



## Broadband Services Interconnect Links (BSILs)

### Part 1

|                 |                         |
|-----------------|-------------------------|
| <b>OUR REF:</b> | <b>ACCOUNT MANAGER:</b> |
|-----------------|-------------------------|

| <u>CP REGISTERED DETAILS:</u>       | <u>CORRESPONDENCE DETAILS:</u> |
|-------------------------------------|--------------------------------|
| <b>CP Name /<br/>Business Name:</b> |                                |
| <b>CP Co. Registration No:</b>      | <b>Main Contact:</b>           |
| <b>Address:</b>                     | <b>Telephone No:</b>           |
|                                     | <b>Email Address:</b>          |
| <b>Postcode:</b>                    |                                |

| <u>BILLING DETAILS:</u>  |                                      |
|--|--------------------------------------|
| <b>Address for invoice:</b><br>(if different to above, please insert here) | <b>Billing Contact Name:</b>         |
|  | <b>Telephone Number:</b>             |
|  | <b>Email Address:</b>                |
|  | <b>Add to Existing Summary Bill:</b> |
| <b>PO No:</b>  | <b>Existing Summary Bill Number:</b> |

| <u>AGREEMENT PERIOD:</u>   | <u>PAYMENT DETAILS:</u>                                |
|--|--|
| <b>Commencement Date:</b>  | <b>Billing Frequency:</b> Monthly                      |
| <b>Proposed Start Date:</b>  | <b>Payment Date:</b> Within 30 days of date of invoice |
|  | <b>Payment Method:</b>                                 |
| <b>Notice Period:</b> 30 Days (applicable after expiry of Initial Term of the order) | <b>Billing Period (Optional):</b>                      |



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| <u>ORDER DETAILS</u>   |                |
|--|----------------|
| New Order:   | External Move: |
| Upgrade:   | Internal Move: |
| If Upgrade, give circuit reference:  |                |
| If Move, give details  |                |
| Where a Service is an upgrade, internal move or external move of an existing BSIL service taken from KCOM, this Agreement supersedes and terminates any earlier agreement for that BSIL service. Where any earlier agreement covers a number of different services, only the part that relates to the relevant BSIL shall be terminated. |                |

| <u>DETAILS</u>       |          |                |                   |                      |
|----------------------|----------|----------------|-------------------|----------------------|
| Service Product Type | Category | Bandwidth Mbps | Connection Charge | Annual Rental Charge |
| BSIL                 |          |                |                   |                      |
| BSIL                 |          |                |                   |                      |

| <u>SITE DETAILS</u>          |  |                   |  |
|------------------------------|--|-------------------|--|
| WFL Site                     |  | CP Site           |  |
| CP Name                      |  | CP Name           |  |
| Building / Street            |  | Floor             |  |
| Town / City                  |  | Room              |  |
| Postcode                     |  | Building / Street |  |
| WFL Extension Path Reference |  | Town / City       |  |
|                              |  | Postcode          |  |



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|   |  |   |  |
|---|--|---|--|
|   |  | Site Contact Name                                   |  |
|   |  | Site Contact Number                                 |  |
| <u>ADDITIONAL INFORMATION</u>                       |  | <u>ADDITIONAL INFORMATION</u>                       |  |
| Presentation, Interface<br>FEA<br>Reference<br>etc. |  | Presentation, Interface<br>FEA<br>Reference<br>etc. |  |

**THE CHARGES SET OUT IN THIS AGREEMENT DO NOT CONSTITUTE AN OFFER AND MAY BE WITHDRAWN AT ANY TIME PRIOR TO ACCEPTANCE OF THE AGREEMENT BY KCOM GROUP LIMITED**

**NOTE:** All Charges exclude VAT which will be added at the prevailing rate



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### Offer and Acceptance – Part 2

KCOM has issued this Agreement to the CP, which includes a copy of KCOM's Standard Terms and Conditions and the Service Standards for the Service. By signing in the place indicated below the CP indicates its willingness to offer to enter into this Agreement. This Agreement will not come into force unless and until KCOM has signed in the place indicated below.

| <b>THE CP'S OFFER TO ENTER INTO THIS AGREEMENT</b><br><b>(to be completed by the CP)</b> | <b>AGREEMENT ACCEPTANCE BY</b><br><b>KCOM GROUP LIMITED</b> |
|--|---|
| Signed   | Signed  |
| Name   | Name  |
| Position   | Position  |
| Date   | Date  |

## Broadband Services Interconnect Links (BSILs)

### Service Standards – Part 3

#### 1. INTRODUCTION

These Service Standards define the commitments KCOM makes to the CP.

Any changes, modifications, additions or deletions to these Service Standards will be provided to the CP in writing 28 days prior to such change coming into effect.

##### 1.1. Service Details

The Broadband Services Interconnect Links (BSIL) provides a connection between a Wholesale FibreLine (WFL) Site and a CP Site in the Hull Area using an ethernet 1Gbps or 10Gbps connection and Ethernet Interfaces from the requested WFL Site to the CP Site.

The Services demarcate on Network Terminating Equipment (NTEs) supplied by KCOM. The NTEs are located on the CP's Site and remain KCOM's property.

The BSIL is configured to aggregate the CP requested WFL End User Access (EUA) connections. It contains the functionality to handle the Remote Authentication Dial-In User Service (RADIUS) communications between the KCOM Layer 2 Tunnelling Protocol (L2TP) Access Concentrator (LAC), KCOM Broadband Network Gateway (BNG), and the CP Radius and CP L2TP Network Server (LNS).

For a description of the Services please refer to the Broadband Service Interconnect Layer (BSIL) Technical Characteristics document (CIP041).

#### 2. SERVICE DELIVERY

##### 2.1. Delivery Management

KCOM will provide the CP with a Proposed Start Date for each Service.

Where KCOM has made a scheduled appointment with the CP for either (i) the installation of the Services at the CP Site or (ii) the resolution of a Fault with the Services, it is the CP's responsibility to ensure that the CP is at the premises to attend the appointment at the date and time of the appointment. This may be subject to a missed appointment fee, at KCOM's standard rate in force from time to time, if one of KCOM's engineers has been dispatched to the CP Site and:

- the appointment is cancelled by the CP after the engineer has been dispatched;
- the person in attendance at the CP Site is under the age of 18;
- there is no one at the CP Site;

## Broadband Services Interconnect Links (BSILs)

- there is no one at the CP Site who knows what work is required or who is otherwise authorised to agree it;
- the CP asks KCOM's engineer to call back at an alternative time;
- KCOM's engineer is refused entry to the CP Site;
- there are no suitable or there are insufficient power sockets.

### 2.2. Restrictions

If the CP cancels an order, or significantly modifies it (e.g. changes in service location, delivery date, or service type) prior to the Proposed Start Date, KCOM reserves the right to claim reasonable costs incurred as a result of such cancellation or modification. In addition, KCOM will not be bound by the original timescales.

If Service installation cannot proceed due to a CP related issue e.g. no available power sockets, no wall space or access to the CP Site is refused, a missed appointment fee at KCOM's standard rate in force from time to time, may be raised.

## 3. SERVICE AVAILABILITY

### 3.1. KCOM's Obligations

KCOM will use reasonable endeavours to provide the Services 24 hours a day 365 days a year and to give the CP advance notice of any Planned Outages which will impact Service availability.

### 3.2. Restrictions

Service outages attributable to the completion of Planned Outages and previously notified to the CP shall not be deemed occurrences of unavailability or a Service Affecting Fault.

Service outages which are the result of CP Responsible Faults or Third Party Attributable Faults shall also not be deemed occurrences of unavailability or a Service Affecting Fault.

