



Dated

KCOM GROUP LIMITED

- and -

**Reference Offer for the
Provision of Leased Lines and
Ethernet Services**



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THE PARTIES AGREE AS FOLLOWS:-

1. INTERPRETATION

1.1 In this Agreement, except if the context requires otherwise, words and expressions shall have the meanings set out below:-

1.2 In this Agreement unless otherwise specified, reference to:

- (a) the terms “subsidiary” and “holding company” have the meanings ascribed to them by Section 1159 and Schedule 6 of the Companies Act 2006 (as amended);
- (b) a party means a party to this Agreement and includes its permitted assignees and/or successors in title;
- (c) a person includes any person, individual, company, firm, corporation, government, state or agency of a state or any undertaking (whether or not having separate legal personality and irrespective of the jurisdiction in or under the law of which it was incorporated or exists);
- (d) Recitals, Clauses, Paragraphs, Schedules or Appendices are to Recitals, Clauses and Paragraphs of, Schedules and Appendices to this Agreement;
- (e) writing shall include typewriting, printing, lithography, photography and other modes of representing words in a legible form other than writing on an electronic or visual display screen or in other non-transitory form (for clarity this excludes e-mail);
- (f) words denoting the singular shall include the plural and vice versa and words denoting any gender shall include all genders;
- (g) any reference to any legislature provision shall be deemed to include any subsequent re-enactment or amending provision.

1.3 Headings are included in this Agreement for ease of reference only and shall not affect the interpretation or construction of this Agreement.



- 1.4 In the event, and to the extent only, of any conflict or inconsistencies between the Clauses, the Schedules, the Order, the Price List, the Service Operations Manual and/or the Credit Vetting Policy the order of precedence shall be as follows:
- (a) the main body of this Agreement;
 - (b) Schedules;
 - (c) the relevant section of the Price List;
 - (d) the Order;
 - (e) the elements of the Service Operations Manual and Credit Vetting Policy that are incorporated by reference in this Agreement.

2. COMMENCEMENT AND DURATION

- 2.1 This Agreement takes effect on the date hereof and shall continue until termination pursuant to this Agreement.
- 2.2 Each Order shall commence on its Service Start Date and continue until the expiry of its Minimum Period. Following the expiry of the Minimum Period the Order will continue unless and until terminated by either party giving the other no less than 30 days' prior written notice.
- 2.3 In the event that either party's entitlement to provide all or a material part of its Public Electronic Communications Network and/or Public Electronic Communications Services is suspended by Ofcom, the party whose entitlement is not so suspended may terminate this Agreement (or such part thereof as that party deems reasonable) immediately on notice to the other.

3. PROVISION OF THE SERVICES

- 3.1 KCOM agrees to provide the CP with the Services in accordance with this Agreement.
- 3.2 KCOM agrees to exercise the reasonable skill and care of a competent Communications Provider in providing the Services and if required, in determining how best to provide the Services to the Site.



- 3.3 KCOM agrees to grant CP a non-exclusive right to use the Services for the sole purpose of enabling the CP to provide the CP Service.
- 3.4 Subject to survey, KCOM will use reasonable endeavours to provide the Services for use by the CP from the Proposed Start Date otherwise specifically agreed by the parties in writing or unless KCOM is unable to do so as a result of a failure by the CP to fulfil its obligations under this Agreement.
- 3.5 The CP acknowledges that KCOM shall be entitled to amend the technical aspects of the Services and/or the relevant Charges, as appropriate, following completion of the survey. In the event that the survey reveals that the provision of the Services to the Site, will be degraded to such an extent that KCOM would be unable to comply with this Agreement, KCOM will be entitled to terminate the relevant Order (in whole or in part) without any liability to the CP. In the event of termination of the Order by the CP, for any reason, prior to the Proposed Start Date, the CP will be liable to pay KCOM the cancellation charges as specified in the Price List.
- 3.6 The CP acknowledges and agrees that the Services can only be provided to a Site in the Hull Area.

4. SERVICE MANAGEMENT

- 4.1 Whilst KCOM agrees to use reasonable endeavours to provide uninterrupted Services to the CP, KCOM may:
- (a) give the CP instructions which it reasonably believes are necessary for reasons of health, safety or the quality of the Services and it is the CP's responsibility to ensure these are adhered to; or
 - (b) interrupt the Services for operational reasons (such as planned maintenance or Service upgrades) or because of an Emergency. KCOM agrees to restore the interrupted Services as quickly as possible. KCOM will give the CP as much notice as possible and aims to give the CP at least 10 Working Days' notice of any interruption to the Services for planned maintenance and upgrade work. If there has been an interruption to the Services for Emergency reasons, KCOM will inform the CP that there has been an interruption as soon as reasonably practicable.



KCOM will use reasonable endeavours to restore the Services as soon as possible after the Emergency has ceased.

5. KCOM EQUIPMENT

5.1 Title to the KCOM Equipment will remain with KCOM at all times and nothing will operate to transfer ownership of or rights in the KCOM Equipment to the CP. Any software contained in the KCOM Equipment and any software or documentation provided by KCOM in connection with the provision of the Services is and will remain KCOM's property or the property of KCOM's licensors.

5.2 The CP agrees to:

- (a) ensure that the Site where Services are to be provided is prepared for the installation of the Services and that there is a suitable place, conditions, connection points and electricity for KCOM Equipment at the Site in accordance with KCOM's reasonable instructions, if any; and
- (b) obtain all necessary consents, including for example, consents for any necessary alterations to buildings, permission to cross other people's land or permission to put KCOM Equipment at the Site.

