

Reference Offer for KCOM Wholesale FibreLine Access

Schedule 1: Definitions

“**Access Charge Change Notice**” means a notice in writing of a change to a Charge for Services provided pursuant to this Agreement;

"**Act**" means the Communications Act 2003;

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

“**Aggregation Point Bandwidth**” means bandwidth that conveys traffic from End User Access connections to an Aggregation Point;

“**Aggregation Point**” means a point at a WFL Site that combines traffic from End User Access connections into a single connection;

“**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;

“**BSIL Backhaul Service**” means a broadband services interconnect link which provides connectivity between the Extension Path and the CP Site and is provided under separate contract terms;

“**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;

“**Charges**” all Connection Charges, Rental Charges or any additional charges payable by the CP for the provision of the Services, as detailed in the Price List;

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

"**CLI**" has the meaning given to Calling Line Identification data in the "Guidance on the Provision of Calling Line Identification Facilities and Other Related Services over Electronic Communications Networks" dated 30 July 2018 as the same may be amended or replaced from time to time (the "**CLI Guidelines**");

"**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 Network**" means 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 the CP and/or an End User, End User Equipment, an incident at a CP Site and/or an 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 and / or Service Credits;

"**CP Service**" means the service provided to the End User by the CP or the CP's reseller;

"**CP Site**" means the CP's premises where the BSIL Backhaul Service terminates;

"**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 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 the document forming part of the Service Operations Manual containing details of individuals, addresses and telephone numbers for the ordering, maintenance and support of the Services provided pursuant to this Agreement;

“Data Processing Commitment” means the Data Processing Commitment as set out at Schedule 6;

“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 Receiving Party;

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

"Disputing Party" means a party raising a Dispute 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 the Services;

"End User Access" means the connection between the ethernet port on the ONT or the VDSL faceplate on the NTE at an End User Site and the KCOM Exchange;

"End User Equipment" any equipment located at the End User Site owned by the End User or a Third 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 premises;

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

“Exchange Line” means apparatus comprised in an Electronic Communications Network and installed for the purpose of connecting a telephone exchange to a Network Termination Point;

“Exchange Line ID” means the Telephone Number or other specific identifier notified by KCOM to the CP and associated with an FTTC or FTTP Service provided to an End User;

“Extension Path” means a connection between the Aggregation Point and the BSIL Backhaul Service;

“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 specified in the Service Operations Manual;

“Initial Term” means the minimum period of service specified in the Schedules;

“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;

“KCOM Equipment” any equipment located at End User Site which is supplied by KCOM as part

of the Service;

“**KCOM Exchange**” means a KCOM exchange which End User Sites connect into;

“**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;

“**KCOM Wholesale Line Rental (KLR)**” means the service provided pursuant to the Reference Offer for the Provision of KCOM Line Rental and which can be seen at <https://www.kcomplc.com/regulatory/> (or any other online address that KCOM may advise the CP of from time to time);

“**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;

“**Line Rate**” means the rate of connection between the ONT/NTE and the equipment located at the KCOM Exchange;

“**Migration**” means the transfer by an End User of their service from one Communications Provider to another Communications Provider;

“**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 or the installation of the Service cannot take place due to a CP or End User related issue;

“**Network Terminating Equipment (NTE)**” means Network terminating equipment at an End User Site, supplied by KCOM, excluding any ethernet cable;

“**Network Termination Point (NTP)**” means the network termination point at an End User Site;

“**Ofcom**” means the Office of Communications;

“**Ofcom’s Voluntary Code of Practice for ISPs**” means the Codes of Practice that specify information to be provided to End Users on broadband speeds and published on the Ofcom website www.ofcom.org.uk;

“**ONT**” means the optical network termination equipment at an End User’s Site;

“**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 specified by KCOM 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;

“**PCP or Primary Cross-Connection Point**” means the connection point at a street cabinet which is part of the KCOM Network;

“**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 the point of connection between the Extension Path and the Backhaul Service;

“**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/> (or any other on-line address that KCOM may advise the CP of from time to time);

“**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;

“**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 paragraph 2.1

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;

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

"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 Extension Paths, Aggregation Points (including Aggregation Bandwidth), WFL FTTC and WFL FTTP as described in the Schedules;

"Service Affecting Incident" any incident or event on the KCOM Network and/or the NTE or ONT which results in any problem or breakdown in the operation of the Service;

"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 Levels" means the KCOM targets set out by KCOM in relation to performance of the Service as described in Schedule 5;

"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/>;

"Service Request Process" means the process described in the Service Operations Manual;

"Service Standards" means the standards set out in Schedule 5 which defines the levels of service

the CP can expect from KCOM;

“Service Start Date” means 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;

“Site” means a WFL Site, CP Site and/or an End User Site;

“Special Offer” means a temporary price reduction for a particular product or service, applicable to all CPs 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;

“Technical Support Team” means the KCOM team who manage the Incident Management Procedure as detailed in the Service Operations Manual;

"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 resolve an incident;

"VAT" means United Kingdom Value Added Tax;

“WFL FTTC” means the connection between a handover frame within the KCOM Exchange and the End User as described in Schedule 3;

“WFL FTTP” means the connection between a handover frame within the KCOM Exchange and the End User as described in Schedule 4;

“WFL Site” means the premises from which the Services are available as notified by KCOM to the CP;

"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.