

DATED

Reference Offer

for the provision of KCOM Physical Infrastructure Access

between

KCOM GROUP LIMITED

and

[]

THIS AGREEMENT is made on

between

- (1) **KCOM Group Limited**, registered in England and Wales (Company Number 02150618) whose registered office is at 37 Carr Lane, Kingston-upon-Hull, HU1 3RE ("**KCOM**").
- (2) [REDACTED], registered in England and Wales (Company No. [REDACTED]) whose registered office is at [REDACTED] ("**CP**")

BACKGROUND

- (A) The parties are providers of Public Electronic Communications Services and Public Electronic Communications Networks in the United Kingdom.
- (B) KCOM has agreed to supply the Services to the CP in the Hull Area, on the terms and conditions of this agreement.
- (C) The terms used in these Recitals shall have those meanings given to them in clause 1 below and Schedule 1.

In consideration of the mutual obligations set forth herein, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

Agreed terms

1. Interpretation

- 1.1 The definitions and rules of interpretation in this clause 1 apply in this Agreement.
- 1.2 The words and expressions set out in Schedule 1 shall have the meaning given to them in that Schedule.
- 1.3 In this Agreement unless otherwise specified, reference to:
 - (a) 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);
 - (b) the terms "party" or "the parties" shall mean KCOM and/or the CP and includes their permitted assignees and/or successors in title;
 - (c) a person includes any person, individual, company, firm, corporation, government, state or agency of a state or any undertaking (whether or not having separate legal personality and irrespective of the jurisdiction in or under the law of which it was incorporated or exists).
 - (d) references to Recitals, Clauses, Paragraphs, Schedules, or Appendices are references to Recitals, Clauses and Paragraphs of, Schedules and Appendices to

this Agreement;

- (e) writing shall include typewriting, printing, lithography, photography and other modes of representing words in a legible form (for clarity this includes e-mail and excludes faxes), and expressions referring to **writing** or **written** are construed accordingly;
- (f) words denoting the singular shall include the plural and vice versa and words denoting any gender shall include all genders; and
- (g) to any provision of a statute or statutory provision shall include all subordinate legislation made from time to time under that statute or statutory provision and shall be deemed to include any subsequent re-enactment or amending provision.

1.4 The headings in this Agreement are for convenience only and shall not affect its interpretation or construction.

1.5 If there is a conflict between these terms and conditions ("Conditions"), the Schedules, the Price List, the Request and/or the Ancillary Documents, the order of precedence shall be as follows:

- (a) the Conditions and Schedule 1
- (b) the other Schedules
- (c) the relevant sections of the Price List
- (d) the Request
- (e) the Ancillary Documents.

1.6 Any words following the terms **including**, **include**, **in particular**, **for example** or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.

2. Commencement and Termination

2.1 This Agreement begins on the date that it is signed by duly authorised representatives of both parties ("Commencement Date") and shall continue, unless terminated in accordance with this Agreement.

2.2 Either party may terminate this Agreement or the Service provided under it immediately, on notice, if the other:

- (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; or
 - (g) commits a material breach of this Agreement which cannot be remedied.
- 2.3 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) thirty (30) calendar days from the date receipt of such breach notice; or
 - (b) in case of Emergency, within such shorter period as the party not in breach may reasonably specify .
- 2.4 If the party in breach fails to remedy the breach within thirty (30) calendar days pursuant to clause 2.3(a), or such reasonable period as may be specified by the party not in breach pursuant to clause 2.3(b), the party not in breach may, until such breach is remedied, suspend performance of such of its obligations (except for payment obligations) under this Agreement as is reasonable in the circumstances.
- 2.5 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 on three (3) months' written notice provided always that if the party in breach remedies the breach within such three (3) months' notice period, this Agreement shall not terminate as a result of such notice.
- 2.6 KCOM may terminate this Agreement:
- (a) on not less than one (1) month's notice if the CP fails to pay a sum due under this Agreement on three (3) or more occasions in separate payment months within a twenty four (24) month period provided notice has been given on the first two (2) occasions pursuant to clause 2.3;
 - (b) immediately upon notice if the CP is prohibited from providing telecommunications service(s) by Ofcom and/or ceases to be a communications provider as defined by section 405(1) of the Communications Act 2003, such termination to be in accordance with the timescales set out in Ofcom's direction. KCOM may immediately reject Requests for Service under such circumstances;
 - (c) on not less than one (1) month's notice if KCOM does not receive a Request from the CP within twelve (12) months of the Commencement Date;
 - (d) on notice, and in accordance with the timescales set out in Ofcom's direction (if any), if KCOM is directed by Ofcom to cease the Physical Infrastructure Access Service or the provision of Physical Infrastructure Access, KCOM may immediately reject Requests for Service under such circumstances;
 - (e) if regulation changes in the future such that certain Services are no longer

regulated by Ofcom, then KCOM may cancel the Services on not less than twelve (12) months' notice.

- (f) on not less than twelve (12) months' notice for any other reason provided that: i) such notice shall not expire before the end date of the latest Minimum Licence Period as at the date of the notice; and ii) KCOM is not obliged by Ofcom to provide Physical Infrastructure Access.

2.7 Individual Licences may be terminated under the provisions of Schedule 6.

2.8 The CP may terminate this Agreement on:

- (a) not less than twelve (12) months' notice for any reason; or
- (b) not less than one (1) month's notice if KCOM changes the terms and conditions of this Agreement to the CP's material detriment, or increases the charges, provided that such notice to terminate shall be served on KCOM no later than two (2) months from the date the change comes into effect.

2.9 If the CP terminates this Agreement during a Minimum Licence Period other than because KCOM has materially breached this Agreement, the CP must pay KCOM the Termination Charges as set out in the Price List.