5.3 The CP is responsible for KCOM Equipment and agrees to take reasonable steps to ensure that nobody (other than someone authorised by KCOM) adds to, modifies or in any way interferes with it. The CP will be liable to KCOM for any loss of or damage to KCOM Equipment, except where such loss or damage is due to fair wear and tear or is caused by KCOM, or anyone acting on KCOM's behalf. The CP's liability under this Clause 5.3 is limited to the replacement value of the KCOM Equipment together with any associated reasonable costs of replacement.

6. CONNECTION OF EQUIPMENT TO THE SERVICES

6.1 CP shall and shall ensure that any End User shall make any such modifications to the End User Equipment as KCOM may determine necessary in order to provide the Services, subject to CP's obligations under the Act.



- 6.2 CP shall and shall ensure that End Users shall ensure that any equipment connected to the KCOM Network conforms to any standards in force from time to time as stipulated any law or regulation, or as required by KCOM for connection of CP Equipment and/or End User Equipment to the KCOM Network. KCOM may disconnect any CP Equipment and/or End User Equipment which does not conform to such standards or approval or which, in KCOM's reasonable opinion, may cause death, personal injury or damage to property or impair the quality of the Services or any other services provided by KCOM, including services to Third Parties. CP shall refund to KCOM any costs KCOM incurs as a consequence of such disconnection.
- 6.3 CP shall, if requested by KCOM, provide such information in respect of the CP Equipment and/or End User Equipment as KCOM may reasonably require.

7. ACCESS AND SITE REGULATIONS

- 7.1 The CP shall do all things as shall reasonably be necessary to enable provision of the Services and shall maintain competent and appropriately trained staff in sufficient numbers for this purpose. CP shall and shall ensure that End Users shall, use all reasonable endeavours to ensure that KCOM or KCOM's sub-contractors are granted access to the Site.
- 7.2 CP shall and shall ensure that End Users shall, use reasonable endeavours to ensure KCOM's staff or KCOM's sub-contractor's staff are provided with a suitable and safe environment. CP will indemnify KCOM against all loss, damages, costs and expenses arising or incurred in respect of any actions, claims or legal proceedings which are brought or threatened against KCOM where the CP is in breach of this Clause 7. The limitations and exclusions of liability contained in Clause 17 do not apply to this indemnity except in respect of liability relating to property damage to which Clause 17 shall apply.



8. USE OF THE SERVICES

8.1 CP shall and shall use reasonable endeavours to ensure that the End Users shall, use the Services in accordance with the provisions of this Agreement, or such reasonable operating guides and instructions as may be notified by KCOM to CP from time to time, and in accordance with all relevant provisions of all relevant Legislation. Without limitation to the foregoing, CP shall comply with the provisions of the Act and the General Conditions.

8.2 CP will not use and CP will procure that the End Users will not use, the Services:

- (a) in any way that is unlawful or fraudulent or, to CP's knowledge, has any unlawful or fraudulent purpose or effect, which shall include (without prejudice to the generality of the foregoing) the carrying out of a fraud or criminal offence against KCOM or any other Communications Provider;
- (b) in any way that contravenes any licence or Third Party rights;
- (c) to knowingly or recklessly transmit any material which contains software viruses or any computer code, files or programs designed to interrupt, damage, destroy or limit the functionality of any computer software, hardware or telecommunications equipment;
- (d) in any way which (in KCOM's reasonable opinion) brings KCOM's name into disrepute or in any way which intentionally causes damage or disruption to the Services or the KCOM Network;
- (e) to send, knowingly receive, upload, download, use or re-use material which is abusive, indecent, offensive, defamatory, obscene or menacing, or in breach of copyright, confidence, privacy or any other rights or is intended to, cause annoyance, inconvenience or worry or needless anxiety or which is defamatory, an act of treason or intended to be a hoax call to any Emergency Organisation;
- (f) in a way that does not comply with any instructions KCOM give pursuant to Clause 8.1;
- (g) in a way that, in KCOM's reasonable opinion, could materially affect the quality of, or be detrimental to, any telecommunications services, including the Services;



- (h) to spam or send or provide unsolicited advertising or promotional material or knowingly receive responses to any spam, unsolicited advertising or promotional material sent or provided by any Third Party.
- 8.3 CP shall, and shall ensure the End Users shall, make any such changes and modifications to any CP Equipment and/or End User Equipment as KCOM may in its absolute discretion determine necessary in order to provide Services subject to the obligations of CP or End User pursuant to all relevant Legislation. CP acknowledges that if the CP and/or End User do not make any such changes and modifications then KCOM may not be able to route the Services to the relevant Site.
- 8.4 CP shall, if so requested by KCOM, provide such information in respect of any CP Equipment and/or End User Equipment as KCOM may reasonably require for the purposes of providing the Services.
- 8.5 If a CP uses the Services in breach of Clause 8.2 or supplies the CP Service to an End User who is in breach of Clause 8.2, KCOM may on notice where reasonably practicable terminate the Services, in so far as it is reasonable in the circumstances, without prejudice to KCOM's rights of termination under this Agreement. Provided that where reasonably practicable, KCOM shall warn the CP that it is in breach of Clause 8.2 and that KCOM may terminate the Services.
- 8.6 If KCOM notifies the CP or if the CP is aware that the End User has used the Services in breach of Clause 8.2 then the CP will take all reasonable steps to cooperate with KCOM and will notify the End User that should they continue to use the Services in breach of Clause 8.2 KCOM reserves the right of termination. If the End User continues to use the Services in breach, the CP agrees to terminate that End User's Services.
- 8.7 The CP agrees to indemnify KCOM against all reasonable loss, damages, costs, liabilities and expenses arising or incurred in respect of any actions, claims or legal proceedings which are brought or threatened against KCOM by a Third Party if the Services are used in breach of this Clause 8.



