



# Lightstream and SmartComms UC Service

## Business Lightstream Services

### Service Standards

#### 1. INTRODUCTION

These Service Standards define the commitments We make to You.

Any changes, modifications, additions or deletions to these Service Standards will be provided to You in writing 30 days prior to such change coming into effect. In certain circumstances You may have the right to terminate Your Contract if we make a change, We will always let You know if this right applies.

#### 2. BROADBAND SERVICES

##### 2.1. Service Description

KCOM Business Lightstream provides You with a superfast broadband service using fibre optics nearer to Your premises to deliver faster broadband services than are normally available over traditional copper based ADSL services.

The service can be deployed by KCOM in two methods depending on where You live and KCOM's roll-out programme. This will either be a full fibre installation directly to Your premises (Fibre To The Premises ('FTTP')) or You may be provided service using a combination of fibre to a nearby street cabinet and copper (Very High Speed Digital Subscriber Line ('VDSL' or 'FTTP')).

You can find out more about what FTTP, VDSL and FTTC means on our website, <https://www.kcom.com/business/our-products/broadband-technologies-and-speeds/>.

The maximum download and upload speeds capable from these services is detailed in the Price Manual and Table 2 below.

A new or existing KCOM telephone business line rental is required at the Site address for each KCOM Business Lightstream Service. This is included as part of your Lightstream Service and is subject to the terms of Our Standard Conditions of Telephone Service for business customers available at <https://www.kcom.com/business/>. By signing this Contract you agree to Our Standard Conditions of Telephone Service

##### 2.2. Service Bolt-ons

The following Bolt-ons can be provided with Your Service for an additional charge:

Table 1 – Service Bolt-ons		
Bolt on	Description	Initial Minimum Period
Call Bolt-on	UK landline and mobile calls only. Local, national calls and unlimited calls and unlimited landline to mobile minutes for that line, as described in Section 2.7.	30 days
Enhanced SLA (Same Day Fix 5 Days per Week)	Enhanced fault management as described in Table 4	12 months
Enhanced SLA (Same Day Fix 7 Days per Week)	Enhanced fault management, as described in Table 4	12 months
Security*	Enhanced security options, as described in Section 2.8	12 months



Lightstream Monitored	24/7/365 monitored of the Lightstream connection, as described in Section 2.9	24 months
IP Bolt-on**	Up to 6 IP addresses as described in Section 2.10.	24 months

#### Table 1 Notes

\*Security Service Bolt-On available to existing customers only.

\*\* Up to 6 IP addresses. Please note existing customers upgrading to additional IP addresses may be required to change subnet and reconfigure current service set up and services. KCOM reserves the right to remove or change any IP addresses assigned to you. All IP addresses are subject to RIPE approval.

The Bolt-ons You have selected for Your Service are as specified in Part 1. You can select additional Bolt-ons at any time by agreement with Us.

You can terminate Bolt-ons after the expiry of the initial minimum period by giving Us no less than 30 days' notice. Terminating a Bolt-on in this way will not affect the continuation of the other parts of this Contract, however should you add the IP Bolt-on at a later date the IP Bolt-on minimum contract term will expire on the expiry of your Lightstream contract term.

### 2.3. Customer Requirements

- A new or existing KCOM business telephone line rental is required at the Site where the KCOM Business Lightstream service is installed. Line rental is included with your Lightstream service.
- Ethernet LAN running TCP/IP (10 BASE T minimum). For LAN connections customer to supply PC Ethernet cards.
- An internet ready device.
- If We connect PC's and laptops using the wireless router, We provide a router to wireless N standards. To optimise Your wireless speed You will require wireless N adaptors or cards for Your PC, rather than older and slower A, B and G standards.
- All customers should consider the security of their PC. KCOM recommends the use of current anti-virus software and firewall protection.
- FTTP customers will require two power sockets for the Optical Network Terminal (ONT) and the supplied route. VDSL customers will require a single power socket for the VDSL router and a VDSL microfilter supplied.

### 2.4. Department for Digital, Culture, Media and Sport Voucher Scheme

- Where You are taking a service under the Voucher Scheme, You must complete a separate Voucher Scheme Application Form together with this Contract.
- The Special Terms and Conditions set out in that Application Form will apply in this Contract.

### 2.5. Engineer Visit

We will provide You with an AM or PM appointment. Customers who purchase a Lightstream Monitored Service may require two on-site engineer visits and We will try and co-ordinate these on the same working day. Missed Appointment charges apply for any missed installation dates.

### 2.6. Connection and Hardware Charges

The type of connection We will provide for Your KCOM Business Lightstream Service will be as stated in Part 1.

Further details of the connections We provide are as follows;

- Connection 50 meters; ONT and router located together within 48 meters (usable of fibre length) of entrance.
- Cat5e Connection; Dual Ethernet socket and cable to 100 meters (90 meters usable)



when Your router needs to be located next to Your PCs.

The connection charges that apply to Your KCOM Business Lightstream Service will be as stated in the Price Manual and Part 1.

The type of hardware We will provide for Your KCOM Business Lightstream Service will be as stated in Table 2.

### Service Features

The service features for Your KCOM Business Lightstream Service will be as stated in the Price Manual and Table 2. Where any of these details are varied in the Price Manual, the up to date details published in the Price Manual will apply.

<i>Service</i>		<i>Business Full Fibre Lightning</i>	<i>Business Full Fibre 150</i>	<i>Business Full Fibre 300</i>	<i>Business Full Fibre 500</i>
		<b>Ex VAT</b>	<b>Ex VAT</b>	<b>Ex VAT</b>	<b>Ex VAT</b>
<b>24-month contract</b>		£39.99	£44.99	£49.99	£54.99
<b>12-month contract</b>		£44.99	N/A		
<b>Monthly Download Allowance</b>		Unlimited			
<b>Average Peak Time Speed<sup>1</sup> (Download/Upload) Mbps</b>	<b>FTTP</b>	75Mbps/20Mbps	150Mbps/150Mbps	300Mbps/300Mbps	500Mbps/500Mbps
<b>Average Peak Time Speed<sup>1</sup> (Download/Upload) Mbps</b>	<b>FTTC/VDSL</b>	75Mbps/20Mbps			
<b>Minimum Access Speeds (Download/Upload) Mbps</b>	<b>FTTC/VDSL</b>	Dependent on the site postcode area but not less than 20Mbps	N/A		
<b>IP Address</b>		Single IP address as standard or upgrade to Multiple IP addresses up to /29 <sup>2</sup>			
<b>Included Router</b>		ZyXEL / Technicolour			

<i>Service</i>		<b>Business Full Fibre 750</b>	<b>Business Full Fibre 900</b>
		<b>Ex VAT</b>	<b>Ex VAT</b>
<b>24-month contract</b>		£64.99	£84.99
<b>Monthly Download Allowance</b>		Unlimited	
<b>Average Peak Time Speed<sup>1</sup> (Download/Upload) Mbps</b>	<b>FTTP</b>	750Mbps/500Mbps	900Mbps/500Mbps
<b>Average Peak Time Speed<sup>1</sup> (Download/Upload) Mbps</b>	<b>FTTC/VDSL</b>	75Mbps/20Mbps	
<b>Minimum Access Speeds (Download/Upload) Mbps</b>	<b>FTTC/VDSL</b>	Dependent on the site postcode area but not less than 20Mbps	N/A



<b>IP Address</b>	Single IP address as standard or upgrade to Multiple IP addresses up to /29 <sup>2</sup>
<i>Included Router</i>	ZyXEL / Technicolour

### Table 2 Notes

For those customers renewing an existing email, webspace or other included service such as email anti-spam and anti-virus protection, please refer to our website [kcom.com/business/](http://kcom.com/business/) for the relevant service standards that apply to your Contract.

\*Multiple static IP addresses included in the price subject to RIPE approval.

\*\* Our FTTP service requires a KCOM business telephone line service to be situated at the Site. This can be an Analogue, ISDN, Smartcomms or other VoIP telephone line. Our FTTC service requires a KCOM business analogue telephone line service. A telephone line (copper or fibre) is included as part of your Lightstream service (line rental only).

\*\*\*References to “unlimited” are to the unlimited download and upload allowances with this service. No other aspect of the service is “unlimited”

\*\*\*\* “Peak Time” is between the hours of noon and 2pm. The “Average Peak Time Download/Upload Speed” is the download/upload speed that 50% of our business customers taking the relevant product can expect to achieve during Peak Time.

### **2.7. Call Bolt-on Description**

The Call Bolt-on includes unlimited UK landline and mobile calls. Further information about Our Call Bolt on is available in the Price Manual. The technology We use to provide Your Call Bolt-on is dependent upon the area which Your premises is situated and whether it is copper or fibre enabled. Please view the Price Manual for more information.

### **2.8. Security Bolt-on Description**

For those customers renewing an existing security Bolt-on, please refer to our website [kcom.com/business/](http://kcom.com/business/) for the relevant service standards that apply to your Contract.

### **2.9. Monitored Bolt-on Description**

The Lightstream Monitored Bolt-on provides 24/7 monitoring of your Lightstream connection by the KCOM Network Support Team. This will provide Our technical support team with diagnostics to assist with remote fixes. Our proactive system which monitors availability will help to minimise downtime and detect any faults over the KCOM provided Cisco hardware.

The provided Cisco router is capable of download speeds up to 900Mbps and upload speeds of up to 487Mbps (although please note that the upload speed of the broadband service will be limited to 500Mbps). The managed router provided is covered by a lifetime replacement warranty for so long as You remain a Lightstream Monitored customer. For more information on features please find in the Price Manual.

### **2.10. IP Bolt-On Description**

All Lightstream packages include one IP address as standard. The IP address Bolt-on provides businesses with up to 6 IP addresses, these may be used support multiple email servers, hosting of websites among other services.

IP Bolt-on is subject to a full 24 month term with early termination fees. Should you add the IP Bolt-on at a later date during the term of your Lightstream contract, the IP Bolt-on minimum contract term will expire on the expiry of your Lightstream contract term.

Please note existing customers upgrading for additional IP addresses may require a new subnet and reconfiguration of existing set up and services. IP addresses are allocated by RIPE to KCOM. KCOM retains the right to remove or change any IP addresses assigned to you at any time without notice and without any liability to you.



### **3. HARDWARE**

#### **3.1. Provided Hardware**

We will provide hardware to You, for You to use with the KCOM Business Lightstream service, including a router. You acknowledge that any free hardware provided shall remain the property of KCOM. We will repair or replace any defective items of KCOM provided hardware free of charge with a new or as new hardware of similar specification as the hardware being replaced.

If this Contract terminates or Your service is cancelled You will be asked to return your equipment or pay the replacement cost (including any hire charges as set by Us).

You must take reasonable care of the hardware whilst it is at the Site and in particular You must protect it from accidental damage and theft. In addition, You must not allow anyone other than Us to carry out any repairs or maintenance work on the hardware.

You will be responsible for the cost of repair or replacement hardware if it is lost or damaged as a result of accidental damage or You failing to take proper care of them. However, We will be responsible for any problems You experience with the use of the hardware that can be attributed to any defects with the materials or manufacture.

#### **3.2. Purchased Hardware**

If You purchase any additional or alternative hardware to use with the Service from Us, the ownership of the hardware shall be Yours once You have paid for the hardware in full. We will assign the benefit of any product warranties given by the manufacturer or supplier of the hardware to You; and You shall be entitled to replacement hardware if You experience any problems with the hardware, during the initial 12 month period following on from the date on which We supply the hardware to You, if such problems can be attributed to any defects with the materials or manufacture of the hardware. We shall have no other maintenance or support obligations to You in relation to such purchased hardware.

### **4. LINE SPEEDS**

The throughput speeds for Our KCOM Business Lightstream Services are as set out in Table 2, above. For our VDSL Services, the throughput speed You actually receive will be dependent on a number of factors including the quality of the line and the distance from the exchange.

The normally available download and upload speeds for your broadband Service will be as stated in Table 2. These will also be the maximum speeds for Your Service. The minimum download and upload speeds for your broadband Service will be 50% of the amounts stated in Table 2. If You consistently experience either download or upload speeds that are below these minimum speeds and We are unable to remedy this within 30 days of You telling us about it, You will be able to cancel Your Contract.

For further information, please contact The Business Team.

### **5. USAGE ALLOWANCE**

#### **5.1. Usage Periods**

All of Our broadband products have an unlimited Monthly Usage, as set out in Table 2 above.

You can view and monitor Your Monthly Usage and check the applicable dates of the Usage period for the particular month, through KCOM Online.

### **6. FAULT MANAGEMENT**

In the event that You become aware of any Fault or a breakdown in the operation of the Services, You should notify us immediately by contacting the KCOM Network Support team.

Faults can be reported to us either:

- via email; or
- telephone the KCOM Network Support team as detailed in the Table 3 and 4 below.

Please ensure when contacting the KCOM Network Support team You have the following relevant details to hand:

1. Organisation name and address.



2. Details of the Services provided to You by us.
3. Contact name and relevant security details.
4. The nature of the fault.

<b>Table 3 – Service Levels – Business Phone</b>	
<b>Service</b>	<b>Business Full Fibre Lightning, Full Fibre 150 - 900</b>
<b>Required Service</b>	Business phone service
<b>Technical Support</b>	Contact hours – Mon to Fri 0700 to 2200 Saturday 0700 to 1800  Sundays and Bank Holidays 1000 to 1800
<b>Service Level Agreement the KCOM Business Promise</b>	Repair time: Next Working Day 85% of calls answered in <60 sec 95% of emails replied to within 1 working day 75% of issues fixed at first point of contact
<b>Managed Service</b>	No
<b>Lead Time</b>	46 days

<b>Table 4 - Network Support Availability and Service Standards</b>		
<b>Service</b>	<b>Same Day Fix 5 Days per Week Bolt- on</b>	<b>Same Day Fix, 7 Days per Week Bolt-on</b>
<b>Technical Support</b>	Contact hours – Mon to Fri 0800 to 2100 Saturday 0900 to 1700 Sundays and Bank Holidays 1000 to 1800	Contact hours – Mon to Fri 0800 to 2100 Saturday 0900 to 1700 Sundays and Bank Holidays 1000 to 1800
<b>Service Level Agreement the KCOM Business Promise</b>	Repair time (or "TTRF"): Same Day Fix 5 days per week <sup>1 2</sup> 90% of calls answered in <60 sec 95% of emails replied to within 1 working day  85% of issues fixed at first point of contact	Repair time (or "TTRF"): Same day fix, 7 days per week <sup>1 3</sup> 90% of calls answered in <60 sec 95% of emails replied to within 1 working day  85% of issues fixed at first point of contact

#### Notes

- 1 Excluding network outages, telephony faults or faults that require ongoing monitoring, working days are Monday to Friday and exclude bank holidays
- 2 Same day fix for faults reported before 1200 Monday to Friday
- 3 Same day fix for faults reported before 1200 Monday to Sunday

<b>Table 5 – Packages VoIP Service Standards</b>	
<b>Type of Fault</b>	<b>Business Care TTRF</b>
<b>Access Network Faults</b>	16:00 hours, next working day
<b>Service Feature Failure</b>	16:00 hours, next working day
<b>Faulty DECT Base station</b>	16:00 hours, next working day



Faulty DECT Telephone*	1 Year Return to base Warranty
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- \* DECT telephones are consumable items and are not maintained and covered by a 1 year return to base warranty. Replacement telephone pricing is published in the Price Manual.

### 6.1. Faults Procedure

The following processes outline Our faults procedure:

1. You contact the KCOM Network Support team to report a fault on the appropriate Support telephone number You have been given.
2. The KCOM Network Support team will log details of the fault on Our Faults system and issue You with a unique Fault Reference Number.
3. The fault is diagnosed and if a Service engineer is required to carry out a Customer Site visit this will be arranged with You.
4. The fault is resolved and passed back to the KCOM Network Support team to confirm the Service has been restored to close.

### 6.2. Our Obligations

The Time to Resolve Faults (TTRF) obligations for Faults are shown in Table 5, above.

Table 3 and 4 also details the KCOM Promise. The KCOM Promise states the levels of service You can expect to receive from Us if You raise a fault.

### 6.3. Restrictions

We will not be responsible for rectifying any fault which is caused by:

1. Your fault or negligence (including without limitation where You have attempted to affect repairs to any Equipment or the Service unless such repairs have been expressly approved by Us);
2. The fault or negligence of another Network Operator;
3. Any failure by You to carry out Your obligations under this Contract;
4. The connection of any KCOM Equipment to any other telecommunications networks or to any Customer Equipment, including any building distribution wiring, not approved by Us; or
5. The use of any Customer Equipment or any other Equipment or software not supplied by Us.

You may request Us to rectify any faults caused by circumstances described in paragraphs 1 to 5 (above) but We reserve the right to charge You for such services at our standard rates in force from time to time. Further to the above, We reserve the right to charge You Our standard abortive visit Charge whenever:

1. One of Our engineers attends an incorrect Site address as provided by You;
2. You have not complied with any of the requirements set out in this Service Standard;
3. Entry is refused to any Site or no access can be gained at the appointed time, as agreed between the parties;
4. One of Our engineers attends a Site and discovers that the fault is not caused by the KCOM Equipment or Our Services; or
5. You report a fault which cannot be verified or confirmed by Us.