2.10 If a valid breach notice is served on the CP by KCOM and the CP has not remedied the breach after the expiry of the period specified for remedy in the breach notice, then KCOM immediately upon given notice in writing at its sole discretion refuse to accept new Requests except for the processing of Requests which relate to cessation of Services or for the monitoring of existing Requests 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. If the CP remedies the material breach KCOM will accept new Requests.

2.11 The CP agrees to pay the Charges for the Services. KCOM agrees to repay or credit the CP with the appropriate proportion of any annual or recurring charges paid in advance for the period ending after the CP's liability to pay such charges ceases.

2.12 If the CP is suspended from providing telecommunications service(s) by Ofcom and/or 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 Service is suspended by Ofcom, KCOM may suspend its provision of the Services in accordance with such Ofcom suspension and may, at its sole discretion refuse to accept any Requests for the Services on notice to the CP. KCOM will restore provision of Service as soon as reasonably practicable if Ofcom ceases such suspension.

2.13 KCOM may suspend the provision of the Services without liability to the CP 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 Service as soon as possible after the Emergency has ceased.

2.14 Termination, expiry or suspension 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. If either party delays in acting upon a breach of this Agreement that delay will not be regarded as a waiver of that breach. If either party waives a breach of this Agreement that waiver is limited to that particular breach.

- 2.15 Each of the parties' rights to terminate or suspend performance is without prejudice to any other rights or remedies available to either party.
- 2.16 If this Agreement is terminated for any reason the CP shall remove CP Apparatus from the Physical Infrastructure and/or KCOM's Network as set out in Schedule 6. For the avoidance of doubt, the Licence Fees shall be payable until such time as the CP Apparatus has been removed from the Physical Infrastructure and/or KCOM's Network as set out in Schedule 6.
- 2.17 Without prejudice to KCOM's rights under clause 2.10 above if the CP is subject to three or more breach notices from KCOM in a rolling twelve (12) months period then KCOM reserves the right to suspend the CP's ability to place new Requests (including requests for Network Adjustments) until such time as the CP remedies the breaches to KCOM's reasonable satisfaction and provides written undertakings to KCOM, in a form which are reasonably acceptable to KCOM in respect of their future compliance with the terms of the Agreement.

3. CP Contact Details

- 3.1 The Operations Manual shall contain current and up-to-date details of the points of contact within the CP's and KCOM's organisations for security, service, health and safety and quality of work. The parties shall keep such information up to date during this Agreement.
- 3.2 The Operations Manual shall also include details of the emergency safety arrangements that the CP has in place as set out at clause 14.4 below.

4. Scope

- 4.1 KCOM shall provide and the CP shall use the Service in accordance with the terms and conditions of this Agreement.
- 4.2 The CP acknowledges and agrees that the Services can only be provided to Physical Infrastructure located within the Hull Area.
- 4.3 The CP represents and warrants that it will use the Service solely for the Permitted Use. The CP may not use the Service for advertising and marketing purposes and the size and scope of any label that the CP attaches to the Physical Infrastructure must be no more than is reasonably necessary to meet the Traceability Requirements.

5. Service Management

- 5.1 KCOM may:
 - (a) KCOM may give the CP instructions which it reasonably believes are necessary for reasons of health or safety of the Service and it is the CP's responsibility to ensure

these are adhered to; or

- (b) interrupt the Services for operational reasons (such as planned maintenance) or because of an Emergency. KCOM agrees to restore the interrupted Services as quickly as possible. KCOM will give the CP reasonable notice (where possible not less than five (5) Working Days) of any interruption to the Services for planned maintenance and upgrade work. If there has been an interruption to the Services for Emergency reasons, KCOM will inform the CP that there has been an interruption as soon as reasonably practicable. KCOM will use reasonable endeavours to restore the Services as soon as possible after the Emergency has ceased.

6. Software

- 6.1 KCOM does not guarantee that the KCOM Software, or any content on it, provided by KCOM to the CP for use with the Service will always be available or will be uninterrupted.
- 6.2 Without prejudice to the above, KCOM shall use commercially reasonable endeavours to notify the CP in advance of any planned maintenance or outages to the KCOM Software.

7. Provision of information

- 7.1 KCOM shall provide access to KCOM Software to enable the CP to access information for the sole purpose of enabling the CP to produce Network Plans in accordance with the provisions of Schedule 4. Any information accessed on the KCOM Software by the CP shall be deemed KCOM's Confidential Information.
- 7.2 On termination of this Agreement, each party shall destroy any copies of the other party's Confidential Information in their possession and provided under this Agreement save to the extent it is and remains necessary to comply with any legal or regulatory requirement or in respect of any terms which survive the termination of this Agreement and shall certify to the other party that this has been done.
- 7.3 Notwithstanding any provision of this Agreement, neither party shall be obliged to provide Information which is subject to a confidentiality obligation to a third party unless such third-party consents to such disclosure.
- 7.4 Each party will use reasonable endeavours to ensure that Information disclosed is correct to the best of its knowledge at the time of provision of the information but cannot warrant that the Information is free from errors or omissions. The CP shall inform KCOM in writing of any mistakes in the KCOM Information that the CP becomes aware of within a reasonable time of receiving it.
- 7.5 Nothing in this Agreement shall require either party to do anything in breach of any statutory or regulatory obligation of confidentiality.

8. Audits and record-keeping

- 8.1 KCOM reserves the right, acting reasonably, to audit and review the CP's use of the Service including any use of the Physical Infrastructure. The CP shall provide such

assistance and information as KCOM may reasonably require to enable KCOM to fully and properly monitor and check the CP's compliance with the terms of this Agreement. The CP shall comply with the process for any audit as set out in the Operations Manual and KCOM will take steps to ensure that any audit does not unreasonably interfere with the CP's network build provided that the build is done in accordance with the terms of this Agreement. For the avoidance of doubt, this clause 8.1 does not affect the ability of KCOM to carry out 'In Progress Unplanned' or 'Retrospective Quality' audits as set out in the Operations Manual at the frequencies set out therein.