8.8 Both parties agree to co-operate fully with the Police and any other relevant authorities (including but not limited to HM Revenue & Customs, the Trading Standards Office and/or Ofcom and any successors from time to time) in connection with any misuse or suspected misuse of the Services and CP consents to KCOM co-operating with any other Communications Providers in connection with any fraudulent or illegal activity related to or connected with the Services and agrees that KCOM shall be entitled to divulge the name and address and account information relating to CP and End Users to such Third Parties so far as permitted under the applicable Data Protection Laws.

9. FORECASTING

9.1 Every month, the CP shall provide KCOM with a rolling quarterly forecast split by month, detailing;

- (a) The number of Orders the CP expects to place each month;
- (b) For each Order, the A and B end post codes and number of single fibres and fibre pairs; and
- (c) Such other details as KCOM may reasonably require from time to time.

9.2 Following receipt of each quarterly forecast if KCOM, acting reasonably, considers the forecast will trigger the provisions of paragraph 9.4, KCOM will contact the CP as soon as reasonably practicable to organise a meeting that will:

- (a) set out a timetable between KCOM and the CP for the priority of Orders to be placed pursuant to that quarterly forecast; and
- (b) establish which, if any, Orders shall be dealt with under the provisions of paragraph 9.4

9.3 KCOM shall not be liable in respect of any delay to or failure of the Services to the extent caused directly or indirectly by any failure of the CP pursuant to Clause 9.1, or by the number of Orders placed significantly deviating from either:

- (a) the forecasts provided by the CP pursuant to Clause 9.1: or
- (b) the timetable established with the CP pursuant to Clause 9.2(a).



- 9.4 If a CP's forecast produced under Clause 9.1 indicates the CP intends to place 10 or more Orders in one month, then KCOM reserves the right to organise a meeting pursuant to Clause 9.2 in order to propose to the CP:
- (a) which Orders KCOM will implement as a standalone project implementing all of such Orders in a single block; and
 - (b) an Indicative Lead Time for such Orders.
- 9.5 Where KCOM has issued a proposal under Clause 9.4, the CP can:
- (a) approve KCOM's proposal, whereupon the parties will follow the process set out in paragraph 2 of Schedule 2 for the proposed Orders that KCOM will implement as a standalone project; or
 - (b) reject KCOM's proposal and inform KCOM it does not wish to proceed; or
 - (c) reject KCOM's proposal and revert to KCOM with a new forecast under Clause 9.

10. SERVICE ORDERS

- 10.1 The CP shall request KCOM to provide the Services pursuant to the terms of this Agreement by sending to KCOM an Order in the form specified by KCOM. Each Order shall include full and accurate written details of the CP and End User and the Site to which the relevant Order relates. The CP acknowledges that in order for KCOM to be able to provide the Services, the CP must provide fully the information regarding the Site and the Services requested. All Orders must be placed in accordance with such procedures as may be agreed between the parties and defined in Schedule 2 (Service) and the Service Operations Manual from time to time. In order to suspend an Order the CP must notify KCOM using the process set out in the Service Operations Manual.
- 10.2 KCOM shall not be liable in respect of any delay to or failure of the Services to the extent caused whether directly or indirectly by any failure of the CP to comply with the provisions of this Clause 10, Clause 12 or paragraph 2 (Ordering and Provision) of Schedule 2 (Service).



11. QUALITY OF SERVICE

- 11.1 KCOM will use all reasonable endeavours to provide the Services in accordance with the Service Standards set out in Schedule 3 and will use reasonable skill and care in the provision of the Services.
- 11.2 The CP acknowledges that the Services cannot be provided fault free and KCOM does not warrant error free or uninterrupted use of the Services. The parties shall comply with the incident identification and reporting guidelines set out in Schedule 3 and the Service Operations Manual.

12. PROVISION OF INFORMATION

- 12.1 Each party shall provide to the other such information and assistance as is reasonably requested from time to time by the other party to enable it to perform its obligations pursuant to this Agreement.
- 12.2 Notwithstanding any provision of this Agreement a party shall not be obliged to provide information which is subject to a confidentiality obligation to a Third Party unless such Third Party consents to such disclosure.
- 12.3 Each party will use reasonable endeavours to ensure that information provided by it is correct to the best of its knowledge at the time of provision of such information.
- 12.4 Nothing in this Agreement shall prevent the furnishing of traffic data (as defined in the Privacy Regulations) to a person who is a competent authority for the purposes of any provision relating to the settlement of disputes (by way of legal proceedings or otherwise) in, or made by virtue of any enactment.
- 12.5 Nothing in this Agreement shall require a party to do anything in breach of any statutory or regulatory obligation of confidentiality.



13. KCOM CHARGES AND DEPOSITS

- 13.1 For Services provided by KCOM the CP shall pay to KCOM the Charges specified from time to time in the Price List and calculated using the details recorded by KCOM.
- 13.2 KCOM may from time to time vary the Charges for the Services by issuing an Access Charge Change Notice to the CP. Such new Charges shall take effect:
- (a) not less than 28 days after the Access Charge Change Notice for any new network access provided pursuant to this Agreement;
 - (b) not less than 28 days after the Access Charge Change Notice for price decreases in relation to existing network access provided pursuant to this Agreement;
 - (c) not less than 28 days after the Access Charge Change Notice relating to the end of a temporary reduction in accordance with the terms of any Special Offer; and
 - (d) not less than 56 days after the Access Charge Change Notice in the case of any other existing network access provided pursuant to this Agreement.
- KCOM will send advice of the Access Charge Change Notice to the CP Billing Contact, as supplied in the Customer Service Plan.
- 13.3 Notwithstanding the aforesaid, KCOM may vary the Charge which has retrospective effect for the Services provided by KCOM by publication in the Price List if the variation is as a result of an order, direction, determination or requirement of Ofcom or any other regulatory authority or body of competent jurisdiction.
- 13.4 The date of publication in the Price List shall be the date that KCOM first makes the contents of the Price List available on the internet containing the relevant entries to persons other than KCOM including, without limitation the CP.
- 13.5 The CP agrees to pay the Charges by the Due Date. KCOM may charge daily interest on late payments not the subject of a bona fide dispute at the Interest Rate both before and after any judgement for the period beginning on the date on which payment is due and ending on the date payment is actually made.



