data Pack to the Access Seeker within 5 Working Days of Receipt Time of the Site Data Pack Application	90%	<p>The 5 Working Day timeframe applies for the issue of up to <u>150</u> Site Data Packs by an Access Provider per Access Seeker per week.</p> <p>Where the Access Seeker places more than <u>150</u> Site Data Pack Applications with the same Access Provider <u>and the Receipt Time for each of those Site Data Applications was in one the same calendar week, any excess Site Data Pack Applications will be treated as if their Receipt Time was at the beginning of the following calendar week (up to a maximum of 10 excess Site Data Pack Applications, with the rule repeating for any Site Data Pack Applications over that 10).</u></p> <p><u>For the avoidance of doubt,</u> this Service Level will not apply to those additional Applications.</p> <p>The 5 working day timeframe will not apply where the Access Seeker makes a request for further information pursuant to clause 15.2.6 of the Mobile Co-locations Operations Manual. However, such information requests are to be processed within a reasonable timeframe.</p>

Initial Site Application and Detailed Site Design

Item No.	Service Attribute	Deliverable	Service Level	Tolerance Level	Exclusions and Limitations
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Item No.	Service Attribute	Deliverable	Service Level	Tolerance Level	Exclusions and Limitations
8.	Initial Site Application Acknowledgement	Access Provider will acknowledge receipt of an Initial Site Application	Provide acknowledgement to the Access Seeker within 4 Business Hours following the Receipt Time	90% 9	
9.	Design Notes Acknowledgement	Access Provider will acknowledge receipt of Access Seeker's Site Design Notes	Provide acknowledgement to the Access Seeker within 4 Business Hours following the Receipt Time	90% 9	
10.	Confirmation of the Access Seeker's Site Design Notes	Access Provider will confirm to the Access Seeker that the Site Design Notes have been completed in accordance with the Detailed Site Design Visit, or request further consultation	Confirm Access Seeker's Site Design Notes, or request further consultation on the Access Seeker's Site Design Notes, within 3 Working Days of Receipt Time.	90%	

Final Site Application

Item No.	Service Attribute	Deliverable	Service Level	Tolerance Level	Exclusions and Limitations
11.	Full Site Application Acknowledgement	Access Provider will acknowledge receipt of a Full Site Application	Provide acknowledgement to the Access Seeker within 4 Business Hours following the Receipt Time	90% 9	

Item No.	Service Attribute	Deliverable	Service Level	Tolerance Level	Exclusions and Limitations
12.	Decision on Access Seeker's Full Site Application (Preliminary Site Approval)	Access Provider will issue Preliminary Site Approval or Access Provider will reject the Full Site Application	Issue Preliminary Site Approval or notification of rejection to the Access Seeker within 10 Working Days of Receipt Time of the Full Site Application	90%	

Final Site Approval

Item No.	Service Attribute	Deliverable	Service Level	Tolerance Level	Exclusions and Limitations
13.	Preliminary Notice Acknowledgement	Access Provider will acknowledge receipt of a Preliminary Notice	Provide acknowledgement to the Access Seeker within 4 Business Hours following the Receipt Time	90%	
14.	Decision on Access Seeker's Preliminary Notice (Final Site Approval)	Access Provider will issue Final Site Approval or Access Provider will reject the Preliminary Notice	Issue Final Site Approval or notification of rejection to the Access Seeker within 5 Working Days of Receipt Time of the Preliminary Notice from the Access Seeker	90%	

Project Plan

Item No.	Service Attribute	Deliverable	Service Level	Tolerance Level	Exclusions and Limitations
15.	Project Plan Acknowledgement	Access Provider will acknowledge receipt of a Project Plan	Provide acknowledgement to the Access Seeker within 4 Business Hours following the Receipt Time	90%	
16.	Decision on Access Seeker's Project Plan (Approval to Build)	Access Provider will issue Approval to Build or Access Provider will reject the Project Plan and will issue a change request	Issue Approval to Build or notification of rejection and change request to the Access Seeker within 7 Working Days of Receipt Time of the Project Plan	90%	
17.	Decision on Access Seeker's amended Project Plan (Approval to Build)	Access Provider will issue Approval to Build or Access Provider will reject the amended Project Plan and will issue a change request	Issue Approval to Build or notification of rejection and change request to the Access Seeker within 5 Working Days of Receipt Time of the amended Project Plan	90%	For avoidance of doubt, this Service Level only applies where the Access Seeker is required to submit an amended Project Plan

