

Out of Area Outbound Switched Voice Services

Terms and Conditions

1 Term

1.1 This Contract will come into effect on the Contract Date and shall continue until the expiry of the Initial Term. Following expiry of the Initial Term this Contract will continue unless and until terminated by either party giving no less than 90 days' prior written notice, such notice to expire on or after the expiry of the Initial Term.

2 Provision of the Service

2.1 We will use reasonable endeavours to provide the Service in accordance with the Service Standards and will use reasonable skill and care in the provision of the Service. However, You acknowledge that the Service cannot be provided fault free and We do not warrant error free or uninterrupted use of the Service.

2.2 We will use reasonable endeavours to provide the Service 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).

2.3 We do not guarantee the continuous 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 13.1, 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 other Network Operators) that affect or otherwise impact upon the provision of the Service.

2.4 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.

2.5 We cannot guarantee that We can provide Services to specific numbers where such number(s) have been transferred to the KCOM Network from another Network 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 telephone calls to any such number.

2.6 We shall be entitled from time to time, for reasons connected with any numbering scheme imposed upon Us by OFCOM or any other appropriate body, or other operational, commercial or technical reasons, to change, modify or substitute the Service Numbers or add or subtract digits thereto or there from respectively, or introduce such additional codes as are required.

3 Your obligations in respect of the Services

3.1 In order to enable Us to fulfil Our obligations under this Contract You will (where required) at Your own cost:

- (a) procure all consents, licences and permissions necessary from landlords or other third parties for the carrying out of preparation work, installation of Equipment and for the use and operation of the Equipment and Services at the Site for the duration of this Contract. 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 KCOM Equipment on the Site(s);
- (b) provide site and building plans (to include full details of all internal cabling runs) of the Site as requested by Us;
- (c) provide Us with full details of all other services in the vicinity of the proposed works;
- (d) ensure that any unique or special conditions applicable to the Site that may affect the survey or the installation and maintenance of any Equipment are made known to Us in writing at the detailed survey stage;

(e) prepare the Site 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 and connection of any Equipment;

(f) ensure that any network testing termination point serving the Site 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;

(g) provide Us, or Our nominated third party, with such access and facilities as We or they may reasonably require in order to install any Equipment, provide the Services and otherwise perform Our obligations under this Contract; and

(h) 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.

3.2 In the event that We or You are not able to procure the necessary consents (including without limitation if BT refuses to switch You over to KCOM) to provide the Services within three months from the Contract Date We will be able to terminate this Contract without any liability. If You have not managed to procure the necessary consents and We have commenced work We may ask You to refund to Us the reasonable cost of all such work (including, without limitation, staff costs and equipment costs).

3.3 You will advise Us in writing of all health and safety at work rules and regulations, all dangerous objects and substances and any other reasonable security requirements applicable at the Site.

3.4 You will provide such continuous supply of electrical current and connection sockets as may be required for the installation, operation and maintenance of the Equipment.

3.5 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 KCOM Equipment other than by Us or Our nominated third party.

3.6 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 and maintain the necessary environmental and other conditions for any Equipment as may be specified by Us from time to time.

3.7 We will be entitled to modify and/or replace any KCOM Equipment from time to time if We consider such modification and/or replacement reasonably necessary for the continued provision of the Service.

3.8 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 the terms of this Contract. 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.

4 Wholesale Line Rental

This clause is relevant only where You take Service Category 3.

4.1 You will not route any calls via another provider using an indirect access code. You will ensure all other providers' indirect access codes are deactivated. If You fail to do this, You will not be able to use the Service.

4.2 Reprogramming or removal of Customer Equipment will be Your responsibility.

4.3 You acknowledge that if You have an internet service provided via an indirect access service, You may no longer be able to access that service. Internet access provided via dial up access will not be affected.

4.4 You agree to terminate Your existing contract for equivalent services with Your existing line and calls provider.

4.5 You will provide Us with all information necessary to enable implementation of WLR.. In addition, You

also consent to the release of information held by BT relating to products that are to be retained, reallocated to an equipment only account or removed. We will not be responsible for any incorrect data supplied by You that impedes the setting up of service, including rejected orders by BT where the information has been incorrectly supplied by You.

4.6 Where an alternative service provider's equipment is used to access the Services, We will not take over ownership of or responsibility for maintenance of that equipment.

4.7 Where You require a new WLR connection You will provide all relevant information as set out in the Data Capture tool. You acknowledge that new connection requirements may attract additional installation charges over and above the standard connection charge.

4.8 Where engineer appointments have been agreed and the appointment date is not met by You, We may pass on any charges incurred to You. If You Cancel the Service within 15 days of the agreed installation date We reserve the right to pass on any charges which are levied on Us by Our suppliers. This is normally calculated as a percentage of the Installation and Per Channel Connection Charge and may include any additional charges that have been identified on any survey. If You request a delay or suspension and the agreed installation date has already been reached and the line has been installed, You will be given 25 days to take up the Service. If You still do not take up the Service, cancellation charges will apply.