- 13.6 If a refund is due to the CP by KCOM, the CP may charge daily interest on late repayments at the Interest Rate for the period beginning on the date on which the parties acting reasonably agree KCOM shall make the repayment and ending on the date KCOM actually makes payment. If any Charge is recalculated or adjusted with retrospective effect under an order, direction, determination or requirement of Ofcom, or any other regulatory authority or body of competent jurisdiction, the parties agree that interest will be payable at the Interest Rate on any amount due to either party as a result of that recalculation or adjustment.
- 13.7 All Charges exclude Value Added Tax (VAT) which is charged at the applicable rate and is payable by the CP.
- 13.8 KCOM shall invoice the CP as follows:
- (a) Connection Charges – at any time on or after the Service Start Date;
 - (b) Rental Charges – monthly in advance or as otherwise stated on the Order;
 - (c) Any other charges or sums due under this Agreement shall be payable on demand.
- 13.9 The CP agrees to pay Rental Charges in accordance with KCOM's billing cycle. If KCOM begins, or ceases, the Services on a day which is not the first or last day of the period by reference to which KCOM charges rental, KCOM will apportion rental on a daily basis for the incomplete period.
- 13.10 Payment will be in pounds sterling. All Charges and any other sums due under this Agreement will be collected in full by direct debit, unless otherwise agreed in writing, within 30 calendar days of the date of the relevant invoice without any setoff, deduction or withholding of any kind, notwithstanding that the CP may not have received payment from any End Users to whom the Services have been provided. Any dispute between the CP and any End User regarding billing is the sole responsibility of the CP.



- 13.11 The CP acknowledges that it will be subject to KCOM's Credit Vetting Policy. Should KCOM consider it necessary following the application of such procedures or should the CP fail to pay the Charges due under or in connection with this Agreement, KCOM may (without prejudice to any other rights and remedies available to KCOM), at any time, require the CP to pay a deposit or provide a guarantee as security for payment of future Charges. The CP agrees to pay such deposit or provide such guarantee within 28 calendar days of receiving notice from KCOM requiring it to do so, failing which KCOM reserves the right, without prejudice to any other rights and remedies available to it under this Agreement to refuse to accept any further Orders under the Agreement and to suspend performance of such of its obligations under this Agreement as is reasonable in the circumstances until such deposit or guarantee is provided.
- 13.12 If the CP disputes any invoice, it will notify KCOM in writing within the invoice payment period of the relevant KCOM invoice giving its reasons. The CP is not entitled to withhold payment of any amount not in dispute. The CP is not entitled to withhold any payments to KCOM on the grounds that the CP has a dispute with the End User(s). Clause 23 will apply to the resolution of a dispute of the type referred to in this Clause 12.11.
- 13.13 KCOM may correct an invoice sent to the CP providing it notifies the CP within 12 months of the date of the invoice giving its reasons.
- 13.14 The CP may seek correction of an invoice providing it notifies KCOM within 12 months of the date of the invoice giving its reasons. The parties will negotiate in good faith to resolve the issue as soon as reasonably practicable.

14. REVIEW

- 14.1 KCOM may change this Agreement at any time by giving not less than the 56 days' notice before the change takes effect in order to:
- (a) comply with any legal or regulatory obligation; or
 - (b) maintain the integrity or security of the Service or KCOM Network; or
 - (c) introduce or withdraw Service features (subject to any other notice requirements specified by any applicable regulation); or
 - (d) change the service levels; or



- (e) introduce process changes; or
- (f) improve clarity, or make corrections to typographical errors;

providing that the changes in sub-clauses (b) to (f) inclusive shall not materially adversely affect the Service.

- 14.2 Either KCOM or the CP may propose changes to this Agreement at any time. KCOM will publish details of any such proposed changes on the KCOM Website and notify the CP and other Communications Providers who in its reasonable opinion may be affected by the changes. If there are no objections to the proposed changes within the 56 days of the service of KCOM's notice from KCOM, the CP or from any other Communications Provider who has an agreement for the Services, the parties agree that the changes shall take effect from the proposed effective date. If there are any objections to the proposed changes within 56 days of the service of KCOM's notice of the proposed changes under this Clause 14.2, KCOM shall enter into discussions with the CP and any other Communications Providers affected. If the parties (including the objector) cannot reach an agreement by the end of 56 days of the service of KCOM's notice of the proposed changes, KCOM shall not introduce that change into this Agreement and either party may raise a dispute under Clause 23.
- 14.3 KCOM may amend, change, remove, or replace those parts of Ancillary Documents which do not form part of this Agreement without prior agreement from the CP. For the avoidance of doubt, the form specified by KCOM from time to time for Orders, the Service Operations Manual and the Credit Vetting Policy are Ancillary Documents. KCOM will give reasonable written notice of any such changes and publish details of those changes on the KCOM Website before the changes take effect. If the CP considers any such changes to an Ancillary Document would change the Agreement or materially and adversely affect the Services then, on or before the expiry of the 56th Working Day of any such changes taking effect, the CP may dispute any such changes to an Ancillary Document in accordance with Clause 23.