8.2 The CP shall have and maintain full and accurate records of any and all use of the Physical Infrastructure including full details of;

- (a) the location of any CP Apparatus in the Physical Infrastructure (with O/S coordinates);
- (b) Physical Infrastructure being used by the CP including whether spine, chamber, lead-in or Pole;
- (c) the CP Apparatus at each location;
- (d) Photographic Evidence of any installation or repair work the CP or CP Personnel has done on or in the Physical Infrastructure;
- (e) the date CP Apparatus was installed at the location and if relevant removed;
- (f) the diameter of any cables installed by the CP; and
- (g) any work the CP or any CP Personnel have done on or in the Physical Infrastructure including details of CP Personnel who did the work together with location, dates and times.

8.3 The CP shall keep and maintain the records referred to in clause 8.2 for the period of this Agreement and for three years thereafter (two years thereafter in the case of 8.2(g)) and shall provide to KCOM on reasonable request a current copy of those records, including but not limited to after each Build Completion.

9. Forecasts

9.1 The CP shall provide Forecasts to KCOM in accordance with the provisions of Schedule 7.

9.2 The CP shall not be required to provide a Forecast where the CP in good faith and acting reasonably notifies KCOM in writing on or before the Forecast Date that it does not intend to use in each calendar month in that Fixed Forecast Period:

- (a) more than twenty-five (25) kilometres of Spine Duct; and
- (b) any Pole

("Minimum Forecast Threshold Notice").

10. Use of the Service

10.1 The CP and any CP Personnel must when using the Service and in respect of any survey, plan and build activity comply with the terms of this Agreement and in particular Schedule 2 (Accreditation), Schedule 4 (Survey, Plan and Build) and Schedule 6 (Licence). The CP

must when using the Physical Infrastructure comply with Good Industry Practice, the Contractor Code of Practice and the Operations Manual and any specifications for use of the Service all as may be made available to the CP and/or published on the KCOM Website from time to time.

- 10.2 The CP shall attend review meetings convened by KCOM upon reasonable notice at reasonable intervals. During the review meetings KCOM shall review the CP's performance under the Agreement and raise any issues. KCOM may in its absolute discretion give a remediation notice to the CP ("**Remediation Notice**") which shall detail any changes and/or improvements and a date for achieving improvements KCOM deem are reasonably necessary to comply with the terms of the Agreement and/or the Operations Manual.
- 10.3 Without prejudice to any other remedies available to KCOM under this Agreement, If the CP fails to implement the changes and/or improvements by the date set out in the Remediation Notice, KCOM may escalate under the dispute resolution clause set out in clause 27.

11. Personnel provisions

- 11.1 In relation to CP Personnel who are assigned by the CP to carry out activities on or in the KCOM Network pursuant to this Agreement, the CP shall ensure that:
- (a) the CP Personnel are accredited, trained and qualified to perform work in accordance with this Agreement including accreditation requirements under Schedule 2;
 - (b) if KCOM reasonably determines that the continued assignment of any CP Personnel is not in accordance with the requirements of this Agreement, it immediately removes any member(s) of the CP Personnel from any Site or any Facility, provided that KCOM has first given written notice to the CP requesting the removal or replacement of the identified member(s) of the CP Personnel.
- 11.2 The CP shall ensure that CP Personnel comply with all relevant laws and regulations, the Operations Manual, KCOM Security Policy, Accreditation Guidelines and any relevant safety or security requirements notified to the CP from time to time which KCOM may reasonably require when they attend Sites or Facilities.
- 11.3 The CP shall (and shall ensure that the CP Personnel shall) access only those parts of the Physical Infrastructure which are strictly necessary for the purposes of doing work in accordance with this Agreement. Subject to clause 14.5, the CP shall not access those parts of the KCOM Network which are shown as being Sensitive Areas.
- 11.4 KCOM reserves the right at any time to refuse entry and re-admission to, any Site or Facility, any person who in KCOM's reasonable opinion is unsuitable to be engaged in, or continue to be engaged in, carrying out work in accordance with this Agreement.
- 11.5 KCOM reserves the right on reasonable grounds to challenge the CP Personnel whereby they may be compelled to explain what they are doing in a particular Site or Facility if a KCOM employee is unsure whether they are entitled to be there.
- 11.6 The CP shall not, nor allow any CP Personnel to, use or remove from the Site or Facility any KCOM owned equipment, facilities and materials, without specific written notification and permission from KCOM.

- 11.7 Each party shall provide to the other full co-operation to investigate any breaches and suspected breaches of security in relation to this Agreement.
- 11.8 KCOM shall not be responsible for safeguarding any property (including money) brought onto the Site or Facility by the CP, CP Personnel or their representatives.
- 11.9 The CP shall issue to all CP Personnel who are engaged to carry out work on or in the Physical Infrastructure in accordance with this Agreement, including foremen and agents, a personal identification card which contains the photo, name, contractor and CP details. CP Personnel must have and be prepared to show to KCOM on request, such personal identification card at any time where they are working on or in the Physical Infrastructure.
- 11.10 KCOM reserves the right to audit compliance with the provisions of clauses 11.2 to 11.9 (inclusive) at any time throughout the duration of this Agreement. In exercising and without prejudice to this right KCOM shall not unduly interfere with the CP's work programme provided it is done in accordance with the terms of this Agreement.
- 11.11 The CP shall be liable for any act or omission by CP Personnel in relation to any activities on or in the KCOM Network in breach of this Agreement and as a consequence causes harm or losses to KCOM.
- 11.12 The CP shall comply with the Whereabouts Requirements and provide the notice and information as set out in the Operations Manual. The CP must subject to clause 11.13 notify and provide the information to KCOM as set out in the Whereabouts Requirements before doing any work on or in the Physical Infrastructure and may only do work on or in the Physical Infrastructure where it has a valid and complete Request for the location which has been received and acknowledged by KCOM.
- 11.13 In the case of urgent repairs on CP Apparatus at a Facility the CP must notify KCOM as soon as reasonably practicable.
- 11.14 The notice referred to at clauses 11.12 and 11.13 above is subject to the Whereabouts Requirements.