4.9 You acknowledge that certain services are incompatible with the WLR service, such services will be excluded from the WLR Service. In addition, any technical limitations associated with WLR such as limitations on certain exchanges, will be withdrawn.

4.10 New connections and work deemed necessary to transfer an existing line to ensure provision of Service will be undertaken during a Working Day. If We agree to work outside those hours, We may charge You an additional charge.

4.11 All Intellectual Property Rights in Our data capture tool belong to Us (or Our licensors) and nothing in this Contract shall transfer or assign any right, benefit, title or interest in such Intellectual Property Rights to You.

4.12 If it is necessary to make repairs to the external line because You damage it or because You mis-operate it, We may charge You for engineering charges We incur.

4.13 If You or We choose to cease Your lines it will result in complete disconnection unless You make alternative arrangements with another telephony service provider.

4.14 In the event that, due to technical limitations, We can provide the WLR Service on less lines than anticipated prior to this Contract coming into force, We reserve the right to alter the Line Rental Charges by a reasonable amount. You accept that Our Line Rental Charges were calculated on the basis that all Your lines ordered for the WLR Service would be able to be transferred to the WLR Service and accordingly that it is reasonable for Us to alter our Line Rental Charges in this way.

5 Access Codes

5.1 In the event that the Service is to be initiated through use of an Access Code to be manually dialled by the User We will make the Access Code, available to You as soon as practicable after the Contract Date and, in any event, prior to the Service Start Date.

5.2 You acknowledge that, as We use another Network Operators' infrastructure to provide the Service, there is a possibility that such Network Operators' may bar certain Access Codes meaning the Service can no longer be offered either temporarily or permanently.

5.3 We will be entitled at any time to change, modify or substitute the Access Code or add or subtract digits to it or introduce such additional codes as are required. Where necessary We will provide notice of any such change as soon as reasonably practicable following such change.

5.4 You will not acquire any title to, proprietary right or other interest in any Access Code issued by Us.

6 Our obligations in respect of the Services

- 6.1 As soon as reasonably practical after the Contract Date in order to provide the Services We will undertake any necessary surveys and installation of the KCOM Equipment at the Site.
- 6.2 If necessary to provide the Service We will use all reasonable endeavours to procure any consents, licences or permissions necessary from the Highways Agency or equivalent body to enable Us to lay any cables.
- 6.3 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.
- 6.4 We will supply the KCOM Equipment in accordance with the Acts and will comply at all times with the relevant standards.
- 6.5 Title to KCOM Equipment will remain with Us at all times and nothing will operate to transfer ownership of or rights in the KCOM Equipment to You. Any software contained in the KCOM Equipment and any software or documentation provided by Us in connection with the provision of the Service is and will remain Our property or the property of Our licensors. We hereby grant You a non-exclusive, non-transferrable right to use such software and documentation for the purpose of accessing the Service only. You will not make any modifications to such software and documentation. You will indemnify and keep Us indemnified against any costs (including, without limitation, any legal costs or disbursements on an indemnity basis), losses, damages, or liability We may incur due to You amending or in any way altering the software.
- 6.6 You agree and undertake and represent to Us to:
- take all reasonable and proper care of the KCOM Equipment;
 - comply with all reasonable instructions communicated by Us to You for the safe and proper use of the KCOM Equipment from time to time; and
 - not operate the KCOM Equipment after it has become defective, damaged or in a dangerous state.
- 6.7 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 the KCOM Equipment upon 7 days' notice. You will return to Us or make available for collection (as directed by Us) such KCOM Equipment.
- 6.8 Risk in the KCOM Equipment will pass immediately to You on delivery.
- 6.9 You will for the duration of this Contract (without prejudice to Your liability to Us), at Your own expense, effect and maintain insurance in relation to the KCOM Equipment with a reputable insurance company and such insurance will be in an amount equal to the full new replacement value of the KCOM 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 the KCOM Equipment.
- 6.10 You will allow Our employees, and nominated third parties, access to the KCOM 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.
- 6.11 On termination of this Contract if You fail to allow Us to collect the KCOM Equipment You will be liable to Us for:
- a sum equivalent to the full retail value of the KCOM Equipment; and
 - the hire charges, as set by Us from time to time, for the unreturned unit of KCOM Equipment until the sum specified in clause 6.11(a) has been received by Us.
- 6.12 You will indemnify and keep Us indemnified from and against all loss or damage caused by You to the KCOM Equipment to its full replacement value.
- 6.13 We will be entitled to:
- modify and/or replace any KCOM 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
 - suspend the Service for operational reasons or in the case of emergency.

7 Customer Equipment

- 7.1 You will make any such modifications to the Customer Equipment as We may determine necessary in order to provide the Service, subject to Your obligations pursuant to the relevant Legislation.
- 7.2 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 and only attach to any Equipment other equipment or apparatus approved for connection under the Acts. We may disconnect any Customer Equipment which does not conform to such standard or approval or which, in Our reasonable opinion, could cause death, personal injury or damage to property or impair the quality of the Service.
- 7.3 You will, if requested by Us, provide such information in respect of the Customer Equipment as We may reasonably require.