15. CONFIDENTIALITY

- 15.1 Subject to the following provisions of this Clause 14, a Receiving Party shall keep in confidence Confidential Information and will not (and will use its reasonable endeavours to ensure that its directors, employees, and professional advisers will not) disclose such information to any Third Party.
- 15.2 A Receiving Party shall exercise no lesser degree of care of Confidential Information than would a reasonable person with knowledge of the confidential nature of the information. A Receiving Party shall exercise no lesser security or degree of care than that party applies to its own Confidential Information of an equivalent nature.
- 15.3 A Receiving Party shall restrict disclosure of Confidential Information relating to the other party to those persons who have a reasonable need to know or, in the case of CLI, to those employees to whom it is essential for permitted purposes. Confidential Information shall be used solely for the purposes for which it was disclosed.
- 15.4 A Receiving Party may disclose Confidential Information to an associated company, subject to the associated company undertaking to comply with obligations equivalent to these contained in this Clause 14.
- 15.5 A Receiving Party may disclose Confidential Information to a contractor or agent, subject to the contractor or agent undertaking in writing to comply with obligations equivalent to those contained in this Clause 14.
- 15.6 The following shall not constitute a breach of this Clause 14:
- (a) a disclosure authorised in writing by the Disclosing Party to the extent of that authority; or
 - (b) a disclosure to an Emergency Organisation
 - (c) publication of all or part of this Agreement or details of it or publication in the Price List except in so far as Ofcom has consented to the exclusion of any matter; or
 - (d) a disclosure which is properly made pursuant to a Condition or a relevant statutory or other regulatory obligation; or



- (e) a disclosure properly and reasonably made to Ofcom under Clause 14 or to an arbitrator, expert or any person appointed by the parties for the resolution of a Dispute; or
- (f) a disclosure to obtain or maintain any listing on or required by the rules of any recognised stock exchange

subject to in the case of any disclosure specified in Clauses 15.6(c) to 15.6(e), the Receiving Party informing the Disclosing Party as soon as reasonably practical, after such disclosure.

- 15.7 Unless otherwise agreed in writing, a Receiving Party shall not use the other party's Confidential Information to provide commercial advantage to its retail business.

16. FORCE MAJEURE

- 16.1 **"Event of Force Majeure"** means, in relation to either party, an event or circumstance beyond the reasonable control of that party (the **"Claiming Party"**) including, without limitation strikes, lock outs and other industrial disputes (in each case, whether or not relating to the Claiming Party's workforce), acts of God, insurrection or civil disorder, war or military operations, national or local emergency, acts or omissions of government, highway authority or other competent authority (including, without limitation, issuance of applicable codes of conduct or regulatory orders, determinations or directions), compliance with any statutory obligation, fire, lightning, explosion, flood, subsidence, weather of exceptional severity, interruption or failure of utility service (including but not limited to electric power, gas and water but excluding telecommunication services save those provided by a Third Party) or acts or omissions of persons for whom neither party is responsible.
- 16.2 The Claiming Party shall not be deemed to be in breach of this Agreement or otherwise liable to the other party (the **"Non-claiming Party"**) for any delay in performance or any non-performance of any obligations under this Agreement (and the time for performance shall be extended accordingly) if and to the extent that the delay or non-performance is due to an Event of Force Majeure.



- 16.3 The Claiming Party shall promptly notify the Non-claiming Party of the nature and extent of the circumstances giving rise to the Event of Force Majeure and of the estimated extent and duration of its inability to perform or delay in performing its obligations.
- 16.4 Upon cessation of the effects of the Event of Force Majeure the party initially affected by a Force Majeure shall promptly notify the other of such cessation.
- 16.5 If as a result of an Event of Force Majeure, the performance by the party initially affected of its obligations under this Agreement is affected, such party shall, subject to the provisions of Clause 16.6, perform those of its obligations not affected by the Event of Force Majeure. In performing those of its obligations not affected by an Event of Force Majeure, the party initially affected by an Event of Force Majeure shall deploy its resources such that (when taken together with other obligations to its customers and Third Parties) there is no undue discrimination against the other party.
- 16.6 If the Event of Force Majeure in question prevails for a continuous period in excess of three months after the date on which it began, the Non-claiming Party may give notice to the Claiming Party terminating this Agreement. The notice to terminate must specify the termination date, which must be not less than 30 clear days after the date on which the notice to terminate is given. Once a notice to terminate has been validly given, this Agreement will terminate on the termination date set out in the notice. Neither party shall have any liability to the other in respect of termination of this Agreement due to an Event of Force Majeure, but rights and liabilities which have accrued prior to termination shall subsist.



17. LIMITATION OF LIABILITY

- 17.1 Subject to Clause 17.3 if a party is in breach of any of its obligations under this Agreement to the other party (excluding obligations arising under this Agreement to pay monies in the ordinary course of business), or otherwise (including liability for negligence or breach of statutory duty) such party's liability to the other shall be limited to one million pounds sterling (£1,000,000) for any one event or series of connected events and two million pounds sterling (£2,000,000) for all events (connected or unconnected) in any period of 12 calendar months.
- 17.2 Neither party excludes or restricts its liability for death or personal injury caused by its own negligence or liability arising under Part I of the Consumer Protection Act 1987 or any other liability which cannot be excluded or limited by law.
- 17.3 Neither party shall be liable to the other in contract, tort (including negligence or breach of statutory duty) or otherwise for loss (whether direct or indirect) of profits, business or anticipated savings, wasted expenditure or for any indirect special or other consequential loss and damage whatsoever arising in connection with the operation of this Agreement.
- 17.4 Each provision of this Clause 17 is a separate limitation applying and surviving even if one or more such provisions is inapplicable or held unreasonable in any circumstances.

