

Reference Offer for Leased Line and Ethernet Services

Schedule 1: Definitions (Version 2)

"Access Charge Change Notice" the notification sent to the CP to advise of changes to Charges associated with this Agreement;

"Act" means the Communications Act 2003;

"Agreement" means this agreement, the Price List, Schedules and Appendices;

"Ancillary Documents" means those documents specifically listed on KCOM's Website that contain information about the Services;

"Appendix" means an appendix to a Schedule to this Agreement;

~~"Billed Party" means a party required to make payment of Charges to the Billing Party;~~

~~"Billing Party" means a party requesting payment of Charges from the other party;~~

~~"Charge Change Notice" the notification sent to the CP to advise of changes to Charges associated with this Agreement;~~

"Cable Chamber" means, a physical point within the WFLA Site, or its curtilage specified by KCOM, that acts as the primary aggregation point for all incoming communications cables.

"Call Out Charges" means the charges specified in the Price List which apply where a KCOM engineer is called out to undertake work as specified in the Price List;

~~"Charge Change Notification Procedure" the process by which KCOM shall notify CP of any changes to Charges associated with this Agreement as set out in this Agreement the Service Operations Manual;~~

~~"Charges" all connection charges, rental charges or any additional charges, including (without limitation) the Connection Charges, and the Rental Charges or any additional charges, payable by the CP for the provision of the Services, as detailed in the Price List;~~

"CIP" means the relevant KCOM Customer Interface Publication as published on the KCOM Website <https://www.kcomplc.com/regulatory/>;

~~"Clean Order Process" the process KCOM shall follow upon receipt of an Order Form from the CP as set out in section paragraph 2.1 of the Service Operations Manual, and which will culminate in an Order ~~Form~~ being accepted or rejected;~~

"CLI" has the meaning given to Calling Line Identification data in the "Guidance elines for on the pProvision of Calling Line Identification Facilities and Other Related Services ~~over Electronic Communications Networks version 2~~" -dated ~~11-30 July~~December 2018~~03~~ as the same may be amended or replaced from time to time (the "CLI Guidelines");

~~"CP or Communications Provider" means a person who provides an Electronic~~

Communications Network or an Electronic Communications Service;

“CP Billing Contact” means the person so named in the Customer Service Plan, as set out in the Service Operations Manual;

“CP Equipment” any equipment located at the CP Site, a WFLLA Site or End User Site owned by CP or a ~~T~~hird ~~P~~arty which when operated in conjunction with KCOM's Equipment allows CP to obtain and/or receive the Services;

“CP Equipment Room” means the room (which for the avoidance of doubt includes a Co-location Hostel) within a WFLLA Site in which the CP has a Specified Floor Area (the terms Co-location Hostel and Specified Floor Area having the meaning ascribed to them in the Accommodation Services Agreement as may be amended from time to time and available on <https://www.kcomplc.com/regulatory/>);

“CP Network” the telecommunications infrastructure and system operated by the CP;

“CP Operational Contact” means the person so named in the Customer Service Plan, as set out in the Service Operations Manual;

“CP Order Correspondence Contact” means the person named in the Customer Service Plan, as set out in the Service Operations Manual;

“CP Responsible Incident” in the event that an incident is identified as being attributable to CP or End User Equipment, the CP ~~Site Network~~ and/or the End User Site, power supplies, or the action of the CP or End User, employees or agents of the CP or End User, including any failure of the CP or End User to comply with the provisions of this Agreement or supply any information reasonably requested by KCOM, in a timely manner, the incident shall be deemed the responsibility of the CP. Any such downtime shall not qualify for compensation;

“CP Service” means the service provided to the End User by the Communications Provider or the Communications Provider's reseller;

“CP Site” means the CP's premises where the Services are provided;

“Compliant Equipment” means telecommunications apparatus connected at a WFLLA Site and which is used solely for the purpose of connecting a WFLLA Service and any associated services, and is configured and operated in compliance with the technical parameters set out by KCOM in the applicable Customer Interface Publication available at <https://www.kcomplc.com/regulatory/kcom-wholesale/service-information/technical-interface-information/>;