### 6.4. TTRF

The TTRF period shall begin once You notify the KCOM Network Support team of the fault and this being logged as a fault and a Fault Reference Number being allocated.



The TTRF period shall cease upon notice to You by the KCOM Network Support team of fault resolution. We will record the duration of the TTRF period for all Faults.

The TTRF shall not apply in respect of Customer Responsible Faults, Planned Outages, Third Party Responsible Faults or any events of Force Majeure.

#### **6.5. Faults Logged by Us**

We may raise faults against alarms on the KCOM Network. If a fault affects the Services then We will use reasonable endeavours to promptly inform the named contact(s). If You wish to change these arrangements You must contact a representative.

The start time of a fault is the time it is detected by us We will allocate a Fault Reference Number.

#### **6.6. Fault Reference Numbers**

When You report a fault, the KCOM Network Support team will give You a unique Fault Reference Number. You must quote this number in subsequent communications.

#### **6.7. Progress Reports**

We will contact You if We have any relevant updates or when the fault is cleared. You may request additional updates at any time by contacting the KCOM Network Support team on Your usual Support telephone number **and** quote Your Fault Reference Number.

#### **6.8. Confirmation of Fault Clearance**

We will contact You as soon as possible and not more than 15 (fifteen) minutes after notification from Our engineering staff that Service has been restored. In the event You contact us to report that the fault has disappeared or been traced to a third party's infrastructure, We will cancel processes in action.

#### **6.9. Faults Not Involving KCOM Network**

If the fault cannot be traced to Our Services, network or equipment, and appears to be a problem with resources or equipment for which We are not responsible, We will provide You with a report of tests that have been carried out and an explanation of how the fault was traced. This report will be supplied in writing to You if requested.

#### **6.10. Fault Escalation**

Fault escalation procedures can be invoked in the following situations:

- If a reported Fault exceeds the TTRF
- Where an individual Fault condition is particularly sensitive and is deemed to be business affecting and a quicker resolution may be necessary.

You may at any time during the Fault request immediate escalation. Escalation may be via the appropriate KCOM Group contact or on a direct peer to peer level. All requests are to clearly state the reason for escalation and any subsequent actions will be recorded on the KCOM Group Fault management system. We will use our best endeavours to respond as promptly and quickly as possible.

### **7. CUSTOMER AVAILABILITY AND COMPATIBLE SERVICES**

KCOM Business Lightstream services are only available with a KCOM telephone service at the Site, if you do not have an existing line, this service will be installed. VDSL customers must also take a standard KCOM telephone line. Line rental is included with your Lightstream service. Telephone service may be provided over a fibre exchange line rather than copper. KCOM Business Lightstream prices include Your high-speed Internet rental and normal line rental however call charges apply to any telephony services You receive from KCOM over Your telephone line.

KCOM Business Lightstream over VDSL is not suitable for connection on ISDN2/2e, ISDN30/30e or Business Superway lines. Customers with ISDN2/2e or Business Superway will have to have their lines ceased and converted to normal phone lines for KCOM Broadband Max. ISDN30/30e customers will also need an additional analogue line in order to receive the service KCOM Business Lightstream over VDSL on a fax line is not recommended. Fax users should note that Group 3, 2 or 1 fax machines may not function correctly due to frequency





crossover problems. Therefore, an additional analogue (telephone) line is required when You still intend to use a fax machine.

KCOM Business Lightstream over VDSL may interfere with caller display equipment. To check whether Your caller display unit or telephone is compatible with broadband, please refer to the manufacturer or supplier.

KCOM Business Lightstream over VDSL may interfere with alarm systems. Most alarm systems will operate as normal, but some which use 'out of band' (greater than 4kHz) signalling will be incompatible. To check whether Your alarm system is compatible, please refer to Your alarm system manual or provider.

All KCOM Business Lightstream services are subject to availability, line test and confirmation. All customers and end-users are subject to and must abide by KCOM's Acceptable Use Policy, see [kcom.com/legal](https://kcom.com/legal).

## 8. CONTACTING US

For support or complaints, please contact Business Care on 0800 9155 777 or email at [businesscare@kcom.com](mailto:businesscare@kcom.com). Or visit <https://www.kcom.com/business/contact-us/> for other ways to contact us.

We are required to have and comply with procedures that conform to the OFCOM Approved Complaints Code when handling complaints. Our Complaints Code of Practice tells you how to make a complaint. This is available at <https://www.kcom.com/business/legal/>.

## 9. DEFINITIONS

**Time To Resolve Fault (TTRF)** - The length of time from the issue of the Fault Reference Number to restoration of the Service and/or associated equipment, measured in accordance with this Service Standard.

**Customer Responsible Faults** - In the event that a Fault is identified as being attributable to Customer Equipment, customer network, software, content, any actions or omissions of You or Your employees or agents the fault shall be deemed Your responsibility.

**Fault Reference Number** - The unique number issued when logging a fault with us.

**Planned Outage** - All necessary equipment maintenance or network upgrades will, wherever possible, be planned to avoid any interruption to the provided Service. In general planned work would be scheduled at low traffic periods to minimise any disruption. Except in an emergency, or when events outside our control do not allow, We will provide 24 hours' notice to You of any planned works that will affect the availability of the service via the Status Page on the portal. All maintenance operations are controlled by internal procedures. All notifications will be notified to You via the Status Page on the portal.

**Price Manual** - the price manual published on [kcom.com/legal](https://kcom.com/legal) that sets out the detailed charges for Our services.

**Third Party Attributable Faults** - A Fault that is identified as being attributable to a third party (i.e. neither You nor us). In such circumstances, We will try to rectify such Third Party Attributable Faults as soon as reasonably practicable.



## SmartComms UC Services

### Service Standards

#### 1. INTRODUCTION

This Service Standard defines the levels of service You can expect from Us.

Any changes, modifications, additions or deletions to this Service Standard will be provided to You in writing 30 days prior to such change coming into effect. In certain circumstances You may have the right to terminate Your Contract if we make a change, We will always let You know if this right applies.

#### 2. SMARTCOMMS SERVICES

##### 2.1. Service Description

The SmartComms UC Service is a fully-featured Unified Communications (UC) solution providing a range of telephony and UC functions to Your Sites and Users. The Service allows You to combine office-based staff, homeworkers and remote Users within a single UC environment.

The SmartComms UC Service is delivered to Your Site(s) via the internet using data connectivity services. It is delivered to Users using equipment such as fixed or DECT IP phones, softphones, smartphones and tablets connected to Your local area network (LAN), wide area network (WAN), or Mobile Network provider and can also be delivered over ISP networks to remote Users.

During the set-up process, We will provision and configure the Service. Further details of the set-up process and Your obligations prior to receiving a Service and during Service delivery are described in Section 3.

##### 2.2. Service Dependencies

In order to receive the SmartComms UC Service, You will need:

- The inclusive Access Network services to the Site(s) requiring the Service that is suitable for supporting the required number of Users and/or concurrent calls from Our SmartComms UC Service.
- The inclusive LAN infrastructure provided by KCOM as part of the Service; or
- a suitable LAN infrastructure meeting the minimum requirements required as determined by a Site survey, or detailed in the Customer Network Compliance Statement for each Site requiring the Service.

##### 2.3. Service features and options

The SmartComms UC Service comprises the following elements:

- Service Availability
- User licences
- Site licences
- IP telephone devices and accessories (optional)
- Number Allocation
- Call Minutes or Call Minute Packages
- Access Network services, e.g. copper DSL, Lightstream Fibre, or Ethernet Services
- SmartComms UC Router and LAN switches



The SmartComms UC service can also be delivered to Users using a Softphone or DECT only solution:

- Softphone Only - Get access to the softphone dialler across your devices so you can make/receive calls without or alongside a desk phone.
- DECT Only – ‘Digital Enhanced Cordless Technology’ that allows a handset to link to its base station wirelessly. Maximum 8 handsets per site. Purchase of handsets taking the Site over the stipulated threshold (maximum 8 handsets) will require You to sign up to an additional contract(s) with Us for the purchase of a new SmartComms UC package which includes Switch customer premise equipment (CPE). This infrastructure is included within our office packages.

### 2.3.1 User Licences

Each User of the Service requires a User licence, which are available in three options:

- Functional - For infrequent phone Users who do not need a plethora of features; or for a lobby, or lift phone.
- Fixed – For Users that mainly work from a single fixed location with occasional home-working.
- Mobile - For Users that are regularly mobile, or working from multiple locations. This option also includes a range of smartphone apps are included that enable Users to use a single number across all of their devices, as well as hot-desk functionality.

Each User licence option includes a range of features and there are also optional chargeable add-on User feature licences that can be added on a per User basis to meet the specific needs of particular Users.

### 2.3.2 Site licences

Each of Your Sites that take the SmartComms UC Service will have an inclusive licence that that covers a standard range of features and there are also optional chargeable add-on Site feature licences that can be added on a per Site basis to enhance functionality.

### 2.3.3 IP telephone devices and accessories

We provide and support a range of IP telephones and accessories for use with Your SmartComms Service.

### 2.3.4 Number Allocation

We can allocate You a new telephone numbers for the Service or We support the porting of existing numbers to the Service

### 2.3.5 Call Minutes or Call Minute Packages

The Service offers Call Minute tariffs or Call Minute packages dependent on Your requirements.

### 2.3.6 Access Network Services

The SmartComms UC Service includes the required Access Network connections

### 2.3.7 SmartComms UC Router and LAN switches

The SmartComms UC Service is delivered with a router, and LAN network switches as standard. You may elect to use existing LAN infrastructure, subject to Site survey and completion of a Customer Network Compliance Statement for each Site requiring the Service.

## 2.4. Service Constraints

The SmartComms UC Service has the following service constraints:

- You must only use authorised IP endpoints with Your SmartComms UC Service. IP endpoints supplied by us are pre-configured to work with the service. We cannot guarantee the delivery of Your SmartComms UC Service on IP endpoints that have been provided by another supplier.
- Diallers of any type are strictly prohibited and are not supported on the Service.



- Whilst it is possible to port the majority of UK Geographic numbers. We cannot guarantee it is possible to transfer (port) any existing number(s) You may currently use to the Service from another telecommunications operator or service at time of ordering, as the port request may be rejected during the porting process.
- Number porting can only be undertaken during normal working hours, (Monday –Friday, 08:30 to 16:30hrs, excluding English Public Holidays).
- New Numbers allocated in the Service cannot be exported to the KCOM telephony network, if You wish to terminate the Service.
- New Numbers allocated in the Service come in maximum blocks of 100 numbers; if You require more than 100 numbers You will be allocated two separate number blocks, however We cannot guarantee these will be consecutive ranges.

#### Supported Call Types (Dialling prefixes)

Call types (Dialling Prefixes)	SmartComms Service
Outgoing Calls to:	
(i) 04*	Excluded
(ii) 01*,02*,03*,05*	Included
(iii) 06*	Excluded
(iv) 07* except 070*	Included
(v) 070* Personal Number Services	Excluded
(vi) 08*	Included
(vii) 09*	Included
(viii) 1* - except as stated below:	Excluded
▪ 100; 101; 111; 112; 116xxx; 116000; 116006; 116111; 116117; 116123; 118xxx;	Included
▪ 123;12*;13*	Included
▪ 14* except 144	Included
▪ 153; 1571;16*;17* except 17070;	Included
▪ 18* except 18000; 180010;18001112;1800150; 18001999 and 180020 numbers	Included
▪ 192; 194	Included
(ix) 2*; 3*; 4*;5*;6*;7*;8*;88* and 9*	Excluded
999	Included
Non-Numeric and Others	Excluded
Dial up Internet	Excluded
Short message service and text messaging	Excluded

You should note the following in respect of the supported call types detailed above:

- Calls to 1800xx numbers will require use of the G.711 Codec to support modem signals.
- If You make an abnormally high number of calls using the Service, for termination to an International number, then You accept that We may instigate network management



control measures to protect Our network, and mitigate Call Fraud.

- A Service Guide is also available to help You with understanding the full capabilities and use of the Service, which can be provided on request.

### 3. SERVICE SET-UP

#### 3.1. Service set-up process

Once You have signed and returned the offer and acceptance form, We will provide You with a ready for service date and where applicable the following documents for Your completion:

- Where Your existing LAN infrastructure is being used to deliver the SmartComms UC Service to Your Users, in addition to any Site Survey completed, You will be required to complete a **Customer Network Compliance Statement** for each Site which requires You to warrant that the local area network (LAN) infrastructure is or will be configured to meet the minimum requirements to support the Service. We will work with You to help You understand the minimum network requirements
- **Letter of Authority** for Number Porting, giving Us authorisation to port Your telephone number(s) from Your current provider.

Once You have completed and returned the above documents We will proceed with the preparations to set-up Your Service.

On completion of the Service set up, and depending on the features delivered You will receive the following documentation:

- Welcome Letter
- Extracted CIF Data
- Additional Information
- Visio Diagram to show call flow
- Scope of Works
- Quick Reference Desk Guide
- A4 User Guides
- KCOM recorded .wav files (Auto Attendant & Call Centres)

#### 3.2. Our obligations

We will contact You regarding the Proposed Start Date and provide contact details for any queries You may have regarding delivery of the Service. We will use Our reasonable endeavours to ensure that the Service is Ready for Service (RFS) from the Proposed Start Date.

#### 3.3. Restrictions

If You cancel an order, or significantly modify it, e.g. change the Service location, delivery date, Service Type, or number of Users, prior to the relevant Service Start Date or implementation of the relevant Change Request, We reserve the right to claim reasonable costs incurred as a result of cancellation or modification. In addition We will not be obliged to meet the original timescales.

If service implementation cannot proceed due to a customer related issue, e.g. LAN infrastructure issues, no available power sockets, no wall space or access to Site is refused. We will not be obliged to meet the original timescales and an abortive visit charge may be raised.

#### 3.4. Customer Provided Local Area Network (LAN) requirements

Our SmartComms UC Service is a 'real time' application that should be prioritised on Your network, to ensure a high quality experience for Your Users. Prior to placing Your order, We will have helped You to determine whether the network at each of Your Sites meets the requirements for bandwidth (number of concurrent calls supported), latency, jitter and packet loss. More information relating to the minimum requirements can be found in the Customer Network Compliance Statement document.

## 4. MANAGING THE SERVICE AND OPERATIONAL SUPPORT



#### 4.1. Web management portal

Our intuitive administration and User portal delivers a fully featured self-service experience, allowing You to manage, monitor and make changes to the configuration of Your Service at any time, from anywhere there is an Internet connection. You can also view and download call data by Site, group or single extension level and track performance over time by analysing easily generated Call Log reports.

#### 4.2. Making changes to Your Service

Beyond basic configuration changes that can be made via Your web portal, You can request more substantial changes via an Additional Services Order (ASO). Such changes will need to be agreed by Us and any one-off charges, or changes to monthly recurring charges calculated and notified to You before the implementation process is started.

#### 4.3. Using the Service

The Service combines traditional telephony functionality with more advanced collaboration and mobility features (dependent on licences purchased).

#### 4.4. Service Availability

We will use Our reasonable endeavours to provide Service Availability of 99.999%, 24 hours per day, 365 days per year commencing on each relevant Service Start Date, and to give You advance notice of any Planned Outages which will impact Service Availability

Service Outages attributable to Planned Outages to the Service or service platform and any emergency outages shall not be deemed occurrences of Unavailability for the purposes of this Service Standard.

In all such circumstances, the Service shall be deemed Available.

##### 4.4.1 Planned Outages

Planned Outages may occasionally be necessary for Us to carry out essential maintenance work or network upgrades; these will be kept to a minimum.

Except in an emergency or when circumstances are beyond Our control You will receive at least 5 (five) Working Days' notice of any Planned Outage which will affect the availability of the Services.

##### 4.4.2 Customer and Third Party Attributable Faults

Downtime, failure, faults or outages caused by Customer Responsible Faults, Third Party Attributable Faults, or Force Majeure Events or where section 6 below applies shall also not be included when calculating the Service Availability. In all such circumstances, the Service shall be deemed Available.

### 5. FAULT MANAGEMENT

#### 5.1. Fault Reporting

In the event that You become aware of any problem or a breakdown in the operation of the Services, any Equipment or the Network, You should notify Us by contacting the Business Technical Support (BTS) team in accordance with the Fault Management Procedure.

#### 5.2. Our Obligations

Our Business Care support service will be provided as standard with the SmartComms UC Service. You have an option to upgrade this level of care to Our Business Care Plus support service for the Lightstream or Network element of Your Service.