18. INTELLECTUAL PROPERTY RIGHTS

- 18.1 Except as expressly provided otherwise in this Agreement, Intellectual Property Rights shall remain the property of the party creating or owning the same and nothing in this Agreement shall be deemed to confer any assignment or licence of the Intellectual Property Rights of one party to the other party.

19. INDEMNITY AND UNDERTAKING

- 19.1 The CP may permit End Users to use the Services provided that the CP shall be responsible, and remain responsible, for ensuring that:
- (a) the End Users comply with the CP's obligations under this Agreement (so far as applicable); and



(b) the terms of the CP's contracts with End Users are not inconsistent with the terms of this Agreement (so far as applicable) and without limiting the generality of the foregoing the CP shall be solely responsible for obtaining from each End User any information, access to premises including, without limitation, the End User's Site and other co-operation needed by KCOM in connection with the provision of the Services.

19.2 KCOM's obligations under this Agreement shall be solely to the CP and except if and to the extent caused by any act and/or omission caused by KCOM the CP agrees to fully indemnify, defend and hold harmless KCOM against any and all liabilities, claims and costs (including legal costs) arising from any and all claims by any Third Party or End User in connection with the Services.

19.3 The CP shall be liable to KCOM for any acts and omissions of Third Parties relating to the use of the Services.

20. CONDUCT OF INDEMNIFIED EVENTS

20.1 The indemnified party must notify the indemnifying party of any related claims or legal proceedings and use reasonable endeavours to do so within 14 days of receipt and if it fails to do so, any additional cost reasonably incurred as a consequence of that failure may be deducted from the indemnified sum.

20.2 The indemnifying party may assume conduct of the claim providing it notifies the indemnified party of such intention within 5 days of receipt of the notification in Clause 20.1. The indemnified party may re-assume conduct of the claim at any time if it reasonably believes a failure to do so would be prejudicial to its interests.

20.3 The party assuming conduct of the claim must:

- (a) actively consult with the other party regarding the conduct of any action and take their views into account; and
- (b) make no admissions relating to any claims or legal proceeding without the prior written consent of the other party which shall not be unreasonably withheld; and



- (c) not agree any settlement of such claims or legal proceedings nor make any payment on account of them without the prior written consent of the other party, which shall not be unreasonably withheld.

21. DATA PROTECTION

- 21.1 Where KCOM is processing data on CP's behalf, KCOM shall only process such data in accordance with the Data Protection Laws and KCOM's Data Processing Commitment.

22. ASSIGNMENT

- 22.1 Subject to Clauses 22.2 and 22.4, neither party may assign the whole or part of this Agreement without the other party's prior written consent, such consent not to be unreasonably withheld or delayed.
- 22.2 KCOM may assign this Agreement to any company which from time to time is a KCOM Group Company.
- 22.3 The CP may transfer its rights and obligations by way of novation to an eligible CP Group Company subject to credit vetting by KCOM and the signing of a novation agreement in such form as KCOM shall reasonably require.
- 22.4 The assigning party shall promptly give notice to the other party of any assignment permitted to be made without the other party's consent. No assignment shall be valid unless the assignee/successor agrees in writing to be bound by the provisions of this Agreement.

23. DISPUTES

- 23.1 Either party (the "**disputing party**") may invoke the dispute procedure specified in this Clause 23, and if it wishes so to do it shall send written notice of the Dispute to the other party's commercial contact (the "**receiving party**"). The notice shall contain all relevant details including the nature and extent of the Dispute. The receiving party shall acknowledge the receipt of such notice of the Dispute within two Working Days. In the absence of acknowledgement from the receiving party within such timeframe, the disputing party may notify the receiving party that the notice has been deemed received.



- 23.2 The name of each party's commercial contact shall be as specified from time to time in the Customer Service Plan. For the purposes of this Clause 23 no change to a commercial contact shall be effective until it has been notified in writing to the other party.
- 23.3 Following notice under Clause 23.1, the parties shall consult in good faith to try to resolve the Dispute. If agreement is not reached within 14 Working Days from date of such written notice of Dispute, the Dispute will be escalated under Clause 23.4.
- 23.4 If the Dispute is not resolved under Clause 23.3, the parties shall send written notice to each other's respective commercial contact requiring the Dispute to be escalated and stating to whom each party has escalated the Dispute. The commercial contact receiving such a notice shall acknowledge the receipt of such notice in writing within four Working Days and state to whom the Dispute has been escalated.
- 23.5 Following notice under Clause 23.4, the parties shall work in good faith to try to resolve such Dispute, involving appropriate senior managers.
- 23.6 If the Dispute is not resolved within 90 (ninety) calendar days of receipt of an acknowledgement under Clause 23.4, either party may refer the Dispute to Ofcom or an agreed alternative dispute resolution body for resolution and shall forthwith send a copy of the referral to the other party. In the event of a reference to Ofcom or an agreed alternative dispute resolution body, both parties shall compile a detailed dispute report which shall include origin, nature, extent, issues and any proposals for resolution and make their respective reports available to Ofcom or the agreed alternative dispute resolution body and each other within 28 calendar days of the referral.
- 23.7 The above procedures are without prejudice to any other rights and remedies that may be available in respect of any breach of any provisions of this Agreement.
- 23.8 Nothing herein shall prevent a party from:
- (a) seeking (including obtaining or implementing) interlocutory or other immediate relief;



- (b) referring the Dispute to Ofcom in accordance with any right (if any) either party may have to request a determination or other appropriate steps for its resolution.