### 3.3. Planned Outages

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

Except in an Emergency or when circumstances are beyond KCOM's reasonable control the CP will receive at least 5 (five) Working Days' notice of any planned work which will affect the availability of the Services.



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### 4. INCIDENT MANAGEMENT

In the event that the CP becomes aware of any problem or a breakdown in the operation of the Services, any of KCOM's Equipment or the KCOM Network ("**Fault**"), the CP should notify KCOM by contacting the KCOM Wholesale Desk in accordance with the Incident Management Procedure.

#### 4.1. KCOM's Obligations

The Time to Resolve (TTR) obligation for Service Affecting Faults is 5 clock hours, measured 24 hours a day, 7 days a week, Public and Bank Holidays included.

Failure to meet the TTR obligation for Service Affecting Faults only may entitle the CP to claim compensation as detailed in Section 5. For Non-Service Affecting Faults, KCOM will ensure that there is an effective management of any such Faults.

### 5. SERVICE CREDITS

#### 5.1. Service Delivery

In the event that KCOM fails to meet the Proposed Start Date, and KCOM is unable to demonstrate the delay to be caused by a failure of the CP to fulfil any of its obligations or by a delay caused by a Third Party or by circumstances beyond its or KCOM's reasonable control or for any of the reasons set out in Section 2.1 of this Part 3, the CP shall have the right to claim compensation as detailed in Table 1.

**Table 1**

| <b>Number of days beyond the Proposed Start Date</b> | <b>% of Connection Charge</b> |
|--|-------------------------------|
| <b>1 to 10</b>                                       | 5% of Connection Charge       |
| <b>11 to 15</b>                                      | 10% of Connection Charge      |
| <b>16 to 20</b>                                      | 15% of Connection Charge      |
| <b>More than 20</b>                                  | 20% of Connection Charge      |

Please note for the avoidance of doubt these Service Credits are not cumulative.

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The maximum Service Credit that CP may claim under this Agreement in respect of an order where KCOM fails to achieve the Proposed Start Date is 20% of the Connection Charge for the affected Service.

### 5.2. Incident Management

In the event that KCOM fails to meet the TTR for Service Affecting Faults only, the CP has the right to claim compensation as detailed in Table 2 unless KCOM's failure to meet the TTR is due to a CP Responsible Fault, Third Party Attributable Fault, Planned Outage, a Fault caused by failure of the CP to fulfil any of the CP's obligations, or by a Fault caused by a Third Party or by circumstances beyond its or KCOM's reasonable control.

**Table 2**

| Hours past TTR                    | Categories 1 & 2                         |
|-----------------------------------|--|
| Up to 3 hours after 5 clock hours | 1% of annual Rental Charges <sup>1</sup> |
| 3 – 6 hours after 5 clock hours   | 3% of annual Rental Charges <sup>1</sup> |
| 6+ hours after 5 clock hours      | 5% of annual Rental Charges <sup>1</sup> |

<sup>1</sup> Refers to rental charges paid by the CP in the previous 12 months, up to a maximum aggregate amount equivalent to 3 months' Rental Charges in any 12 month period, commencing on the Service Start Date or any anniversary of that date.

### 5.3. Payment of Service Credits

All claims must be submitted to the relevant account manager within 30 Working Days (dependent on the type of claim), from either:

- the date the Service was delivered (late delivery)
- the date the Fault was notified to KCOM (incident management)

Credit notes will be issued which can be used to offset Charges on future bills. If at any time an account enters into credit, the CP may request payment by cheque to reduce the account balance to zero. When the balance on the account is in debit, a cheque cannot be requested.

## 6. DEFINITIONS

### CP Responsible Faults





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In the event that a Service Affecting Fault or Non-Service Affecting Fault is identified as being attributable to CP Equipment, CP power supplies, or the CP's actions or those of the CP's employees or agents the Fault shall be deemed the CP's responsibility and will not qualify for compensation. KCOM shall not be responsible for access unavailability arising due to the CP's network or any equipment not provided by KCOM or in accordance with KCOM's instructions and/or which is incorrect and/or otherwise incapable of correctly transmitting all or part of TCP/IP packets or other network application.

### **Fault Reference Number (FRN)**

The unique number issued when logging a Fault with KCOM.

### **Incident Management Procedure**

KCOM's Fault management procedure for the Services, as updated from time to time.

### **Non-Service Affecting Fault**

A Fault or condition which is not a Service Affecting Fault.

### **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 Fault or Service reliability measurements.

### **Service Affecting Fault (SAF)**

Any failure of KCOM's transmission or terminating equipment, which causes a material loss of signals in one or both transmission directions. For the avoidance of doubt the following shall not constitute Service Affecting Faults: excessive Internet latency (beyond KCOM's Network), destination outages, or inability to connect to one destination where others are connectable.

### **Time To Resolve (TTR)**

The length of time from the issue of the Fault Reference Number to the time that KCOM notifies the CP that the Fault has been resolved.

### **Third Party Attributable Faults**

In the event that a Service Affecting Fault or Non-Service Affecting Fault is identified as being attributable to a Third Party (i.e. neither KCOM nor the CP) downtime or Faults arising shall



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not qualify for Service Credits. KCOM will try to rectify such Third Party Attributable Faults as soon as reasonably practicable.

## Standard Terms and Conditions – Part 4

### 1. TERM

1.1 This Agreement shall come into effect on the Commencement Date and, subject to the provisions for earlier termination, shall continue until such time as the Initial Term of all orders for Services have expired and thereafter shall continue unless and until terminated by either party on no less than 30 days' written notice to the other.

### 2. PROVISION OF THE SERVICE

2.1 KCOM will provide the Services specified in Part 1 of this Agreement.

2.2 KCOM will use reasonable endeavours to provide the Services in accordance with the applicable Service Standards (and the Services are otherwise subject to Part 3 of this Agreement) and will use reasonable skill and care in the provision of the Services. However, the CP acknowledges that the Services cannot be provided fault free and KCOM does not warrant error free or uninterrupted use of the Services.

2.3 KCOM will use reasonable endeavours to provide the Services for use by the CP from the Proposed Start Date unless otherwise specifically agreed by the parties in writing or unless KCOM is unable to do so as the result of:

- (a) a failure by the CP to fulfil its obligations under this Agreement;
- (b) any delay caused by a nominated Third Party (including, without limitation, other Network Operators);
- (c) delays caused by planning permission and/or Ofcom approvals that may be required and/or
- (d) any technical issues that may arise during installation.

2.4 If, for any reason and prior to the Service Start Date, the CP requests KCOM to make any changes to the Services KCOM has agreed to supply to the CP, the CP accepts that the provision of such requested Services is subject to KCOM's agreement and such amendment to the Proposed Start Date, the Charges and/or this Agreement, as required by KCOM, in its sole discretion.

2.5 The CP acknowledges that the provision of the Services is subject to survey and KCOM shall notify the CP if it requires such a survey. The CP acknowledges that KCOM shall be entitled to amend the technical aspects of the Services and/or the relevant Charges, as appropriate, following completion of the survey. In the event that the survey reveals that the provision of the Services to the CP at the CP Site will be degraded to such an extent that KCOM would be unable to comply with this Agreement, KCOM will be entitled to terminate the Agreement (in whole or in part) without any liability to the CP. In the event of termination of this Agreement, for any reason, following completion of the survey but prior to the Proposed Start Date, the CP will refund to KCOM (at KCOM's request) any costs incurred, including, without limitation, staff costs, equipment costs and the cost of carrying out the survey.