Planned and Unplanned Outages

Item No.	Service Attribute	Deliverable	Service Level	Tolerance Level	Exclusions and Limitations
18.	Notification of Planned Outages	Access Provider will advise Access Seeker of Planned Outages	Advise at least 10 Working Days before Planned Outage occurs	90%	Access Provider will use all reasonable endeavours to schedule Planned Outages between the hours of 12:00am and 7:00am

Item No.	Service Attribute	Deliverable	Service Level	Tolerance Level	Exclusions and Limitations
19.	Notification of Unplanned Outages	Access Provider will advise Access Seeker of Unplanned Outages	Advise within 2 hours, on a 24x7 basis, of Access Provider discovering or receiving notification of the Unplanned Outage	90%	

Fault Management for Mobile Co-location Service

Item No.	Service Attribute	Deliverable	Service Level	Tolerance Level	Exclusions and Limitations
20.	Fault report receipt acknowledgement	Access Provider will acknowledge receipt of each fault report	Provide fault report receipt acknowledgement within half a Fault Restoration Hour of the fault being reported ¹	90%	
21.	Notification of expected restoration time	Access Provider will provide notification of the expected restoration time	Provide notification of the expected restoration time within 8 Fault Restoration Hours of the fault being reported	90%	
22.	Meet notified expected restoration time	Access Provider will restore the fault within the expected restoration time	Restore fault within the Access Provider's notified expected restoration time	90%	The expected restoration time will be provided in accordance with the Access Provider's fault prioritisation systems. If a fault is logged outside Fault Restoration Hours, for the purposes of this Service Level, the report will be deemed to have been received from 7am the following day

¹ If a fault is logged outside Fault Restoration Hours, for the purposes of this Service Level, the report will be deemed to have been received at 7.00am the following day.

Operational Support System SLTs for Mobile Co-location

Item No.	Service Attribute	Deliverable	Service Level	Tolerance Level	Exclusions and Limitations
23.	Availability of web-based Provisioning System	Access Provider will make the Provisioning System available to the Access Seeker	The Provisioning System is available to the Access Seeker 24 hours a day, 7 days a week	99.8%	Availability to be measured 24x7 over a calendar month, excluding any periods of Permitted Maintenance This Service Level only applies to web-based Provisioning Systems
24.	Availability of the Fault Management System	Access Provider will make the Fault Management System available to the Access Seeker	The Fault Management System is available to the Access Seeker 24 hours a day, 7 days a week	99.8%	Availability to be measured 24x7 over a calendar month, excluding any periods of Permitted Maintenance
25.	Availability of the Common Format Site Database	Access Provider will make the Common Format Site Database available to the Access Seeker	The Common Format Site Database is available to the Access Seeker 24 hours a day, 7 days a week	99.8%	Availability to be measured 24x7 over a calendar month, excluding any periods of Permitted Maintenance

Notes:

Where availability measured

In respect of Items 23, 24 and 25 availability is measured from the point at which the public internet meets the Provisioning System (where a web-based system is in place), Fault Management System (where a web-based system is in place) or Common Format Site Database (as the case may be).

Permitted Maintenance

The Provisioning System, Fault Management System and the Common Format Site Database may be taken out of service for routine maintenance, testing, configuration changes, software upgrades or updating facilities. The Access Provider will, where practicable, carry out such work between 10:00pm and 7:00am. In such cases, the Access Provider shall advise Access Seekers not less than 5 Working Days prior to the event.

The Access Provider may, at such other times as Access Provider considers reasonably necessary, take the Provisioning System, Fault Management System and the Common Format Site Database out of service, taking into account the need to minimise any disruption caused to the Access Seekers. The Access Provider will advise of such outages not less than 10 Working Days prior to the planned event.

Unplanned Outages

If the Provisioning System, Fault Management System or the Common Format Site Database must be taken out of service to resolve a fault affecting the system, where reasonably practicable, the Access Provider shall give notice to the Access Seeker of any such unscheduled outages and the Access Seeker will be kept regularly updated regarding the resolution of the fault.