12. Access and Site Regulations

- 12.1 The CP shall be deemed to have examined any Site or Facility and KCOM shall not be liable for any claim from the CP in relation to its misinterpretation of any Site-related or Facility-related matter, or any other matter in respect of which the CP could reasonably have satisfied itself by a visit, reference to KCOM or otherwise. KCOM will provide such information reasonably required by the CP in relation to the Site or Facility. KCOM warrants that where it has the necessary easements, wayleaves, agreements, statutory entitlements, or other freedoms of access for the provision of the Service to the Physical Infrastructure and/or Sites or Facilities in respect of any Physical Infrastructure deployed by KCOM it shall share those easements, wayleaves, agreements, statutory entitlements with the CP where KCOM is permitted and/or entitled to do so. However, KCOM makes no warranty as to the existence of any easements, wayleaves, agreements, statutory entitlements, or other freedoms of access to Sites or Facilities.
- 12.2 The Physical Infrastructure remains the property of KCOM at all times.

12.3 Except where KCOM has its own wayleave under either the Telecommunications Act 1984 (old code) or the Digital Economy Act 2017 (new code), or has installed infrastructure prior to 29 December 2003 (in which case KCOM will share those rights with the CP), the CP shall obtain all necessary consents, permission or wayleaves in respect of CP's work on the Physical Infrastructure, including for example, consents, wayleaves, or easements, for any necessary alterations to buildings, permission to cross other people's land or permission to survey, install and maintain CP Apparatus at the Site and Facility. This includes the CP being responsible for obtaining all consents and permissions required from local authorities (or any other third party) which may be necessary for the CP to survey, install and maintain CP Apparatus at a Site and Facility. For the avoidance of doubt, where the CP obtains its own wayleave in accordance with this clause 12.3, the CP will share those rights with KCOM.

12.4 Each party shall act in accordance with the Code.

13. Business Continuity and Risk Incident Management

13.1 The CP shall comply with or work to ISO 22301 (International Standard for business continuity management) or the most recent version thereof with regard to Incident Management and Disaster Recovery to the extent it has and will maintain for the duration of this Agreement, processes and standards to a similar level as set out in the responses made to KCOM on business continuity when being established as a customer of KCOM for this product. The CP shall provide KCOM with contact details for reporting an incident at the customer establishment stage to be set out in the Operations Manual, and shall promptly notify KCOM in writing of any changes to these contact details.

13.2 The CP shall immediately notify KCOM in accordance with the process set out or referred to in the Operations Manual of any actual or suspected damage to or unlawful interference with the Physical Infrastructure. The Customer shall also immediately notify KCOM if it becomes aware of or suspects a Risk Event. Such notification may result in the formal declaration by KCOM (acting reasonably) of an incident (a "Risk Incident").

13.3 In the event of a Risk Incident being declared by KCOM, the CP shall inform KCOM of all CP Apparatus affected by the incident so that KCOM may assess and determine priority access to the Physical Infrastructure for the purposes of restoration of telecommunications services provided by either party or a third party by means of cables and related facilities installed within the Physical Infrastructure. The Customer acknowledges that all incidents will be managed by KCOM in accordance with ISO 22301. The Parties shall co-operate to minimise the impact of such incident or Risk Event.

14. Safety

14.1 The CP shall in connection with this Agreement:

- (c) take, and shall ensure that its CP Personnel take, all reasonable precautions to protect themselves, the employees and individual contractors of KCOM, members of the general public and the environment; and, without limitation,
- (d) comply, and ensure that the CP Personnel comply, with all Applicable Laws relating to health and safety, the Contractor Code of Practice, and any other health and safety provisions that may be set out in or referred to by this Agreement.

- 14.2 The CP shall, in addition, comply (and shall ensure its CP Personnel comply) with any safety requirements contained or referred to in Operations Manual and the Contractor Code of Practice, and any health and safety policies referred to and/or set out in this Agreement, each as published by KCOM from time to time.
- 14.3 At all Sites where unique safe working systems are in operation, the CP shall conform to such systems or other requirements specified by the site managers (including where necessary, special indemnity or insurance arrangements) at its own cost.
- 14.4 The CP must have and maintain for the duration of this Agreement emergency call out arrangements with CP Personnel to rectify and make safe any work done by CP Personnel on or in the Physical Infrastructure which, in KCOM's reasonable opinion, presents an immediate or serious threat of physical harm or damage to person or property. The details of those arrangements which should operate and be available at all times should be included in the Operations Manual and kept up-to-date.
- 14.5 The CP acknowledges that it is not permitted to enter on to any Sensitive Areas, other than where entry is required in order to continue to comply with Applicable Law or where otherwise set out in the Operations Manual.
- 14.6 Notwithstanding any other term to the contrary KCOM reserves the right to request that the CP remove and make safe any CP Apparatus in or on Physical Infrastructure if it reasonably believes it poses an immediate or serious threat of physical harm or damage to person or property or the KCOM Network in such a way that that has the effect, in KCOM's reasonable opinion, of impacting KCOM's ability to provide the Services to the CP or any other CP or impacts KCOM's ability to provide services to end users of the KCOM Network, and the CP will be liable for any reasonable costs and expenses of doing such work. In such circumstances, KCOM shall take photographs of the works which pose the immediate or serious threat prior to removing and make them safe plus photographs after such works have been made safe.
- 14.7 Notwithstanding the CP's obligations under this Agreement, the CP acknowledges that any health and safety documents and policies set out or referred to by KCOM under this Agreement are provided in order to give the CP guidance and does not relieve the CP of its obligations to comply with all Applicable Laws including without limitation relevant environmental, health and safety legislation.

