



SmartComms 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 (thirty days) prior to their coming into effect.

2 SERVICE DESCRIPTION

2.1 General

Our SmartComms Service provides a hosted IP Telephony solution which includes an integrated package of private branch exchange ("PBX") functionality, a portfolio of user equipment options and a voice over IP ("VOIP") communication service.

2.2 Call Recording

Due to the storage requirements of SmartComms Call Recording, we apply a fair usage policy to our 30 day offering. Each Call Recording user is allowed 600 minutes (100MB) per 30 days. The storage is cumulative for each customer and is shared across all users.

3 SERVICE DELIVERY

3.1 Delivery Management

We will use our reasonable endeavours to ensure that the Service is Ready for Use at each Site from the Proposed Start Date for that Site.

3.2 Restrictions

If You cancel an order, or significantly modify it (e.g. changes in service location, delivery date, or service type) prior to the Proposed Start Date for any Site, We reserve the right to claim reasonable costs incurred as a result of such cancellation or modification. In addition We will not be bound by the original timescales.

If service installation cannot proceed due to a customer related issue e.g. no available power sockets, no wall space or access to site is refused, an abortive visit charge may be raised.

4 SERVICE AVAILABILITY

4.1 Our Obligations

We will use Our reasonable endeavours to provide the Services 24 hours a day 365 days a year and to give You advance notice of any Planned Outages which will impact service availability.

4.2 Restrictions

Service outages attributable to the completion of Planned Outages on the KCOM network and previously notified to You shall not be deemed occurrences of unavailability.

Service outages which are the result of Customer Responsible Faults shall also not be deemed occurrences of unavailability.

4.3 Planned Outages

Planned outages may occasionally be necessary for Us to carry out essential maintenance 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 10 (ten) Working Days' notice of any planned work which will affect the availability of the Services.

5 INCIDENT MANAGEMENT

5.1 Incident 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 Service Desk in accordance with the Incident Management Procedure.

5.2 Our Obligations

Our Business Care support service will be provided as standard with all Services. You may decide to upgrade this level of care to Our Business Care Plus support 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:

Table 2: Network faults within KCOM HEY OLA causing a total loss of service

Type of Fault	Business Care TTR	Business Care Plus TTR
KCOM Core Network Faults	10 working hours	5 clock hours
KCOM HEY Access Network Faults (Fibre Access)	10 working hours	5 clock hours
KCOM HEY Access Network Faults (Fibre Multi-Service Access)	16:00 hours next working day	16:00 hours next working day
KCOM HEY Access Network Faults (Copper DSL Access)	16:00 hours next working day	16:00 hours next working day

Table 3: Network faults outside of KCOM HEY OLA causing a total loss of service

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

Table 4: Faults affecting single users

Type of Fault	Business Care TTR	Business Care Plus TTR
Service Feature Failure	16:00 hours next working day	16:00 hours next working day
Faulty Handset	16:00 hours next working day	16:00 hours next working day

For Business Care, working hours/working days are Monday to Saturday 08:00 hours to 16:00 hours (excluding public holidays)

For Business Care Plus, working hours/working days are 24 hours a day, 7 days a week, 365 days a year.

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 Service Desk of the incident in accordance with the Incident 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.

6 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.

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.

Incident 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 Desk

The centre to which all incidents, reports and help queries should be addressed.

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.

SmartComms Services

Terms and Conditions

The following Terms and Conditions apply to the provision of IP Voice Services using SIP Trunking.

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 The supply of Services at each Site shall commence on the Service Start Date and shall continue until the expiry of the Initial Term at such Site. Following the expiry of the Initial Term the Services at each Site will continue unless or until terminated by either party giving the other at least 30 days' written notice expiring on the last day of the Initial Term at such Site, or any anniversary of the Initial Term at such Site.