Appendix 2

Performance Penalties for individual Service Level Defaults

Item No.	Service Attribute	Service Level	Tolerance Level	Performance Penalty
2	Interference Desktop Study	Access Provider will complete the Desktop Study within 10 Working Days from the Receipt Time of proposed solution	90%	Where the Access Provider fails to meet the specified Tolerance Level, the Performance Penalty is to be calculated on a per calendar month basis in accordance with the following formula: Performance Penalty = A x B Where: A = 20% of the Charge for the issue of the Desktop Study B = the number of instances during the calendar month where the Access Provider's performance fell below the specified Tolerance Level.
7	Issue of Site Data Pack	Issue Site Data Pack to the Access Seeker within 5 Working Days of Receipt Time of the Site Data Pack Application	90%	Where the Access Provider fails to meet the specified Tolerance Level, the Performance Penalty is to be calculated on a per calendar month basis in accordance with the following formula: Performance Penalty = A x B Where: A = 20% of the Charge for the issue of Site Data Pack B = the number of instances during the calendar month where the Access Provider's performance fell below the specified Tolerance Level.
10	Confirmation of the Access Seeker's Site Design Notes	Confirm Access Seeker's Site Design Notes, or request further consultation on the Access Seeker's Site Design Notes, within 3 Working Days of Receipt Time.	90%	Where the Access Provider fails to meet the specified Tolerance Level, the Performance Penalty is to be calculated on a per calendar month basis in accordance with the following formula: Performance Penalty = A x B Where:

Item No.	Service Attribute	Service Level	Tolerance Level	Performance Penalty
				<p>A = 20% of the Charge for the issue of Site Data Pack</p> <p>B = the number of instances during the calendar month where the Access Provider's performance fell below the specified Tolerance Level.</p>
12	Decision on Access Seeker's Full Site Application (Preliminary Site Approval)	Issue Preliminary Site Approval or notification of rejection to the Access Seeker within 10 Working Days of Receipt Time of the Full Site Application	90%	<p>Where the Access Provider fails to meet the specified Tolerance Level, the Performance Penalty is to be calculated on a per calendar month basis in accordance with the following formula:</p> <p>Performance Penalty = A x B</p> <p>Where:</p> <p>A = 20% of the Charge for the issue of Preliminary Site Approval</p> <p>B = the number of instances during the calendar month where the Access Provider's performance fell below the specified Tolerance Level.</p>
14	Decision on Access Seeker's Preliminary Notice (Final Site Approval)	Issue Final Site Approval or notification of rejection to the Access Seeker within 5 Working Days of Receipt Time of the Preliminary Notice from the Access Seeker	90%	<p>Where the Access Provider fails to meet the specified Tolerance Level, the Performance Penalty is to be calculated on a per calendar month basis in accordance with the following formula:</p> <p>Performance Penalty = A x B</p> <p>Where:</p> <p>A = 20% of the Charge for the issue of Final Site Approval</p> <p>B = the number of instances during the calendar month where the Access Provider's performance fell below the specified Tolerance Level.</p>
16	Decision on Access Seeker's Project Plan (Approval to Build)	Issue Approval to Build or notification of rejection and change request to the Access Seeker within 7 Working Days of Receipt Time of the Project Plan	90%	<p>Where the Access Provider fails to meet the specified Tolerance Level, the Performance Penalty is to be calculated on a per calendar month basis in accordance with the following formula:</p> <p>Performance Penalty = A x B</p>

Item No.	Service Attribute	Service Level	Tolerance Level	Performance Penalty
				<p>Where:</p> <p>A = 20% of the Charge for the issue of Project Plan approval</p> <p>B = the number of instances during the calendar month where the Access Provider's performance fell below the specified Tolerance Level.</p>
17	Decision on Access Seeker's amended Project Plan (Approval to Build)	Issue Approval to Build or notification of rejection and change request to the Access Seeker within 5 Working Days of Receipt Time of the amended Project Plan	90%	<p>Where the Access Provider fails to meet the specified Tolerance Level, the Performance Penalty is to be calculated on a per calendar month basis in accordance with the following formula:</p> <p>Performance Penalty = A x B</p> <p>Where:</p> <p>A = 20% of the Charge for the issue of Project Plan approval</p> <p>B = the number of instances during the calendar month where the Access Provider's performance fell below the specified Tolerance Level.</p>
22	Meet notified expected restoration time	Restore fault within the Access Provider's notified expected restoration time	90%	<p>Where the Access Provider fails to meet the specified Tolerance Level, the Performance Penalty must be calculated in respect of each fault falling below the Tolerance Level, in accordance with the following formula:</p> <p>Performance Penalty = A x B</p> <p>Where:</p> <p>A = 7%, increasing by 1 percentage point for every 12 Fault Restoration Hours that the Service Level Default continues to not be resolved</p> <p>B = the equivalent of the monthly Charge for the Access Seeker's use of the Relevant Facility detrimentally affected by the fault</p> <p>For clarity, in assessing which faults (if any) fall below the Tolerance Level, each month's faults must be assessed chronologically from time and date of failure to meet the Service Level</p>