- 2.6 The CP accepts that there may be some technical limitations within the Network which may not become apparent until after KCOM commences supplying the Services to the CP, or, prior to completion of any tests, as detailed in Clause 4.4, it may become apparent to KCOM that the Services will be degraded to such an extent that KCOM would be unable to comply with this Agreement. In such circumstances, KCOM will be entitled to terminate the Agreement (in whole or in part) without any liability to the CP.

### **3 CP OBLIGATIONS**

- 3.1 In order to enable KCOM to fulfil its obligations under this Agreement the CP will at its own cost:
- (a) procure all consents, licences and permissions necessary from landlords or other Third Parties (including (without limitation) consents, licenses and permissions to building alterations at the CP Site, any consents required under the Act) for the carrying out of preparation work, installation of Equipment and for the use and operation of the Equipment and Services at the CP Site for the duration of the Agreement. If the CP occupies and owns the CP Site(s) in which the CP is taking Services, by signing this Agreement the CP gives KCOM written permission pursuant to the Code to install and keep KCOM's Equipment on the CP Site(s);
  - (b) provide site and building plans (to include full details of all internal cabling runs) of the CP Site as requested by KCOM;
  - (c) provide KCOM with full details of all other services in the vicinity of the proposed works;
  - (d) provide any information that may be reasonably required by KCOM or its Third Party supplier. If the CP's requirements change for any reason, the CP will inform KCOM immediately;
  - (e) ensure that any unique or special conditions applicable to the CP Site that may affect the survey or the installation and maintenance of any KCOM Equipment are made known to KCOM in writing prior to KCOM commencing the survey;
  - (f) prepare the CP Site in accordance with any instructions notified in advance by KCOM and provide KCOM with such assistance as it may reasonably require for the purposes of carrying out the installation, connection and maintenance of any KCOM Equipment;
  - (g) ensure that any network testing termination point serving the CP Site to which the Equipment is to be connected is available for use upon request by KCOM and is not moved or modified without notification in writing to KCOM.
  - (h) provide KCOM or its nominated third party with access to the CP Site, during normal working hours, and such facilities as they may reasonably require in order to perform the survey, install any Equipment, provide the Services and otherwise perform its obligations under the Agreement;
  - (i) ensure a safe working environment for KCOM's employees and nominated Third Parties whilst at the CP Site; and

- (j) provide KCOM with information regarding any changes to the CP Site plans, regulations or any other conditions affecting the CP Site during the term of the Agreement, which may impact the provision of the Services to the CP or which may be reasonably requested by KCOM to enable the provision of the Services to the CP.
- 3.2 In the event that KCOM or the CP are not able to procure the necessary consents to provide the Services within three months from the Commencement Date KCOM will be able to terminate the Agreement without any liability. If the CP has not managed to procure the necessary consents and KCOM has commenced work the CP will refund to KCOM (on KCOM's request) the cost of all such work (including, without limitation, staff costs and equipment costs).
- 3.3 The CP will advise KCOM in writing of all health and safety at work rules and regulations of all dangerous objects and substances and any other reasonable security requirements applicable at the CP Site and KCOM will use its reasonable efforts to observe and ensure that its employees, network sub-contractors and authorised representatives observe, the CP's reasonable regulations, as advised to KCOM pursuant to this clause, whilst at the CP Site, provided that KCOM shall not be liable to the CP if, as a result of conforming with such regulations, KCOM is in breach of its obligations under this Agreement.
- 3.4 The CP will, at its own expense, provide any electricity and connection points KCOM may require in order to provide the Services.
- 3.5 The CP 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 KCOM or its nominated or approved Third Party or KCOM's network sub-contractor (as applicable).
- 3.6 The CP will at all times ensure that the KCOM Equipment is kept in a good and proper state of repair, is secure whilst on the CP Site and maintain the necessary environmental and other conditions for any KCOM Equipment as may be specified by KCOM from time to time.
- 3.7 The CP will, if so requested by KCOM, promptly provide such information as KCOM may reasonably require in order to fulfil its obligations under this Agreement.
- 3.8 The CP will be responsible for restoring the condition of the CP Site after any of KCOM's installation or de-installation work, including any redecorating that may be necessary.
- 3.9 KCOM will be entitled to modify and/or replace any KCOM Equipment or the Services from time to time if it considers such modification and/or replacement reasonably necessary for the continued provision of the Services.
- 3.10 KCOM will not be liable to the CP if KCOM is unable to carry out any or all of its obligations under the Agreement as a result of a breach by the CP of any of the provisions of this Agreement.
- 3.11 KCOM will usually carry out the Services during its normal working hours on Working Days but may agree, exceptionally, to carry out work outside its usual working hours on Working Days subject to the CP's agreement to pay an Additional Charge.

3.12 Further, KCOM may raise an Additional Charge if:

- (a) KCOM's approved engineer is called out because of Faults that are found upon examination not to be Faults with KCOM's Equipment (including without limitation, power supply fluctuations or faults on another network system or apparatus to which KCOM's Equipment is connected) or the Network; or
- (b) KCOM arranges an appointment for its approved engineer to attend the CP Site but the CP (i) fails to provide access to the CP Site, or (ii) cancels the appointment for any reason; or
- (c) if the CP reports the KCOM Equipment faulty and KCOM considers (acting reasonably) that it is not, or the Fault is not covered by KCOM's warranty with the relevant Third Party manufacturer.

## **4 KCOM EQUIPMENT**

- 4.1 Where KCOM is using KCOM Equipment to provide the Services, as soon as reasonably practicable after the Commencement Date (and in any event prior to the Service Start Date), KCOM will undertake any necessary surveys and installation (or procure the installation) of the KCOM Equipment at the CP Site.
- 4.2 If necessary to provide the Services KCOM will use reasonable endeavours to procure any consents, licences, or permissions necessary from the Highways Agency or equivalent body to enable cable to be laid.
- 4.3 Any duct, underground surface access chambers, cable or other materials developed or provided by KCOM for the Services shall remain the property of KCOM or its network sub-contractor (as applicable) for use exclusively for the Services. The CP shall not and shall not allow any Third Party (other than KCOM's duly authorised network sub-contractor) to interfere with or use the same.
- 4.4 Following installation of the KCOM Equipment and completion of the works, KCOM will carry out its standard test procedures to ensure that the Services are ready for operation by the CP. KCOM will supply the KCOM Equipment in accordance with all relevant legislative requirements and will comply at all times with the relevant standard.
- 4.5 Title to KCOM's Equipment will remain with KCOM at all times and nothing will operate to transfer ownership of or rights in KCOM's Equipment to the CP. The CP shall not remove or obscure any identification mark(s) affixed to the same. Any software contained in KCOM's Equipment provided by KCOM or its network sub-contractors or other Third Party providers (as applicable) and any other software or documentation provided by KCOM or its network sub-contractors or other Third Party providers (as applicable) in connection with the provision of the Services are and will remain KCOM's property or the property of KCOM's licensors. All Intellectual Property Rights in any such software or documentation and KCOM's Equipment shall remain vested in KCOM or its licensors (as applicable) and nothing shall operate to transfer or assign any Intellectual Property Rights in any such software or documentation or KCOM Equipment to the CP. KCOM hereby grants the CP a non-exclusive, non-

transferrable right to use such software and documentation for the purpose of accessing the Services only. The CP will not make any modifications to such software and documentation. If the CP modifies the software or documentation in any way KCOM will be entitled to terminate the Agreement with immediate effect. The CP will indemnify and keep KCOM indemnified against any and all costs (including, without limitation, any legal costs or disbursements on an indemnity basis), losses, damages or liabilities KCOM may incur due to the CP amending or in any way altering the software or documentation.