“Condition(s)” means General Condition(s) or a condition other than a General Condition which is expressly stated to apply to either KCOM and/or the CP as the case may be, unless otherwise stated;

“Confidential Information” means any information obtained under or in connection with this Agreement or the Service, in whatever form, which in the case of written or electronic information is clearly designated as confidential and which, in the case of information disclosed orally, is identified at the time of disclosure as being confidential or is by its nature confidential and including such Confidential Information already disclosed by either party to the other prior to the date of this Agreement but excluding any information which:

- a. is in or comes into the public domain other than by reason of a breach of this Agreement; or
- b. is previously known on a non-confidential basis to the Receiving Party at the time of its receipt other than by reason of a breach of this Agreement; or
- c. is independently generated, developed or discovered at any time by or for the Receiving Party; or
- d. is subsequently received from a Third Party without any restriction on disclosure;

"Connection Charges" the charge specified in the Price List for the installation and connection of the Services;

"Credit Limit" means the amount of credit, if any, extended by KCOM to the CP as calculated in accordance with the Credit Vetting Policy;

~~**"Credit Vetting Administration Fee"** the fee set out in the Price List as further described in the Credit Vetting Policy;~~

~~**"Credit Vetting Policy"** means the means the document which sets out KCOM's process for assessing credit risk, as may be amended from time to time and available on <https://www.kcomplc.com/regulatory/>;~~

"Customer Service Plan" means a document containing details of individuals, addresses and telephone numbers for ordering or maintenance of the Services provided pursuant to this Agreement;

~~**"Data Connect Access Service"** the service described in [paragraph Section 4](#), Appendix 1 of [the Service Description Schedule 2](#);~~

~~**"Data Direct Access Service"** the service described in [Section paragraph 2](#), Appendix 1 of [the Service Description Schedule 2](#);~~

~~**"Data Processing Commitment"** means the Data Processing Commitment as set out at [Schedule 4](#);~~

~~**"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;~~

"Disclosing Party" means a party disclosing Confidential Information to the other party;

"Dispute" means a disagreement between the parties excluding breaches of this Agreement;

~~**"Disputing Party"** means a party disputing information with the other party;~~

"Due Date" means a date which is 30 calendar days after the date of an invoice or if such date falls on a date other than a Working Day the date of the previous Working Day;

~~**"Electronic Communications Network"** means-~~

- (a) a transmission system for the conveyance, by the use of electrical, magnetic or electro-magnetic energy, of signals of any description; and
- (b) such of the following as are used, by the person providing the system and in association with it, for the conveyance of the signals
- (i) apparatus comprised in the system;
 - (ii) apparatus used for the switching or routing of the signals; and
 - (iii) software and stored data;

"**Electronic Communications Service**" means any service consisting in, or having as its principal feature, the conveyance by means of an Electronic Communications Network of signals, except in so far as it is a content service;

"**Emergency**" means a serious situation or occurrence that happens unexpectedly and demands immediate action;

"**Emergency Organisation**" means the relevant local public police, fire, ambulance and coastguard services and other similar organisation providing assistance to the public in the case of an Emergency;

"**End User**" a person having a contract with the CP for the provision of telecommunication services ~~by means of the CP's Electronic Communications Network and/or Services;~~

"**End User Equipment**" any equipment located at the End User Site owned by the End User or a ~~T~~third ~~P~~party which when operated in conjunction with KCOM's Equipment allows the End User to obtain and/or receive the Services;

"**End User Site**" means the End User's ~~business~~ premises;

"**Ethernet Connect Access Services**" the service described in paragraph~~Section~~ 5, Appendix 1 of ~~the Service Description~~Schedule 2;

"**Ethernet Direct Access Services**" the service described in ~~Section~~paragraph 3, Appendix 1 of ~~the Service Description~~Schedule 2;

"**Excess Construction Charges**" means charges for network build as set out in the Price List;

"**External CableConnect**" the service described in paragraph 6, Appendix 1 of Schedule 2;

"**General Conditions**" means the general conditions set under section 45 of the Act;

"**Group Company**" means in respect of either party, 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);

"**Hull Area**" means the area defined as the 'Licensed Area' in the licence granted on 30 November 1987 under section 7 of the Telecommunications Act 1984 to Kingston upon Hull City Council and Kingston Communications (Hull) plc;