The Time to Resolve (TTR) targets for Your Service will vary depending on the type of fault and the level of care that applied to Your Service, as shown in Tables 2,3 and 4:

<b>Table 2: Network faults within the KCOM area causing a total loss of service</b>		
<b>Type of Fault</b>	<b>Business Care TTR</b>	<b>Business Care Plus TTR</b>



<b>KCOM Core Network Faults</b>	10 working hours	5 clock hours
<b>KCOM HEY Access Network Faults (Fibre Access)</b>	10 working hours	5 clock hours
<b>KCOM HEY Access Network Faults (Fibre Multi-Service Access)</b>	16:00 hours next working day	16:00 hours next working day
<b>KCOM HEY Access Network Faults (Copper DSL Access)</b>	16:00 hours next working day	16:00 hours next working day

**Table 3: Network faults outside of KCOM area causing a total loss of service**

Type of Fault	Business Care TTR	Business Care Plus TTR
<b>KCOM Core Network Faults</b>	10 working hours	5 clock hours
<b>Access Network Faults (Ethernet Fibre Delivery)</b>	10 working hours	5 clock hours
<b>Access Network Faults (Ethernet Over FTTC)</b>	8 Hours	8 Hours
<b>Access Network Faults (FTTC)</b>	None	None
<b>Faulty Router</b>	16:00:00 hours next working day	16:00:00 hours next working day

**Table 4: SmartComms UC telephony Faults**

Type of Fault	TTR	
<b>Service Feature Failure</b>	8 hours	
<b>Faulty Handset replacement</b>	16:00 hours next working day	

For these Service Standards, working hours/working days are Monday to Friday 08:00 hours to 18:00 hours (excluding public holidays), Saturday 0800 – 16:00 hours

We will use Our reasonable endeavours to resolve any faults within Our TTR target.

### 5.3. Restrictions

The TTR periods shall begin once You notify the Business Technical Support (BTS) team of the incident in accordance with the Fault Management Procedure.

### 5.4. Faults Not Involving Our Network

If the fault cannot be traced to Our Services, network or equipment, and appears to be a problem with resources or equipment for which We are not responsible, We will provide You with a report of tests that have been carried out and an explanation of how the fault was traced. This report will be supplied in writing to You if requested.

### 5.5. Faults Procedure



#### 5.5.1 The FOLLOWING OUTLINES THE FAULTS PROCEDURE FOR THE SERVICE:

1. You call the KCOM Business Technical Support desk to report a fault on **0808 208 3000**.
2. You provide the following details:
  - Organisation name and address, including postcode
  - Site Address and contact details for the Site affected
  - Affected telephone number(s) or Usernames
  - Details of the problem being experienced
3. The KCOM Business Technical Support team will log details of the fault on Our Service Management System, and issue You with a unique Fault Reference Number.
4. The KCOM Business Technical Support team will diagnose the fault, assign a relevant priority, and if required contact You for further information.
5. For faults diagnosed with any Customer Equipment, or where the fault is otherwise not Our responsibility, We will advise You of the suspected issue. It is Your responsibility to resolve the issue directly, or with the assistance of any third party supplier You may employ, e.g. IT support supplier.
6. The KCOM Business Technical Support team will proactively keep You informed on fault status and progress and provide an audit trail of interaction (via telephone) with You.

5.5.2 The KCOM Business Technical Support team will manage Your fault including closure, verification and record Service event history on the Service management system.

5.5.3 The KCOM Business Technical Support team will inform You of any proposed workarounds or changes required to restore the Service as quickly as possible until a permanent solution has been identified.

5.5.4 You accept that a priority status may be downgraded to a lower priority, following the application of a temporary solution; or that faults can be upgraded from a lower priority to a higher one.

5.5.5 To meet these goals, We may require that You, Your personnel, or personnel from a third party supplier be onsite and available to allow remote diagnostics and support activities.

#### 5.6. Software Related Incidents

Certain Software failures could occur which are beyond Our reasonable control. As a general rule, a Software failure can only be rectified by the software vendor and it shall be Our responsibility to log the incident with the manufacturer, monitor and manage progress until resolution, and keeping You informed of progress throughout the incident lifecycle.

If the resolution is expected to take more than 5 Working Days or the issue is causing significant operational problems, We may attempt to implement a workaround / re-engineered design to restore the level of Service. Our position with regard to Software and firmware related issues, including software patches and service packs are as follows:

- In the event of a fault in or problem with third party software, We shall not be liable for any failure, delay, outage, downtime or fault with or of the Service or for associated service credits except where Software is installed by Us that is known to have a Service affecting Software fault in that function at the time of deployment. In this situation Our obligations are as follows:
- If a new Software version has been installed and this new version causes Unavailability, We reserve the right to regress to a previous stable version if required to restore Service operation. Upon identification of a Software fault a plan to address it shall be formulated and agreed with You.
- As We shall be dependent upon a third party for any redevelopment of the Software, the plan shall relate to any remedial action that has been identified. This shall be agreed on a per instance basis. The plan shall also include the agreed frequency updates required by You





relating to resolution progress. If a Software fault of this nature exists, Our obligation shall be to formulate an action plan with You, and then execute it within the agreed timetable

- The KCOM Business Technical Support team will inform You of any proposed workarounds or Changes required to restore the Service as quickly as possible until a permanent solution has been identified.

## 6. EXCLUSIONS

We shall not be responsible or liable for any Service delay, failure, downtime, fault or outage (including, without limitation, any failure to comply with the Service Standards) (together a “**Failure**, caused by or in respect of any of the following:

- (a) Failures occurring in the first 30 days of installation and use of Service in respect of Service Availability.
- (b) Failure due to suspension of the Service in whole or in part in accordance with the Contract.
- (c) Failure due to actions or omissions of You, or due to a Customer Responsible Fault or Third Party Attributable Fault.
- (d) Where any part of this Contract states that We are not responsible or liable.
- (e) Where We are unable to confirm the Failure when reported by You.
- (f) Failure due to Planned Outages or Emergency Outages.
- (g) Individual outages of less than 10 seconds, as timed by Us, do not qualify towards the cumulative Unavailability time. Multiple and/or repeated individual outages of less than 10 seconds may be treated as a single incident, subject to Our express agreement.
- (h) Failure due to a Force Majeure Event.
- (i) If Service recommendations which are made by Us to improve Your network to support the Service are not followed by You.
- (j) The circumstances set out in section 5.3 above.

## 7. CONTACTING US

For support or complaints, please contact Business Care on 0800 9155 777 or email at [businesscare@kcom.com](mailto:businesscare@kcom.com). Or visit [kcom.com/business/contact](http://kcom.com/business/contact) us for other ways to contact us.

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We are required to have and comply with procedures that conform to the OFCOM Approved Complaints Code when handling complaints. Our Complaints Code of Practice tells you how to make a complaint. This is available at [kcom.com/business/legal/](http://kcom.com/business/legal/).

## 8. DEFINITIONS

**Customer Responsible Faults** - In the event that an Incident is identified as being attributable to customer provided Equipment, the Site, customer power supplies, or the action of the customer, employees or agents of the customer, including any failure of the customer to comply with the provisions of the Contract or supply any information reasonably requested by Us, in a timely manner, the incident shall be deemed the responsibility of the customer. Any such downtime shall not qualify for compensation.

**Emergency Outage** - An Emergency Outage is a temporary outage in the Service due to unforeseen circumstances are beyond Our control or when emergency engineering work is required to maintain the Service, and where We have been unable to provide You any prior notice of the outage, as We would for a Planned Outage.

**Fault Reference Number** - The unique number issued to You when logging an incident with Us.

**Planned Outage** - In maintaining the Service provided We may, with reasonable notice, require a temporary outage in service. Wherever possible We will agree the outage with You in advance of the required work. Any planned downtime shall not be included in incident or service reliability



measurements.

**Price Manual** - the price manual published on [kcom.com/legal](http://kcom.com/legal) that sets out the detailed charges for Our services.

**Fault Management Procedure** - Our incident management procedure for the Services, as updated from time to time. We will provide You with a copy of Our current incident management procedure for the Services on or before the Service Start Date.

**Service Availability** - The time for which the Service, provided by Us, is usable, measured on a per Site basis. The Service shall be deemed available for the purposes of calculating Service Availability if it is not usable due to an event outside of Our reasonable control such as an emergency or a Force Majeure Event, or where the Service is not usable due to a Customer Responsible Fault, a Third Party Attributable Fault or is due to a Planned Outage or where section 6 above otherwise applies. "Unavailable", "Unavailability" and "Available" shall be construed accordingly.

**Time To Resolve (TTR)** - The length of time for Us to repair or otherwise resolve an incident affecting the Service that has been reported by You in accordance with the Incident Management Procedure.

**Third Party Attributable Faults** - In the event that an Incident is identified as being attributable to a third party, third party equipment, a third party network or the Internet generally. Such faults do not qualify for rebates or compensation. We will endeavour to resolve and rectify such Third Party Attributable Faults as soon possible.



## Terms and Conditions

The following Terms and Conditions apply to the provision of Business Lightstream full fibre broadband and Voice Services using SIP Trunking (Smartcomms). In the event of any conflict between the Contract Summary and these Terms and Conditions, the Contract Summary will prevail:

### 1 TERM

- 1.1 This Contract will come into effect on the Commencement Date and will continue pursuant to the provisions of clause 1.2, unless terminated earlier pursuant to the provisions contained in this Contract.
- 1.2 Thereafter this Contract shall continue in force unless and until terminated by either party giving no less than the required period of prior written notice (as specified in the Order), such notice not to expire before the end of the Initial Term.
- 1.3 Except as set out in clause 19.4 or 20.4, where termination of the Contract or a Unit Agreement, or part thereof, falls within the Initial Term, You will be subject to an Early Termination Fee (ETF).

### 2 OUR RIGHTS AND OBLIGATIONS

- 2.1 We will use reasonable endeavours to supply the Equipment in accordance with this Contract and We will use reasonable endeavours to supply the Services in accordance with this Contract or as stated in this Contract using reasonable skill and care.
- 2.2 You accept that the Service cannot be provided fault free and We do not warrant error free or uninterrupted use of the Service, and that We may not be able to prevent interference of the Service with existing telecommunications services or the functioning of computers, software You have installed, or other electronic equipment, and that We do not undertake to do so.
- 2.3 We will use reasonable endeavours to provide each Service at each Site for use by You from the Proposed Start Date, unless otherwise specifically agreed by the parties in writing or unless We are unable to do so as the result of a failure by You to fulfil Your obligations under this Contract or by any delay caused by a third party (including, without limitation, other Network Operators).
- 2.4 If, for any reason and prior to an agreed Service Start Date or implementation of the relevant Change Request, You request Us to make any changes to the Service We have agreed to supply to You, You accept that the provision of such requested changes to the Service is subject to Our agreement and such amendment to the Proposed Start Date, the Charges and/or this Contract, as required by Us, is at Our sole discretion.
- 2.5 Where We determine that a survey is necessary, You acknowledge and agree that provision of the Service is subject to survey. Where a survey is carried out, We shall be entitled to amend the technical aspects of the Service and/or the relevant Charges, as appropriate, following completion of the survey. In the event that the survey reveals that the provision of a Service to You at a Site will be degraded to such an extent that We would be unable to comply with this Contract, We will be entitled to terminate the Contract (in whole or in part) without any liability to You. In the event of termination of this Contract, for any reason, following completion of the survey but prior to the relevant Proposed Start Date, You will refund to Us (at Our request) any costs incurred, including, without limitation, staff costs, equipment costs and the cost of carrying out the survey.
- 2.6 Where we have determined a survey is not necessary and You have completed a Customer Network Compliance Statement for a given Site, You warrant that the network infrastructure at that Site is configured to the minimum requirements set out in the Customer Network Compliance Statement to

enable Us to supply the Services in accordance with the Service Standards. You warrant that the information You have supplied in the Customer Network Compliance Statement is accurate and correct. In addition to the provisions set out in the section of the Customer Network Compliance Statement named 'declaration', in the event that We determine beyond all reasonable doubt that the Services have been affected due to the Customer Network not meeting the requirements set out in the Customer Network Compliance Statement, to such an extent that We would be unable to comply with this Contract, We will be entitled to terminate the Contract (in whole or in part) without any liability to You. In the event of termination of this Contract, for any reason, following completion of the survey but prior to the relevant Proposed Start Date, You will refund to Us (at Our request) any costs incurred, including, without limitation, staff costs, equipment costs and the cost of carrying out the survey

- 2.7 A request to provision the Services with five (5) or more access lines at any one time, will be treated by Us as a project. You accept that a project plan will be agreed with You for the provision of the Services.
- 2.8 You accept that there may be some technical limitations with the Services or within the Network which may not become apparent until after We commence supplying the Service to You. To the extent that such limitations would result in the Services being degraded to such an extent that We would be unable to comply with this Contract, We will be entitled to terminate the Contract (in whole or in part) without any liability to You upon providing You with 30 days' written notice. We do not guarantee the continuing availability of any particular service and You acknowledge that We may be dependent upon third parties (including, without limitation, other Network Operators, or Service Providers) when providing the Service. Notwithstanding any other provisions of this Contract, but subject to clause 22.1, We will not be liable to You in contract, tort (including negligence) or otherwise for the actions of any third party (including, without limitation, acts or omissions of the Network Operators or Service Providers) that affect or otherwise impact upon the provision of the Service.
- 2.9 In addition to this Contract, We may provide a Technical Proposal Document ("TPD") to You, which sets out a detailed description of the Service to be provided to You pursuant to this Contract. In such circumstances, and without prejudice to the provisions of clause 2.1, We shall use Our reasonable endeavours to provide the Service in accordance with the TPD. Further, You accept and agree to be bound by any limitations or assumptions that We may make in respect of the Service as detailed in the TPD and You accept responsibility in the event that the Services do not meet Your requirements as a consequence.
- 2.10 You confirm that You understand that the Service:
- (a) may differ from Your existing fixed-line telephony or PBX service, including (without limitation) the Service constraints detailed in the Service Standards;
  - (b) may sometimes be unavailable as a result of matters beyond Our control, such as local power disruptions, third party connectivity outages, etc. You acknowledge that on occasion, parts or ALL of the functions of the Service may be unavailable, including access to Emergency Call Services.
  - (c) may not offer You the ability to transfer

(port) Your existing number to the Service, or on termination of the Service to transfer (port) Your number an alternative service if Your Service ends, depending on the type of new service deployed.

- 2.11 If this is a renewal contract, We will review the subscribed user licence volumes and types against the SmartComms UC platform on the date of issue of the renewal contract. The user licence information may differ from the Initial Term contract due to changes to Your Service requested by You during the Initial Term.
- 2.12 We do not guarantee the continuing availability of any particular service and You acknowledge that We may be dependent upon third parties (including, without limitation, other Network Operators) when providing the Service.

Notwithstanding any other provisions of this Contract, but subject to clause 22.1, We will not be liable to You in contract, tort (including negligence) or otherwise for the actions of any third party (including, without limitation, acts or omissions of the Network Operators) that affect or otherwise impact upon the provision of the Service.

### 3 ORDERS FOR SERVICE

- 3.1 At any time after the Commencement Date You will be entitled to:
- (a) order further services under further Unit Agreements; and
  - (b) request a move to the position of the Equipment (where provided by Us as part of a Managed Service), subject to such move not placing the Equipment more than 30 metres from the master socket.
- 3.2 We will respond to any orders pursuant to clause 3.1 within 10 Working Days. We will confirm the availability of the requested Service along with a Contract Summary that will include: the Charges for that Service; the Initial Term for that Service; the likely Proposed Service Start Date of that Service and any other relevant details. Such details shall not constitute an offer and You must confirm to Us in writing if You wish to contract with Us for such Services. No order pursuant to this clause 3 shall be accepted unless and until We confirm it in writing to You. Once accepted by Us, any order made under this clause 3 shall be a Unit Agreement for the purposes of this Contract. We are not obliged to respond to, process or accept any such order submitted by You. If required, You will complete a data capture form in respect of the Service You are ordering.
- 3.3 Unless otherwise agreed by the parties in writing all Unit Agreements shall be governed by the terms of this Contract only.