15. Installation of CP Apparatus in or on Physical Infrastructure

- 15.1 Any CP Apparatus must not harm the KCOM Network, the Service or another Communication Provider's network or equipment and must be:
- (a) connected and used in line with any relevant instructions provided by the manufacturer and the Engineering Principles; and
 - (b) connected and used in line with any relevant laws or regulatory requirements, including any legal requirements imposed upon the parties including requirements arising from General Condition A2 set under the Communications Act 2003; and
 - (c) technically compatible with the Service and connected and used in line with any relevant standards including any standards set out in the ANFP and the Electromagnetic Compatibility Regulations 2016.

15.2 Upon becoming aware that the CP Apparatus does not meet the relevant manufacturer's instructions, Operations Manual, or laws, the CP must rectify or disconnect the CP Apparatus without delay or following written notice, KCOM will do so, at the CP's cost and expense. For the avoidance of doubt, any CP Apparatus that has been deployed by the CP under a Licence granted by KCOM shall not be required to be rectified or disconnected except where rectification or disconnection is required to meet the relevant manufacturer's instructions or for safety or legal reasons.

15.3 CP Apparatus will remain the property of the CP at all times.

16. Data Protection

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

17. Security of information

17.1 The CP shall observe the provisions set out in Schedule 8 (Security).

17.2 Neither party shall use the other party's Information for any purpose other than the purpose for which it was provided and/or only to the extent necessary to enable each party to perform its obligations under this Agreement.

17.3 The Receiving Party shall take all steps reasonably necessary and consistent with its obligations under this Agreement to ensure that the Disclosing Party's Information is protected, and in particular the Receiving Party shall:

- (a) identify to the Disclosing Party on the Commencement Date details of the Receiving Party's Security Contact who shall act as a single point of contact for any security issues and the details for both parties Security Contacts shall be contained in the Operations Manual. The CP shall provide details of a CP Security Contact available on a 24/7 basis for any urgent security issues;
- (b) record and maintain details of all personnel who are authorised to access, and use, the Disclosing Party's Information;
- (c) ensure each member of their personnel who has access to the other Party's Information receives appropriate security training in accordance with the requirements of this clause 17 and shall maintain the records of training;
- (d) ensure that all personnel who have access to the other Party's Information maintain a clear-desk and a clear-screen policy to protect KCOM's Information;
- (e) ensure it has formal security incident management procedures with defined responsibilities and any information on the incident shall be treated as Confidential Information and the terms of this clause 17 shall apply;
- (f) ensure it operates a proactive strategy to minimise the risk and effects of fraud and other security risks and maintain processes to monitor such activities;
- (g) ensure procedures and controls are in place to protect the exchange of information through the use of emails, voice, facsimile and video communications facilities; and

- (h) ensure any use of diagnostic tools is securely controlled.
- 17.4 The CP shall ensure that KCOM's Information is logically separated in a secure manner from all other information created or maintained by the CP.
- 17.5 The Receiving Party shall implement security measures across all supplied components, such that it safeguards the confidentiality, availability and integrity of the Disclosing Party's Information.
- 17.6 The Receiving Party shall ensure that the implementation and management of security of the Disclosing Party's Information:
 - (a) reduces the risk of misuse of the other party's systems and/or Information, which could potentially cause loss of revenue or service, by those individuals who are authorised to access it; and
 - (b) detects any security breaches that do occur enabling quick rectification of any problems that result and identification of the individuals who obtained access and determination of how they obtained it.
- 17.7 The Receiving Party shall maintain processes which detect and record any attempted damage, amendment or unauthorised access to the Disclosing Party's Information.
- 17.8 The Receiving Party shall implement a controlled exit procedure in respect of any person who had access to the Disclosing Party's Information, and leave the employment of Receiving Party or are no longer engaged in connection with this Agreement. The controlled exit procedure shall include the return of the Information in the possession of the Receiving Party.
- 17.9 If the Receiving Party uses subcontractors, it shall procure that formal contracts containing all security requirements within this clause 17, to the extent they are relevant to the subcontractor, must be put in place between the Receiving Party and its subcontractor before the subcontractor can access the Disclosing Party's Information.
- 17.10 If Access by CP Personnel is via CP Systems, the CP shall comply with the provisions of Schedule 8.
- 17.11 The Receiving Party shall report to the Disclosing Party promptly when it becomes aware of:
 - (a) any potential misuse of the Receiving Party's Information or improper or unauthorised access to the Receiving Party's Information;
 - (b) any loss or corruption of the Receiving Party's Information caused by the Disclosing Party's negligence or its unauthorised use of or access to the Receiving Party's Information.

18. Security

- 18.1 The CP shall observe the provisions set out in Schedule 8 (Security).

- 18.2 Each party agrees that it will inform the other party of a material security risk to the extent it believes it may have an impact on the Service.
- 18.3 The CP shall, at its own cost, implement policies relating to security identified in this Agreement.

19. Charges

PAYMENT AND BILLING

- 19.1 The CP agrees to pay all charges for the Services as shown in the Price List (or as otherwise agreed in writing) and calculated using the details recorded by KCOM.
- 19.2 KCOM may from time to time vary the Charges for the Services by issuing an Access Charge Change Notice to the CP. Such new charges will take effect:
- (a) not less than twenty eight (28) calendar days after the Access Charge Change Notice for any new service provided pursuant to this Agreement;
 - (b) not less than twenty eight (28) calendar days after the Access Charge Change Notice for price decreases in relation to any existing physical infrastructure access provided pursuant to this Agreement;
 - (c) not less than twenty eight (28) calendar days after the Access Charge Change Notice relating to the end of a temporary reduction in accordance with the terms of any Special Offer;
 - (d) not less than fifty six (56) calendar days after the Access Charge Change Notice in the case of any other existing physical infrastructure access provided pursuant to this Agreement

KCOM will send advice of the Access Charge Change Notice to the CP Billing Contact as supplied in the Service Plan.