4.6 If the CP becomes aware of any breach of Third Party rights, pursuant to the supply of the Services, the possession or use of any equipment or products provided to the CP (including, without limitation, KCOM Equipment) as part of the Services or in any way connected to this Agreement, the CP agrees that it shall:

- (a) give KCOM notice of any such claim within 14 days of the date on which the CP is first given notice that the claim has been made;
- (b) allow KCOM or its licensors to have sole conduct of the defence or settlement of any such claim; and
- (c) provide KCOM with all reasonable assistance in conducting the defence or settlement of any such claim and shall make no prejudicial statement or admission of liability.

4.7 For the avoidance of doubt, KCOM shall have the right at its discretion to:

- (a) procure the right for the CP to continue using the items so that such use is no longer infringing;
- (b) modify the Services and/or infringing items so that they become non-infringing without a material diminution in their performance or specification so that the provision of the Services is not materially adversely affected and extend the provisions of this clause thereto; or
- (c) replace the infringing items with any reasonable equivalent non-infringing substitute, provided there is no material diminution in their performance or specification and the provision of the Services is not materially affected.

4.8 The CP agrees and undertakes and represents to KCOM that it will:

- (a) take all reasonable and proper care of all KCOM Equipment;
- (b) comply with all reasonable instructions communicated by KCOM to the CP for the safe and proper use of the KCOM Equipment and the Services from time to time;
- (c) not operate the KCOM Equipment after it has become defective, unsuitable, damaged or in a dangerous state.

4.9 Subject to such recall not significantly affecting the provision of the Services (except where this Agreement has already been terminated), KCOM may recall any or all of the KCOM Equipment upon 7

day's' notice. The CP will return to KCOM or make available for collection (as directed by KCOM) such KCOM Equipment.

- 4.10 Risk in KCOM Equipment will pass to the CP immediately on delivery.
- 4.11 The CP will allow KCOM's employees and nominated Third Parties access to KCOM Equipment at all reasonable times upon reasonable notice to inspect, test, adjust, maintain, modify, repair or replace the same. The CP will be responsible for providing safe, proper and adequate access for such purposes.
- 4.12 On termination of this Agreement if the CP fails to allow KCOM to collect the KCOM Equipment the CP will be liable to KCOM for:
- (a) a sum equivalent to the full replacement value of the KCOM Equipment; and
  - (b) the hire charges, as set by KCOM from time to time, for the unreturned unit of KCOM Equipment until the sum specified in Clause 4.12(a) has been received by KCOM.
- 4.13 The CP will be liable for any loss or damage to the KCOM Equipment (reasonable wear and tear excepted), subject to the provisions of Clause 11, except where such loss or damage is caused by KCOM or anyone acting on KCOM's behalf.
- 4.14 KCOM shall not be liable for any failure in the Service, including, without limitation, any obligations to meet any Service Standards, caused by any unauthorised use of the KCOM Equipment by the CP or by a Third Party on the CP's behalf.
- 4.15 KCOM will be entitled to:
- (a) modify and/or replace any KCOM Equipment or modify the Services from time to time if it considers such modification and/or replacement reasonably necessary for the continued provision of the Services; and
  - (b) suspend the Services for operational reasons and KCOM shall use its reasonable endeavours to minimise the period of interruption and mitigate the impact of the interruption on the provision of the Services. KCOM shall notify the CP in advance of any suspension; and
  - (c) suspend the Services in the case of an Emergency and, wherever possible, use its reasonable endeavours to minimise the period of interruption.

## **5 CP EQUIPMENT**

- 5.1 The CP will make any such modifications to the CP Equipment as KCOM may determine necessary in order to provide the Services, subject to the CP's obligations under the Act.
- 5.2 The CP will comply with the Act and only use CP Equipment which conforms to the standard in force from time to time as stipulated by the Act, any law or regulation, or as required by KCOM for connection of CP Equipment to the KCOM Network. KCOM may disconnect any CP Equipment which does not conform to such standard or approval or which, in KCOM's reasonable opinion, may cause death, personal injury or damage to property or impair the quality of the Services or any other services provided



by KCOM, including, without limitation, services to Third Parties. The CP will refund to KCOM any costs KCOM incurs as a consequence of such disconnection.

5.3 The CP will, if requested by KCOM, provide such information in respect of the CP Equipment as KCOM may reasonably require.

## **6 USE OF THE SERVICE**

6.1 CP shall use the Services in accordance with the provisions of this Agreement, or such reasonable operating guides and instructions as may be notified by KCOM to CP from time to time, and in accordance with all relevant provisions of all relevant Legislation. Without limitation to the foregoing, CP shall comply with the provisions of the Act and the General Conditions.

6.2 The CP shall not use the Service:

- (a) in any way that is unlawful or fraudulent or, to the CP's knowledge, has any unlawful or fraudulent purpose or effect, which shall include (without prejudice to the generality of the foregoing) the carrying out of a fraud or criminal offence against KCOM or any other Network Operator;
- (b) In any way that contravenes any licence or Third Party rights;
- (c) to knowingly or recklessly transmit any material which contains software viruses or any computer codes, files or programs designed to interrupt, damage, destroy or limit the functionality of any computer software, hardware or telecommunications equipment;
- (d) in any way which (in KCOM's reasonable opinion) brings KCOM's name into disrepute or in any way which intentionally causes damage or disruption to the Service or KCOM Network;
- (e) to send, knowingly receive, upload, download, use or re-use material which is abusive, indecent, offensive, defamatory, obscene or menacing, or in breach of copyright, confidence, privacy or any other rights or is intended to, cause annoyance, inconvenience or worry or needless anxiety or which is defamatory, an act of treason or intended to be a hoax call to any Emergency Organisation;
- (f) in a way that does not comply with any instructions KCOM gives pursuant to Clause 6.1;
- (g) in a way that, in KCOM's reasonable opinion, could materially affect the quality of, or be detrimental to, any communications services, including the Service;
- (h) to spam or send or provide unsolicited advertising or promotional material or knowingly receive responses to any spam, unsolicited advertising or promotional material sent or provided by any Third Party; or
- (i) for high traffic applications which (in KCOM's reasonable opinion) are an unsuitable use of the Service.

6.3 Both parties agree to co-operate fully with the Police and any other relevant authorities (including but not limited to Customs and Excise, the Inland Revenue, Trading Standards and/or Ofcom and any

successors from time to time) in connection with any misuse or suspected misuse of the Services and the CP consents to KCOM co-operating with any other Communications Provider in connection with any fraudulent or suspected fraudulent activity related to or connected with the Services and agree that KCOM will be entitled to divulge the name and address and account information relating to the CP to such Third Parties.

- 6.4 The CP shall make any such changes and modifications to any CP Equipment as KCOM may in its absolute discretion determine necessary in order to provide Services subject to any obligations the CP may be subject to pursuant to the relevant Legislation. The CP acknowledges that if the CP does not make any such changes and modifications then KCOM may not be able to route the Services to the CP Site.
- 6.5 The CP shall, if so requested by KCOM, provide such information in respect of any CP Equipment as KCOM may reasonably require for the purposes of providing the Services.
- 6.6 The CP will indemnify KCOM against any claims or legal proceedings, which are brought or threatened against KCOM because the Service is used by the CP in breach of this Clause 6.

## **7 CHANGES**

- 7.1 If KCOM changes the location of any KCOM Equipment at the CP Site at the CP's request, the CP shall pay to KCOM all applicable charges for any re-connections and associated work at KCOM's standard rates as in force from time to time.
- 7.2 KCOM may change this Agreement (and any orders pursuant to it) at any time by giving not less than the 28 calendar days' notice before the change takes effect in order to:
- (a) comply with any legal or regulatory obligation; or
  - (b) introduce or withdraw Service features (subject to any other notice requirements specified by any applicable regulation); or;
  - (c) maintain the integrity or security of the Service or KCOM Network; or
  - (d) introduce process changes
  - (e) change the service levels; or;
  - (f) improve clarity, or make corrections to typographical errors; and/or

provided that any changes in sub-clauses 7.2(b) to 7.2(f) inclusive shall not materially affect the Service.