2 SUPPLY OF SERVICES

- 2.1 We will supply the Equipment in accordance with this Contract and We will supply the Services in accordance with this Contract or as stated in the Service Standard, using reasonable skill and care.
- 2.2 You accept that it is impracticable to provide the Service entirely free of faults, 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 the 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 nominated third party (including, without limitation, other Network Operators).
- 2.4 Provision of the Services shall be subject to survey. You acknowledge that We shall be entitled to amend the technical aspects of the Services and the relevant Charges, as appropriate, following the survey. In the event that the survey reveals that the provision of the Services to You at any of the Site(s), 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 in respect of any Site) without any liability to You. In the event of termination of this Contract, in whole or in part in respect of any Site and for any reason, following completion of the survey for any Site but prior to the Proposed Start Date for that Site, 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 for all applicable Site(s).
- 2.5 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.
- 2.6 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, or prior to completion of any tests, as detailed in clause 5.3, it may become apparent to Us that the Services will be degraded to such an extent that We would be unable to comply with this Contract. In such circumstances, We will be entitled to terminate the Contract (in whole or in part) without any liability to You.
- 2.7 You confirm that You understand that the Service:
 - 2.7.1 may not offer all of the features you may expect from a 'traditional' fixed-line telephony service, including (without limitation) the Service constraints detailed in the Service Standard;
 - 2.7.2 may sometimes be unavailable as a result of matters beyond Our control, such as power disruptions, etc. You acknowledge that on occasion, parts or ALL of the functions of the Service may be unavailable, including access to Emergency Call Services;
 - 2.7.3 may not offer You the ability to transfer (port) Your existing number to an alternative service if Your Service ends, depending on the type of Service deployed.
- 2.8 We do not guarantee the continuing availability of any particular service and You acknowledge that We may be dependant upon third parties (including, without limitation, other Network Operators) when providing the Service. Notwithstanding any other provisions of this Contract, but subject to clause 15.1, 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 INSTALLATION AND ACCESS

- 3.1 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);
 - 3.1.1 We waive our right to receive any separate charges under our agreement with you for carrying out the testing; and
 - 3.1.2 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.
- 3.2 In order to enable Us to fulfil Our obligations under this Contract You will at Your own cost:
 - 3.2.1 procure all consents, licences and permissions necessary from landlords or other third parties for:
 - 3.2.1.1 carry out any necessary preparatory work, including building alterations and, if structural alterations are necessary, ensure these are completed prior to delivery;
 - 3.2.1.2 organise the issue of necessary fire certificates;
 - 3.2.1.3 confirm that any floor loadings will not be exceeded; and
 - 3.2.1.4 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;
 - 3.2.2 provide site and building plans (to include full details of all internal cabling runs) at each of the Site(s) as requested by Us;
 - 3.2.3 provide Us with full details of all other services in the vicinity of the proposed works;
 - 3.2.4 complete a 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;
 - 3.2.5 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;
 - 3.2.6 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;
 - 3.2.7 ensure that any network testing termination point serving the Site(s) 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;
 - 3.2.8 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;
 - 3.2.9 ensure a safe working environment for Our employees and nominated third parties whilst at the Site(s);
 - 3.2.10 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;
 - 3.2.11 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; and
 - 3.2.12 remove any equipment or programming that has been used to route call traffic via an alternative telecom supplier which may interfere with the provision of the Services.
- 3.3 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).
- 3.4 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).

- 3.5 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 4.3, 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.
 - 3.6 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, 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.
 - 3.7 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;
 - 3.8 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.
 - 3.9 You shall provide such reasonable temporary office space and related services as We shall reasonably require during the term of this Contract for use by Us, Our employees, agents and sub-contractors solely to enable Us to perform the Services at the Sites;
 - 3.10 We will usually carry out 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.
 - 3.11 Further, We may raise an Additional Charge if:
 - 3.11.1 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
 - 3.11.2 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
 - 3.11.3 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.
- ### 4 TECHNICAL DETAILS
- 4.1 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).
 - 4.2 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.
 - 4.3 In order for Us to provide the Services under this Contract You are required, at Your own cost, to:
 - 4.3.1 provide IP routing to private management LAN; and
 - 4.3.2 supply IP addresses of devices to be managed, including the ethernet interface on Our IP VPN router and IP subnet addresses.
 - 4.3.3 Provide a compatible default gateway IP address to be configured on the LAN interface of Your Equipment.
 - 4.3.4 Where You require Internet connectivity to interoperate with the Services, You shall supply IP address details of the Internet gateway at each Site;
 - 4.3.5 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.