- 19.3 Notwithstanding the aforesaid, KCOM may vary the Charge which has retrospective effect for the Services provided by KCOM by publication in the Price List 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.
- 19.4 The date of publication in the Price List shall be the date that KCOM first makes the contents of the Price List available on the KCOM Website.
- 19.5 Access to all invoices will be via the KCOM online billing and reporting platform.
- 19.6 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 for the period beginning on the date on which payment is due and ending on the date payment is actually made.
- 19.7 All charges exclude Value Added Tax (VAT) which is charged at the applicable rate and is payable by the CP.
- 19.8 The CP shall pay the Licence Fees in accordance with KCOM's billing cycle. If KCOM begins, or ceases, the Service on a day which is not the first or last day of the period by reference to which KCOM charges Licence Fees, the Licence Fees will be calculated from

the start of the next billing cycle. The Licence Fees will be payable in monthly instalments in advance but KCOM may on occasion bill the CP in arrears.

19.9 Payment will be in pounds sterling. All Charges and any other sums due under this Agreement will be collected in full by direct debit, unless otherwise agreed in writing with KCOM, within thirty (30) calendar days of the date of the relevant invoice without any set-off, deduction or withholding of any kind.

19.10 Save as set out in Schedule 5 (Network Adjustments), the CP is liable to pay charges for any work it requests from KCOM on or in the Physical Infrastructure and a description of the work available is set out in the Operations Manual.

19.11 The Licence Fees will commence:

- (a) on the Licence Completion Date for Spine Duct and Poles; and
- (b) from the date of the CP's use for Lead-in Duct and/or drop wires from Poles

and shall be payable in accordance with clause 19.9 above.

19.12 Licence Fees are calculated and based on data in the Network Plans:

- (a) on the Licence Completion Date for Spine Duct and Poles; and
- (b) on the date of the CP's use of the Lead-in Duct and/or drop wires from Poles

or as amended pursuant to the missing inventory process set out in the Operations Manual prior to these dates.

19.13 All other charges for the provision of the Service shall except in the case of Network Adjustments where set out in Schedule 5 (Network Adjustments) be chargeable from the date that the Service is made available to the Customer. The Customer shall be liable to pay the Cancellation Charges in accordance with KCOM's invoice.

19.14 Subject to paragraph 7 of Schedule 5, any charges for Network Adjustments shall be chargeable from the earlier of:

- (a) when KCOM receives and accepts the Build Completion Pack from the CP; or
- (b) when the relevant Request for the Network Adjustment is cancelled, termination or expires

and shall be payable in accordance with clause 19.9 above.

19.15 If the CP disputes an 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 but shall make payment of any undisputed amount or part. Clause 27 will apply to the resolution of a dispute of the type referred to in this clause 19.15.

19.16 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.

19.17 KCOM may make an Invoice Correction to an invoice sent to the CP providing it notifies the CP within twelve (12) months of the date of the invoice giving its reasons.

19.18 The CP may seek correction of an invoice providing it notifies KCOM within twelve (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.

CREDIT VETTING

19.19 During the term of this Agreement 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 or 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 twenty eight (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 or remedies available to it under this Agreement to refuse to accept any further Requests 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.

20. Confidentiality

20.1 Subject to the following provisions of this clause 20, 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.

20.2 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.

20.3 A Receiving Party shall restrict disclosure of Confidential Information relating to the other party to those persons who have a reasonable need to know and where it is essential for permitted purposes. Confidential Information shall be used solely for the purposes for which it was disclosed.

20.4 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 20.

20.5 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 20.

20.6 The following shall not constitute a breach of this clause 20:

- (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 or publication in the Price List 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,

subject to in the case of any disclosure specified in clauses 20.6(d) to 20.6(f) the Receiving Party informing the Disclosing Party as soon as reasonably practical, after such disclosure.

- 20.7 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.

21. Force Majeure

- 21.1 **"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), criminal, intentional or negligent damage to an Electronic Communications Network, or acts or omissions of persons for whom neither party is responsible.
- 21.2 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.
- 21.3 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. For the avoidance of doubt, the Claiming Party shall use all reasonable endeavours to mitigate the effect of the Event of Force Majeure.
- 21.4 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.

- 21.5 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 21.6, 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. Notwithstanding the foregoing, any obligations to make payment of any Charges shall not be delayed or excused by an Event of Force Majeure.
- 21.6 If the Event of Force Majeure in question prevails for a continuous period in excess of three (3) 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 thirty (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.

22. Undertakings and warranties

- 22.1 Each party warrants that it has the requisite power and authority to enter into this Agreement and to carry out its obligations as contemplated by this Agreement.
- 22.2 Each party warrants to the other party that:
- (a) it shall perform any work in connection with this Agreement in accordance with all Applicable Laws and Good Industry Practice;
 - (b) it shall perform all work using a sufficient number of appropriately qualified and skilled personnel and in the case of the CP such personnel who have accreditation in accordance with Schedule 2.

23. Conduct of indemnified events

- 23.1 The indemnified party must notify the indemnifying party of any related claims or legal proceedings and use its reasonable endeavours to do so within fourteen (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.
- 23.2 The indemnifying party may assume conduct of the claim providing it notifies the indemnified party of such intention within five (5) days of receipt of the notification in clause 23.1. 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.
- 23.3 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.

24. Limitation of liability

24.1 Neither party excludes or restricts its liability for:

- (a) death or personal injury caused by its negligence or that of its employees, subcontractors or agents acting in the course of their employment or agency;
- (b) any fraudulent act or omission;
- (c) fraudulent misrepresentation or misstatement; or
- (d) any liability that may not otherwise be limited or excluded by law.