- 7.3 Either KCOM or the CP may propose changes to this Agreement at any time. KCOM will publish details of any such proposed changes on the KCOM Website and notify the CP and other Communications Providers who in its reasonable opinion may be affected by the changes. If there are no objections to the proposed changes within the 56 calendar days of the service of KCOM's notice from KCOM, the CP or from any other Communications Provider who has an agreement for the Services, the parties agree that the changes shall take effect from the proposed effective date. If there are any objections to the

proposed changes within 56 calendar days of the service of KCOM's notice of the proposed changes under this Clause 7.3, KCOM shall enter into discussions with the CP and any other Communications Providers affected. If the parties (including the objector) cannot reach an agreement by the end of 56 calendar days of the service of KCOM's notice of the proposed changes, KCOM shall not introduce that change into this Agreement and either party may raise a dispute under Clause 17.

## **8 CHARGES**

8.1 For Services provided by KCOM the CP shall pay to KCOM the Charges specified in Part 1 of the Agreement.

8.2 KCOM may from time to time vary the Charges for the Services by providing notice to the CP. Such new Charges shall take effect:

- (a) not less than 28 days after KCOM provides notice for any new network access provided pursuant to this Agreement;
- (b) not less than 28 days after KCOM provides notice for price decreases in relation to existing network access provided pursuant to this Agreement;
- (c) not less than 28 days after KCOM provides notice relating to the end of a temporary reduction in accordance with the terms of any Special Offer;
- (d) not less than 56 days after KCOM provides notice in respect of any other existing network access provided pursuant to this Agreement

KCOM will send / provide such notice to the CP at the address specified in Part 1 of the Agreement or such other address as notified by the CP to KCOM from time to time.

8.3 Notwithstanding the aforesaid, KCOM may vary the Charge which has retrospective effect for the Services provided by KCOM immediately on notice if the variation is as a result of an order, direction, determination or requirement of Ofcom or any other regulatory authority or body of competent jurisdiction.

8.4 Access to all invoices will be via the KCOM online billing and reporting platform.

8.5 The CP agrees to pay the Charges by the Due Date. KCOM may charge daily interest on late payments not the subject of a bona fide dispute at the Interest Rate both before and after any judgement for the period beginning on the date on which payment is due and ending on the date payment is actually made.

8.6 All Charges exclude Value Added Tax (VAT) which is charged at the applicable rate and is payable by the CP.

8.7 KCOM shall invoice the CP as follows:

- (a) Connection Charges – at any time on or after the Service Start Date; and
- (b) Rental Charges – monthly in advance or as otherwise stated in Part 1 of this Agreement;

(c) any other Charges or sums due under this Agreement shall be payable on demand.

- 8.8 The CP agrees to pay Rental Charges in accordance with KCOM's billing cycle. If KCOM begins, or ceases, the Services on a day which is not the first or last day of the period by reference to which KCOM charges rental, KCOM will apportion rental on a daily basis for the incomplete period.
- 8.9 Payments will be pounds sterling. All Charges and any other sums due under this Agreement will be collected in full by direct debit within 30 calendar days of the date of the relevant invoice without any set-off, deduction or withholding of any kind.
- 8.10 The CP acknowledges that it will be subject to KCOM's Credit Vetting Policy. Should KCOM consider it necessary following the application of such procedures or should the CP fail to pay the Charges due under or in connection with this Agreement, KCOM may (without prejudice to any other rights and remedies available to KCOM), at any time, require the CP to pay a deposit or provide a guarantee as security for payment of future Charges. The CP agrees to pay such deposit or provide such guarantee within 28 calendar days of receiving notice from KCOM requiring it to do so, failing which KCOM reserves the right, without prejudice to any other rights and remedies available to it under this Agreement to refuse to accept any further orders under the Agreement and to suspend performance of such of its obligations under this Agreement as is reasonable in the circumstances until such deposit or guarantee is provided.
- 8.11 If the CP disputes any invoice, it will notify KCOM in writing within the invoice payment period of the relevant KCOM invoice giving its reasons. The CP is not entitled to withhold payment of any amount not in dispute. Clause 17 will apply to the resolution of a dispute of the type referred to in this Clause 8.11.
- 8.12 If a refund is due to the CP by KCOM, the CP may charge daily interest on late repayments at the Interest Rate for the period beginning on the date on which the parties acting reasonably agree KCOM shall make the repayment and ending on the date KCOM actually makes payment save that the CP shall not be entitled to charge interest on late repayments where such delay is attributable to an act or omission of CP. If any Charge is recalculated or adjusted with retrospective effect under an order, direction, determination or requirement of Ofcom, or any other regulatory authority or body of competent jurisdiction, the parties agree that interest will be payable at the Interest Rate on any amount due to either party as a result of that recalculation or adjustment.
- 8.13 KCOM may correct an invoice sent to the CP providing it notifies the CP within 12 months of the date of the invoice giving its reasons.
- 8.14 The CP may seek correction of an invoice providing it notifies KCOM within 12 months of the date of the invoice giving its reasons. The parties will negotiate in good faith to resolve the issue as soon as

reasonably practicable.

## **9 CONFIDENTIALITY**

- 9.1 Subject to the following provisions of this Clause 9, a Receiving Party shall keep in confidence Confidential Information and will not (and will use its reasonable endeavours to ensure that its directors, employees, and professional advisers will not) disclose such information to any Third Party.
- 9.2 A Receiving Party shall exercise no lesser degree of care of Confidential Information than would a reasonable person with knowledge of the confidential nature of the information. A Receiving Party shall exercise no lesser security or degree of care than that party applies to its own Confidential Information of an equivalent nature.
- 9.3 A Receiving Party shall restrict disclosure of Confidential Information relating to the other party to those persons who have a reasonable need to know or, in the case of CLI, to those employees to whom it is essential for permitted purposes. Confidential Information shall be used solely for the purposes for which it was disclosed.
- 9.4 A Receiving Party may disclose Confidential Information to an associated company, subject to the associated company undertaking to comply with obligations equivalent to these contained in this Clause 9.
- 9.5 A Receiving Party may disclose Confidential Information to a contractor or agent, subject to the contractor or agent undertaking in writing to comply with obligations equivalent to those contained in this Clause 9.
- 9.6 The following shall not constitute a breach of this Clause 9:
- (a) a disclosure authorised in writing by the Disclosing Party to the extent of that authority; or
  - (b) a disclosure to an Emergency Organisation; or
  - (c) publication of all or part of this Agreement or details of it except in so far as Ofcom has consented to the exclusion of any matter; or
  - (d) a disclosure which is properly made pursuant to a Condition or a relevant statutory or other regulatory obligation; or
  - (e) a disclosure properly and reasonably made to Ofcom, or to an arbitrator, expert or any person appointed by the parties for the resolution of a Dispute; or
  - (f) a disclosure to obtain or maintain any listing on or required by the rules of any recognised stock exchange
  - (g) subject to in the case of any disclosure specified in Clauses 9.6(d) to 9.6(f) the Receiving

Party informing the Disclosing Party as soon as reasonably practical, after such disclosure.

9.7 Unless otherwise agreed in writing, a Receiving Party shall not use the other party's Confidential Information to provide commercial advantage to its retail business.