8 Use of the Service

- 8.1 You shall, and shall ensure that any Users shall, 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.
- 8.2 You will, and You will ensure that any User does not, use the Service 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 or worry or which is illegal, 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 causes damage or disruption to the Service or the KCOM Network.
- 8.3 Both parties agree to fully co-operate with the Police and any other relevant authorities (including but not limited to the Inland Revenue, Trading Standards and/or OFCOM and their 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 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.
- 8.4 You will, and will ensure that any Users when using the Service will use reasonable endeavours to avoid causing congestion on the KCOM Network and do not misuse the 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 Changes/Additional Services

- 9.1 We may from time to time make changes to the Service Standard and/or introduce, amend or withdraw the network and calling features set out in the Order. Such changes will be notified to You not less than 30 days prior to their taking effect.
- 9.2 You may at any time on at least 14 days' written notice to Us, request additional services. Any such request should be made to the Service Desk, and will give full details of Your requirements. We will respond within 14 days with details of when the additional service could be provided (if it can) and of the resultant increase in Charges.
- 9.3 No order will be effective until it has been confirmed by Us in writing or by electronic mail and returned to the Service Desk. We are not obliged to process or accept any order submitted by You.
- 9.4 Any orders will be governed by the terms of this Contract only. If You submit any orders or requests for additional services it will always be on the basis that the terms of this Contract apply.
- 9.5 If We or Our network sub-contractor, at Your request, change the location of any Equipment or BT equipment You shall pay Us all applicable charges for any re-connections and associated work.
- 9.6 Where You take the OBR Service, the terms and conditions set out on the OBR website shall apply in addition to this Contract.

10 Charges

- 10.1 Charges for the Services will commence on the day We make the Services available to You (the Service Start Date). We will invoice You in accordance with Our invoice cycle. Call Charges will be invoiced monthly in arrears. All other Charges will be monthly in advance. We may however on occasions invoice You in arrears for such Charges. If We begin or cease a Service on a day which is not the first or last

day of Our invoice cycle, We will apportion the Charges on a daily basis for the incomplete period.