24.2 Except as set out in clause 24.1 and subject to express terms and conditions of this Agreement to the contrary, neither party shall be liable whether based on a claim in contract, tort (including negligence), breach of statutory duty, misrepresentation or otherwise arising out of, or in relation to this Agreement, for:

- (a) loss of revenue (whether direct or indirect);
- (b) loss of time (whether direct or indirect);
- (c) wasted expenditure (whether direct or indirect);
- (d) loss of anticipated savings (whether direct or indirect);
- (e) loss of opportunity (whether direct or indirect);
- (f) loss and/or corruption of data (whether direct or indirect); or
- (g) any indirect or consequential loss whatsoever (even if the liable party has been advised of the possibility of such loss).

24.3 Notwithstanding clause 24.2 and subject to clause 24.4, a party may claim for damage to, loss or destruction of real property or tangible property as a direct loss.

24.4 Subject to any express terms and conditions of this Agreement to the contrary, in relation to any liability arising out of or in relation to this Agreement either party's aggregate liability to the other party (excluding obligations arising under this Agreement to pay monies in the ordinary course of business), in contract, tort (including negligence), breach of statutory duty or otherwise for loss or damage howsoever arising (other than loss or damage of the type referred to in clause 24.5) shall, in any period of twelve (12) calendar months starting from the Commencement Date or any anniversaries thereof, be limited to:

- (a) for any one event or series of connected events, the higher of (i) the total charges paid under the Agreement in such period, or (ii) fifty thousand pounds (£50,000); and
- (b) for all events (connected or unconnected), the higher of (i) the total charges paid under the Agreement in such period or (ii) one hundred thousand pounds sterling (£100,000).

24.5 If a party is liable to the other party in relation to any claim by the other party for damage to, loss or destruction of real property or tangible property, the first party's liability shall be limited to £3 million pounds (£3,000,000) for all such claims connected or unconnected in any Contract Year.

24.6 This clause 24 shall continue in force after the termination or expiry of this Agreement.

25. Insurance and risk

25.1 Each party shall procure and maintain for the duration of this Agreement policies of insurance to cover its liabilities as set out in clause 24.

25.2 The CP shall ensure that KCOM's interest is noted on each insurance policy or that a generic interest clause has been included. The terms of each CP policy of insurance shall include provisions whereby, in the event of any claim or proceedings in respect of which a party would be entitled to receive indemnity under the policy, being brought or made against KCOM, the insurers shall indemnify KCOM against any costs, charges and expenses thereof and whereby the insurers give a waiver of subrogation in respect of any indemnity given by a party to the other party.

25.3 On KCOM's written request, the CP shall provide KCOM with copies of the insurance policy certificates and details of the cover provided. The CP shall retain and make available for inspection by KCOM or its advisors copies of all such policies for at least seven years after termination of cover.

25.4 The CP shall ensure that any subcontractors also maintain adequate insurance having regard to their obligations under this Agreement.

25.5 The CP shall notify the KCOM if any policy is (or will be) cancelled or its terms are (or will be) subject to any material change.

25.6 If the CP is unable to demonstrate to the KCOM's reasonable satisfaction that it has a reasonable level of insurance, with a reputable insurer, in respect of its liabilities under clause 24, KCOM shall be entitled to effect insurance against all claims, proceedings, losses, liabilities, costs, damages and expenses caused by the CP's negligence, other default or deliberate act arising out of or in connection with this Agreement and to recover the reasonable cost of such insurance from the CP.

25.7 The CP's liabilities under this Agreement shall not be deemed to be released or limited by the CP taking out the insurance policies referred to in clause 25.1.

26. Intellectual property rights

26.1 Subject to clauses 26.3 and 26.4, and 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.

26.2 Subject to clauses 26.3 and 26.4, neither party will use the Intellectual Property Rights of the other party without such other party's prior written consent.

26.3 If any Intellectual Property Rights are developed in connection with the performance of this

Agreement then in the absence of any other agreement between the parties, the ownership of the Intellectual Property Rights shall remain in the party who developed such Intellectual Property Rights always provided that to the extent that it is required by the other Party to perform its obligations under the Agreement, the first party hereby grants to the other party at no cost a limited licence in the UK for the term of this Agreement to use such Intellectual Property Rights for the purposes of performing its obligations under this Agreement.

- 26.4 The CP grants KCOM a non-exclusive, non-transferable, royalty free licence during the term of this Agreement to use any CP Background IPR to the extent necessary for it to provide the Services in accordance with this Agreement.

27. Disputes

- 27.1 Either party (the "**disputing party**") may invoke the dispute procedure specified in this clause 27, 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 (2) 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.
- 27.2 The name of each party's commercial contact shall be as specified from time to time in the Operations Manual. For the purposes of this clause 27 no change to a commercial contact shall be effective until it has been notified in writing to the other party.
- 27.3 Following notice under clause 27.1, the parties shall consult in good faith to try to resolve the Dispute. If agreement is not reached within fourteen (14) Working Days from date of such written notice of Dispute, the Dispute will be escalated under clause 27.4.
- 27.4 If the Dispute is not resolved under clause 27.3, 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 (4) Working Days and state to whom the Dispute has been escalated.
- 27.5 Following notice under clause 27.4, the parties shall work in good faith to try to resolve such Dispute, involving appropriate senior managers.
- 27.6 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.
- 27.7 Nothing herein shall prevent a party from:
- (a) seeking (including obtaining or implementing) interlocutory or other immediate relief;
 - (b) 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.
- 27.8 The parties will comply with the Third Party Claims Process where KCOM receives a claim and/or allegation from a third party relating to damage and/or loss and/or injury to person and/or property and/or a failure to comply with Applicable Law.

28. Changes to the Agreement

28.1 KCOM may change this Agreement at any time by giving, unless otherwise directed or required by Ofcom, not less than twenty eight (28) day's notice before the change takes effect in order to:

- (a) comply with any legal or regulatory obligation;
- (b) introduce or withdraw Service features (subject to such notice as is required under the applicable regulatory requirements);
- (c) change the service levels;
- (d) maintain the integrity or security of the Service or KCOM Network;
- (e) introduce process changes; or
- (f) improve clarity, or make corrections to typographical errors;

providing that the changes in sub-clauses (b) - (h) shall not materially adversely affect the Service.