- 4.3.6 For Additional Managed Devices You will supply the following:
- 4.3.6.1 supply managed device SNMP community strings;
 - 4.3.6.2 provide device login and password of devices to be managed;
 - 4.3.6.3 forward SNMP events to designated address on Our management LAN;
 - 4.3.6.4 ensure that any client firewalls have SNMP, CP/IP, ICMP, TFTP and telnet enabled from designated management IP addresses;
 - 4.3.6.5 provide a network diagram for Your Sites;
 - 4.3.6.6 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;
 - 4.3.6.7 provide a network component inventory of each of Your Sites; and
 - 4.3.6.8 if there is an existing Network, provide carrier contact details.
- 4.4 You shall prior to the Services Start Date:
- 4.4.1 make available (at no cost to Us) sufficient employees who have appropriate experience and skill (the "Customer Staff") as We shall reasonably require to enable it to provide the Services and ensure that the Customer Staff are available at any Sites or remote location(s) if requested by Us.
- 4.5 You confirm that the information supplied by You in this Contract, as part of a CIF and/or a Change Request is accurate, completed by Customer 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 EQUIPMENT**
- 5.1 If We need to use Equipment to provide the Services, We will undertake any necessary surveys and installation of Our Equipment at the Site.
- 5.2 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.
- 5.3 Following 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 a Ready for Use Certificate.
- 5.4 We will supply Our Equipment in accordance with all relevant legislative requirements and will comply at all times with the relevant standard.
- 5.5 Title to Our Equipment will remain with Us at all times and nothing will operate to transfer ownership of or rights in Our Equipment to You. You agree and represent to Us that You shall:
- 5.5.1 take all reasonable and proper care of Our Equipment;
 - 5.5.2 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;
 - 5.5.3 provide such information in respect of the Equipment as We may reasonably require;
 - 5.5.4 not operate Our Equipment after it has become defective, damaged or in a dangerous state.
- 5.6 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
- 5.7 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.
- 5.8 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 day's notice. You will return to Us or make available for collection (as directed by Us) such Equipment.
- 5.9 Risk in Our Equipment will pass to You immediately on delivery.
- 5.10 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.

- 5.11 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.
 - 5.12 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 14.1.
 - 5.13 On termination of this Contract, if You fail to allow Us to collect Our Equipment You will be immediately liable to Us for a sum equivalent to the full replacement cost of Our Equipment.
 - 5.14 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.
 - 5.15 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.
 - 5.16 We will be entitled to:
 - 5.16.1 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
 - 5.16.2 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
 - 5.16.3 suspend the Services in the case of an emergency and, wherever possible, use Our reasonable endeavours to minimise the period of interruption.
- 6 CUSTOMER EQUIPMENT**
- 6.1 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 for connection of Customer Equipment to the Network. We may disconnect any Customer Equipment which does not conform to such standard or approval 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. You will refund to Us any costs We incur as a consequence of such disconnection.
- 6.2 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.
- 6.3 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.
- 7 YOUR OBLIGATIONS**
- 7.1 You will, and You will ensure that any Users
- 7.1.1 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
 - 7.1.2 will not use the Service to commit an offence under the Acts or any other relevant Legislation.
- 7.2 You will not use or permit any User or third party to use the Service:
- 7.2.1 in an illegal manner or for an illegal purpose;
 - 7.2.2 in connection with any criminal or public nuisance offence;
 - 7.2.3 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
 - 7.2.4 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.