- 10.2 In the event that BT or any other third party Network Operator increases its charges under its interconnect agreement with Us, causing an increase in the cost to Us of providing the Service, We may at any time during this Contract pass such increases in Charges to You on 30 days' notice. You may choose to terminate this agreement on 30 days' notice to Us if You do not accept such proposed increase in Charges.
- 10.3 For the provision of WLR in the event that BT reject Your calling line identity information due to inaccuracy of the information We reserve the right to pass on to You any additional costs incurred.
- 10.4 We will be entitled to vary the Charges. Subject to such variation not taking effect prior to the end of the Initial Term (if any) such variation will take effect from 30 days after We have given You written notice of the change. Where You take a new Service Number (including but not limited to new call destinations) You may use those Services subject to the payment of the relevant charges (where applicable) or confirmation of the relevant Outpayment rate.
- 10.5 Where in order to provide You 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 KCOM 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.
- 10.6 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 2% per cent per annum above the base rate of National Westminster Bank Plc as current from time to time whether before or after judgment until the date payment is received and/or suspend the Service (either in whole or in part) until all such Charges have been paid in full.
- 10.7 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 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 You written notice.
- 10.8 You agree that We may invoice You for any call made under this Contract at any time up to 12 months following the date on which the call was made.
- 10.9 All Charges are exclusive of value added tax and any other applicable taxes which may from time to time be levied.
- 10.10 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.
- 10.11 Where any Charges or other monies properly due to Us or any member of the KCOM Group from You under this Contract or any other agreements that are outstanding We will be entitled to offset such payments against any payments due from Us or any member of the KCOM Group to You under this Contract or any other contracts under which We or any member of the KCOM Group provide You with telecommunications or data services.
- 10.12 Where Contract renewals involve a change in the tariff schedule, refer to the Change of Tariff Notification Schedule for the effective date of the new tariff.
- ## **11 Agreed Usage**
- 11.1 You must use enough minutes per quarter to reach the Agreed Usage Charge (if any). In the event that You do not achieve such quarterly Agreed Usage Charge, We may invoice You on a quarterly basis for the difference between Your actual usage and the Agreed Usage Charge ("Top Up Usage Charge"). You will pay Us the Top Up Usage Charge. For the avoidance of doubt, if You have used enough minutes so that Your usage is higher than the Agreed Usage Charge You will not be liable to pay Us any additional monies.
- ## **12 Termination**
- 12.1 If either party is:
- in breach of any provision of this Contract (other than clauses 8.2 and 8.3) and fails 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 the business or enter into involuntary or compulsory liquidation or have an administrator, administrative receiver, receiver or any analogous officer appointed over all or part of its assets;
- then the other may immediately upon notice in writing (without prejudice to any other rights and remedies We may have) terminate (either in whole or in part) this Contract.
- 12.2 We may terminate this Contract (either in whole or in part) with immediate effect if:
- (a) You are in breach of clause 8.2 or 8.3 as breach may be a criminal offence and/or cause serious harm to Our reputation; and/or
- (b) KCOM's authorisations to provide the Services are altered in a way that is material to the Service.
- 12.3 We will continue to provide the Services in accordance with Clause 2 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
- 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.
- 12.4 If You choose to terminate this Contract prior to the end of the Initial Term You must give Us not less than 30 days written notice and pay Us a termination payment ("Termination Payment"). The Termination Payment will be the greater of:
- (a) monthly average of Charges incurred during the period from the Service Start Date to termination; or
- (b) the Agreed Usage Charge;
- multiplied by the number of remaining months of the Initial Term minus a 10% deduction for costs not incurred by Us and a 10% deduction for early payment of the monies.
- 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.
- 12.5 Upon termination of this Contract You will cease to use the Service and will pay to Us all outstanding Charges due up to and including the date of termination.
- 12.6 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.
- 13 Limitation of liability**
- 13.1 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
- (d) the indemnity set out in clause 3.8.
- 13.2 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 in respect of the same (if any) are excluded to the fullest extent permitted by law.
- 13.3 Without prejudice to clause 13.1, 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.
- 13.4 Without prejudice to clause 13.1, We shall not be liable to You whether in contracts, 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.
- 13.5 Subject to the provisions of this Contract, each party hereby accepts 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.
- 13.6 Without prejudice to clauses 13.1 and 13.5, each party's maximum aggregate liability in connection with this Contract whether arising in 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) £250,000 (two hundred and fifty thousand pounds); or
- (b) the value of the Charges paid by You in the preceding Contract Year ("Liability Sum").
- 13.7 With reference to clause 13.6, in the event that 12 months has not accrued from the Service Start Date, the Liability Sum shall be calculated by calculating the monthly average Charges incurred over the relevant period and multiplying it by 12.
- 13.8 The limitations of liability set out in this clause 14 shall not limit Your liability to pay any 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 13 to any other liabilities You may incur under or in connection with this Contract.
- 13.9 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:
- (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.
- 14 Force majeure**
- 14.1 Neither party will be liable to the other for any loss or damage caused to or suffered by the other as a direct or indirect result of the supply of Services being prevented, restricted, hindered or delayed by reason of any circumstance outside of that party's control. If either party is prevented from performance of its obligations for a continuous period of 3 months either party may terminate this Contract by giving written notice.
- 15 General**
- 15.1 This Contract constitutes the entire agreement and understanding of the parties and supersedes any previous agreement between the parties relating to the subject matter of this Contract.
- 15.2 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 in this Contract will operate to limit or exclude any liability for fraud.
- 15.3 Should any provision of this Contract be held to be void or voidable the remaining provisions of this Contract will continue in full force and effect.
- 15.4 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.
- 15.5 We shall use reasonable endeavours to meet any delivery time, date or period. However, such dates shall be regarded as estimates and We shall have no liability as a result of any failure to achieve any such time, dates or periods other than pursuant to the service credit regime contained in the Service Standards.
- 15.6 Members of the KCOM Group may enforce their rights under 10.11 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).
- 15.7 You may not assign the whole or part of this Contract without Our prior written consent such consent not to be unreasonably withheld.
- 15.8 We may assign this Contract to any company which is a member of the KCOM Group.
- 15.9 Subject to clause 15.8, We may not assign this Contract to any other third party without Your prior written consent such consent not to be unreasonably withheld.
- 15.10 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. Any other variations must be in writing and agreed between the parties.
- 15.11 Any notice under or in connection with this Contract shall unless otherwise agreed be in writing and may be delivered by hand to or sent by first class post or by facsimile (confirmed by post) to the Company Secretary at the address of the party concerned set out in this Contract or any other address notified by that party from time to time.
- 15.12 Any notice addressed as provided in clause 16.11 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.
- 15.13 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.
- 15.14 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.
- 15.15 This Contract will be governed by English law and the parties submit to the exclusive jurisdiction of the English courts.
- 16 Definitions**
- 16.1 Except where the context otherwise requires in these Terms and Conditions the following words and phrases will have the following meanings:
- "Access Code" the code which may be, required for the provision of the indirect service known as Indirect Voice 138, which is in the form of a series of digits to be dialled either manually by the User or automatically by the KCOM Equipment or the Customer Equipment in order to access the KCOM Network via a third party Network Operators Network;
- "Acts" the Communications Act 2003, the Telecommunications Act 1984, the Electronic Communications Act 2000 (each as amended);
- "Agreed Usage Charge" the minimum quarterly amount (if any) set out in the Order (or as varied from time to time) which is payable by You throughout the term of the Contract;
- "Call Charges" are the pence per minute rates set out in the tariff sheets provided and are calculated on a per second basis unless otherwise agreed;
- "Charges" all call charges, connection charges, rental charges or additional charges payable by You as detailed in the Contract;
- "the Code" Schedule 2 of the Telecommunications Act 1984 as amended by Schedule 3 of the Communications Act 2003.
- "Contract" these Terms and Conditions, the Data Processing Commitment, the Order and the Service Standards;
- "Contract Date" 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 states that We agree to enter into this Contract;
- "Contract Year" a period of 12 months from and including the Service Start Date and each consecutive 12 month period thereafter;
- "Customer Equipment" any equipment at the Site owned by You or a third party which when operated in conjunction with the KCOM Equipment, allows You to obtain and/or receive the Service;
- "Data Processing Commitment" means the Data Processing Commitment contained in this Contract below these terms and conditions;
- "Data Processing 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;