### 4 YOUR OBLIGATIONS

- 4.1 Where You have already signed an agreement with Us to carry out voice readiness testing in relation to the installation of the Services (as indicated in the Order);
- (a) We waive our right to receive any separate charges under our agreement with you for carrying out the testing; and
  - (b) You will be responsible for carrying out any preparatory works or measures recommended in any report we have issued to you with the results of the testing.
- 4.2 You shall accurately complete a data capture form and return it to Us. In the event that the information You provide is incomplete or inaccurate, You will submit the complete



- accurate information to Us upon request.
- 4.3 You must maintain a contract for the use of a business exchange line in respect of each Service if required for the provision of the relevant Service, as specified in the Service Standards. In the event that You fail to maintain such a line, We may terminate that Unit Agreement immediately on notice.
- 4.4 If You receive a telephony service from Us, You must be the account holder for the telephone line that You intend to use with the Lightstream Broadband Services.
- 4.5 You will, if so requested by Us, promptly provide such information as We may reasonably require in order to fulfil Our obligations pursuant to this Contract.
- 4.6 It is Your responsibility to correctly configure Your LAN and all connected devices and to protect Yourself adequately from virus and other system attacks (using up-to date software). The consequence of inadequate anti-virus or firewall systems could be that You unintentionally cause interference or damage to other Internet connected devices. We may have to suspend Your Service if such interference occurs.
- 4.7 In order to enable Us to fulfil Our obligations under this Contract You will at Your own cost and where applicable:
- provide any necessary power supply for the use and operation of the Equipment and Services at the Site(s) for the duration of the Contract;
  - provide site and building plans (to include full details of all internal cabling runs) at each of the Site(s) as requested by Us;
  - provide Us with full details of all other services in the vicinity of the proposed works;
  - ensure that any unique or special conditions applicable to the Site(s) that may affect the survey or the installation and maintenance of any Equipment are made known to Us in writing prior to Us commencing the survey;
  - prepare the Site(s) in accordance with any instructions notified in advance by Us and provide Us with such assistance as We may reasonably require for the purposes of carrying out the installation, connection and maintenance of any Equipment;
  - ensure that any router equipment, or other LAN infrastructure to which the Equipment is to be connected is available for use upon request by Us and is not moved or modified without notification in writing to Us;
  - provide a suitable continuous supply of electricity at such points as are necessary for installation and operation of the Equipment including such fusible cut-outs and other protective devices as We may reasonably require;
  - provide any electricity and connection points We may require in respect of each Service. In the event that You fail to do so, We may terminate that Unit Agreement immediately on notice.
  - ensure a suitable and safe working environment for Our employees and nominated third parties whilst at the Site(s);
  - provide Us with information regarding any changes to the Site plans, regulations or any other conditions affecting the Site(s) during the term of the Contract, which may impact the provision of the Services to You;
  - provide Us or Our nominated third party with access to the Site(s), during normal working hours, and such facilities as they may reasonably require in order to perform the survey, install any Equipment, provide the Services and otherwise perform Our obligations under the Contract;
- (i) provide Us or Our nominated third party with such access to the Site and the facilities as We may reasonably require in order to install, inspect, test, adjust, maintain, modify, repair or replace any Equipment, provide the Services or otherwise perform Our obligations under this Contract.
- 4.8 If You occupy and own the Site(s) in which You are taking Services, by signing this Contract You give Us Your written permission pursuant to the Code to install and keep the Equipment on the Site(s).
- 4.9 In the event that We or You are not able to procure the necessary consent to provide the Services at the first Site within three months from the Commencement Date, or thereafter within a reasonable time prior to Proposed Start Date for any Site, We will be able to terminate the Contract (in whole or in part in respect of any Site) without any liability. If You have not managed to procure the necessary consents and We have commenced work You will refund to Us (on Our request) the cost of all such work (including, without limitation, staff costs and equipment costs).
- 4.10 We shall inform You immediately upon becoming aware of Our inability to meet any dates or times agreed with You. If during the course of the provision of the Services, We are impeded or delayed by any act or omission of You (or Your employees, sub-contractors or agents) which has a direct impact on Our ability to provide the Services, including the requirements of clause 5.3, You shall grant to Us in writing an extension of time which shall be at least equal to the period of any such delay and shall reimburse all additional expenses reasonably and necessarily incurred by Us to the extent that they arise directly out of such impedance or delay.
- 4.11 You will advise Us in writing of all health and safety at work rules and regulations of all dangerous objects and substances and any other reasonable security requirements applicable at the Site(s) and We will use Our reasonable efforts to observe and ensure that Our employees, sub-contractors, nominated third parties and authorised representatives observe Your reasonable regulations, as advised to Us pursuant to this clause 4.11, whilst at the Site(s), provided that We shall not be liable to You if, as a result of conforming with such regulations, We are in breach of Our obligations under this Contract.
- 4.12 You shall ensure in the interests of health and safety that Our employees or nominated third parties, whilst at the Site(s) for the purposes of this Contract, are at all times accompanied by a member of Your staff familiar with the Site(s) and safety procedures;
- 4.13 We will not be liable to You where We are unable to carry out Our obligations under the Contract as a result of a breach by You of the provisions of this Contract.
- 4.14 You shall not move, add to, modify or interfere with or attempt to repair, or cause to be repaired or serviced by any person other than Us or Our third party provider, any of Our Equipment (for the avoidance of doubt this includes any router provided at Your Site, or any telephone or accessories, rented by You under this contract).
- 4.15 You will at all times ensure that the Equipment is kept in a good and proper state of repair, is secure whilst on the relevant Site and maintain the necessary environmental and other conditions for the Equipment as may be specified by Us from time to time.
- 4.16 We will not be liable to You:
- where We are unable to carry out any or all of Our obligations under this Contract as a result of: (i) a breach by You of any of the provisions of this Contract; or (ii) Your negligence; or (iii) faults with, defects in, or problems with Customer Equipment; or (iv) faults with, defects in, or problems with Your local area, or wide area networks, software or content; or
- (b) where any other part of this Contract states that We are not liable.
- 4.17 We will usually carry out the installation or deployment of the Services during Our normal working hours but may agree, exceptionally, to carry out work outside Our usual working hours subject to Your agreement to pay an Additional Charge.
- 4.18 You will be responsible for restoring the condition of the Site after any of Our installation or deinstallation work, including any redecorating that may be necessary.
- 4.19 Further, We may raise an Additional Charge if:
- Our approved engineer is called out because of faults that are found upon examination not to be faults with Our Equipment (including without limitation, power supply fluctuations or faults on another network system or apparatus to which Our Equipment is connected) or the Network; or
  - We arrange an appointment for Our approved engineer to attend the Site(s) but You (i) fail to provide access to the Site(s), or (ii) cancel the appointment for any reason; or
  - if You report the Equipment faulty and We consider (acting reasonably) that it is not, or the fault is not covered by Our warranty with the relevant third party manufacturer.
- ## 5 TECHNICAL DETAILS
- 5.1 The Services to be provided to You pursuant to this Contract shall include the provision of Our Equipment as detailed in the Order and remote network management of the Service and the virtual private network which consists of the connection to the Site(s).
- 5.2 You will ensure that We are given full and unrestricted access to and visibility of Our Network and, if applicable, any security and firewall processes and procedures to enable Us to commence and maintain provision of the Service and give Us such assistance as We reasonably require in relation thereto.
- 5.3 You will ensure that You comply with any security and firewall processes and procedures we request or advise to enable Us to commence and maintain provision of the Service and give Us such assistance as We reasonably require in relation thereto.
- 5.4 You shall provide Us with addresses, contact names and numbers including out of hours contact names and numbers (if applicable) of Your representatives including those with authority to resolve disputes, Company Administrators, and Company Emergency Contacts for the Service and ensure that such details are regularly reviewed and that You notify Us of any changes prior to such changes coming into effect. You shall inform such third parties that We may contact them in order to supply You with the Service pursuant to this Contract.
- 5.5 In order for Us to provide the Services under this Contract You are required, at Your own cost, to:
- provide IP routing to private management LAN; and
  - supply IP addresses of devices to be managed, including the ethernet interface on Our IP VPN router and IP subnet addresses.
  - provide a compatible default gateway IP address to be configured on the LAN interface of Your Equipment.
  - where You require Internet connectivity to interoperate with the Services, You shall supply IP address details of the Internet gateway at each Site;
  - nominate representatives who are authorised to request Change Requests and notify Us of any change in the authorised representatives prior to such changes coming into effect.
  - for Additional Managed Devices You will supply the following:
  - supply managed device SNMP community strings;
  - provide device login and password of devices to be managed;



- (i) forward SNMP events to designated address on Our management LAN;
- (j) ensure that any client firewalls have SNMP, CP/IP, ICMP, TFTP and telnet enabled from designated management IP addresses;
- (k) provide a network diagram for Your Sites;
- (l) provide addresses, contact names and numbers including out of hours contact names and numbers (if applicable) of Your representatives including those with authority to resolve disputes and ensure that such details are regularly reviewed and that it notifies Us of any changes prior to such changes coming into effect;
- (m) provide a network component inventory of each of Your Sites; and
- (n) if there is an existing Network, provide carrier contact details.
- 5.6 You confirm that the information supplied by You in connection with this Contract, as part of a Customer Information File (CIF) and/or a Change Request is accurate and has been completed by Your staff who have knowledge of Your requirements and is sufficient to meet Your requirements. In the event that any changes are required to the information You have supplied to Us in this Contract, and/or the CIF, You agree that You shall submit such change in accordance with the Change Request process.
- 5.7 The terms of this Contract only cover the Service for Sites located within the UK.
- 5.8 In order for Us to provide the Services under this Contract You are required, at Your own cost, to:
- (a) provide a network diagram for Your Site(s);
- (b) provide a network component inventory of each of Your Sites; and
- (c) shall prior to the Service Start Date or implementation of the relevant Change Request nominate (at no cost to Us) sufficient representatives who have appropriate experience and skill (the "Customer Staff") as We shall reasonably require to enable Us to provide the Service and ensure that the Customer Staff are available at any Sites or remote location(s) if requested by Us, and who are authorised to request Change Requests and notify Us of any change in the authorised representatives prior to such changes coming into effect.
- 5.9 You acknowledge that use of the SmartComms UC Service, which is a Voice over IP (VoIP) protocol, like other network-based services, carries certain security risks to the systems and networks owned or used by You, Us and/or any third party including, but not limited to: misuse; unauthorised access; alterations; theft; destruction; corruption; and attacks (known as "Occurrences"). You shall, at Your own expense, take security measures including but not limited to the use of those of the following methods You consider necessary: session border controllers, firewalls, passwords, access restrictions, encryption, policies, and physical access restrictions to protect from Occurrences all VoIP traffic, equipment, software, data and systems and/or the Service, located on Your premises or otherwise in Your control and used in connection with VoIP, whether owned by You, Us and/or Our subcontractors. Neither party shall be liable to the other, in contract, tort (including negligence), or on any other basis, for any loss resulting from any Occurrences or use of such VoIP traffic, facilities or other equipment, software, data and systems. You are responsible for all security measures You consider necessary, even if You use a third party or Us to configure and implement them.
- 6 PROVISION OF THE SERVICE**
- 6.1 SmartComms Service:
- (a) The Service requires an underlying access network (connectivity) solution at each Site to operate. This access network must comply with the minimum requirements set out in the Customer Network Compliance Statement (as stated in clause 2.6). You must procure this access network either from Us under a separate contract or from a third party service provider
- (b) If need to use Equipment to provide the Services, We will undertake any necessary surveys and installation of Our Equipment at the Site.
- (c) If necessary to provide the Service We will use reasonable endeavours to procure any consents licences or permissions necessary from the Highways Agency or equivalent body to enable Us to lay any cables.
- (d) Following deployment of the User Licences, or where applicable, installation of the Equipment We will carry out Our standard test procedures to ensure that the Service is ready for operation by You. Upon successful completion of such tests We will provide You with an Order Completion notification, or Ready for Use Certificate.
- (e) Where with Our written agreement You are carrying out the installation of any part of the Equipment or Service, You acknowledge and agree that You will be solely responsible for that installation and that You will carry out such installation with reasonable skill and care and in a proper and good workmanlike, in accordance with the relevant standards, any KCOM specific installation requirements advised to you, and any manufacturer's installation documentation. You further acknowledge and agree that (without prejudice to Our other rights and remedies under this Contract or otherwise) We will not be liable to You if We are unable to carry out any or all of Our obligations under this Contract as a result of any defect, fault or error in such installation.
- 6.2 Lightstream Service:
- (a) Provision of the Service is subject to availability and Our survey of Your Site. We shall use reasonable endeavours to provide the Services in accordance with this Contract and will use reasonable skill and care in the provision of the same. However, You acknowledge that the Services cannot be provided fault free and We do not warrant error free or uninterrupted use of the Services. We will use Our reasonable endeavours to repair any faults in accordance with the Service Standard.
- (b) We shall use reasonable endeavours to make each Service available for use by You from its Proposed Start Date provided the Proposed Start Date allows for Our standard lead time for the Service, as detailed in the Service Standard, and unless We are unable to do so as the result of, (a) a failure by You to fulfil Your obligations under this Contract; (b) any delay caused by a nominated third party (including, without limitation, other Network Operators); (c) delays caused by planning permission and/or OFCOM approvals that may be required and/or (d) any technical issues that may arise during installation.
- (c) We may need to:
- i. change the technical specification of the Services where necessary for operational reasons, subject to such change not materially adversely affecting the performance of the Service (except where it is reasonable to do so);
- ii. suspend the Services for operational reasons
- (including, without limitation, in case of emergency; or
- iii. give You instructions which We believe to be necessary for health and safety reasons or for maintaining the quality of the Services or other services, but before doing any of these things, We will give You as much notice as possible.
- (d) Where Your DNS records are to be transferred to Us We shall not be liable for any loss or damage suffered by You:
- i. due to Your inability to receive or send any e-mails;
- ii. for any website unavailability where the same is caused by any act or omission on the part of the ISP from whom Your e-mail (or other application) or DNS address is to be transferred from any relevant registration authority; or
- iii. by Your failure to give consent to the originating ISP to carry out such transfer.
- (e) You acknowledge that We may be dependent upon third parties (including, without limitation, other Network Operators) to provide the Services. Notwithstanding any other provisions of this Contract but subject to clause 22 We will not be liable to You in contract, tort (including negligence) or otherwise for the actions of any Network Operator (or other third parties) that affect or otherwise impact upon the provision of the Service.
- (f) You must obtain the necessary consents (at Your own expense) in order for You to receive the Service in advance of installation, including but not limited to consents to building alterations at the Site and any landlord or neighbour's permissions to enable Us, or Our subcontractors to install or maintain the Equipment. In the event that either party is not able to procure any necessary consent(s) to provide the Services within 3 months of the Proposed Start Date of a Unit Agreement, We will be able to terminate that Unit Agreement without any liability to You. You must provide an appropriate environment for the installation of the Equipment in accordance with any requirements advised to You in advance.
- (g) If We discover that We are not able to provide the Service for any technical reason (including, without limitation, the fact that the exchange line over which any Service is to be provided is unsuitable for use with the Services) and We cannot resolve the issue within 3 weeks of the Proposed Start Date of a Unit Agreement, We may terminate that Unit Agreement without liability to You.
- (h) If You are migrating to Our Service from another ISP You must ask that ISP to port Your service to Us and inform Us that You have done so. In the event that the ISP fails to reply to Your request or refuses to comply with Your request within 14 days of that request, We may terminate that Unit Agreement without liability to You.
- (i) Where in order to provide You the Service, We consider it necessary in the circumstances to provide the Service, wholly or in part, by non-standard or exceptionally expensive methods or at a substantially greater cost than usually incurred so as to render Our standard tariff inappropriate, We may decide to make further charges in addition to the



standard connection charge. If We decide to do so, We will inform You and You may then terminate that Unit Agreement within 7 days of Us notifying You of the increased Charge.

- (j) You acknowledge that:
- i. some technical limitations within the Our network may not become apparent until after the Service has been installed and working for some time. In such instances, We may terminate that Unit Agreement on notice to You. In such circumstances, We will notify You of any alternative services We can provide to You, if any; and
  - ii. following activation of Your Communications Line You may suffer a temporary loss of telephone service. This will be reinstated following installation as soon as reasonably possible.
- (k) We will supply You with a router and any other agreed Equipment for use with the Service. Title to such Equipment will remain with Us and it will be KCOM Equipment for the purposes of this Contract. Ownership of all Customer premises equipment supplied on a rental basis will be retained by Us during the initial contract period, unless purchased on contract termination via ETFs. We will notify You where this is the case.
- (l) For the purpose of providing You with Our Managed Services, You acknowledge that We will access the Equipment supplied to You, remotely through Our network, in order for You to receive the Services, and You expressly grant a right to Us to (i) access the Equipment through such means; and (ii) monitor the traffic flowing through the Equipment to enable us to provide the Managed Services to You in accordance with Our Service Standards.
- (m) You shall be entitled to either purchase additional or alternative Equipment from Us or else arrange for the supply of Your own Equipment for use with the Service. Any Equipment You use must be compatible with Our Service. Title to any additional or alternative Equipment You purchase from Us will pass to You as soon as You have paid Us for it in full. We will use Our best endeavours to pass onto You the benefit of any manufacturer's warranty for any additional or alternative Equipment You purchase from Us.
- (n) You acknowledge that in respect of certain Services, We may implement an additional element to the Service, which will:
- i. scan all incoming and outgoing e-mails for viruses. If We detect a virus, We will not deliver the infected e-mail and/or
  - ii. scan all incoming e-mails to see if they are unsolicited bulk commercial e-mails ("Spam"). If We detect a Spam e-mail, We will deliver it to a separate folder, which You may access using Your password. Spam e-mails will be deleted from this folder after 30 days. If You choose to have Spam e-mails delivered straight into Your inbox, We will identify them as being Spam.
- (o) If You use the Service to send or receive emails, We reserve the right to delete any unread emails two months after receipt.
- 6.3 Multiple static IP:
- (a) You acknowledge that IP addresses are allocated by RIPE to Us. We

reserve the right to remove or change any IP addresses assigned to You at any time without notice and without any liability to You.

- (b) You acknowledge that where You are an existing Customer upgrading to additional IP addresses, You may require a new subnet and reconfiguration of Your existing set up and services.
- (c) We shall assign new or additional TCP/IP addresses as requested by You upon being provided with satisfactory documentation justifying the need for those addresses. The documentation must be in accordance with the policies set forth by RIPE.
- (d) In certain circumstances, it may be necessary for TCP/IP addresses to be approved by RIPE, and in such cases those addresses are only assigned for the duration of the Service and become invalid at such time as We no longer provides the Service to You.
- (e) We shall not be responsible for any decision made by RIPE.
- (f) If You wish to apply for addresses that will subsist beyond the duration of the Service, You must do so directly to RIPE. Any decision by RIPE or by another ISP relating to TCP/IP addresses is the responsibility of RIPE or of that other ISP and We accept no responsibility for such decision.