- 7.3 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.
 - 7.4 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.
 - 7.5 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.
 - 7.6 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.
- 8 SOFTWARE LICENCES**
- 8.1 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.
- 8.2 You shall not reverse engineer, disassemble or decompile the Software except and only to the extent that such activity is expressly permitted by law.
- 8.3 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.
- 8.4 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.
- 8.5 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.
- 8.6 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.
- 8.7 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.
- 8.8 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:
- 8.8.1 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;
 - 8.8.2 Allow Us or Our licensors to have sole conduct of the defence or settlement of any such claim; and
 - 8.8.3 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.
- 8.9 For the avoidance of doubt, We shall have the right, at Our sole option and expense, to:
- 8.9.1 procure the right for You to continue using the items so that such use is no longer infringing;
 - 8.9.2 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
- 8.9.3 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.
- 8.10 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.
- 9 ALLOCATION AND USE OF SERVICE NUMBERS**
- 9.1 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.
- 9.2 You are not entitled to sell or agree to transfer to a third party any Service Number allocated to You by Us.
- 9.3 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.
- 9.4 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.
- 9.5 If at Your request a specific Service Number is allocated to You, You shall be responsible for all necessary investigations and inquiries as to the legitimacy or use of such numbers and We shall have no liability whatsoever with respect to the number chosen and its use by You.
- 9.6 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.
- 9.7 You acknowledge that:
- 9.7.1 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;
- 9.7.2 the Service does not support certain outgoing calls, incoming calls, sms and text messaging services, as further detailed in the Service Standard; and
- 9.7.3 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.
- 9.8 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.
- 9.9 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.
- 10 CALLING LINE IDENTITY**
- 10.1 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.
- 10.2 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.
- 11 EMERGENCY CALL SERVICES**
- 11.1 You confirm that You understand that the Service will connect You to public Emergency Call Services but may not provide Your telephone number(s) and location details to the operator if You make an Emergency Call Services call, depending on the type of Service deployed.
- 11.2 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 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 11.2.
- 11.3 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.
- 11.4 You acknowledge and agree that in order to make Emergency Call Services You agree that:
- 11.4.1 You shall ensure the Customer Equipment used to make the Emergency Call Services is connected to a mains power supply;
- 11.4.2 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
- 11.4.3 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.
- 11.5 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 11.
- 12 TECHNICAL CHANGES**
- 12.1 Following provision of the Service, You shall be able to request technical changes to the Services, including the cessation and/or amendment of Service Features (a "Change Request").
- 12.2 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.
- 12.3 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.
- 12.4 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.
- 12.5 If You allow more Users to use the Services than agreed, We shall be entitled to recommend that You make a Change Request to increase the number of Service Licences and pay the applicable Charges accordingly.
- 12.6 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.
- 13 CHARGES**
- 13.1 You will pay the Charges to Us in accordance with the Order and the Price Manual. The Charges will be subject to change in accordance with this clause 13. You will pay the Charges at the times and frequencies set out in this clause 13.
- 13.2 You will pay the Charges as follows:
- 13.2.1 Rental Charges— in accordance with the billing period as specified in the Order. If a billing period is not specified then such Rental Charges shall be payable monthly in advance.
- 13.2.2 One off Charges (such as the Connection Charge, Purchase Charge or any Service Charge) - shall be payable in full immediately following the Service Start Date or delivery of the Equipment. We reserve the right to send an invoice to You for the one off Charges at any time following the Commencement Date.
- 13.2.3 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.
- 13.2.4 Any other Charges shall be payable monthly in arrears or as otherwise agreed in writing.
- 13.3 In the event that any amounts due to Us total less than £10, We shall not raise an invoice but shall accrue Charges until they exceed £10. In any event invoices shall not be delayed for longer than 3 months.
- 13.4 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.
- 13.5 The Charges You must pay for the Service are dependant 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 13.6.
- 13.6 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.
- 13.7 If We agree to provide the Services to You following a suspension of the Services, for any reason, You will be liable to pay a reconnection Charge.
- 13.8 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.
- 13.9 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:
- 13.9.1 terminate this Contract, in whole or in part immediately on written notice to You;
- 13.9.2 require You to make such regular instalment payments in advance on account of any future charges as We shall deem appropriate;
- 13.9.3 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
- 13.9.4 impose such other measures on Your right to use any of the Services as We shall deem appropriate.
- 13.10 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.
- 13.11 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 16.1, We shall be entitled to suspend any further supply or Services without liability.
- 13.12 All charges are exclusive of value added tax and any other applicable taxes which may from time to time be levied.
- 13.13 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.
- 13.14 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.

13.15 You shall pay to Us any Charges resulting from fraudulent activity on the Services.

14 TERMINATION

14.1 If either party is:

14.1.1 in material breach of any provision of this Contract (other than clauses 7.1, 7.4 or 7.2(d)) and fail to remedy such breach within 30 days of written notice to do so;

14.1.2 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.