"Equipment" KCOM Equipment and Customer Equipment;

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

"Initial Term" the period of time stated in the Order which commences on the Service Start Date;

"Intellectual Property Rights" all intellectual and industry property rights including patents, know-how, registered trademarks, registered designs, utility models, applications for and rights to apply for any of the foregoing, unregistered design rights, unregistered trademarks, rights to prevent passing off for unfair competition and copyright, database rights, topography rights and any other rights in any invention, discovery or process, in each case in the United Kingdom and all other countries in the world and together with all renewals and extensions;

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

"KCOM Group" Us/Our holding company, Our subsidiaries and any subsidiaries of Our 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 Network" the telecommunications infrastructure and system operated by Us;

"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 Operator(s)" any public telecommunications operator used by You to connect telecommunications services to and from Your Site and/or used by Us to deliver the Service;

"OBR" on-line billing and reporting, a service providing You with on line access to billing and associated reports through a portal;

"OFCOM" the Office of Communications or its successors from time to time;

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

"Proposed Start Date" the date specified in the Order or such later date as notified to You by Us should there be any delay in commencement of this Contract, on which the Service is due to be made available to You;

"Ready for Use Certificate" the certificate to be supplied to You when the Service is ready for use;

"Service(s)" the provision by Us to You of a telecommunications service allowing You to make or

receive calls using Equipment on the KCOM and/or other Network Operators network as detailed in the Order and Service Standards;

"Service Desk" the centre to which all incidents reports and help queries should be addressed;

"Service Standards" the document incorporated into this Contract below these terms and conditions;

"Service Start Date" the Proposed Start Date or if different the earlier of the date upon which You are notified the Service is available for use or the date You begin using the Service or in the case of additional Service Numbers the date of the provision of a Service Number to You in accordance with clause 10;

"Site" the Site where the Services are to be provided, as more fully described in the Order;

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

"We/Us" KCOM Group Limited, (registered no 2150618) whose registered office is at 37 Carr Lane, Kingston upon Hull, HU1 3RE;

"Wholesale Rental" or "WLR" the wholesale line rental service where We rent Your line from BT;

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

"You/Your" means the person or company to whom the Services are provided as detailed in the Order.

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 13, 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	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"> i. Provision of the Services ii. Ensuring effective communication between Us and You; iii. Maintaining full and accurate records of all Services arising under the Contract; iv. Dealing with any rights, actions, incidents or disputes arising under the Contract;
Type of Personal Data	Name Date of Birth Age IP Address National Insurance Number Gender Telephone Number Address Email Address Unique Identifier Biometric Data Racial or Ethnic Origin Sexual Orientation Physical or Mental Health or Condition Proceedings in relation to any offence Religious Belief Trade Union Membership Political opinion
Categories of Data Subject	Your employees Employees of End Customer Any member of the general public Includes: <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

Out of Area Outbound Switched Voice 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 (thirty) days prior to such change coming into effect.

The Services are divided into service categories, which are subject to different Service Standards.

Table 1 shows the different Services available which are covered by these Service Standards.

Indirect Voice (Analogue and Digital) with Line Rental is a service that provides line access, including connection to the BT network terminating equipment on NTE or NTTP. You will not be able to take this Service from Us if You do not have a pre-existing BT line or a line provided by Us. The connection will support incoming and outgoing calls and any number allocated will be provided for the duration of this Contract.

Table 1

Service Category 1	Service Category 2	Service Category 3
<p>Directly connected Switched Services provided by KCOM fibre. Indirectly connected services using the access method of auto diallers, manual dialling or telephone system. The service names are:</p> <ul style="list-style-type: none"> • Directly Connected Switched Voice • Indirect Voice – Indirect Voice 138 	<p>Directly connected Switched Services provided by a third party network. The service names are:</p> <ul style="list-style-type: none"> • Directly Connected Switched Voice 	<p>Indirectly connected services provided over BT lines. The service name is:</p> <ul style="list-style-type: none"> • Indirect Voice – Analogue Line Rental • Indirect Voice – ISDN2 Line Rental (Digital Standard & Digital System only) • Indirect Voice – ISDN30 Line Rental

2 SERVICE DELIVERY

2.1 Our Obligations

Failure to comply with the Proposed Start Date may entitle You to claim service credits in accordance with Section 5 of this Service Standard.