23.9 For the avoidance of doubt any referral made to Ofcom by a party under a Condition shall be deemed to be with regard to a right referred to in Clause 23.8(b), without prejudice to the provisions of Clause 23.6.

23.10 The dispute procedure specified in this Clause 23 shall not apply to disputes arising out of the service of a Charge Change Notice nor to disputes relating to invoices.

24. BREACH, SUSPENSION AND TERMINATION

24.1 In the event that the CP's entitlement to provide all or a material part of its Public Electronic Communications Network and/or Public Electronic Communications Service is suspended by Ofcom, KCOM may suspend this Agreement (or such part thereof as it deems reasonable) immediately on notice to the CP. KCOM will resume provision of the Services provided pursuant to this Agreement as soon as possible following receipt of notice from the CP that Ofcom has lifted the suspension.

24.2 The CP may terminate the provisions of this Agreement:

- (a) on not less than one month's notice if KCOM materially changes the terms and conditions of this Agreement or increases the Charges, to the CP's detriment provided that such notice to terminate shall be served on KCOM no later than two months from the date the change comes into effect; or
- (b) on not less than 3 months' notice for any other reason.

24.3 KCOM may terminate the provisions of this Agreement:

- (a) on not less than one month's notice if the CP fails to pay a sum due under this Agreement on 3 or more occasions in separate payment months within a 24 month period provided notice has been given on the first two occasions pursuant to Clause 24.4; or
- (b) subject to sub-clauses (c) and (d) below, on not less than 6 months' notice for any other reason; or



- (c) immediately, or from an Ofcom specified date, on notice if KCOM is directed by Ofcom or any other relevant body to no longer provide the Services under regulated terms, or
 - (d) if regulation changes in the future such that certain Services are no longer regulated by Ofcom (or subject to Significant Market Power obligations as may be determined by Ofcom), then KCOM may cancel the Services on not less than 12 months' notice.
- 24.4 If a party is in material breach of (including failure to pay a sum due under) this Agreement, the other party may serve a written notice (the "breach notice") on the party in breach specifying the breach and requiring it to be remedied within:
 - (a) 30 calendar days from the date of receipt of such breach notice; or
 - (b) in case of Emergency, within such shorter period as the party not in breach may reasonably specify.
- 24.5 If the party in breach fails to remedy the breach within 30 calendar days pursuant to Clause 24.4(a), or such reasonable period as may be specified by the party not in breach pursuant to Clause 24.4(b), the party not in breach may, until such breach is remedied, suspend performance of such of its obligations under this Agreement as is reasonable in the circumstances.
- 24.6 If the party in breach fails to remedy the breach within the period stated in the breach notice the party not in breach may terminate this Agreement or, where the breach relates to a Service, the Service provided under this Agreement, on three months' written notice provided always that if the party in breach remedies the breach within such three months' notice period, this Agreement shall not terminate as a result of such notice.
- 24.7 If a valid breach notice is served on the CP and the CP has not remedied the breach after the expiry of the period specified for remedy in the breach notice then KCOM may immediately upon giving notice in writing at its sole discretion refuse to accept new Orders except for the processing of Orders which relate to cessation of Services, maintenance of existing Services, or for the monitoring of existing Orders and suspend such other services or facilities available to the CP as shall be reasonable in the circumstances.



The CP agrees to pay the Charges for the Services until this Agreement is terminated.

24.8 This Agreement may be terminated by either party by written notice forthwith (or on the termination of such other period as such notice may specify) if the other party:

- (a) is unable to pay its debts within the meaning of section 123(1)(e) of the Insolvency Act 1986; or
- (b) has a receiver or administrative receiver appointed in relation to all or any of its assets; or
- (c) has an order made or a resolution passed for its winding up (other than for the purpose of amalgamation or reconstruction); or
- (d) has an administration order made in respect of its business; or
- (e) enters into a voluntary arrangement under section 1 of the Insolvency Act 1986; or
- (f) ceases to carry on business.

24.9 If the Services under this Agreement are delivered to an End User Site and KCOM terminates this Agreement on the grounds of insolvency specified above, KCOM may communicate directly with End Users to inform them of the termination of the Services and how this will affect the communications services they receive from the CP and/or KCOM including the options available to End Users in order to avoid disconnection or interruption to End Users' existing communications services. Such communication will not favour KCOM's own products and services. This Clause 24.9 will survive termination of the Agreement.

24.10 Upon termination or expiry of this Agreement each party shall take such steps and provide such facilities as are necessary for recovery by the other party of equipment (if any) supplied by that other party. Each party shall use reasonable endeavours to recover equipment made available by it. The CP will immediately cease using the relevant Services.