14.2 We may terminate this Contract (either in whole or in part) with immediate effect if:

14.2.1 You fail to meet the standard of creditworthiness as set out in clause 13.9;

14.2.2 You are in breach (or We reasonably believe You are in breach) of clauses 7.4 or 7.5 as breach may be a criminal offence and/or cause serious harm to Our reputation; and/or

14.2.3 Our authorisations to provide the Services are altered in a way that is material to the Service.

14.3 We will continue to provide the Services in accordance with Clause 1 until termination of this Contract but if:

14.3.1 You are late in making any due payment, or

14.3.2 We become entitled to terminate this Contract early for any reason, or

14.3.3 You break any material term of another contract with Us or another company in the KCOM Group,

then We may partially or completely suspend the Services without limiting Our ability to enforce other remedies that may be available. While the Services are suspended You must continue to pay the Charges.

14.4 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:

14.4.1 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

14.4.2 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; plus

14.4.3 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; plus

14.5 Upon termination of this Contract (in whole or in part) in circumstances where clause 14.4 does not apply, you will pay to Us a termination payment calculated as follows:

14.5.1 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

14.5.2 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; plus

14.5.3 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; plus

14.6 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.

14.7 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.

14.8 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.

15 LIMITATION OF LIABILITY

15.1 Nothing in this Contract shall exclude or limit either parties' liability for:

15.1.1 fraud or fraudulent misrepresentation; or

15.1.2 death or personal injury resulting from its own negligence or that of its employees, sub-contractors or agents; or

15.1.3 breach of the terms implied by s.12 of the Sale of Goods Act 1979;

15.1.4 the indemnities set out in clauses 8.5 and 11.5.

15.2 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.

15.3 Without prejudice to clause 15.1, 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:

15.3.1 loss of business; or

15.3.2 loss or corruption of data or information; or

15.3.3 loss of profits; or

15.3.4 loss of goodwill; or

15.3.5 loss of business opportunity; or

15.3.6 loss of anticipated savings even when advised of the possibility,

suffered by You under or in connection with this Contract

15.4 Without prejudice to clause 15.1, 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,

15.5 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.

15.6 Without prejudice to clauses 15.1 and 15.5, 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:

15.6.1 £250,000 (two hundred and fifty thousand pounds); or

15.6.2 the value of the Charges paid by You in the preceding Contract Year ("Liability Sum").

15.7 With reference to clause 15.6, 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.

15.8 The limitations of liability set out in this clause 15 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 15 to any other liabilities You may incur under or in connection with this Contract.

15.9 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:

15.9.1 any breach of this Contract; and

15.9.2 any use made or resale of the Equipment and/or Software, or of any product incorporating the said Equipment and/or Software; and

15.9.3 any representation, statement or tortious act or omission (including negligence) arising under or in connection with this Contract.

16 FORCE MAJEURE

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.

17 GENERAL

17.1 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.

17.2 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.

17.3 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.

17.4 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.

17.5 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.

17.6 Members of KCOM Group may enforce their rights under clause 13.13 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).

17.7 You may not assign the whole or part of this Contract without Our prior written consent such consent not to be unreasonably withheld.

17.8 We may assign this Contract to any company which from time to time is a member of the KCOM Group.

17.9 Subject to clause 19.8, We may not assign this Contract to any other third party without Your prior written consent such consent not to be unreasonably withheld.

17.10 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.

17.11 Any notice under or in connection with this Contract shall be in writing and may be delivered by hand 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.

17.12 Any notice addressed as provided in clause 19.11 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.

17.13 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.

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 email heybusiness@kcom.com including the individual's details in the mail.

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.

17.14 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 provisions of this Contract.

17.15 You are not authorised or entitled to re-sell, re-supply or otherwise distribute or sub-license the services, software, documentation and/or any equipment provided by Us without Our prior written agreement or unless otherwise permitted by the terms of this Contract.

17.16 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.

18 DEFINITIONS

18.1 In these conditions:

"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;

"Authorised List" means the authorised list of equipment that may be connected to the Equipment.