2.2 Restrictions

If You cancel an order, or significantly modify it (e.g. changes in Site, Proposed Start Date or Service type) prior to the Service Start Date, We reserve the right to claim the reasonable costs We incur as a result of such cancellation or modification and We will not be bound by the original timescales.

If on arrival the planned work cannot go ahead due to there being no available power sockets, no wall space or if access to the Site is refused then an abortive visit charge may be raised.

3 SERVICE AVAILABILITY

3.1 Our Obligations

We will use reasonable endeavours to provide the Services 24 hours a day throughout the year. However, Our Service Availability obligation will be achieved if the Services are available for not less than 99.95% of the year, commencing on the Service Start Date and each anniversary of that date.

Failure to meet the Service Availability obligation may entitle You to claim Service Credits as detailed in Table 5 in Section 5.

3.2 Restrictions

- 3.2.1 Planned Outages previously notified to You shall not be deemed occurrences of unavailability for the purposes of this Service Standard. Planned Outage shall not be included when calculating the Service Availability.
- 3.2.2 Outages which are deemed by Us to be the result of Customer Responsible Incidents shall not be included when calculating the Service Availability.

4 INCIDENT MANAGEMENT

In the event that You become aware of any problem or a breakdown in the operation of the Services, any Equipment or the KCOM Network You should notify Us immediately in accordance with the Incident Procedure set out below. Once it has been established that a problem exists, We shall use Our reasonable endeavours to remedy such incidents.

Please ensure when contacting the Service Desk You have the following relevant details to hand.

1. Organisation name & address.
2. Details of the Services provided to You by Us.
3. Site Address, Contact name and details and Access details for site affected.
4. Affected Circuit Reference numbers/Telephone Numbers if applicable.
5. Nature of problem.

4.1 Incident Procedure

The following process outlines Our incident procedure:

1. You will contact the Service Desk to report a incident on a freephone number - 0800 138 4858 or any other number that We notify to You for this purpose.
2. The Service Desk staff will log details of the reported problem on Our problem system and issue You with a Incident Reference Number (IRN).
3. The Service Desk will diagnose the problem as either a Service Affecting Incident or a Non-Service Affecting Incident and, if required, contact You for further information.
4. The problem is diagnosed and if a field engineer is required to carry out a visit to Your site this will be arranged with You.
5. If the reported problem is deemed to be caused by another Network Operator, We will advise You to liaise with Your Network Operator to manage the incident resolution.
6. Once the incident has been resolved it will be passed back to the Service Desk which will confirm to You that the Service has been restored.
7. If You require an update on the status of the incident, You should contact the Service Desk on **0800 138 4858**.

4.2 Escalation

Escalation procedures can be invoked in the following situations:

- Where a incident is serious enough to cause a significant impact, or presents a significant threat to the Services
- If a reported incident exceeds the TTR
- Where an individual incident condition is particularly sensitive and is deemed to be business affecting.

Either of Us may at any time during the incident condition request immediate escalation of the incident. Escalation may be via the appropriate Service Desk operations 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 Our incident systems. We will respond to all such requests within 20 minutes of the request being made.

4.3 Major Incident Escalation

In the event of a major incident, as defined and agreed between Us, an action plan will be developed to resolve the incident. This action plan will be developed, agreed and communicated by both of Us via a conference call or meeting. At the time a situation is (re) classified as a major incident We will both nominate a “major incident manager” who will become the prime point of contact for all communications between Us regarding that incident. You should Use the following numbers, or such alternative numbers as We may notify to You for this purpose, to contact Us in the event of a major incident:

0800 138 48 58 or 0800 587 69 99

4.4 Our Obligations

Our Time to Resolve (“TTR”) obligations for the Services covered are shown in Table 2:

Table 2

Time to Repair	Service Category 1	Service Category 2	Service Category 3
Service Affecting	4 Hours	5 Hours	As per table below
Non-Service Affecting	48 Hours	48 Hours	As per table below

For the avoidance of doubt, where You take the Wholesale Line Rental (WLR) service (Category 3 as set out in Table 1 above), if it is determined that the incident relates to Wholesale Line Rental (WLR), Service Category 3 will apply.