## 10 FORCE MAJEURE

10.1 "**Event of Force Majeure**" means, in relation to either party, an event or circumstance beyond the reasonable control of that party (the "**Claiming Party**") including, without limitation strikes, lock outs and other industrial disputes (in each case, whether or not relating to the Claiming Party's workforce), acts of God, insurrection or civil disorder, war or military operations, national or local emergency, acts or omissions of government, highway authority or other competent authority (including, without limitation, issuance of applicable codes of conduct or regulatory orders, determinations or directions), compliance with any statutory obligation, fire, lightning, explosion, flood, subsidence, weather of exceptional severity, interruption or failure of utility service (including but not limited to electric power, gas and water but excluding telecommunication services save those provided by a Third Party) or acts or omissions of persons for whom neither party is responsible.

10.2 The Claiming Party shall not be deemed to be in breach of this Agreement or otherwise liable to the other party (the "**Non-claiming Party**") for any delay in performance or any non-performance of any obligations under this Agreement (and the time for performance shall be extended accordingly) if and to the extent that the delay or non-performance is due to an Event of Force Majeure.

10.3 The Claiming Party shall promptly notify the Non-claiming Party of the nature and extent of the circumstances giving rise to the Event of Force Majeure and of the estimated extent and duration of its inability to perform or delay in performing its obligations.

10.4 Upon cessation of the effects of the Event of Force Majeure the party initially affected by an Event of Force Majeure shall promptly notify the other of such cessation.

10.5 If as a result of an Event of Force Majeure, the performance by the party initially affected of its obligations under this Agreement is affected, such party shall, subject to the provisions of Clause 10.6, perform those of its obligations not affected by the Event of Force Majeure. In performing those of its obligations not affected by an Event of Force Majeure, the party initially affected by an Event of Force Majeure shall deploy its resources such that (when taken together with other obligations to its customers and Third Parties) there is no undue discrimination against the other party.

10.6 If the Event of Force Majeure in question prevails for a continuous period in excess of three months after the date on which it began, the Non-claiming Party may give notice to the Claiming Party terminating this Agreement. The notice to terminate must specify the termination date, which must be not less than 30 clear days after the date on which the notice to terminate is given. Once a notice to terminate has been validly given, this Agreement will terminate on the termination date set out in the notice. Neither

party shall have any liability to the other in respect of termination of this Agreement due to an Event of Force Majeure, but rights and liabilities which have accrued prior to termination shall subsist.

## **11 LIMITATIONS OF LIABILITY**

- 11.1 Subject to Clause 11.3 if a party is in breach of any of its obligations under this Agreement to the other party (excluding obligations arising under this Agreement to pay monies in the ordinary course of business), or otherwise (including liability for negligence or breach of statutory duty) such party's liability to the other shall be limited to one million pounds sterling (£1,000,000) for any one event or series of connected events and two million pounds sterling (£2,000,000) for all events (connected or unconnected) in any period of 12 calendar months.
- 11.2 Neither party excludes or restricts its liability for death or personal injury caused by its own negligence or liability arising under Part I of the Consumer Protection Act 1987 or any other liability which cannot be excluded or limited by law.
- 11.3 Neither party shall be liable to the other in contract, tort (including negligence or breach of statutory duty) or otherwise for loss (whether direct or indirect) of profits, business or anticipated savings, wasted expenditure or for any indirect special or other consequential loss and damage whatsoever arising in connection with the operation of this Agreement.
- 11.4 Each provision of this Clause 11 is a separate limitation applying and surviving even if one or more such provisions is inapplicable or held unreasonable in any circumstances.

## **12 INTELLECTUAL PROPERTY RIGHTS**

- 12.1 Except as expressly provided otherwise in this Agreement, Intellectual Property Rights shall remain the property of the party creating or owning the same and nothing in this Agreement shall be deemed to confer any assignment or licence of the Intellectual Property Rights of one party to the other party.

## **13 INDEMNITY AND UNDERTAKING**

- 13.1 KCOM's obligations under this Agreement shall be solely to the CPs and except if and to the extent caused by any act and/or omission caused by KCOM the CP agrees to fully indemnify, defend and hold harmless KCOM against any and all liabilities, claims and costs (including legal costs) arising from any and all claims by any Third Party or End User in connection with the Services.
- 13.2 The CP shall be liable to KCOM for any acts and omissions of Third Parties relating to the use of the Services.

## **14 CONDUCT OF INDEMNIFIED EVENTS**

- 14.1 The indemnified party must notify the indemnifying party of any related claims or legal proceedings and use reasonable endeavours to do so within 14 days of receipt and if it fails to do so, any additional cost reasonably incurred as a consequence of that failure may be deducted from the indemnified sum.
- 14.2 The indemnifying party may assume conduct of the claim providing it notifies the indemnified party of

such intention within 5 days of receipt of the notification in Clause 14.1. The indemnified party may re-assume conduct of the claim at any time if it reasonably believes a failure to do so would be prejudicial to its interests.

14.3 The party assuming conduct of the claim must:

- (a) actively consult with the other party regarding the conduct of any action and take their views into account; and
- (b) make no admissions relating to any claims or legal proceeding without the prior written consent of the other party which shall not be unreasonably withheld; and
- (c) not agree any settlement of such claims or legal proceedings nor make any payment on account of them without the prior written consent of the other party, which shall not be unreasonably withheld.

## 15 DATA PROTECTION

15.1 Where KCOM is processing data on CP's behalf, KCOM shall only process such data in accordance with the Data Protection Laws and KCOM's Data Processing Commitment.

## 16 ASSIGNMENT

16.1 Subject to Clauses 16.1 and 16.2, neither party may assign the whole or part of this Agreement without the other party's prior written consent, such consent not to be unreasonably withheld or delayed.

16.2 KCOM may assign this Agreement to any company which from time to time is a KCOM Group Company.

16.3 The CP may transfer its rights and obligations by way of novation to an eligible CP Group Company subject to credit vetting by KCOM and the signing of a novation agreement in such form as KCOM shall reasonably require.

16.4 The assigning party shall promptly give notice to the other party of any assignment permitted to be made without the other party's consent. No assignment shall be valid unless the assignee/successor agrees in writing to be bound by the provisions of this Agreement.

## 17 DISPUTES

17.1 Either party (the "**disputing party**") may invoke the dispute procedure specified in this Clause 17, and if it wishes so to do it shall send written notice of the Dispute to the other party's commercial contact (the "**receiving party**"). The notice shall contain all relevant details including the nature and extent of the Dispute. The receiving party shall acknowledge the receipt of such notice of the Dispute within two Working Days. In the absence of acknowledgement from the receiving party within such timeframe, the disputing party may notify the receiving party that the notice has been deemed received.

17.2 The name of each party's billing contact shall be as specified in Part 1 of this Agreement or such other contact as the CP may notify KCOM from time to time. For the purposes of this Clause 17 no change



to a billing contact shall be effective until it has been notified in writing to the other party.

- 17.3 Following notice under Clause 17.1, the parties shall consult in good faith to try to resolve the Dispute. If agreement is not reached within 14 Working Days from date of such written notice of Dispute, the Dispute will be escalated under Clause 17.3.
- 17.4 If the Dispute is not resolved under Clause 17.2, the parties shall send written notice to each other's respective commercial contact requiring the Dispute to be escalated and stating to whom each party has escalated the Dispute. The commercial contact receiving such a notice shall acknowledge the receipt of such notice in writing within four Working Days and state to whom the Dispute has been escalated.
- 17.5 Following notice under Clause 17.3, the parties shall work in good faith to try to resolve such Dispute, involving appropriate senior managers.
- 17.6 The above procedures are without prejudice to any other rights and remedies that may be available in respect of any breach of any provisions of this Agreement.
- 17.7 Nothing herein shall prevent a party from referring the Dispute to Ofcom in accordance with any right (if any) either party may have to request a determination or other appropriate steps for its resolution.