"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 12;

"Charges" the Connection Charges, Rental Charges, Call Charges or any Purchase or Service Charges, as detailed in 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" date this Contract was entered into;

"Contract" this contract for the supply of SmartComms Services, including these Terms and Conditions, the Service Standards, the Data Processing Commitment and the Order;

"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;

"CIF" means a Customer Information Form which shall be completed by You, with assistance from Us, and will supply the detail of the Services required by You;

"Data Processing Commitment" means the Data Processing Commitments contained in this Contract;

"Data Protection Laws" means all applicable laws and regulations relating to the processing of Personal Data and privacy including the Data Protection Act 1998, the General Data Protection Regulation 2016/679 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;

"Documentation" any documents prepared by or on behalf of Us in respect of the Equipment and/or the Services;

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

"Equipment" means Our Equipment and/or the Customer Equipment;

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

"Initial Term" a period of 12 months for the provision of Services (unless otherwise stated in the Order) commencing on the Service Start Date;

"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;

"KCOM Group" KCOM Group Limited, its holding company, its subsidiaries and any subsidiaries of its holding company. The terms "subsidiary" and "holding company" have the meanings ascribed to them by Section 1159 and Schedule 6 of the Companies Act 2006 (as amended);

"KCOM Customer Network Operation Centre" the centre to which all fault reports and help queries should be addressed;

"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;

"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;

"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 www.heybusiness.kcom.com or any other replacement site;

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

"Order" means the order for the Services placed by You and accepted by Us, as attached to this Contract, which describes your requirements ;

"PBX" Private Business Exchange;

"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 will have its own Proposed Start Date, as will be notified to You in writing;

"Service Feature" means a distinguishable software function included in the Software and as further detailed in the Service Standard. Various Service Features may be grouped together in Feature Packs;

"Service Feature Pack" means a grouping of specific Service Features as identified in the Service Schedule. We may make changes to the Service Features and/or the Charges that make up a Service Feature Pack or introduce new Service Feature Packs;

"Service Licence" means the right for each User to access the Services. This right does not operate to transfer any intellectual property to You;

"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 9.4;

"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 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;

"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;

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

"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;

"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 Schedule 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 Schedule, unless the context otherwise requires:

“**Data Subject**” has the meaning given to it in the Data Protection Laws;

“**Data Subject Access Request**” has the meaning given to it in the Data Protection Laws;

“**Personal Data**” has the meaning given to it in the Data Protection Laws;

“**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 Schedule 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 Annex A sets out the information regarding Our processing of Your Personal Data as required by article 28(3) of the General Data Protection Regulation 2016/679. We may make reasonable amendments to Annex A by written notice to You from time to time as We reasonably consider necessary to meet those requirements. Nothing in Annex A (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 United Kingdom or 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 Sub-Processor enters into the Standard Contractual Clauses for the Processing and transfer of Personal Data outside of the United Kingdom or the EEA 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 Schedule 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 Our 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 Schedule;
 - (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) above;
 - (m) at Your expense, implement any reasonable recommendations and/or remedial actions necessary to ensure compliance with the provisions of this Schedule 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 15, 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

Annex A

Description	Details
Subject matter of the processing	Provisions of Services pursuant to the Contract between Us and You
Duration of the processing	During the Term of the Contract and for up to 7 years after the expiry or termination of the Contract
Nature and purposes of the processing	<p>Collecting</p> <p>Storing</p> <p>Processing (organising, structuring, adaptation or alteration, retrieval consultation, use)</p> <p>Releasing (transmission, dissemination or otherwise making available)</p> <p>To facilitate the fulfilment of Our obligations arising under the Contract including</p> <ol style="list-style-type: none"> i. Ensuring effective communication between Us and You; ii. Maintaining full and accurate records of all Services arising under the Contract; iii. Dealing with any rights, actions, incidents or disputes arising under the Contract;
Type of Personal Data	<p>Name</p> <p>Date of Birth</p> <p>Age</p> <p>IP Address</p> <p>National Insurance Number</p> <p>Gender</p> <p>Telephone Number</p> <p>Address</p> <p>Email Address</p> <p>Username</p> <p>Racial or Ethnic Origin</p> <p>Sexual Orientation</p> <p>Physical or Mental Health or Condition</p> <p>Proceedings in relation to any offence</p> <p>Religious Belief</p> <p>Trade Union Membership</p> <p>Political opinion</p>
Categories of Data Subject	<p>Includes:</p> <ol style="list-style-type: none"> i. Your directors, employees and/or staff of the Customer concerned with the delivery of the Service ii. The directors, employees and/or staff of Your group and/or associated companies concerned with the delivery of the Service 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