- 24.11 If 90 calendar days after the termination or expiry of this Agreement, a party fails to recover equipment in good condition (fair wear and tear excepted) because of the acts or omissions of the other party (or a Third Party appearing to have control of an End User Site where such equipment is situated) the first party may demand reasonable compensation from the other party which shall be paid by the other party within 10 calendar days of the date of the demand.
- 24.12 Termination or expiry of this Agreement shall not be deemed a waiver of a breach of any term or condition of this Agreement and shall be without prejudice to a party's rights, liabilities or obligations that have accrued prior to such termination or expiry.
- 24.13 Without prejudice to the circumstances where the CP pays a Cancellation Payment pursuant to Schedule 2, if any Order is terminated during the Initial Term, as a result of the CP exercising its termination rights under Clause 24.2(b) or KCOM exercising its termination rights under Clause 24.3(a), Clause 24.6 (where the CP is in material breach) or Clause 24.8 (where the CP is in breach), then the CP must pay KCOM a Termination Payment equal to the Rental Charges payable for the remaining months of the Initial Term.
- 24.14 CP acknowledges that the Charges have been calculated on the basis that each Order will continue until the end of the Initial Term as KCOM may have spent money on set up costs and accordingly the CP agrees that it is reasonable for KCOM to require the payment of the Termination Payment as calculated in Clause 24.13.
- 24.15 Notwithstanding the termination or expiry of this Agreement Clauses 1, 15, 17, 18, 19, 20, 21, 24 and 34 shall continue in full force and effect.
- 24.16 Each of the parties' right to terminate or suspend performance of this Agreement pursuant to this Clause 24 is without prejudice to any other rights or remedies available to either party.

25. NOTICES

- 25.1 Any notice given or made under this Agreement shall be in writing and shall be delivered by e-mail, hand or prepaid first class post, including recorded delivery:-



If to the CP:

If to KCOM:

Company Secretary
KCOM Group Limited
37 Carr Lane
Hull
HU1 3RE

and copied by email to:

wholesalepartners@kcom.com

and shall be deemed to have been duly given or made as follows:-

- (a) if delivered by e-mail, upon delivery at the address of the relevant party;
- (b) if delivered by hand, upon delivery at the address of the relevant party; and
- (c) if sent by first class post, two Working Days after the date of posting

provided that if, in accordance with the above provision, any such notice, demand or other communication would otherwise be deemed to be given or made outside Working Hours, such notice, demand or other communication shall be deemed to be given or made at the start of Working Hours on the next Working Day.

25.2 A party may notify the other party to this Agreement of a change to its name, relevant addressee or address for the purposes of Clause 25.1 provided that such notification shall only be effective on:-

- (a) the date specified in the notification as the date on which the change is to take place; or
- (b) if no date is specified or the date specified is less than five Working Days after the date on which notice is given, the date falling five Working Days after notice of any such change has been given.



26 ENTIRE AGREEMENT

26.1 This Agreement contains the whole agreement between the parties and supersedes all previous understandings, commitments, agreements or representations whatsoever, whether oral or written, other than any fraudulent misrepresentation, in relation to the subject matter of this Agreement.

27 VARIATIONS

27.1 Except as expressly provided in this Agreement, (a) no variation or waiver of any term, provision or condition of, or consent granted under, this Agreement shall be effective and (b) no breach of any provision of this Agreement shall be waived or discharged unless agreed in writing by the parties and signed by a person nominated in writing on behalf of:

- (a) KCOM, by a director or the company secretary of KCOM; and
- (b) the CP, by a director or the company secretary (or equivalent office holder or other person nominated in writing by the CP) of the CP.

28 WAIVER

28.1 No failure or delay on the part of any party in exercising any right, power or privilege under this Agreement shall operate as a waiver thereof, nor shall any single or partial exercise of any such right, power or privilege preclude any other or further exercise thereof or the exercise of any other right, power or privilege. Any effective waiver shall be effective only in the instance and for the purpose for which it is given.

28.2 The rights and remedies herein provided are cumulative with and not exclusive of any rights or remedies provided by law.

29 THE CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999

29.1 The Contracts (Rights of Third Parties) Act 1999 shall not apply to this Agreement and no person other than a party shall have rights under it nor shall it be enforceable by any person other than the party.



30 INDEPENDENT CONTRACTORS AND AGENCY

- 30.1 Each of the parties is and shall remain at all times an independent contractor fully responsible for its own acts or defaults (including those of its employees or agents). Neither party is authorised and neither of the parties nor their employees, agents or representatives shall at any time attempt to act or act on behalf of the other party to bind the other party in any manner whatsoever to any obligations. Neither party nor its employees, agents or representatives shall engage in any acts which may lead any person to believe that such party is an employee, agent or representative of the other party. Nothing in this Agreement and no action taken by the parties pursuant to this Agreement shall constitute, or be deemed to constitute, between the parties a partnership, agency, association, joint venture or other co-operative entity.
- 30.2 If either party appoints an agent for the purposes of this Agreement, and notifies the other party, then the other party shall deal with the appointed agent for such purposes until the first party notifies the other party that the appointment has been terminated.

31 SEVERABILITY

- 31.1 The invalidity or unenforceability of any provision of this Agreement shall not affect the validity or enforceability of the remaining provisions of this Agreement.

32 COUNTERPARTS

- 32.1 This Agreement shall be executed in two counterparts which together shall constitute one agreement and this Agreement shall not take effect until it has been executed by both parties.

33 COSTS

- 33.1 Save as expressly otherwise provided in this Agreement each of the parties shall bear its own legal, accountancy and other costs, charges and expenses connected with the negotiation, preparation and implementation of this Agreement and any other agreement incidental to or referred to in this Agreement.



34 GOVERNING LAW

- 34.1 This Agreement (and any dispute, controversy, proceedings or claim of whatever nature arising out of or in any way relating to this Agreement or its formation) shall be governed by and construed in accordance with English law.
- 34.2 Each of the parties to this Agreement irrevocably agrees that the courts of England shall have exclusive jurisdiction to hear and decide any suit, action or proceedings, and/or to settle any disputes, which may arise out of or in connection with this Agreement and, for these purposes, each party irrevocably submits to the jurisdiction of the courts of England.



IN WITNESS whereof the Agreement has been entered into on the date first above written

Signed by

for and on behalf of **KCOM GROUP
LIMITED**

Signature

Signed by

for and on behalf of

Signature