Appendix 3

Performance Penalties for cumulative delay days

The formula for calculating the Performance Penalty for cumulative delay days caused by Service Level Defaults for Items 2, 7, 10, 12, 14, 16 and 17 in processing an Application for an Access Provider's Relevant Facility is set out below:

$$\text{Performance Penalty} = \sum(C_x - D_x) * E$$

Where:

- C_x = the actual number of Working Days taken by the Access Provider to complete the Service Level Deliverable for an Item (where x is the Item number), rounded ~~up~~ down to the nearest Working Day when the Receipt Time was before 1pm and rounded up to the nearest Working Day when the Receipt Time was after 1pm (e.g. C_2 = the actual number of Working Days taken by the Access Provider to deliver the Service Attribute for Item 2)
- D_x = the target number of Working Days to complete the Service Level Deliverable for an Item as set out in the "Service Level" column of Appendix 1, where x is the Item number (e.g. D_2 = the number of Working Days in the Service Level for Item 2)
- X = the Item numbers for all of Items 2, 7, 10, 12, 14, 16, and 17, which the Access Provider was required to deliver during the specific Application process for an Access Provider's Relevant Facility
- E = \$500

Note that some Items included in the above formula will not be required for all co-location Applications. For example, Item 17 (Approval of Amended Project Plan) will only be required in cases where the Access Provider rejected the initial Project Plan submitted by the Access Seeker.

Where the Performance Penalty for cumulative delay days is an amount which is less than zero, the Performance Penalty deemed payable for cumulative delay days for those Relevant Facilities is deemed to be zero.

For the avoidance of doubt, the Performance Penalty for cumulative delay days is calculated when the Access Provider has granted Approval to Build, or when the Application is withdrawn by the Access Seeker.

Example

Item No.	Service Attribute	Service Level	Working Days for actual delivery
2	Interference Desktop Study	Access Provider will complete the Desktop Study within 10 Working Days from the Receipt Time of proposed solution	14.3

7	Issue of Site Data Pack	Issue Site Data Pack to the Access Seeker within 5 Working Days of Receipt Time of the Site Data Pack Application	6
10	Confirmation of the Access Seeker's Site Design Notes	Confirm Access Seeker's Site Design Notes, or request further consultation on the Access Seeker's Site Design Notes, within 3 Working Days of Receipt Time.	3
12	Decision on Access Seeker's Full Site Application	Issue Preliminary Site Approval or notification of rejection to the Access Seeker within 10 Working Days of Receipt Time of the Full Site Application	5.8
14	Decision on Access Seeker's Preliminary Notice	Issue Final Site Approval or notification of rejection to the Access Seeker within 5 Working Days of Receipt Time of the Preliminary Notice from the Access Seeker	4
16	Decision on Access Seeker's Project Plan (Approval to Build)	Issue Approval to Build or notification of rejection and change request to the Access Seeker within 7 Working Days of Receipt Time of the Project Plan	8
17	Decision on Access Seeker's amended Project Plan (Approval to Build)	Issue Approval to Build or notification of rejection and change request to the Access Seeker within 5 Working Days of Receipt Time of the amended Project Plan	NA (not required as the Access Provider approved the original Project Plan)

Based on the example timeline set out above the Performance Penalty for cumulative delay days is calculated as follows:

$$\begin{aligned}
 \text{Performance Penalty} &= [(C_2 - D_2) + (C_7 - D_7) + (C_{10} - D_{10}) + (C_{12} - D_{12}) + (C_{14} - D_{14}) + (C_{16} - D_{16})] * E \\
 &= [(15 - 10) + (6 - 5) + (3 - 3) + (6 - 10) + (4 - 5) + (8 - 7)] * 500 \\
 &= \$1000
 \end{aligned}$$

Note that:

- Item 17 is not included in the above calculation, on the basis that this Item was not required in the co-location application process for these specific Relevant Facilities; and
- Working Days for actual delivery for Items 2 and 12 were rounded up to the nearest Working Day, as for this example the Receipt Time was after 1pm.