"**Incident Management Procedure**" KCOM's incident management procedure for the Services, ~~as updated from time to time. KCOM will provide the CP with a copy of KCOM's~~

~~current incident management procedure for the Services on or before the Service Start Date, specified in the Service Operations Manual;~~

"**Intellectual Property Rights**" means any patent, petty patent, registered design, registered trade or service mark, copyright, design right, semi-conductor topography right, know-how or any similar right exercisable in any part of the world including any application thereof;

"**Interest Rate**" ~~means 4% per annum above the base lending rate of the National Westminster Bank Plc in force from time to time shall have the meaning set out in section 3.2.6 of the Billing Manual;~~

"**KCOM Equipment**" any equipment located at the CP Site, WFLA Site and/or End User Site which is supplied by KCOM as part of the Service;

"**KCOM Network**" the telecommunications infrastructure and system operated by KCOM;

"**KCOM Operational Contact**" means the person so named in the Customer Service Plan, as set out in the Service Operations Manual;

"**KCOM Technical Support Team**" the centre to which all incidents should be addressed;

"**KCOM Website**" means the website at: <http://www.kcomplc.com> or such other on-line address that KCOM may advise to the CP from time to time;

"**KCOM Wholesale Desk**" the centre to which help queries should be addressed, the contact details of which are set out in the Customer Service Plan in the Service Operations Manual;

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

"**Minimum Period**" means

- (a) a period of 12 months in the case of Data Connect Access Services and Data Direct Access Services; or
- (b) a period of 12, 36 or 60 months in the case of Ethernet Connect Access Services and Ethernet Direct Access Services;
- (c) a period of 12 months in the case of External CableConnect Services.;

~~the period of time beginning on the Service Start Date, as set out on the Order Form;~~

"**Missed Appointment Fee**" the fee set out in the Price List that KCOM may charge in the event that an appointment is cancelled by the CP or the CP Operational Contact;

~~"**Network Operator**" any authorised public telecommunications operator;~~

"**Network Terminating Equipment (NTEs)**" equipment supplied by KCOM and the point at which the Services demarcate;

"**Ofcom**" means the Office of Communications;

"**Optical Wave Access Service with filter**" means the service described in paragraph 7, Appendix 1 of Schedule 2;

“**Order**” means an Order for the supply of the Services placed by the CP using the Order Form which is accepted by KCOM and which is governed by this Agreement;

“**Order Form**” means the form notified by KCOM from time to time appended at Schedule 4 which the CP shall submit to place an Order for the Services which KCOM may accept or reject;

“**Payment Period Notice**” a notice which may be issued by KCOM pursuant to the Credit Vetting Policy;

“**Planned Outage**” in maintaining the Service provided KCOM may, with reasonable notice, require a temporary outage in service. Wherever possible KCOM will agree the outage with the CP in advance of the required work. Any planned downtime shall not be included in incident or service reliability measurements;

“**Point of Handover**” means, in relation to External CableConnect, a physical point where the CP’s duct is joined to the wall of the KCOM handover box and the External CableConnect Service terminates;

“**Price List**” means the folder entitled Price lists & notices containing a list of KCOM’s charges and terms that apply to the Service and which can be seen at <https://www.kcomplc.com/regulatory/> ~~http://www.kcomplc.com/regulatory-information/price-lists-and-notices/~~ (or any other on-line address that KCOM may advise the CP);

“**Privacy Regulations**” means the Privacy and Electronic Communications (EC Directive) Regulations 2003 as amended in 2004, 2011, 2015 and 2016 and as may be further amended from time to time as in force at 11 December 2003;

“**Profile Monitoring**” means the process by which the actual level of invoicing by KCOM in the month will be monitored against the Credit Limit for that month as further described in the Credit Vetting Policy;

“**Proposed Start Date**” or “**PSD**” the date calculated in accordance with ~~section paragraph~~ 2 Table 1 of the Service Operations Manual, or such later date as notified to the CP by KCOM should there be any delay in respect of when the Service is due to be made available to the CP;

“**Public Electronic Communications Network**” means an Electronic Communications Network provided wholly or mainly for the purpose of making Electronic Communications Services available to members of the public;-