## **18 BREACH TERMINATION AND SUSPENSION**

- 18.1 In the event that the CP's entitlement to provide all or a material part of its Public Electronic Communications Network and/or Public Electronic Communications Services is suspended by Ofcom, KCOM may terminate this Agreement (or such part thereof as KCOM deems reasonable) immediately on notice to the CP. KCOM will resume provision of the Services provided pursuant to this Agreement as soon as possible following receipt of notice from the CP that Ofcom has lifted the suspension.
- 18.2 The CP may terminate the provisions of this Agreement:
- (a) on not less than one month's notice if KCOM materially changes the terms and conditions of this Agreement or increases the Charges, to the CP's detriment provided that such notice to terminate shall be served on KCOM no later than two months from the date the change comes into effect;
  - (b) on not less than three months' notice for any other reason.
- 18.3 KCOM may suspend the provision of the Services as shall be reasonable under the circumstances on notice in the case of Emergency. KCOM will provide as much notice as is reasonably practicable and will restore the Services as soon as possible after the Emergency has ceased.
- 18.4 If any order is terminated during its Initial Term, as a result of KCOM exercising its termination rights under this Agreement or as a result of the CP terminating the same other than pursuant to the CP's termination rights under Clause 18.2(a) then the CP must pay KCOM a termination payment ("Termination Payment"). The amount of this Termination Payment shall be the Rental Charges payable

for the remaining months of the Initial Term.

- 18.5 CP acknowledges that the Charges have been calculated on the basis that each Order will continue until the end of the Initial Term as KCOM may have spent money on set up costs and accordingly the CP agrees that it is reasonable for KCOM to require the payment of the Termination Payment as calculated in Clause 18.4.
- 18.6 KCOM may terminate the provisions of this Agreement:
- (a) on not less than one month's notice if the CP fails to pay a sum due under this Agreement on three or more occasions in separate payment months within a 24 month period provided notice has been given on the first two occasions pursuant to Clause 18.7;
  - (b) on not less than six months' notice for any other reason.
- 18.7 If a party is in material breach of (including failure to pay a sum due under) this Agreement, the other party may serve a written notice (the "**breach notice**") on the party in breach specifying the breach and requiring it to be remedied within:
- (a) 30 calendar days from the date of receipt of such breach notice; or
  - (b) in case of Emergency, within such shorter period as the party not in breach may reasonably specify.
- 18.8 If the party in breach fails to remedy the breach within such reasonable period as may be specified by the party not in breach pursuant to Clause 18.7 the party not in breach may, until such breach is remedied, suspend performance of such of its obligations under this Agreement as is reasonable in the circumstances.
- 18.9 If the party in breach fails to remedy the breach within the period stated in the breach notice the party not in breach may terminate this Agreement or, where the breach relates to a Service, the Service provided under this Agreement, on three months' written notice provided always that if the party in breach remedies the breach within such three months' notice period, this Agreement shall not terminate as a result of such notice.
- 18.10 If a valid breach notice is served on the CP and the CP has not remedied the breach after the expiry of the period specified for remedy in the breach notice then KCOM may immediately upon giving notice in writing at its sole discretion refuse to accept new orders except for the processing of orders which relate to cessation of Services, maintenance of existing Services, or for the monitoring of existing orders and suspend such other services or facilities available to the CP as shall be reasonable in the circumstances. The CP agrees to pay the charges for the Services until this Agreement is terminated.
- 18.11 This Agreement may be terminated by either party by written notice forthwith (or on the termination of such other period as such notice may specify) if the other party:
- (a) is unable to pay its debts within the meaning of section 123(1)(e) of the Insolvency Act 1986;

or

- (b) has a receiver or administrative receiver appointed in relation to all or any of its assets; or
- (c) has an order made or a resolution passed for its winding up (other than for the purpose of amalgamation or reconstruction); or
- (d) has an administration order made in respect of its business; or
- (e) enters into a voluntary arrangement under section 1 of the Insolvency Act 1986; or
- (f) ceases to carry on business.

18.12 If the CP terminates any order for the Services during its Initial Term, other than because KCOM has materially breached this Agreement or increased its Charges or has materially changed the conditions of this Agreement to the CP's detriment or because the Agreement is terminated under an Event of Force Majeure, the CP must pay KCOM the Rental Charges and other charges for the remainder of any Initial Term at the rate in force at termination. In this situation the provisions detailed in Clause 18.4 apply.

18.13 Upon termination or expiry of this Agreement each party shall take such steps and provide such facilities as are necessary for recovery by the other party of Equipment (if any) supplied by that other party. Each party shall use reasonable endeavours to recover Equipment made available by it.

18.14 If 90 calendar days after the termination or expiry of this Agreement, a party fails to recover Equipment in good condition (fair wear and tear excepted) because of the acts or omissions of the other party (or a Third Party appearing to have control of a CP Site where such Equipment is situated) the first party may demand reasonable compensation from the other party which shall be paid by the other party within 10 calendar days of the date of the demand.

18.15 Termination or expiry of this Agreement shall not be deemed a waiver of a breach of any term or condition of this Agreement and shall be without prejudice to a party's rights, liabilities or obligations that have accrued prior to such termination or expiry.

18.16 Notwithstanding the termination or expiry of this Agreement Clauses 9, 11, 12, 13, 14, 16, and 18 shall continue in full force and effect.

18.17 Each of the parties' right to terminate or suspend performance of this Agreement pursuant to this Clause 18 is without prejudice to any other rights or remedies available to either party.

## **19 NOTICES**

19.1 Any notice given or made under this Agreement shall be in writing and shall be delivered by hand or sent by first class post, including recorded delivery, (air mail if posted to or from a place outside the United Kingdom). Any notice addressed to the CP shall be sent to the CP's registered office as set out

in Part 2 of this Agreement. Any notice addressed to KCOM shall be addressed to the Company Secretary at KCOM Group Limited, Brandy Carr Road, Wrenthorpe, Wakefield, WF2 0UG and copied by email to [wholesalepartners@kcom.com](mailto:wholesalepartners@kcom.com) and shall be deemed to have been duly given or made as follows:

- (a) if delivered by hand, upon delivery at the address of the relevant party;
- (b) if sent by first class post, two Working Days after the date of posting; and
- (c) if sent by air mail, ten Working Days after the date of posting.

provided that if, in accordance with the above provision, any such notice, demand or other communication would otherwise be deemed to be given or made outside of the hours specified in a Working Day, such notice, demand or other communication shall be deemed to be given or made at the start of the hours specified in the next Working Day.

19.2 A party may notify the other party to this Agreement of a change to its name, relevant addressee or address for the purposes of Clause 19.1 provided that such notification shall only be effective on:

- (a) the date specified in the notification as the date on which the change is to take place;
- (b) if no date is specified or the date specified is less than five Working Days after the date on which notice is given, the date falling five Working Days after notice of any such change has been given.

## **20 ENTIRE AGREEMENT**

20.1 This Agreement contains the whole agreement between the parties and supersedes all previous understandings, commitments, agreements or representations whatsoever, whether oral or written, other than any fraudulent misrepresentation, in relation to the subject matter of this Agreement.

## **21 VARIATIONS**

21.1 Except as expressly provided in this Agreement, (a) no variation or waiver of any term, provision or condition of, or consent granted under, this Agreement shall be effective and (b) no breach of any provision of this Agreement shall be waived or discharged unless agreed in writing by the parties and signed by a person nominated in writing on behalf of:

- (a) KCOM, by a director or the company secretary of KCOM; and
- (b) the CP, by a director or the company secretary (or equivalent office holder or other person nominated in writing by the CP) of the CP.