## 7 OUR EQUIPMENT

- 7.1 We will supply Our Equipment in accordance with all relevant legislative requirements and will comply at all times with the relevant standard.
- 7.2 Title to Our Equipment will remain with Us at all times (or Our lessors as the case may be) and nothing will operate to transfer ownership of or rights in Our Equipment to You.
- 7.3 You agree and represent to Us that You shall:
- (a) take all reasonable and proper care of Our Equipment;
  - (b) comply with all reasonable instructions communicated by Us to You for the safe and proper use of Our Equipment and the Service from time to time;
  - (c) provide such information in respect of the Equipment as We may reasonably require;
  - (d) not operate Our Equipment after it has become defective, damaged or in a dangerous state;
  - (e) not operate Our Equipment in the event that it has become defective, damaged or in a dangerous state; and
  - (f) not add to, modify or interfere with Our Equipment
- 7.4 You will not move, add to, modify or interfere with or attempt to repair, or cause to be repaired or serviced by any person any of Our Equipment other than by Us or Our nominated third party. You will only attach to Our Equipment such other equipment or apparatus as approved by Us and as appears on the Authorised List
- 7.5 You will at all times ensure that the Equipment is kept in a good and proper state of repair, is secure whilst on the Site(s) and maintain the necessary environmental and other conditions for any Equipment as may be specified by Us from time to time.
- 7.6 Subject to such recall not significantly affecting the provision of the Service (except where this Contract has already been terminated), We may recall any or all of Our Equipment upon 7 days' notice. You will return to Us or make available for collection (as directed by Us) such Equipment.
- 7.7 Risk in Our Equipment will pass to You immediately on delivery and You will indemnify and keep Us indemnified from and against all loss or damage caused by You to Our Equipment to its full replacement value, except where this is due to fair wear and tear or is caused by Us (or anyone acting on Our behalf).
- 7.8 You will for the duration of the Contract

(without prejudice to Your liability to Us), at Your own expense, effect and maintain insurance in relation to Our Equipment with a reputable insurance company and such insurance will be in an amount equal to the full new replacement value of Our Equipment (including all taxes duties and other payments incidental to any replacements) and on fully comprehensive terms (including third party liability) against loss or damage from any cause, including, but without limitation, all risk of third party liability arising out of the presence or use of Our Equipment. You will provide Us written proof of such a policy within 10 Working Days of Our written request for the same.

- 7.9 You will allow Our employees and nominated third parties access to Our Equipment at all reasonable times upon reasonable notice to inspect, test, adjust, maintain, modify, repair or replace the same. You will be responsible for providing safe, proper and adequate access for such purposes.
- 7.10 We reserve the right to recover all or any of Our Equipment upon 7 days' notice, and You shall return to Us or make available for collection (as directed by Us) such of Our Equipment as soon as reasonably practicable following receipt of such notice. You shall be responsible for all and any costs that We may incur in relation to the collection and/or recovery of Our Equipment unless We are in breach of this Contract and/or You have terminated this Contract pursuant to clause 21.1.
- 7.11 On termination of this Contract or any Unit Agreement, if You fail to allow return Our Equipment or where applicable, fail to allow Us to collect Our Equipment You will be immediately liable to Us for:
- (a) a sum equivalent to the full replacement cost of Our Equipment (if the Equipment is not subsequently returned to us); or
  - (b) the hire charges, as set by Us from time to time, for the unreturned unit of Our Equipment (up until the time the Equipment is subsequently returned to us).
- 7.12 You will be liable for any loss or damage to Our Equipment (reasonable wear and tear excepted), subject to the provisions of clause 15.4, except where such loss or damage is caused by Us or anyone acting on Our behalf.
- 7.13 We shall not be liable for any failure in the Service, including any obligations to meet any Service Standard, caused by any unauthorised use of the Equipment by You or by a third party on Your behalf.
- 7.14 We will be entitled to:
- (a) modify and/or replace any of Our Equipment or modify the Service from time to time if We consider such modification and/or replacement reasonably necessary
- for the continued provision of the Service; and
- (b) suspend the Services for operational reasons and We shall use Our reasonable endeavours to minimise the period of interruption and mitigate the impact of the interruption on the provision of the Services. We shall notify You in advance of any suspension; and
  - (c) suspend the Services in the case of an emergency and, wherever possible, use Our reasonable endeavours to minimise the period of interruption.
- 7.15 Any software contained in Our Equipment and any software or documentation provided by Us in connection with the provision of the Services is and will remain Our property or that of Our licensors. You and Your authorised users are granted a non-exclusive, non-transferable right to use such software and manuals for the purpose of accessing the Services during the continuation of the Unit Agreement under which it is provided. Save as permitted by law, You will not copy, de-compile or modify such software and/or manuals. You will indemnify and keep Us indemnified against any costs, losses, damages, or liability We may incur due to You



- amending or in any way altering the Software.
- 8 CUSTOMER EQUIPMENT**
- 8.1 You will comply with the Acts and only use Customer Equipment which conforms to the standard in force from time to time as stipulated by the Acts, any law or regulation, or as required by Us and detailed in the Authorised Equipment List for connection to the Service. We may request disconnection of any Customer Equipment which does not conform to such standard, approval or is detailed in the Authorised Equipment List, or which, in Our reasonable opinion, may cause death, personal injury or damage to property or impair the quality of the Service or any other services provided by Us, including services to third parties. Additionally, we reserve the right to suspend the Service to the affected individual user or users until such time we have confirmed and agreed the offending Equipment has been removed. You will refund to Us any costs We incur as a consequence of such disconnection.
- 8.2 You shall make any such changes and modifications to the Customer Equipment as We may determine necessary in order to provide the Services, subject to Your obligations pursuant to the Acts.
- 8.3 You shall, if so requested by Us, provide such information in respect of the Customer Equipment as We may reasonably require for the purposes of providing the Services, subject to Your obligations pursuant to the Acts.
- 8.4 Where applicable, You warrant that Your Customer Equipment and Your network: (a) is fit for purpose; (b) is compatible with Our Equipment and Our Service; (c) will not harm Our network, Our Equipment or the equipment of any third party; and (d) is connected and used in line with any relevant instructions, standards or laws.
- 8.5 Where You purchase any Equipment from Us under the terms of this Contract. We will supply the relevant Equipment with the benefit of the manufacturer's standard product warranty for that Equipment.
- 9 USE OF SMARTCOMMS SERVICE**
- 9.1 You will, and You will ensure that any Users
- (a) will, use the Service only in accordance with Our instructions as may be notified in writing from time to time and in accordance with the relevant provisions of the Acts and any other relevant Legislation; and
- (b) will not use the Service to commit an offence under the Acts or any other relevant Legislation.
- 9.2 You will not use or permit any User or third party to use the Service:
- (a) in an illegal manner or for an illegal purpose;
- (b) in connection with any criminal or public nuisance offence;
- (c) to knowingly or recklessly transmit any material which contains software viruses or any computer codes, files or programs designed to interrupt, damage, destroy or limit the functionality of any computer software or hardware; or
- (d) in any way in connection with, any message or communication which is offensive, abusive, indecent, obscene or menacing or which does, or is intended to, cause annoyance, inconvenience nuisance or worry or which is fraudulent, defamatory, an act of treason or intended to be a hoax call to any emergency services or which (in Our reasonable opinion) brings Our name into disrepute or in any way which intentionally or recklessly causes damage or disruption to the Service or the Network or a third party network, or use the Service in a manner which constitutes a violation or infringement of the rights of any other person.
- 9.3 Both parties agree to fully co-operate with the Police and any other relevant authorities (including but not limited to the Inland Revenue, the Trading Standards Office and/or OFCOM and any successors from time to time) in connection with any misuse or suspected misuse of the Service and You consent to Us co-operating with any other telecommunications operators in connection with any fraudulent activity related to or connected with the Service and agree that We will be entitled to divulge the name and address and account information relating to You to such third parties.
- 9.4 You will, and You will ensure that any Users when using the Service will, use reasonable endeavours to avoid causing congestion on Our Network and do not misuse Our Network in any way. Where We notify You of any such congestion or misuse, then You shall immediately take all steps to prevent such congestion or misuse. If You do not promptly take such steps then We shall be entitled to take all reasonable steps to protect Our Network including the suspension and/or termination of the Services or any part of the Services.
- 9.5 We will not be liable to You where We are unable to carry out Our obligations under this Contract as a result of a breach by You of the provisions of this Contract.
- 9.6 We will use reasonable endeavours to assist You with identifying any fraudulent activity connected with use of the Services. However, You acknowledge and agree that You are responsible for maintaining the security of the Customer Equipment including but not limited to Your PBX.
- 10 USE**
- 10.1 Usage Allowance:
- (a) If the Service You receive is subject to a Monthly Usage Allowance, You shall have sole responsibility for the monitoring of Your Usage and shall pay any Charges for each gigabyte or part thereof, of Usage over and above the Monthly Usage Allowance for the Service as detailed in the Service Standard. We do not accept any liability or responsibility for the Charges that You may incur as a result of Usage of the Service, whether made innocently or with, or without, Your consent or knowledge.
- (b) We will send regular warnings to You by email to the email address You provide for this purpose when You place Your Order. We will send email warnings to You when You reach and/or exceed a set proportion of Your Monthly Usage Allowance, depending on the Service You take and as detailed in the Service Standard. You must ensure that You access Your email account regularly in order to receive such notices.
- 10.2 You are only entitled to use the Services for business purposes. The Services are not available for domestic or residential use.
- 10.3 You will not re-sell the use of the Services to any third parties.
- 10.4 You will comply with any restrictions set out in the Service Standard with regard to the number of PC's that You are able to connect to the Services or the networking of the Services with a LAN.
- 10.5 You must use and You must procure that Your authorised users use, the Services only in accordance with Our instructions as may be notified in writing from time to time and in accordance with the relevant provisions of the Acts, Our Acceptable Use Policy and any other relevant Legislation.
- 10.6 You will not use and You will procure that Your authorised users will not use, the Service:
- (a) in any way that is unlawful or fraudulent or, to Your 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 Us or any other Network Operator;
- (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 Our reasonable opinion) brings Our name into disrepute or in any way which intentionally causes damage or disruption to the Service or Our 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 services;
- (f) in a way that does not comply with any instructions We give pursuant to clause 6.2(c)(iii) and/or 10.6;
- (g) in a way that, in Our reasonable opinion, could materially affect the quality of, or be detrimental to, any telecommunications services, including the Service;
- (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; or
- (i) for high traffic applications which (in Our reasonable opinion) are an unsuitable use of the Service.
- 10.7 Both parties agree to fully co-operate with the Police and any other relevant authorities (including but not limited to the Inland Revenue, the Trading Standards Office and/or OFCOM and any successor from time to time) in connection with any misuse or suspected misuse of the Service and You consent to Us co-operating with any other telecommunications operators in connection with any suspected fraudulent activity related to or connected with the Service and agree that We will be entitled to divulge the name and address and account information relating to You to such third parties.
- 10.8 You will indemnify Us against any claims or legal proceedings, which are brought or threatened against Us because the Service is used by You in breach of clauses 10.2 – 10.7.
- 11 RATE ADAPTATION AND STABILISATION**
- You acknowledge and agree that the speed and the stability of the operation of the Service is determined by:
- (a) the characteristics of Your Communications Line, which includes its physical length, quality and susceptibility to interference from other Communication Lines;
- (b) the specific IP application protocol used;
- (c) electrical, electromagnetic or radio frequency interference;
- (d) Rate Adaptation and the Line Rate of the Customer Equipment;
- (e) the capacity available within Our network or the internet generally; and/or
- (f) the management of Our network traffic and the priority that may be applied to the Service that You have purchased from Us.
- 11.2 If, for any reason, Our engineers should be required to visit Your Site to assist with the installation of the Services (or any fault reported thereafter), You may incur an additional charge.



- 11.3 You acknowledge that Your Line Rate will be subject to Rate Adaptation. Rate Adaptation can occur several times each day and may change the Line Rate available to You. Such changes in the Line Rate may re-set Your connection to Our network or the DSLAM.
- 11.4 The Service may provide upstream (and downstream) Rate Adaptation. If so, there shall be a maximum and minimum Line Rate available for the Service. Information regarding the maximum and minimum Line Rate available for the Service can be obtained from Us, if required.
- 11.5 Where applicable to the Service You have selected, You acknowledge that the Stabilisation Period cannot commence and, if Your Communication Line is provided by another Network Operator, We will not be able to establish a Maximum Stable Rate until You have installed the appropriate Equipment and the Communication Line is synchronised to the relevant DSLAM. We will notify You once a Maximum Stable Rate has been established. However, You acknowledge that the Maximum Stable Rate may be subject to change.
- 12 LICENCES**
- 12.1 Any intellectual property associated with the Service and/or documentation or Software, or anything else provided by Us or Our sub- contractors in connection with the Services, will remain Our property or the property of Our licensors. Without prejudice to clause 9 in respect of Software and associated documentation:
- We hereby grant You a non-exclusive, non-sub-licensable, non-transferrable, revocable right to use such intellectual property and/or documentation for the purpose of accessing the Service only;
  - You will not make any modifications to the Service and/or documentation;
  - If You modify the Service and/or documentation in any way We will be entitled to terminate the Contract with immediate effect; and
  - You will indemnify Us and keep Us indemnified against any costs (including, without limitation, any legal costs or disbursements on an indemnity basis), losses, damages or liabilities We may incur due to You amending or in any way altering the Services and/or documentation.
- 12.2 Where Software is installed on the Equipment or is to be used in conjunction with the Equipment You shall only use such software in accordance with Our instructions or the items of equipment that are expressly specified to be operated by or in conjunction with such specified software.
- 12.3 You shall not reverse engineer, disassemble or decompile the Software except and only to the extent that such activity is expressly permitted by law.
- 12.4 You shall not without Our permission copy the Software or any part thereof, including any accompanying printed materials, save that You may make a single back-up copy of Our Software for archival purposes.
- 12.5 Neither You nor any User will make any modifications to the Software or documentation, unless You have received prior written consent from Us or the licensor to do so.
- 12.6 You will indemnify and keep Us indemnified against any costs, losses, damages, or liabilities We may incur to the extent that they are due to You or any User carrying out unauthorised amendments or alterations to the Software.
- 12.7 You shall not permit any third party to use the Software except for the purposes of this Contract and You shall remain responsible for any liability arising under this Contract as a result of the Software being used by third parties.
- 12.8 If You are in breach of any of Your obligations under this Contract or if any unauthorised use is made of the Software and such use is due to Your act, negligence or default then, without prejudice to Our other rights and remedies, We may terminate this Contract forthwith by notice to You.
- 12.9 If You become aware of any breach of third party rights, pursuant to the supply of the Services, the possession or use of any equipment or products provided to You (including, without limitation, the Equipment) as part of the Services or in any way connected to this Contract, You agree that You shall:
- give Us notice of any such claim within 14 days of the date on which You are first given notice that the claim has been made;
  - Allow Us or Our licensors to have sole conduct of the defence or settlement of any such claim; and
  - You agree that You will provide Us with all reasonable assistance in conducting the defence or settlement of any such claim and shall make no prejudicial statement or admission of liability.
- 12.10 For the avoidance of doubt, We shall have the right, at Our sole option and expense, to:
- procure the right for You to continue using the items so that such use is no longer infringing;
  - modify the Services and/or infringing items so that they become non-infringing without a material diminution in their performance or specification so that the provision of the Services is not materially adversely affected and extend the provisions of this clause thereto; or
  - replace the infringing items with any reasonable equivalent non-infringing substitute, provided there is no material diminution in their performance or specification and the provision of the Services is not materially affected.
- 12.11 Upon termination of this Contract You shall promptly return or, if requested, destroy all copies of the Software held by You that is in a tangible form, including Software stored on electronic or optical storage devices, whether in digital form or otherwise.
- 12.12 Where We require access to or use of any Customer Equipment, or any software or associated documentation in connection with the Customer Equipment, You hereby grant Us a non-exclusive, transferable, sub-licensable, irrevocable right to use such software, documentation and Customer Equipment for the duration of this Contract for the purposes of providing the Services to You. You warrant that You are entitled to grant Us such rights and You further warrant that Our use of such software, documentation and Customer Equipment shall not infringe the intellectual property rights of any third party.
- 13 ALLOCATION AND USE OF SERVICE NUMBERS**
- 13.1 Any Service Numbers allocated to You by Us (if any) do not belong to You. You accept that You do not acquire any intellectual property rights whatsoever in such telephone numbers and You must make no attempt to apply for registration of the same as a trademark, service mark, or domain name whether on its own or in conjunction with some other words or trading style.
- 13.2 You are not entitled to sell or agree to transfer to a third party any Service Number allocated to You by Us.
- 13.3 You acknowledge that there are restrictions in place for the Service regarding number portability for certain number ranges.
- 13.4 If You have not initiated use of any of the Service Numbers within 6 months of the Service Start Date, We may recall such Service Numbers from You and We will be entitled to use such Service Numbers for third parties.
- 13.5 We shall be entitled, for commercial, operational or technical reasons or in order to comply with the requirement of any competent authority to withdraw or change any Service Numbers or code or group of Service Numbers or codes allocated or provisionally allocated to You. Where a Service Number is already in operational use by You, We shall use Our reasonable endeavours to give You reasonable prior notice. We shall not be liable for any costs, inconvenience or other losses (including without limitation marketing and stationery costs) incurred by You as a result of any change or withdrawal as described in this clause.
- 13.6 If You are allocated a Service Number which falls within a range of numbers classified from time to time by OFCOM (or any other competent authority) as being for the provision of a particular type of service, then You must ensure that any service provided by You on that number conforms at all times with the type allocated to that number range. In the event You lose Your right to use such number, You must inform Us immediately and We will terminate provision of such Service Number to You.
- 13.7 You acknowledge that:
- We may bar access to certain types of number ranges if You are in breach of this Contract (or if We reasonably suspect You are in breach of this Contract) or for commercial or regulatory reasons;
  - the Service does not support certain outgoing calls, incoming calls, sms and text messaging services, as further detailed in the Service Standard; and
  - If You make an abnormally high number of calls to an international destination, then We may instigate network management control measures in order to prevent any security risk to the Network. In such circumstances We will notify You of the action We have taken as soon as reasonably practicable.
- 13.8 We cannot guarantee that We can provide Services to specific numbers where such number(s) have been transferred to Our Network from another telecommunications operator or where there are national code or number changes and We shall not be liable for any loss or damage You may incur due to Your inability to receive any incoming calls to any such number.
- 13.9 You shall supply Us with such information regarding Your use of any Service Numbers We supply to You pursuant to this Contract, that may be reasonably requested by Us.
- 14 CALLING LINE IDENTITY**
- 14.1 You acknowledge that the calls made using the Services may not be presented with a Calling Line Identity or "CLI". It is entirely Your obligation to ensure that each call placed using the Service is presented with a CLI and to validate the CLI.
- 14.2 We reserve Our right to use a dummy CLI or mark the CLI "private" in the event that You present a call to Us without a CLI. You accept that a dummy or private CLI, used in connection with the Services, will not provide any meaningful information to the emergency services.
- 15 EMERGENCY CALL SERVICES**
- 15.1 You confirm that You understand that the Service will connect You to public Emergency Call Services but Your Calling Line ID (CLI) may not provide Your correct physical location details to the Emergency Call Services operator, Especially if the User is a remote or mobile User.
- 15.2 You shall provide Us with all relevant information that We may request from You, in such format as We may request, to enable Us to provide Site address details to the Emergency Services database. Further You agree to notify Us immediately, in the event of any change to the information requested from You pursuant to this clause 15.2.
- 15.3 You also confirm that it shall be Your sole responsibility to make available to Users of the Service alternative means of accessing Emergency Call Services in circumstances where these are unavailable through the Service, and to inform or otherwise make Users aware of the Service purchased by