Service Category 3

Table 3 below sets out details of the Service Guarantee for each Care Level for incidents where an engineer appointment is required and for incidents where no engineer appointment is required. We will let You know whether an engineer appointment to fix an incident is required

Table 3

	Care Level 1	Care Level 2	Care Level 3	Care Level 4
Working Days	For the purposes of Care Level 1 “Working Day(s)” shall mean Monday to Friday excluding UK bank and public holidays	For the purposes of Care Level 2 “Working Day(s)” shall mean Monday to Saturday excluding UK bank and public holidays	For the purposes of Care Level 3 “Working Day(s)” shall mean Monday to Sunday including UK bank and public holidays	For the purposes of Care Level 3 “Working Day(s)” shall mean Monday to Sunday including UK bank and public holidays
Service Guarantee - fix where no appointment is required	You may report an incident at any time. Where the You report an incident on a Working Day between the hours of 00.00 hrs and 23.59 hrs (inclusive) We guarantee to fix by 23.59 hrs on the second Working Day following the day on which the incident was reported. Where You report an incident between the hours of 00.00 hrs and 23.59 hrs (inclusive) on a Saturday or Sunday or on a UK bank or public holiday We	You may report an incident at any time. Where You report an incident on a Working Day between the hours of 00.00 hrs and 23.59 hrs (inclusive) We guarantee to fix by 23.59 hrs on the first Working Day following the day on which the incident was reported. Where You report an incident between the hours of 00.00 hrs and 23.59 hrs (inclusive) on a Sunday or a UK bank or public holiday We guarantee to fix by 23.59 hrs on the	You may report an incident at any time. Where You report an incident between the hours of 00.00 hrs and 11.59 hrs (inclusive) We guarantee to fix by 23.59 hrs on the same Working Day. Where You report an incident between the hours of 12.00 hrs and 23.59 hrs We guarantee to fix by 12.59 hrs on the next Working Day after the day on which the incident was reported.	You may report an incident at any time. Where You report an incident We guarantee to fix within 6 hours.

	guarantee to fix by 23.59 hrs on the second Working Day following the first Working Day after the day on which the incident was reported.	first Working Day following the first Working Day after the day on which the incident was reported.		
Service Guarantee - fix where We stipulate that an engineer appointment is required	<p>You may report an incident at any time.</p> <p>Where You report an incident We guarantee to fix on the later event of either:</p> <p>(i) 23.59 hrs on the date of the arranged appointment: or</p> <p>(ii) 23.59 hrs on the second Working Day following the first Working Day after the day on which the incident was reported.</p>	<p>You may report an incident at any time.</p> <p>Where You report an incident We guarantee to fix on the later event of either:</p> <p>(i) 23.59 hrs on the date of the arranged appointment: or</p> <p>(ii) 23.59 hrs on the Working Day immediately following the first Working Day after the day on which the incident was reported.</p>	<p>You may report an incident at any time.</p> <p>Where You report an incident between the hours of 00.00 hrs and 11.59 hrs (inclusive) We guarantee to fix on the later event of either:</p> <p>(i) 23.59 hrs on the day of the arranged appointment: or</p> <p>(ii) 23.59 hrs on the day on which the incident was reported.</p> <p>Where the Reseller reports an incident between the hours of 12.00 hrs and 23.59 hrs (inclusive) We guarantee to fix on the later event of either:</p> <p>(i) 12.59 hrs on the day of the arranged appointment: or</p> <p>(ii) 12.59 hrs on the day immediately following the day on which the incident was reported.</p>	<p>You may report an incident at any time.</p> <p>Where You report an incident We guarantee to fix within 6 hours of the incident being reported or within 6 hours from the date and time of the appointment (whichever is later).</p>

For the purposes of Table 3 above “Line Type” means the type of line, either being a Basic Line, Premium Line, Multiline, ISDN2 or ISDN30 selected by You in this Contract or pursuant to an additional order.

Basic Lines come with Care Level 1 as standard. Premium Lines, Multi Lines, ISDN2 lines and ISDN30 lines come with Care Level 2 as standard.

You may upgrade the monthly Care Level on a line by line basis. Basic Lines may be upgraded to Care Level 2, 3 and 4. Premium Lines, Multi Lines, ISDN2 lines and ISDN30 lines may be upgraded to Care Levels 3 and 4. Where You upgrade the Care Level of a line additional monthly rental charges may apply.

You may pay an additional one off fee to upgrade a fix on a Line Type to a higher Care Level ('Expedite Repairs'). Additional Charges will be payable for Expedite Repairs.

Failure to meet the TTR obligation for Service Affecting Incidents may entitle You to claim service credits as detailed in Section 5.

4.5 Restrictions

The TTR period shall begin once You notify the Service Desk of the incident, the incident is logged by the service operations team and a Incident Reference Number (IRN) is allocated.

The TTR period shall end once notice has been given to You by the Service Desk that the incident has been resolved.

We will record the duration of the TTR period in order to assess Our compliance with Our obligations under Section 5.

4.6 Incident Report Closure

We will close any incident in accordance with Our normal working procedures. Formal discussion between You and Us will take place after the incident has been cleared and Service restoration has been agreed. The Service may be restored without necessarily resolving the original incident condition, e.g. by reconfiguration.

The following information is to be verbally agreed and recorded by Us on Our incident logging system when We close a incident, written confirmation is available if required:

- Names/contact numbers of both representatives at the time of incident closure
- Service restoration time
- TTR
- Time lost due to site access problems
- Incident resolution/service restoration actions taken.

5 SERVICE CREDITS

Where We fail to comply with the Service Standard, You shall be entitled to service credits calculated in accordance with the following provisions.