- (a) ~~a transmission system for the conveyance, by the use of electrical, magnetic or electro-magnetic energy, of signals of any description; and~~
- (b) ~~such of the following as are used, by the person providing the system and in association with it, for the conveyance of the signals~~

~~apparatus comprised in the system;~~

~~apparatus used for the switching or routing of the signals;~~

~~software and stored data; and~~

~~(iv) except for the purposes of sections 125 to 127 of the Communications Act, other resources, including network elements which are not active.~~

"Public Electronic Communications Service" means any Electronic Communications Service that is provided so as to be available for use by members of the public;

"Ready for Use Certificate" means the notice of Order completion sent to the CP Operational Contact as specified on the Order Form;

"Receiving Party" means a party receiving Confidential Information from a Disclosing Party;

"Rental Charges" means the monthly charge payable for the provision of the Service, as detailed in the Price List;

"Schedules" means the Schedules to this Agreement, including any amendments;

"Security Notice" a notice issued pursuant to the Credit Vetting Policy;

"Services" means the supply of Leased Line ~~services~~ and Ethernet Services as described in Schedule 2;

"Service Affecting Incident" ~~a~~Any incident or event on the KCOM Network which results in any problem or breakdown in the operation of the Service, any equipment or the network;

"Service Credit" compensation which may be payable by KCOM to the CP in the event that KCOM's delivery of the Services fails to achieve prescribed minimum standards, subject to certain exceptions, as further described and set out in the Service Standard;

"Service Operations Manual" means the appropriate product description document and business process document containing information relating to the Service (depending upon the Service) as may be amended from time to time. The Service Operations Manual is available on the KCOM Website ~~<https://www.kcomplc.com/regulatory/http://www.kcomple.com/regulatory-information/access-information/>~~;

"Service Standard" the document set out at Schedule 3 which defines the levels of service the CP can expect from KCOM;

"Service Start Date" the Proposed Start Date or if different the earlier of the date upon which KCOM notifies the CP the Service is available for use or the date the End User begins using the Service;

~~"System" means the KCOM System or, as the context requires, the CP System;~~

~~"Termination Payment" has the meaning given to it in Clause 24.4;~~

"Site" means a CP Site, End User Site or WFLLA Site being the place at which KCOM agrees to provide or is providing the Services;

"Special Offer" means a temporary price reduction for a particular product or service, applicable to all Communications Providers on a non-discriminatory basis, which is stated to apply for a limited and predefined period and where the price immediately on expiry of that period is not higher than the price immediately before the start of that period;

“Specified Floor Area” means a floor area or areas within a CP Equipment Room occupied by a Communications Provider under a Licence where the CP’s Compliant Equipment is installed, specified against a WFLLA Site as further described in KCOM’s Reference Offer for the provision of Accommodation Services as may be amended from time to time and available on <https://www.kcomplc.com/regulatory/> (the term Licence having the meaning ascribed to it in the KCOM Reference Offer for the provision of Accommodation Services);

“Street Cabinet” means existing street cabinets owned and controlled by the CP or a Third Party and located in the street and which are used to host KCOM Equipment;

“Third Party” means a person other than KCOM or the CP;

“Time Related Charges” the charges specified in the Price List, raised to recover cost incurred when an engineer performs additional work;

“Time To Resolve (TTR)” the length of time to repair and resolution of the service circuit and/or associated equipment;

“VAT” means United Kingdom Value Added Tax;

“Wavelength” means, in relation to the Optical Wave Access Service with filter, the end-to-end connectivity of a specific bandwidth;

“WDM” means, in relation to the Optical Wave Access Service with filter, Wavelength Division Multiplexing (WDM) which combines multiple optical signals onto a single optical fibre.

“WFLLA Site” means the premises at which the CP connects to the KCOM Network for the provision of services pursuant to KCOM’s Reference Offer for Wholesale FibreLine Local Access available on <https://www.kcomplc.com/regulatory/>;

“Working Day” means any day other than Saturdays, Sundays, public or bank holidays in the United Kingdom;

“Working Hours” means between 9.00 a.m. and 5.00 p.m. on any Working Day.