- You (whether they gain access to the Service with Your permission or not) of the possible limitations of the Service.
- 15.4 You acknowledge and agree that in order to make Emergency Call Services You agree that:
- You shall ensure the Customer Equipment used to make the Emergency Call Services is connected to a mains power supply;
  - You will inform Your Users that they must provide or confirm their location details, as may be requested by the Emergency Call Services operator; and
  - Any calls made using the Emergency Call Services may not receive the same priority as an emergency call made using a mobile or telephony network.
- 15.5 We accept no responsibility whatsoever in the event that a call is made using the Services or an attempt is made to make a call using the Services to the Emergency Call Services and You will indemnify and keep Us indemnified from and against all costs, (including without limitation, any legal costs or disbursements on an indemnity basis), expenses, damages, liabilities, losses, actions, suffered by Us, directly or indirectly and whether wholly or in part resulting from failure by You to comply with this clause 15.
- 15.6 This Emergency Calls Services shall only be available for access where the Emergency Call originates from a calling party located in the UK having a telephone number conforming to the National Telephone Numbering Plan, and being either from a geographic number range or from non-geographic number ranges 055, 056, 03 or
08. The appropriate "ii" digits will be inserted by Us to identify the call as VoIP originating.
- 15.7 We shall give You not less than 6 weeks written notice of any material change to the Emergency Call Services, or such lesser period as may be agreed with you such agreement not to be unreasonably withheld.
- 15.8 You shall provide Us with all relevant information that We may request from You, in such format as We may request, to enable Us to provide You with Emergency Call Services. Further You agree to notify Us immediately, in the event of any change to the information requested from You pursuant to this clause 15.8.
- 16 WEB SPACE**
- 16.1 This clause 16 applies to existing Customers receiving existing web space. Web space is no longer made available to new Customers.
- 16.2 The web space made available to Your as part of the Services will be as specified in the Service Standard.
- 16.3 Details or logs of who visits any site You create using Your web space will not be made available to You.
- 16.4 Returning copies of any content or data stored on any web site You create using Your web space is Your responsibility. We will not keep back up copies of Your web site. We accept no responsibility for loss of any such data or content which results from Your use of the Services.
- 16.5 The passwords that Your use with Your web space are Your responsibility and should not be disclosed to any third party.
- 16.6 Your must only reference the pages on Your web space using the Domain Name allocated to Your. You must not reference Your web space by a dotted IP address (e.g. 194.152.67.11).
- 17 DOMAIN NAME REGISTRATION**
- 17.1 This clause 17 applies to existing Customers receiving existing Domain Names. Domain Names are no longer made available to new Customers.
- 17.2 We will use Our reasonable endeavours to make any changes to the Domain Names You use with the Service, at Your request. You agree to pay any additional charges, calculated at Our standard rates, for providing this service. We do not accept any responsibility for any changes that You make to Your Domain Name, the Equipment or the Services, without Our express agreement.
- 17.3 We will automatically renew the registration of any Domain Names You use with the Service, unless You give Us at least one month's written notice prior to the relevant renewal date. We will make additional charges calculated at Our standard rates for every renewal that We carry out.
- 17.4 On the termination of any Unit Agreement, We will continue to renew the registration of the Domain Names You used with the terminated services in accordance with clause 17.2 until such time as You tell Us not to by giving Us at least one month's written notice prior to the relevant renewal date. You must continue to pay charges calculated at Our standard rates for every renewal that We carry out.
- 17.5 We will route any IP addresses that were previously assigned to You only if those addresses were assigned to You directly and not through any other ISP. We will not be held responsible if any other ISP's refuse to accept these addresses. We shall assign new or additional TCP/IP addresses as requested by You upon being provided with satisfactory documentation justifying the need for those addresses. The documentation must be in accordance with the policies set forth by RIPE. In certain circumstances, it may be necessary for TCP/IP addresses to be approved by RIPE, and in such cases those addresses are only assigned for the duration of the Service and become invalid at such time as We no longer provides the Service to You. We shall not be responsible for any decision made by RIPE. When We assign addresses to You, a temporary extension (usually thirty (30) days after the end of the Service) may be granted at Our sole discretion. Following termination or any further period (if any), those TCP/IP addresses may be reassigned by Us to other customers. If You wish to apply for addresses that will subsist beyond the duration of the Service, You must do so directly to RIPE. Any decision by RIPE or by another ISP relating to TCP/IP addresses is the responsibility of RIPE or of that other ISP and We accept no responsibility for such decision.
- 17.6 We will not accept responsibility for any loss of ownership of any Domain Name where You have instructed Us not to renew the registration and We will not be liable for any losses You incur as a result of this.
- 17.7 On Your request, We will arrange for the transfer of any Domain Names You use with the Services to an alternative service provider. You must pay additional charges calculated at Our standard rates for every such transfer that We carry out. We will not accept responsibility for any failure to re-register or renew the registration of any Domain Names that occur after they have been transferred from Us.
- 18 CHANGES BY YOU**
- 18.1 Following provision of the Service, You shall be able to request changes to the Service, including the cessation and/or amendment of User Licences, or optional Site or User 'add-on' licences, additional Equipment or accessories, additional Call Package(s), new number allocations or Number transfers (ports) by means of "Change Request" or Additional Services Order (ASO). which shall be accepted or rejected by Us in accordance with this clause 18 (a "Change Request").
- 18.2 We shall either accept or reject Your request as soon as reasonably possible following Our receipt of Your Change Request. There may be limitations with the Services that may require Us to reject Your Change Request. In such circumstances, We may suggest a different technical change that We are able to supply to You. Once We have reached agreement regarding the Change Request, both parties will agree such Change Request in writing and We shall make the technical change available to You, subject to the terms of this Contract.
- 18.3 In respect of a change where the Change Request relates to changes to or additions of Service Numbers, the Change Request shall only be binding on both parties once We confirm the Change Request in writing (including, for the avoidance of doubt, by email).
- 18.4 In respect of any other changes, such as the addition of further Users or new Sites and associated changes and additions, such Change Requests shall be binding once both parties have signed Our Additional Service Order to bring into effect such a Change Request.
- 18.5 Following Our agreement to supply the Change Request, We shall calculate the applicable Charges on a pro-rata basis from the date of implementation of the Change Request.
- 18.6 You will not be able to make a Change Request which has the effect of reducing the Charges payable for the Services, during the Initial Term.
- 18.7 You accept that in respect of some technical changes, You may be required to complete a CIF. If so requested, You agree that You will complete the CIF and agree any variations thereto with Us, or provide any other information that may be reasonably required by Us or Our third party supplier. If Your requirements change for any reason, You will inform Us immediately. Any changes to the CIF must be with Our written agreement.
- 18.8 Any changes made under this clause 18 shall form part of, and shall be subject to and governed by, the terms of this Contract.
- 18.9 A Change Request in respect of adding additional users or new Sites may have its own Proposed Start Date for the purposes of this Contract. Otherwise, any other Change Request shall not have a Proposed Start Date for the purposes of this Contract.
- 18.10 No Change Request, including the addition of further Sites or Hosted SIP channels, shall affect the Initial Term of this Contract (unless the parties agree otherwise in writing) and the changes made to this Contract shall be subject to and shall be valid for the Initial Term and the notice period thereafter set out in clause 1.2.
- 19 CHANGES BY US**
- 19.1 We may from time to time makes changes to the Service Standard and the Acceptable Use Policy. You will be able to obtain a copy of the most up-to-date versions of the Service Standard and the Acceptable Use Policy from Our website at [www.heybusiness.kcom.com](http://www.heybusiness.kcom.com) at any time or by writing to Us at KCOM, 37 Carr Lane, Hull, HU1 3RE.
- 19.2 If We change the location of any Equipment at Your request, You shall pay to Us all applicable charges for any re-connections and associated work.
- 19.3 We may change this Contract (and any Unit Agreements pursuant to it) at any time in order to:
- comply with any legal or statutory obligation including, but not limited to, any requirements from time to time under the Acts;
  - comply with any final order, direction, notice, specification, designation or consent made by the Director General of OFCOM relating to the Service;
  - implement a change pursuant to clause 19.2;
  - introduce or withdraw Service features;
  - maintain the integrity or security of the Service or a Network;
  - introduce process changes, provided they are not to Your material detriment;
  - improve clarity, or make corrections to typographical errors; and/or



- (h) protect the use of any trade names or trademarks.  
We will give You at least 30 days' notice before the changes are to take effect.
- 19.4 If We change the conditions of this Contract pursuant to this clause 19 or pursuant to any other clause under this Contract, unless the change is exclusively for Your benefit, is of purely administrative nature and has no negative effect on You, or is directly imposed by law, You shall be entitled to terminate this Contract and all Unit Agreements under it on 7 days' notice, such notice to be given no later than 30 days after the date We announce the change.
- 19.5 If You exercise this right to terminate your Contract in accordance with clause 19.4, You will not have to pay any early termination charges but You will have to pay the Charges for the Services up to the date of termination.
- 20 CHARGES**
- 20.1 You will pay the Charges to Us in accordance with the Order and the Price Manual. In the event of any conflict between the Charges for the Services stated in the Order and the Charges for the Services stated in the Price Manual, the Charges stated in the Price Manual shall apply. The Charges will be subject to change in accordance with this clause 20. You will pay the Charges at the times and frequencies set out in this clause 20. You can choose to view Your Charges through KCOMOnline, which can be accessed from <https://myaccount.kcom.com/>.
- 20.2 You will pay the SmartComms Charges as follows:
- (a) Rental Charges– in accordance with the billing period as specified on the Order of the Contract. If a billing period is not specified then such Rental Charges shall be payable monthly in advance.
- (b) The Service set-up and connection Charges, any one-off number porting charges, any one off charges for Service Numbers (including DDI) and number ranges, and any other initial or one-off charges, shall be payable upon the relevant Service Start Date or the implementation of the relevant Change Request or otherwise on demand. We reserve the right to send an invoice to You for the one off Charges at any time following the Commencement Date.
- (c) Call Charges - shall be payable monthly in arrears from the Service Start Date. Such charges shall be calculated by reference to Your use of the Service as recorded by Us and not by reference to Your records. You shall be liable to pay all Call Charges, even if the calls were made or the Service is used by a third party.
- (d) You agree that We may invoice You for any Call Charges made under this Contract at any time up to 12 months following the date on which the call was made. You agree that We may vary any or all of the Call Charges or the features of the Call Package itself at any time to the extent necessary to reflect any consent and You will be bound by any such variations.
- (e) Any other Charges shall be payable monthly in arrears or as otherwise agreed in writing.
- 20.3 You will pay the Business Lightstream Charges as follows:
- (a) the purchase price of any Equipment purchased by the Customer will be payable on delivery to the Site;
- (b) any connection Charges will be payable upon installation unless otherwise stated in the Order;
- (c) any rental or other fixed monthly Charges will be payable in advance at the frequency set out on the Order from the Service Start Date unless otherwise agreed in writing; and  
In the event that the Service Start Date of a Unit Agreement is not the same as Your monthly invoice date, We will charge You a pro rata monthly rental Charge for the first and last month, to ensure that all Unit Agreement monthly rental Charges are due on the same date.
- 20.4 Without prejudice to Our ability to vary the Charges under clause 28.10 or to vary the Call Charges under clause 18, We may vary any of the Charges at any time on no less than 30 days' prior written notice to You. We will publish the changes in Our Price Manual. We will also give You notice of any t changes by writing to You at the correspondence address for You set out in the Order. Unless the change is exclusively for your benefit, is of purely administrative nature and has no negative effect on you, or is directly imposed by law a, You may terminate this Contract on 30 days' written notice to Us provided that You serve such notice within 30 days of the date we give You notice of the varied Charges
- 20.5 You agree that We may invoice You for any Charges made under this Contract at any time up to 12 months following the date on which the Charge was initiated.
- 20.6 The Charges You must pay for the Service are dependent on the total number of Users for the Services, across all of the Sites. If the total number of Users for the Services varies during the continuation of this Contract, the Charges You pay for the Services will vary in accordance with the pricing matrix for the Service set out in the Price Manual, but subject to change in accordance with clause 20.4.
- 20.7 All Charges due under this Contract will be payable within 30 days of the date of the relevant invoice and will be paid in full without any set-off, deduction or withholding of any kind. We reserve the right to charge daily interest on any outstanding amounts until payment is received in full at a rate equal to 4% per annum above the base rate of National Westminster Bank plc as current from time to time whether before or after judgment, charge a late payment fee and/or suspend the Service (either in whole or in part) until all such charges have been paid in full.
- 20.8 If We agree to re-provide the Services to You following a suspension of the Services, for any reason, You will be liable to pay a reconnection Charge.
- 20.9 Where in order to provide You with the Service it is necessary in Our reasonable opinion to (whether in whole or in part) use non-standard or exceptionally expensive methods or where a substantially greater cost than usual is incurred by Us so as to render Our standard tariff inappropriate We may charge an additional charge. If We decide to do so, We will inform You and if You do not wish to pay such additional charges You may terminate this Contract by giving Us 30 days' written notice.
- 20.10 We shall be entitled to carry out credit checks on You. We accept no liability for the accuracy or otherwise of information provided to Us from credit reference agencies. If at any time before or during the term of this Contract You fail to meet the standard of creditworthiness deemed acceptable by Us, We shall be entitled to:
- (a) terminate this Contract, in whole or in part immediately on written notice to You;
- (b) require You to make such regular instalment payments in advance on account of any future charges as We shall deem appropriate;
- (c) impose credit limits on You in respect of Charges and to suspend the Service at any time when such limits are reached until payment in full of such outstanding Charges has been made; and  
impose such other measures on Your right to use any of the Services as We shall deem appropriate. If at any time during this Contract in Our reasonable opinion Your financial standing changes adversely or You persistently default in paying the Charges then We may request a reasonable security deposit against non- payment. If You fail to provide such security deposit within 10 Working Days then We reserve the right to suspend and/or terminate this Contract with immediate effect by giving written notice.
- 20.11 In the event that You fail to make any payment on the due date under this Contract or under any other agreement with Us then without prejudice to any of Our other remedies or rights, including the right of termination under clause 21.1, We shall be entitled to suspend any further supply or Services without liability.
- 20.12 All charges are exclusive of value added tax and any other applicable taxes which may from time to time be levied.
- 20.13 Where any monies properly due to Us or any member of the KCOM Group under this Contract or any other agreements are outstanding We will be entitled to offset such payments against any payments due from Us to You or any member of the KCOM Group under this Contract or any other contracts under which We or any member of the KCOM Group provide You with telecommunications or data services.
- 20.14 We shall be entitled to recover from You any charges levied on Us by any Network Operator in respect of incoming calls made from a public payphone.
- 20.15 You are liable pay to Us any Charges resulting from any fraudulent activity on the Service, howsoever caused
- 21 TERMINATION**
- 21.1 If either party is:
- (a) in breach of any provision of this Contract (other than clauses 9.1, 9.2, 9.4, 10.5 or 10.6 and fail to remedy such breach within 30 days of written notice to do so;
- (b) unable to pay its debts as they fall due or threaten to suffer any resolution to wind up its business or enter into involuntary or compulsory liquidation or have an administrator, administrative, receiver or any analogous officer appointed over all or part of its assets;
- then the other party may immediately upon notice in writing (without prejudice to any other rights and remedies they may have) terminate (either in whole or in part) this Contract.
- 21.2 We may terminate this Contract (either in whole or in part) and/or any Unit Agreements with immediate effect if:
- (a) You fail to meet the standard of creditworthiness as set out in clause 20.10;
- (b) You are in breach (or We reasonably believe You are in breach) of clauses 9.1, 9.2, 9.4, 10.5 or 10.6 as breach may be a criminal offence and/or cause serious harm to Our reputation; and/or
- (c) Our authorisations or Our ability to provide the Services are altered in a way that is material to the Service.
- 21.3 We will continue to provide the Services in accordance with Clause 1 until termination of this Contract but if:
- (a) You are late in making any due payment, or
- (b) We become entitled to terminate this Contract early for any reason, or
- (c) You break any material term of another contract with Us or another company in the KCOM Group, or
- (d) any of the circumstances in clauses 6.2(c)(ii), 4.6, 20.7, 20.10, 20.11, 21.1, or 21.2 occurs,
- then We may partially or completely suspend the Services without prejudice to any right to terminate the Contract. For the avoidance of doubt You will be liable for the Charges during any such period of suspension.
- 21.4 If You terminate the provision of the Services (together with any related equipment rental) for an individual User or a number of Users and provided that You continue to take the Services for at least 50% (fifty percent) of the total number of Users specified in the Order, then You will