5.1 Service Delivery

In the event that We fail to meet the Proposed Start Date, and We are unable to demonstrate that the delay was attributable to You or to any third party, then You have the right to claim service credits as detailed in Table 4. Service credits for Service Category 3 are only offered where a new line is installed.

Table 4

Working days past Proposed Start Date	Service Category 1	Service Category 2	Service Category 3
For each day that Services remain unavailable	0.5% of connection charge	0.5% of connection charge	0.5% of connection charge

Claims are limited to a maximum aggregate amount of 10% of the total connection charges.

5.2 Service Availability

In the event that We fail to meet the Service Availability obligations, You have the right to claim service credits as detailed in Table 5.

Table 5

Service Availability	Service Category 1	Service Category 2	Service Category 3
Less than 99.95% Service Availability	5% of annual rental charges	5% of annual rental charges	Not applicable

5.3 Incident Management

In the event that We fail to meet the TTR for Service Affecting Incident, You have the right to claim service credits as detailed in Table 6.

Table 6

Service Affecting	Service Category 1	Service Category 2	Service Category 3
If failure to repair within the TTR	2% of annual rental charges	2% of annual rental charges	1% of annual rental charges

Category 1 & 2 – For each additional hour up to a maximum of five hours.

Category 3 – For each additional day.

Service credits for incidents shall not exceed the total annual rental charge.

5.4 Payment of Service Credits

All claims for service credits must be submitted to the relevant Service Desk within 30 days (dependent on the type of claim), from either:

- the date Service was delivered (service credits for Service Delivery)
- the end of the Service Measurement Period (service credits for reduced Service Availability)
- the date the incident was notified to Us (Incident Management).

Credit notes will be issued where service credits are payable which can be Used to offset Charges on future bills. If at any time an account enters into credit, customers may request payment of service credits by cheque to reduce the account balance to zero. When the balance on the account is in debit, a cheque for service credits cannot be requested.

6 DEFINITIONS

Customer Responsible Incident

In the event that a Service Affecting or a Non-Service Affecting Incident is identified as being attributable to Customer Equipment, the Site, Your power supplies or Your actions or those of Your employees or agents, the problem shall be deemed Your responsibility. Any such Service unavailability shall not be included in Service Availability calculation and does not qualify for service credits.

Incident Reference Number

The unique number issued when logging an incident with Us.

Non-Service Affecting Incident

A problem or condition which is not a Service Affecting Incident.

Planned Outage

All necessary equipment maintenance or upgrade to the KCOM Network (or the network of a third party Network Operator) will, wherever possible, be planned to avoid any interruption to the Service. Where We provide diverse circuits, We will not carry out planned maintenance on both routes at the same time unless You have agreed in writing. 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 ten (10) Working Days' notice to You of any planned works that will affect the availability of the Service. These Planned Outages will be limited to a single outage per quarter. Any other or additional outage requests are subject to negotiation between Us and You. All of Our maintenance operations are controlled by internal procedures. All notifications will be transmitted by fax and e-mail to You. Any Planned Outages shall not be included in the Service Availability measurements.

Service Affecting Incident

Any failure of Our transmission or terminating equipment which, in Our reasonable opinion, causes a material loss of signals in one or both transmission directions. In all such cases the circuit shall be deemed unavailable and the length of downtime recorded by Us from the point We allocate an IRN. Examples: no incoming calls; no outgoing calls; noise on every call; post dial delay on every call; echo on every call.

No outgoing calls where service has been proven to be working over the BT line for indirect services will be a Service Affecting Incident.

For the avoidance of doubt, the following shall not constitute Service Affecting Incidents: intermittent noisy calls (normal conversation degraded), intermittent echo, poor quality fax transmission, post dial delay or inability to connect to one destination where others are connectable.

Service Availability

The time for which Our Service is Usable, expressed as a percentage of the total time in a given Service Measurement Period. The Service shall be deemed available for the purposes of calculating Service Availability if the reason it is unavailable is outside of Our control, for example a Customer Responsible Incident, a Third Party Attributable Incident or a Planned Outage. The following formula will be Used to calculate the Service Availability figure:-

$$\text{Availability \%} = \frac{M - z_m}{M} \times 100$$

Where: M = number of minutes in a year

z_m = number of minutes where Service is unavailable

Service unavailability commences when the incident has been logged and time stamped on Our incident tracking system and the unique FRN has been given to You. It concludes when both parties agree that the incident has been cleared.

Service Desk

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

Service Measurement Period

This is twelve months from the Service Start Date and each subsequent anniversary.

Time To Resolve (TTR)

The length of time from the issue of the IRN to the restoration of the Service.

Third Party Attributable Incidents

In the event that a Service Affecting Incident or a Non-Service Affecting Incident is identified as being attributable to a third party (i.e. neither You nor Us) downtime shall not be included in Service Availability measurements. Such problems do not qualify for service credits. We will try to rectify such Third Party Attributable Incidents as soon as reasonably practicable.