## **22 WAIVER**

22.1 No failure or delay on the part of any party in exercising any right, power or privilege under this Agreement shall operate as a waiver thereof, nor shall any single or partial exercise of any such right, power or privilege preclude any other or further exercise thereof or the exercise of any other right, power

or privilege. Any effective waiver shall be effective only in the instance and for the purpose for which it is given.

22.2 The rights and remedies herein provided are cumulative with and not exclusive of any rights or remedies provided by law.

## **23 THE CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999**

23.1 The Contracts (Rights of Third Parties) Act 1999 shall not apply to this Agreement and no person other than a party shall have rights under it nor shall it be enforceable by any person other than the party.

## **24 INDEPENDENT CONTRACTORS AND AGENCY**

24.1 Each of the parties is and shall remain at all times an independent contractor fully responsible for its own acts or defaults (including those of its employees or agents). Neither party is authorised and neither of the parties nor their employees, agents or representatives shall at any time attempt to act or act on behalf of the other party to bind the other party in any manner whatsoever to any obligations. Neither party nor its employees, agents or representatives shall engage in any acts which may lead any person to believe that such party is an employee, agent or representative of the other party. Nothing in this Agreement and no action taken by the parties pursuant to this Agreement shall constitute, or be deemed to constitute, between the parties a partnership, agency, association, joint venture or other co-operative entity.

24.2 If either party appoints an agent for the purposes of this Agreement, and notifies the other party, then the other party shall deal with the appointed agent for such purposes until the first party notifies the other party that the appointment has been terminated.

## **25 SEVERABILITY**

25.1 The invalidity or unenforceability of any provision of this Agreement shall not affect the validity or enforceability of the remaining provisions of this Agreement.

## **26 COUNTERPARTS**

26.1 This Agreement shall be executed in two counterparts which together shall constitute one agreement and this Agreement shall not take effect until it has been executed by both parties.

## **27 COSTS**

27.1 Save as expressly otherwise provided in this Agreement each of the parties shall bear its own legal, accountancy and other costs, charges and expenses connected with the negotiation, preparation and implementation of this Agreement and any other agreement incidental to or referred to in this Agreement.

## 28 GOVERNING LAW

- 28.1 This Agreement (and any dispute, controversy, proceedings or claim of whatever nature arising out of or in any way relating to this Agreement or its formation) shall be governed by and construed in accordance with English law.
- 28.2 Each of the parties to this Agreement irrevocably agrees that the courts of England shall have exclusive jurisdiction to hear and decide any suit, action or proceedings, and/or to settle any disputes, which may arise out of or in connection with this Agreement and, for these purposes, each party irrevocably submits to the jurisdiction of the courts of England.

## 29 DEFINITIONS

- 29.1 In this Agreement the following terms shall have the following meanings:

“**Act**” the Communications Act 2003 (each as amended from time to time);

“**Additional Charge(s)**” the additional fees which may be charged at KCOM’s standard rates, in force from time to time, as detailed in this Agreement;

“**Agreement**” these terms and conditions and all other parts of this document;

“**Billing Manual**” means the document published at <https://www.kcomgrouppltd.com/media/1313/billing-manual.pdf> ;

“**BSIL or 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;

“**Charges**” all Connection Charges, Rental Charges or any Additional Charges payable by the CP for the provision of the Services, payable by the CP as detailed in Part 1 or these terms and conditions of this Agreement or otherwise;

“**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" dated 30 July 2018 as the same may be amended or replaced from time to time (the "**CLI Guidelines**");

“**the Code**” Schedule 2 of the Telecommunications Act 1984 as amended by Schedule 3 of the Communications Act 2003 (as amended from time to time);

“**Commencement Date**” the date of signature of this Agreement;

“**Communications Provider**” means a person who provides an Electronic Communications Network or an Electronic Communications Service;

“**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 Part 1 for the installation and connection of the Services;

**“CP”** means the communication provider to whom the Services are provided as detailed in Part 1 of this Agreement;

**“CP Equipment”** any equipment at the CP Site owned by the CP or a Third Party which when operated in conjunction with KCOM Equipment, allows the CP to obtain and/or receive the Services;

**“CP Site”** the Site(s) where the Services are to be provided, as more fully described in Part 1;

**“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.kcomgrouppltd.com/regulatory/>;

**“Data Processing Commitment”** means the Data Processing Commitment contained in this Agreement at Part 5;

**“Data Protection Laws”** means all applicable laws and regulations relating to the processing of Personal Data and privacy including the Data Protection Act 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;

**"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 services supplied by KCOM to the CP pursuant to the terms of KCOM's Reference Offer for Wholesale FibreLine Access Services;

**"End User Access"** means the WFL End User Access (EUA) 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 Site"** means the End User's premises;

**"Equipment"** KCOM Equipment and CP Equipment;

**"Extension Path"** means a connection between the at the WFL Site between services provided pursuant to KCOM's Reference Offer for Wholesale FibreLine Access Services 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;

“**Initial Term**” a period of 12 months commencing on the Service Start Date of the relevant order for Services;

“**Intellectual Property Rights**” patents, utility models, rights to inventions, copyright and neighbouring and related rights, moral rights, trade marks and service marks, business names and domain names, rights in get-up and trade dress, goodwill and the right to sue for passing off or unfair competition, rights in designs, rights in computer software, database rights, rights to use, and protect the confidentiality of, confidential information (including, without limitation, know-how and trade secrets) and all other intellectual property rights, in each case whether registered or unregistered and including, without limitation, all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world;

“**Interest Rate**” shall have the meaning set out in section 3.2.6 of the Billing Manual as published on the KCOM Website;

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

“**KCOM Equipment**” the BSIL and any equipment located at the CP Site which is supplied by KCOM or a third party as part of the Services;

“**KCOM Exchange**” means a KCOM exchange which End User Sites connect into pursuant to the terms of KCOM's Reference Offer for Wholesale FibreLine Access Services;

“**KCOM Network**” the telecommunications infrastructure and system operated by KCOM;

“**KCOM Website**” the KCOM website at [www.kcomgrouppltd.com](http://www.kcomgrouppltd.com) or any other website that replaces it;

“**KCOM Wholesale Desk**” the centre to which help queries should be addressed, the contact details of which are available from your account manager;

“**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 or replaced from time to time;

“**Network**” the telecommunications infrastructure and system operated by KCOM and/or the network of any Network Operator, as applicable;

“**Network Operator(s)**” any public telecommunications operator whose network is used by KCOM to deliver the Services;

“**Network Terminating Equipment (NTE)**” means Network terminating equipment at the CP Site, supplied by KCOM pursuant to the terms of KCOM’s Reference Offer for Wholesale FibreLine Access Services, excluding any ethernet cable;

“**Ofcom**” the Office of Communications or successors from time to time;

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

“**Proposed Start Date**” the date specified in Part 1 or as amended on which the Services are 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 Part 1, the Annual Rental Charge being a sum equal to 12 x the Rental Charge;

“**Service(s)**” means the BSIL;

“**Service Credits**” any service credits set out in Part 3;

“**Service Standards**” the standards to which various elements of the Services will be provided as set out in Part 3;

“**Service Start Date**” the Proposed Start Date or if different the earliest of the dates upon which the CP is notified the Services are available for use or the date the CP begins using the Services;

“**Site**” the CP Site(s) where the Services are to be provided, as more fully described in Part 1;

“**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;

“**Termination Payment**” has the meaning given to it in Clause 18.4;

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

“**VAT**” means United Kingdom Value Added Tax;



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

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