- pay to Us a termination payment calculated as follows:
- (a) all outstanding Charges due up to and including the date of termination with respect to the terminated Services, including any one-off Charges that may have been incurred prior to the date of termination; plus
  - (b) with respect to any Services terminated prior to the first anniversary of the relevant Service Start Date, 100% (one hundred percent) of any recurring Charges (such as the Rental Charge) payable with respect to the terminated Services for the period up to the first anniversary of the Service Start Date, in circumstances where clause 19.4 or 21.4 does not apply; plus
  - (c) 25% (twenty five percent) of any recurring Charges (such as the Rental Charge) payable with respect to the terminated Services for the period from the first anniversary of the Service Start Date up to the end of the Initial Term, in circumstances where clause 19.4 or 21.4 does not apply; plus
- 21.5 Upon termination of this Contract (in whole or in part), you will pay to Us a termination payment calculated as follows:
- (a) all outstanding Charges due up to and including the date of termination, including any one-off Charges that may have been incurred prior to the date of termination; plus
  - (b) with respect to any Services terminated prior to the first anniversary of the relevant Service Start Date, 100% (one hundred percent) of any recurring Charges (such as the Rental Charge) payable for the period up to the first anniversary of the Service Start Date, in circumstances where clause 19.4 or 21.4 does not apply; plus
  - (c) 50% (fifty percent) of any recurring Charges (such as the Rental Charge) payable for the period from the first anniversary of the Service Start Date up to the end of the Initial Term, in circumstances where clause 19.4 or 21.4 does not apply.
- 21.6 If a Unit Agreement is terminated by either party prior to the expiry of its Initial Term (other than pursuant to clauses 6.2(f), 6.2(g), 6.2(h), 6.2(i), 6.2(j), 19.4, 20.4 21.2(c) or 23) You shall pay Us a termination payment ("Termination Payment") for each terminated Unit Agreement. The Termination Payment shall be the monthly rental and other fixed charges Charge multiplied by the number of remaining months of the Initial Term.
- 21.7 Upon termination of this Contract or a Unit Agreement You will cease to use all the Services or any individual Service(s) under the terminated Unit Agreement(s) as directed by Us and will pay to Us all outstanding Charges due up to and including the date of termination.
- 21.8 You will pay Us the cease Charge if (a) You terminate this Contract or any Unit Agreement (or they end) for any reason; (b) You move to another ISP; and/or (c) You move and ask Us to provide the Service at another Site.
- 21.9 You acknowledge that Our Charges have been calculated on the basis that this Contract will continue until the end of the Initial Term as We may have spent money on set up costs and accordingly agree that it is reasonable for Us to require the payment of the Termination Payment as calculated above.
- 21.10 Further, upon termination of this Contract You shall return all of Our Equipment to Us. We may enter any Site(s) to recover and remove such of Our property and Our Equipment at Your cost, however the ONT should not be removed from any Site by
- You without our prior written consent. For the avoidance of doubt, where we have supplied Customer Premises Equipment on a rental basis as set out in the Order, provided that You have paid any termination payment set out in clauses 21.4, or 21.5 as applicable, such equipment shall not be deemed to be Our Equipment.
- 21.11 We will repay or credit You with the appropriate proportion (on a pro rata basis) for any rental Charges You have paid in advance (other than for any part of the Initial Term if a Termination Payment is due) for the period ending after Your liability to pay the rental Charges ceases.
- 21.12 Further, upon termination of this Contract You at Your own cost, shall return all of the Equipment to Us, and We may enter any Site(s) to recover and remove such of Our property at Your cost.
- 21.13 The expiry or termination of this Contract will be without prejudice to any other rights either party may be entitled to and will not affect any accrued rights or liabilities of either party.
- ## 22 LIMITATION OF LIABILITY
- 22.1 Nothing in this Contract shall exclude or limit either party's liability for:
- (a) fraud or fraudulent misrepresentation; or
  - (b) death or personal injury resulting from its own negligence or that of its employees, sub-contractors or agents; or
  - (c) breach of the terms implied by s.12 of the Sale of Goods Act 1979 or s.2 of the Sale of Goods and Services Act 1982;
  - (d) the indemnities set out in clauses 7.7, 7.15, 10.8, 12.1(d), 12.6 and 15.5.
  - (e) anything else that cannot be excluded or limited under applicable law
- 22.2 Except as expressly provided in this Contract all conditions, warranties, terms, representations, undertakings and obligations express or implied by statute (including, without limitation, those of satisfactory quality or of fitness for a particular purpose (even if that purpose is made known expressly or by implication to Us)), common law, custom, trade usage or otherwise and all liabilities (if any) are excluded to the fullest extent permitted by law.
- 22.3 Without prejudice to clause 22.1, We shall not be liable to You whether in contract, tort (including negligence) or restitution, or for breach of statutory duty or misrepresentation, or otherwise, for any:
- (a) loss of business; or
  - (b) loss or corruption of data or information; or
  - (c) loss of profits; or
  - (d) loss of goodwill; or
  - (e) loss of business opportunity; or
  - (f) loss of anticipated savings even when advised of the possibility,
- suffered by You under or in connection with this Contract
- 22.4 Without prejudice to clause 22.1, We shall not be liable to You whether in contract, tort (including negligence) or restitution, or for breach of statutory duty or misrepresentation, or otherwise, for any special, indirect or consequential loss or damage (including legal and other professional fees and expenses) or expenses of any nature,
- 22.5 Subject to the provisions of this Contract, both parties hereby accept liability in respect of damage to the other party's tangible property resulting from its own or its employees' negligence up to an aggregate amount of £2,000,000 (two million pounds) during the term of this Contract.
- 22.6 Without prejudice to clauses 22.1 and 22.5, both parties maximum aggregate liability in connection with this Contract whether arising contract, tort (including negligence) or restitution or for breach of statutory duty or
- misrepresentation, or otherwise, shall be limited in the aggregate in each Contract Year to the greater of:
- (a) £100,000 (one hundred thousand pounds) in respect of one incident or a series of related incidents and £250,000 (two hundred and fifty thousand pounds) for all such incidents in any 12 month period; or
  - (b) the value of the Charges paid by You under this Contract (including all Unit Agreements) in the preceding Contract Year ("Liability Sum").
- 22.7 With reference to clause 22.6, in the event that 12 months has not accrued from the Commencement Date, the Liability Sum will be calculated by calculating the monthly average Charges incurred over the relevant period and multiplied by 12.
- 22.8 The limitations of liability set out in this clause 22 shall not limit Your liability to pay and Charges that are properly due under this Contract. Further, Your liability to pay the Charges shall not be taken into account for the purposes of applying the limitations set out in this clause 22 to any other liabilities You may incur under or in connection with this Contract.
- 22.9 We will in no circumstances be liable to You in contract, tort (including negligence) or otherwise if We fail to renew Your domain name.
- 22.10 You acknowledge and accept that We do not have control over, nor are responsible for any third party information, software, content or services obtained by You whilst using the Services. Use of the Services is solely at Your risk and We shall not be liable to You for any loss or damage of any nature whatsoever You suffer as a result of the use or reception of such materials.
- 22.11 This clause sets out each party's entire financial liability (including any liability for the acts or omission of their respective employees, agents or subcontractors) to the other in respect of:
- (a) any breach of this Contract; and
  - (b) any use made or resale of the Equipment and/or Software, or of any product incorporating the said Equipment and/or Software; and
  - (c) any representation, statement or tortious act or omission (including negligence) arising under or in connection with this Contract.
- ## 23 FORCE MAJEURE
- Subject to clause 22.1, We will not be liable to You for any loss or damage caused to or suffered by You as a direct or indirect result of the supply of the Equipment and/or Services being prevented, restricted, hindered or delayed by reason of any circumstance outside of Our control. If either party is prevented from performance of its obligations for a continuous period of 3 months the other may terminate this Contract by giving written notice.
- ## 24 EXPORT CONTROL
- You acknowledge that the Service (including, but not limited to, Software, technical assistance and training) provided under this Contract may be subject to export laws and regulations of the USA and other countries, and any use or transfer of the Services must be in compliance with all applicable regulations. You will not use, distribute, transfer, or transmit any part of the Services (even if incorporated into other services) except with Our, or Our licensor's, express written approval and in compliance with all applicable export regulations.
- ## 25 RECORDS / INFORMATION
- 25.1 You agree that, in accordance with clause 20.10, We may use credit reference agencies to help Us decide whether We can provide (or continue to provide) the Services. You agree that We can pass information about You and Your payment record to credit security and debt collection agencies and to other companies in the KCOM Group to help recovery and credit control.
- 25.2 We or Our agents may sometimes monitor or record calls made to Our Customer Network Operations Centre for training and quality control purposes.
- 25.3 We may also contact Your organisation (including individuals within Your



- organisation) by letter, telephone or e-mail with details of Our services that may be of interest. If an individual does not wish to receive marketing material from Us then please notify us by calling 0345 1224 333.
- 25.4 As We continue to develop our business, members of the KCOM Group may be sold and any relevant Customer Information may be transferred as part of the sale, subject to the terms of this clause 25.
- 26 DATA PROTECTION**
- 26.1 Where We are processing data on Your behalf We shall only process such data in accordance with the Data Protection Laws and Our Data Processing Commitment.
- 26.2 We may contact Your organisation (including individuals within Your organisation) by letter, telephone or e-mail with details of Our services that may be of interest. If an individual does not wish to receive marketing material from Us then please notify us by calling 0800 1386000.
- 26.3 As We continue to develop our business, members of the KCOM Group may be sold and any relevant Customer Information may be transferred as part of the sale, subject to the terms of this clause.
- 27 CONFIDENTIAL INFORMATION**
- 27.1 Each party shall (subject to clause 26 in respect of Personal Data) during this Contract and after its termination or expiration for any reason, both parties shall keep secret and not disclose any Confidential Information received or obtained from the other party to any third party for any purpose except with the prior written consent of the other party;
- (a) only use any Confidential Information received or obtained from the other party for the purpose of performing its obligations under this Contract;
- (b) protect the Confidential Information received or obtained from the other party with the same standard of skill and care as it uses for its own confidential information (but, in any event, at least reasonable skill and care); and
- limit dissemination of the Confidential Information received or obtained from the other party to those of its employees, agents or officers that need to know the information for compliance with clause 27.1(b).
- 27.2 Information is not Confidential Information if:
- (a) the relevant information comes into the public domain other than by breach of this clause 27;
- (b) the relevant information is or has been generated independently by the receiving party, otherwise within the course of performing its obligations pursuant to this Contract; or
- 27.3 A party may disclose Confidential Information if the receiving party is obliged to disclose the relevant information pursuant to a statutory obligation, court order or instruction from a competent regulatory body or the rules of the UK Listing Authority.
- 27.4 The terms of this clause 27 shall survive termination of this Contract.
- 28 GENERAL**
- 28.1 This Contract constitutes the entire contract and understanding of the parties and supersedes any purchase order or other document supplied by You or any previous contract between the parties relating to the subject matter of this Contract.
- 28.2 Each of the parties acknowledges and agrees that in entering into this Contract it does not rely on, and will have no remedy in respect of, any statement, representation, warranty or understanding (whether negligently or innocently made) of any person (whether party to this Contract or not) other than as set out in this Contract. Nothing will operate to limit or exclude any liability for fraud.
- 28.3 Should any provision of this contract be held to be void or voidable the remaining provision of this Contract will continue in full force and effect.
- 28.4 No forbearance, delay or indulgence by either party in enforcing the provision of this Contract will prejudice or restrict the rights of that party nor will any waiver of its rights operate as a waiver of any past or subsequent breach.
- 28.5 We will use reasonable endeavours to meet any delivery time, date or period. However, such dates will be regarded as estimates and We will have no liability to achieve any such time, dates or periods, other than the payment of service credits as detailed in the Service Standard.
- 28.6 Members of KCOM Group may enforce their rights under clause 20.13 but no other person or body who is not a party to this Contract has any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any terms of this Contract (but this does not affect any rights or remedies of a third party which exist or are available apart from that Act).
- 28.7 You may not assign the whole or part of this Contract without Our prior written consent such consent not to be unreasonably withheld.
- 28.8 We may assign this Contract to any company which from time to time is a member of the KCOM Group.
- 28.9 Subject to clause 28.8, We may not assign this Contract to any other third party without Your prior written consent such consent not to be unreasonably withheld.
- 28.10 We reserve the right to vary these terms and conditions to the extent necessary to take into account any changes to Industry Agreements and any relevant Legislation. We may make changes to the Service Standard from time to time. Such changes will be notified to You not less than 30 days prior to their taking effect. Any other variations must be in writing and agreed between the parties.
- 28.11 Unless expressly stated, nothing in this Contract entitles You to use any of Our or any of Our other supplier's names, logos, trademarks or other intellectual property rights without prior written consent. Intellectual property rights shall remain the property of the owners and nothing in this Agreement shall be deemed to confer any assignment or licence of such rights except where expressly stated
- 28.12 Any notice under or in connection with this Contract shall be in writing and may be delivered by hand to or sent by first class post, email or by facsimile (with confirmation by post) to the Company Secretary at the address of the party concerned set out in this Contract or any other address notified from time to time.
- 28.13 Any notice addressed as provided in clause 28.12 shall be deemed to have been given or made on the second Working Day after posting if sent by first class post upon delivery if delivered by hand and if sent by fax on the next Working Day after the date of transmission provided the sender's facsimile machine produces a report showing successful transmission to the correct facsimile.
- 28.14 You are not authorised or entitled to re-sell, re-supply or otherwise distribute, software, documentation and/or any equipment provided by Us without Our prior written agreement or unless otherwise permitted by the terms of this Contract.
- 28.15 The construction, validity and performance of this Contract will be governed by English law and the parties submit to the exclusive jurisdiction of the English courts.
- 29 DEFINITIONS**
- 29.1 In these conditions:
- "Acceptable Use Policy" Our acceptable use policy which We may amend from time to time and which We will publish on Our Website;
- "Acts" the Communications Act 2003, the Telecommunications Act 1984 and the Electronic Communications Act 2000 (each as amended from time to time);
- "Additional Charges" the additional fees which may be charged at Our standard rates, in force from time to time, as detailed in this Contract;
- "Additional services Order (ASO)" means a pro forma Order Form, which is required when additional chargeable items, User licences, Site or User 'Add-on' licences, or Equipment is required, used in conjunction with a "Change request" "Authorised List" means the authorised list of equipment that may be connected to the Equipment;
- "Bolt-on" a service option selected by You as specified in the Order and further described in the Service Standard;
- "Business Portal" means the web based Administration portal for the Company Administrator to manage the Site and User features of the service;
- "Call Charges" means the rate applicable for a call commencing from when an answer signal is received and ceasing when a release signal is received. Call Charges are calculated on a per second basis and rounded up to the nearest second, with the exception of minimum of fixed fee calls. For the avoidance of doubt, VoIP to VoIP calls over the Network shall not attract Call Charges;
- "Change Request" means a change requested in accordance with clause 18;
- "Charges" the Connection Charges, Rental Charges, Call Charges or any Purchase or Service Charges, as detailed on the Order, any Additional Charges or other charges payable by You under this Contract;
- "Class of Service" the level of Service We will provide to You as detailed in the Contract;
- "Code" means Schedule 2 of the Telecommunications Act 1984 as amended by Schedule 3 of the Communications Act 2003;
- "Commencement Date" means either: (a) the date We confirm acceptance of Your Order in writing; or (b) the date We make the Service available to You;
- "Confidential Information" means information relating to the activities or affairs of the other party to which they gain access in the course of carrying out their respective obligations pursuant to this Contract;
- "Contract" these Terms and Conditions, together with the Order, Service Standards, the Contract Summary, the Data Processing Commitment and any other appendices;
- "Contract Date" means the date that We accept Your Order and agree to enter into this Contract, which will be the date of Our email or letter to You that constitutes Our acceptance to enter into this Contract with You;
- "Contract Summary" means the pre-contractual contract summary document sent to You as required by the EECC;
- "Contract Year" a period of 12 months from and including the Commencement Date and each consecutive 12 month period thereafter;
- "Customer Equipment" any equipment at the Site(s) owned by You or a third party which when operated in conjunction with Our Equipment, allows You to obtain and/or receive the Services;
- "Customer Network Compliance Statement" Our standard information questionnaire relating to the Site;
- "CIF" means a Customer Information Form which shall be completed by Us, with assistance from You, and will supply the detail of the Services required by You;
- "Data Processing Commitment" means the Data Processing Commitment contained in this Contract at Part 5;
- "Data Protection Laws" means all applicable laws and regulations relating to the processing of Personal Data and privacy including the Data Protection Act 2018, the retained EU General Data Protection Regulation 2016/679 ("UK GDPR") and any statutory instrument, order, rule or regulation made thereunder, as from time to time amended, extended, re-enacted or consolidated and the terms "Data Controller", "Data Processor", "Data Subject", "Data Subject Access Request", "Supervisory Authorities", "process" and "Personal Data" shall have the meanings given to those terms in such data protection laws and regulations;
- "DNS" (Domain Name System) the mechanism used to resolve IP addresses against domain names;
- "Documentation" any documents prepared by or on behalf of Us in respect of the Equipment and/or the



Services;

"Domain Name" a node name and associated email address allocated to You for use with the Services;

"DSLAM" digital subscriber line access multiplexer;

"Early Termination Fee (ETF)" means an amount payable, up to and including the outstanding balance due under the Initial Term of the contract for the Service or part of the Service You wish to terminate before the anniversary of Initial Term;

"EECC" means the European Electronic Communications Code;

"Emergency Call Services" means the conveyance of a call made to the 999 (or 112) services, using the Services;

"Equipment" means Our Equipment (equipment rented from Us, for the purpose of clarity, telephone devices, ONT (white box on the wall) and accessories) and/or the Customer Equipment, (equipment purchased from Us, or on lease/purchase, for the purpose of clarity, telephone devices, and accessories), or Authorised Equipment purchased by You from a third party, or currently in use.

"Industry Agreements" any standard industry agreements or third party agreement which impact upon Our ability to provide the Service;

"Initial Term" the period of time stated in each Unit Agreement, or if none is stated, the period of time stated in the Order which commences on the Service Start Date;

"ISP" means an Internet service provider, other than Us;

"KCOM Business Technical Support Team" the place to which all fault reports and help queries should be addressed; "KCOM Group"

"KCOM Group" means Us, Our holding company, Our subsidiaries, and any subsidiary of Our holding company. The terms "subsidiary" and "holding company" have the meanings given to them by section 1159 and Schedule 6 of the Companies Act 2006 (as amended);

"KCOM Equipment" any equipment located at the Site which is supplied by Us or a third party as part of the Services;

"Legislation" all Acts of Parliament and statutory regulations, instruments or orders and codes of practice and all applicable European Union laws, directives and other legislation as any of the same may be amended or replaced from time to time;

"Line Rate" the rate of connection between the Customer Equipment and the DSLAM located at the local exchange;

"Managed Services" any Services described as such in the Service Standard;

"Materials" means any materials that You supply to Us to enable Us to perform the Services, whether in paper, digital or other format and which may contain copyright, trademark, tradename, domain name or other intellectual property rights, whether registered or in the process of registration and whether or not registerable in the UK or elsewhere;

"Maximum Stable Rate" the maximum Line Rate the Service is expected to achieve on Your Communications Line, calculated on a per line basis;

"Metallic Pair" means a circuit comprising a pair of twisted metal wires which allows electrical signs to be conveyed;

"Monthly Usage Allowance" the Usage included with the Service, as detailed in the Service Standard;

"Network" the telecommunications and/or IP infrastructure and system operated by Us and/or the network of any Network Operator, as applicable;

"Network Operator(s)" any licensed public telecommunications operator whose network is used by Us to deliver the Service;

"Order" means the order for the Services placed by You, the material details of which will be confirmed to You in writing by email or letter;

"Our Equipment" means equipment owned by Us (or by a third party that has made the equipment available to Us) in order for Us to supply the Services, including the handsets and other rental equipment specified in the Order.

"Our Website" means Our website at [kcom.com/business](http://kcom.com/business) or any other replacement site;

"PBX" Private Business Exchange;

"Personal Data" has the meaning given to it in the Data Protection Act 2018;

"Price Manual" the price manual published on Our Website that sets out the detailed charges for Our services;

"Proposed Start Date" the date specified in the Order or as amended on which the Service is due to be made available to You at the first Site. For the avoidance of doubt, each Site and/or Service may have its own Proposed Start Date, as will be notified to You in writing;

"Rate Adaptation" the automatic negotiation of the best Line Rate between the DSLAM and the Customer Equipment, based on the settings within Our network, as applicable, line characteristics and conditions. Rate Adaptation can occur several times a day, thus resetting the rate between the Customer Equipment and the DSLAM;

"RIPE" means the Ripe Network Coordinating Centre;

"RPI" means the Retail Price Index;

"Service Numbers" those number ranges (including but not limited to 0800, 0845, 0870, 0900) as varied or substituted from time to time in accordance with clause 13.5;

"Service Standard" the Service Standards set out in this Contract;

"Service Start Date" means, in respect of each Site, the Proposed Start Date or if different the earlier of the dates upon which You are notified the Service is available for use at a particular Site or the date You begin using the Services at such Site;

"Services" the service or services (if any) to be provided by Us as detailed in the Order;

"Site" or "Site(s)" the location or locations at which We install and/or deliver the Equipment and provide the Services and/or the premises to which the Services are to be provided, as described in the Order;

"Software" means the software with any additional software if any, which is supplied by Us to enable Us to provide the Services pursuant to this Contract;

"Stabilisation Period" a period of up to 10 Working Day commencing from the date that You first use the Service following the Service Start Date, during which time the Maximum Stable Rate will be established for Your connection;

"UK" England, Wales, Scotland and Northern Ireland;

"Unit Agreements" Your agreement with Us for each individual Service, whether as detailed in this Contract or in any further orders accepted by Us in accordance with clause 3;

"Usage" the amount of data transferred over the Services to You measured in gigabytes (GB);

"Users" any individual authorised by You to use the Service;

"We/Us/Our" KCOM Group Limited, (registered number 2150618) whose registered office is at 37 Carr Lane, Hull, HU1 3RE;

"Website" Our website at [www.kcom.com](http://www.kcom.com) or any other replacement site;

"Working Day" Monday to Friday 9.00am to 5.00pm inclusive except for UK bank and public holidays;

"You/Your" the person or company to whom the Equipment and/or Services are provided.

## Data Processing Commitment

This Data Processing Commitment represents Our commitment to You in regard to processing of Personal Data. It forms part of the Contract and should be read in conjunction with the Contract and any associated documentation.

### 1 DEFINITIONS

1.1 In this Data Processing Commitment, unless the context otherwise requires:

**“Permitted Sub-Processor”** means any third party supplier or other sub-processor appointed by Us for the provision of Services to You pursuant to the Contract, as such third party supplier or sub-processor is expressly identified to You or as otherwise agreed between the parties.

1.2 Any other definitions used in this Data Processing Commitment shall have the meaning ascribed to it in the Contract.

### 2 DATA PROTECTION

2.1 Both Parties hereby warrant, represent and agree that in relation to the performance of the Services during the term of the Contract each Party will comply with the Data Protection Laws.

2.2 Both Parties acknowledge and agree that in relation to Your Personal Data, You are the Data Controller and We are the Data Processor. We agree and accept that We will process the Personal Data pursuant to and in accordance with the Contract, as applicable, and the Data Protection Laws.

2.3 Part 5A sets out the information regarding Our processing of Your Personal Data as required by article 28(3) of UK GDPR. We may make reasonable amendments to Part 5A by written notice to You from time to time as We reasonably consider necessary to meet those requirements, including but not limited to amendments arising from amendments to UK GDPR that result in a divergence from EU GDPR. Nothing in Part 5A (including as amended pursuant to this section 2.3 of this Data Processing Commitment) confers any right or imposes any obligation on either You or Us.

2.4 We shall:

- (a) only process the Personal Data for the purposes of performing its obligations under the Contract, as applicable, and in accordance with Your documented instructions;
- (b) not transfer the Personal Data outside of the EEA, unless permitted to do so as follows:

- (i) in provision of the Services to the relevant Permitted Sub-Processor, subject to ensuring that either: (a) such Permitted Sub-Processor implements appropriate technical and organisational measures to safeguard against unauthorised and unlawful processing of Personal Data and to ensure a level of security appropriate to the risk; or (b) the such permitted Sub-Processor (i) is processing Personal Data in a territory which is subject to adequacy regulations under the Data Protection Laws; (ii) enters into the International Data Transfer Agreement (**IDTA**), the International Data Transfer addendum to the European Commission’s Standard Contractual Clauses for International Data Transfers (**Addendum**) and any transitional provisions for the time being relating to the IDTA and/or the Addendum for the Processing and transfer of Personal Data outside of the United Kingdom with You; or
- (ii) with Your prior written consent; and/or
- (iii) if required to do so by any legislation or regulation, in which case We shall inform You of such requirement if it is able to do so;
- (c) ensure that all of Our employees who process the Personal Data are subject to an obligation of confidentiality in relation to the Personal Data;
- (d) implement appropriate technical and organisational measures to safeguard against unauthorised and unlawful processing of Personal Data and to ensure a level of security appropriate to the risk, including but not limited to:
  - (i) pseudonymising and encrypting Personal Data, as appropriate;
  - (ii) ensuring the ongoing confidentiality, integrity, availability and resilience of its processing systems and services;
  - (iii) enabling the restoration, availability and access to Personal Data in a timely manner in the event of a physical or technical incident and, without prejudice to the foregoing, in accordance with any service level agreement between Us and You;

- (iv) regularly testing, assessing and evaluating the effectiveness of the technical and organisational measures for ensuring the security of the processing; and
- (v) taking steps to ensure that any of Our employees who have access to Personal Data does so in accordance with Our rights and obligations as expressly detailed in this Data Processing Commitment or otherwise on Your express written instructions unless otherwise required by legislation or other applicable regulation;
- (e) inform You of any new sub-processor and/or change of a Permitted Sub-Processor. You shall inform Us within five (5) Business Days of any objection to such appointment or change. If You do not raise any such objection, We shall ensure that such sub-processors shall comply with the provisions of this Data Processing Commitment or terms which are substantially similar;
- (f) assist You in the timely response to requests from Data Subjects exercising their rights, including but not limited to:
  - (i) where We are required to assist You with a Data Subject Access Request You have received, responding to such request for assistance within twenty (20) days of receiving notice of such request from You;
  - (ii) where We receive a Data Subject Access Request directly from the Data Subject, We shall notify You within one (1) Business Day after receipt and shall respond to the Data Subject within the time limits specified within the Data Protection Laws and where You are required to assist Us with such Data Subject Access Request, You shall respond to Us within twenty (20) days of receiving notice of such request from Us;
  - (iii) assisting You, as applicable, with a request for access, rectification and/or erasure by a Data Subject; and
  - (iv) enabling You to comply with a request for data portability of a Data Subject;
- (g) assist You in complying with its obligations relating to security of Personal Data as set out in the Contract, as applicable, or as otherwise may be reasonably requested by You, including but not limited to:
  - (i) notifying You of any Personal Data breach as soon as reasonably practicable and no later than twenty four (24) hours after We become aware of the breach (such notice by email and/or telephone and followed up by email), and including all relevant detail. We agree and accept that You may use any detail included in the notification of a Personal Data breach, or otherwise given in its communication to Data Subjects, to the extent that such information does not breach the rights of any other individual;
  - (ii) at Your request and expense assisting with the communication to the Supervisory Authorities, any of Your customers and/or Data Subjects following a Personal Data breach and/or implementing any measures required as a result of such breach;
  - (iii) at Your request and expense, consulting with the Supervisory Authorities and/or assisting You to consult with the Supervisory Authorities, including providing You with any information relating to Our processing of Personal Data and/or Our compliance with the Data Protection Laws as You may be reasonably request.
  - (h) upon the expiry or termination of the Contract, delete or return all Personal Data to You (as requested by You), unless otherwise required or permitted by Data Protection Laws and provide written confirmation You in this respect;
  - (i) make available to You all information reasonably necessary to enable You to demonstrate compliance with Your obligations under the Data Protection Laws, including such records of all categories of processing carried out on Your behalf, as such is requested by You;
  - (j) co-operate with any request of the Supervisory Authority;
  - (k) allow You to undertake audits of Us on 30 days' notice and at Your expense, subject to any reasonable requests We may have regarding the timing and conduct of such audit (including, without limitation, such audits to be conducted during Our Business Hours and allowing Us to supervise such audit), to ensure Our compliance with this Data Processing Commitment;
  - (l) contribute to any audits or inspections carried out on You by any Supervisory Authority or any of Your suppliers or customers, as such contribution and/or inspection is reasonably necessary to demonstrate compliance with Your and/or Our obligations in this Data

- Processing Commitment, subject always to the provisions in Section 2.3(k);
- (m) at Your expense, implement any reasonable recommendations and/or remedial actions necessary to ensure compliance with the provisions of this Data Processing Commitment and/or the Data Protection Laws, as such recommendations and/or remedial actions are deemed necessary by You (acting reasonably) or any Supervisory Authority, as applicable, following an audit or inspection in accordance with Section 2.3(l) above, or otherwise as You deem reasonably necessary.

- (n) Subject to clause 22, each Party shall indemnify the other Party in the event of any claim by a third party arising as a consequence of the other Party's breach of this Data Processing Commitment and/or Data Protection Laws.

### **3 GENERAL**

- 3.1 We shall be entitled to amend this Data Processing Commitment either: (i) immediately to ensure Our commitment is in compliance with Data Protection Laws; or (ii) upon giving You 30 days' prior written notice of such change, provided that such change shall not (in Our reasonable opinion) cause a material detrimental effect to You).



## Data Processing Details

Description	Details
<b>Subject matter of the processing</b>	Provisions of Services pursuant to the Contract between Us and You
<b>Duration of the processing</b>	During the Term of the Contract and for up to 7 years after the expiry or termination of the Contract
<b>Nature and purposes of the processing</b>	Collecting Storing Processing (organising, structuring, adaptation or alteration, retrieval consultation, use) Releasing (transmission, dissemination or otherwise making available) To facilitate the fulfilment of Our obligations arising under the Contract including <ol style="list-style-type: none"> <li>i. Ensuring effective communication between Us and You;</li> <li>ii. Maintaining full and accurate records of all Services arising under the Contract;</li> <li>iii. Dealing with any rights, actions, incidents or disputes arising under the Contract;</li> </ol>
<b>Type of Personal Data</b>	Name IP address Unique identifier Contract details (telephone numbers, address, email address) including: <ol style="list-style-type: none"> <li>i. contact details of, and communications with You, and Your employees, directors or contractors concerned with management of and/or receipt of Services pursuant to the Contract</li> <li>ii. contact details of, and communications with Your associated or group companies, and such parties staff concerned with management of and/or receipt of Services pursuant to the Contract</li> <li>iii. contact details of, and communications with Your sub-contractors and third parties and such parties staff concerned with either the fulfilment of Your obligations arising from the Contract or the receipt of Your rights under the Contract.</li> </ol>
<b>Categories of Data Subject</b>	Includes: <ol style="list-style-type: none"> <li>i. Your directors, employees and/or staff of the Customer concerned with the delivery of the Service</li> <li>ii. The directors, employees and/or staff of Your group and/or associated companies concerned with the delivery of the Service</li> <li>iii. The directors, employees and/or staff of Your sub-contractors and/or other third parties concerned with either the fulfilment of Your obligations arising from Contract or the receipt of Your rights under the Contract</li> </ol>
<b>Permitted Sub-Processors</b>	BT Wholesale