28.2 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 fifty six (56) days of the service of KCOM's notice from KCOM, the CP or from any other Communications Provider who has an agreement for Services, the parties agree that the changes shall take effect from the proposed effective date. If there are objections to the proposed changes within 56 days of the service of KCOM's notice of the proposed changes under this clause 28.2, KCOM shall enter into discussions with the CP and any other Communications Provider affected. If the parties (including the objector) cannot reach an agreement by the end of fifty six (56) 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 27.

28.3 KCOM may amend, change, remove, or replace those parts of an Ancillary Document which do not form part of the Agreement without prior agreement from the CP. For the avoidance of doubt, the form specified by KCOM from time to time for Requests, the Operations Manual, the KCOM Security Policy, the Contractor Code of Practice and the Credit Vetting Policy are Ancillary Documents. KCOM will give reasonable written notice of any such changes and publish details of those changes on the KCOM Website before the changes take effect. If the CP considers any such changes to an Ancillary Document would change the Agreement or materially and adversely affect the Service, then on or before the expiry of the 28th Working Day of any such changes taking effect, the CP may dispute any such changes to an Ancillary Document via the dispute resolution process set out in clause 27 above.

29. Transfer of rights and obligations

29.1 Subject to clause 29.2, neither party may transfer, assign, mortgage, novate, charge, delegate, declare a trust over or deal in any other manner any or all of its rights or obligations under this Agreement without the written consent of the other, such consent not to be unreasonably withheld or delayed. For the avoidance of doubt, the parties agree that any consent by KCOM is subject to KCOM's Credit Vetting Policy.

- 29.2 KCOM may transfer its rights or obligations (or both) to a KCOM Group Company without consent provided that it notifies the CP in advance that it intends to do so.

30. Waiver

- 30.1 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.
- 30.2 The rights and remedies herein provided are cumulative with and not exclusive of any rights or remedies provided by law.

31. Entire agreement

- 31.1 This Agreement contains the whole agreement between the parties and supersedes all previous understandings, commitments, agreements or representations whatsoever, whether written or oral agreements, including but not limited to any agreements relating to the trialling of the Physical Infrastructure Access Service, other than any fraudulent misrepresentation relating to its subject matter of this Agreement.
- 31.2 The parties acknowledge and agree that the parties have not been induced to enter into this Agreement by, nor have relied on any statement, representation, warranty or other assurance not expressly incorporated into it.
- 31.3 Nothing contained in clauses 31.1 and 31.2 above shall affect the rights or remedies of the parties in respect of any fraudulent misrepresentation.
- 31.4 If there is any inconsistency between this Agreement and any other document, agreement or understanding between KCOM and the CP which relates to the subject matter of this Agreement, the terms of this Agreement shall prevail.

32. Notices

- 32.1 All notices given under this Agreement must be in writing and shall be delivered by hand, e-mail or prepaid first class post, including recorded delivery to the following provided that any notice relating to contract termination, suspension or breach must be delivered by hand or first class post.

If to the CP:

[Insert CP's email and address details for the receipt of notices]

If to KCOM:

Company Secretary
KCOM Group Limited
37 Carr Lane
Hull
HU1 3RE

and copied by email to: 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 (2) Working Days after the date of posting; and
 - (c) if sent by email, upon delivery at the address of the relevant party,
- 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 Working Hours, such notice, demand or other communication shall be deemed to be given or made at the start of Working Hours on the next Working Day.

32.2 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 32.1 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; or
- (b) if no date is specified or the date specified is less than five (5) Working Days after the date on which notice is given, the date falling five (5) Working Days after notice of any such change has been given.

33. Relationship of the parties

33.1 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, subcontractors or agents). Neither party is authorised and neither of the parties nor their employees, subcontractors, 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, subcontractors, 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 a partnership, agency, association, joint venture or other co-operative between the parties.

33.2 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.

34. Variations

34.1 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.

35. Announcements

No party shall make, or permit any person to make, any public announcement concerning the existence, subject matter or terms of this Agreement, the wider transactions contemplated by it (including but not limited to the relationship between the parties, without the prior written consent of the other parties, except as required by law, any governmental or regulatory authority (including, without limitation, any relevant securities exchange), any court or other authority of competent jurisdiction. The parties shall consult together on the timing, contents and manner of release of any announcement.

36. Cumulative remedies

Except where this Agreement provides otherwise, the rights, powers and remedies provided to the parties in this Agreement are in addition to, and do not exclude or limit, any right, power or remedy provided by law or equity or by any agreement between the parties.

37. Rights of third parties

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.

38. Waiver

No failure to exercise nor any delay in exercising any right, power or remedy precludes any other or further exercise of that, or any other right, power, or remedy. A waiver is not valid or binding on the party granting that waiver unless made in writing.

39. Counterparts

- 39.1 This Agreement may 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.

40. Survivability

The provisions relating to confidentiality, indemnities and limitation of liability shall survive any completion, rescission, expiration or termination of this Agreement. In addition, all rights and restrictions relating to any perpetual licenses and all payment terms relating to any outstanding payments shall survive.

41. Severability

If any Court of competent jurisdiction holds any provision of this Agreement invalid, illegal or unenforceable for any reason, such provision shall be severed and the remainder of its provisions will continue in full force and effect as if this Agreement had been executed with the invalid, illegal or unenforceable provision omitted.

42. Costs

- 42.1 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.

43. Governing law and jurisdiction

43.1 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.

43.2 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 exclusive jurisdiction of the English Courts.

IN WITNESS whereof the Agreement has been entered into on the date first above written

Signed by:

For and on behalf of **KCOM GROUP LIMITED**

Signature:

Date:

Signed by:

For and on behalf of **[CP]**

Signature:

Date: