



RESELLER AGREEMENT FOR CONNECT FIBRE LANDLORD SERVICES

PART 1

RESELLER BUSINESS NAME:	ACCOUNT TEAM:
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RESELLER INFORMATION:	
Address:	Main Contact:
	Phone Number:
	Email Address:
Postcode:	
Company Type:	
If Other, please state:	

BILLING DETAILS:	
Address for invoice:	Email address for Over Usage Alerts:
If Other, please state:	Please provide an email address which is checked regularly so We can send You alerted by email when Your Customers are nearing any Usage limits that apply to the Services
	Contact Number:
	Contact Name:
PO Number:	Payment Method: Direct Debit
Please note: If the above box is blank We will assume no PO number is required for payment	Summary:



RESELLER AGREEMENT FOR CONNECT FIBRE LANDLORD SERVICES

OFFER AND ACCEPTANCE – PART 2

We have issued this Agreement to You, which includes a copy of Our Standard Terms and Conditions of Service. By signing in the place indicated below You indicate Your willingness to offer to enter into this Agreement. This Agreement will not come into force unless and until We have signed in the place indicated below. You also consent to Our providing details of this Agreement and the Services You receive under it to BT (or any other Communications Provider), but only insofar as it is required for Us to provide the Services.

YOUR DETAILS:	
REGISTERED COMPANY NAME	
COMPANY REGISTRATION NUMBER	
REGISTERED OFFICE	
POSTCODE	

YOUR OFFER TO ENTER INTO THIS CONTRACT (To be completed by You)		CONTRACT ACCEPTANCE BY KCOM GROUP LIMITED	
Signed		Signed	
Name		Name	
Position		Position	
Date		Date	

Please update any information in the 'Your Details' box which is incorrect or omitted.

RESELLER AGREEMENT FOR CONNECT FIBRE LANDLORD SERVICES

SERVICE STANDARDS - PART 3

1 INTRODUCTION

These Service Standards define the commitments We make to You.

Any changes, modifications, additions or deletions to these Service Standards will be provided to You in writing 30 days prior to such change coming into effect.

2 CONNECT FIBRE LANDLORD SERVICES

2.1 Availability

The KCOM Connect Fibre Landlord Service is intended for resale to residential landlords who want to provide a superfast broadband service to the tenants who occupy their rented property. The KCOM Connect Fibre Landlord Service is only available for use by landlords who rent out residential property; not commercial property.

You are entitled to make KCOM Connect Fibre Landlord Service available for use by the tenants who occupy residential property that Your Customer's rent out. However, You are not entitled to resell the KCOM Connect Fibre Landlord Service on a more general basis. You must not allow any wider commercial use of KCOM Connect Fibre Landlord Service, and You must not allow Your Customers or their tenants to make commercial use of the KCOM Connect Fibre Landlord Service.

The KCOM Connect Fibre Landlord Services which are available are detailed in Table 1.

If a Customer has a property with more than 12 bedrooms it must subscribe to multiple KCOM Connect Fibre Landlord Services which We may deploy using the same Optical Network Termination unit

All KCOM Connect Fibre Landlord Services are subject to availability, line test and confirmation.

You and Your end users are subject to and must abide by KCOM's Acceptable Use Policy.

2.2 Service Description

The Services are Our 'white label' reseller product that We make available to Communications Providers (CPs) pursuant to this Agreement. The Services enable You to offer Connect Fibre Landlord Service direct to Your retail Customers and gives You control over sales, billing and first line support to Your Customers.

The Services are available in the Hull Area. However, You acknowledge and agree that We are still in the process of deploying Our new fibre network in the Hull Area and that the Connection Charges payable by You for the Services will depend on whether a Customer address is located in an area where We have deployed Our fibre network or an area where We have not deployed Our fibre network. Notwithstanding whether We have deployed Our fibre network in a given area, any Orders for the Services that You place will qualify for a discount on the prices that We would otherwise charge Our direct customers.

KCOM Connect Fibre Landlord Service provides Your Customer with a superfast broadband service using fibre optics nearer to Your Customer's premises to deliver faster broadband services than are normally available over copper based ADSL services.

The service can be deployed by KCOM in two methods depending on the location of Your Customer's Site(s) and KCOM's roll-out programme. This will either be a fibre installation directly to Your Customer's Site premises (Fibre To The Premises – FTTP) or We may provide service using Fibre to a nearby street cabinet (Very High Speed Digital Subscriber Line - VDSL).

The maximum download and upload speeds capable from these services is detailed in the Price Manual and Table 1, below.

KCOM Connect Fibre Landlord Services incorporate a KCOM exchange line at each Site.

Outgoing calls will be barred on the KCOM exchange line(s) that You use with the KCOM Connect Fibre Landlord Service, apart from emergency calls to 151 or 999.

The line rental charge for the KCOM exchange line(s) that You use with the KCOM Connect Fibre Landlord Service is included within the Monthly Rental Charges for the KCOM Landlord Lightstream Service.

If You do not have an existing KCOM exchange line at any Site, You must order a new KCOM exchange line and pay any installation charges for that line. Once it has been installed, the provision of the KCOM exchange line will be incorporated in your KCOM Connect Fibre Landlord Service.

2.3 Customer Requirements

- A new or existing KCOM exchange line is required at the address of the Connect Fibre Landlord Service.
- Ethernet LAN running TCP/IP (10 BASE T minimum). For LAN connections You must supply PC Ethernet cards.
- An internet ready device.

We would remind You that all Customers and end users should consider the security of their PC. We recommend the use of current anti-virus software and firewall protection. Email anti-virus protection is provided with email Post Office Protocol ("POP") accounts. Where the Services are delivered using FTTP, Your Customers will require two functioning power sockets for the Optical Network Terminal (ONT) and the router. Where the Services are delivered using VDSL, Your Customers will require a single power socket for the VDSL router and a VDSL microfilter. See installation options below.

2.4 Engineer Visit

In respect of the installation of the Services We will provide You with the date of an engineer visit with either a morning (AM) or afternoon (PM) appointment for each Customer. You are responsible for communicating this information to Your Customer.

Where We have made a scheduled appointment with You for either (i) the installation of the Services at a Customer's premises or (ii) the resolution of a fault with the Services at a Customer's premises, it is Your responsibility to inform Your Customer of the date and time of the appointment. You will be subject to a Missed Appointment Charge as set out in the Price Manual if one of Our engineers has been dispatched to a Customer address and:

- The appointment is cancelled by You and/or Your Customer after the engineer has been dispatched;
- The person in attendance at the Customer's premises is under the age of 18;
- There is no one at the Customer's premises;
- There is no one at the Customer's premises who knows what work is required or who is otherwise authorised to agree it
- You and/or Your Customer ask Our engineer to call back at an alternative time
- Our engineer is refused entry to the Customer's premises.
- There are no suitable or there are insufficient power sockets

Where You do not use a router supplied by Us, We shall ensure that the Services are successfully delivered to the ONT that We will install at the Customer's premises. You acknowledge and agree that in order for the Customer to be able to use the Services, You will need to install and connect a router that is compatible with the Services to the ONT. Furthermore, You acknowledge and agree that the Customer will not have a working broadband service and will not have access to internet services until such time as You connect a router to the ONT installed at the Customer's premises.

2.5 Connection and Hardware Charges

The type of connection We will provide for Your KCOM Connect Fibre Landlord Service will be as stated in the Order Form. Further details of the connections We provide are as follows;

- **Connection 50 metres;** ONT and router located together within 48 metres (usable of fibre length) of entrance.

- **Cat5e Connection;** Dual Ethernet socket and cable to 100 metres (90 metres usable) when Your router needs to be located next to Your PCs.

The connection charges that apply to Your KCOM Connect Fibre Landlord Service will be as stated in the Price Manual and the Order Form.

The type of hardware We will provide for Your KCOM Connect Fibre Landlord Service will be as stated in Table 1.

2.6 Service Features

The service features for Your KCOM Connect Fibre Landlord Service will be as stated in the Price Manual and Table 1. Where any of these details are varied in the Price Manual, the up to date details published in the Price Manual will apply.

Table 1 - FTTP & VDSL

		Connect Fibre Landlord Basic	Connect Fibre Landlord Super	Connect Fibre Landlord Ultra	Connect Fibre Landlord Giga
Average Peak Time Download Speed****	FTTP	75Mbps	200Mbps	400Mbps	900Mbps
	VDSL	Dependent on postcode of property	N/A	N/A	N/A
Average Peak Time Upload Speed****	FTTP	20Mbps	35Mbps	35Mbps	50Mbps
	VDSL	Dependent on postcode of property	N/A	N/A	N/A
Monthly Usage Allowance		800GB*	Unlimited***	Unlimited***	Unlimited***
Traffic Shaping		Yes**	No	No	No
IP Addresses		1 static IP address			
Hardware included		Wireless router			

Notes

* Fair Usage Policy - During peak hours 6pm – Midnight. Usage above the Monthly Usage Allowance is not billed.

The service will be reduced to an ADSL average speed of 10Mbps down 1Mbps up for the remainder of the month.

** Further details of the Traffic Shaping that applies to Your Service are set out in the Traffic Management Policy for Landlord Services published on Our Website.

*** References to “unlimited” are to the unlimited download and upload allowances with this service. No other aspect of the service is “unlimited”

**** “Peak Time” is between the hours of 8pm and 10pm. The “Average Peak Time Download/Upload Speed” is the download/upload speed that 50% of our residential customers taking the relevant product can expect to achieve during Peak Time.

2.7 Service Bolt-ons

The following Bolt-ons can be provided with Your Service for an additional charge;

Table 2 – Service Bolt-ons

Bolt on	Description
Direct Tech Support	This Bolt-on allows Your Customers and Your Customers tenants to contact Us directly for tech support. This allows the individual property account to be password protected. Tenants of that property can discuss their connection with Us through Our technical support helpdesk by stating the password on the account which You or Your Customers agents have provided to them. Without Direct Tech Support, We can only discuss any network issues with You, the account holder.

The Bolt-ons You have selected for Your Service are as specified in the Order. You can select additional bolt-ons at any time by agreement with Us.

You must take each Bolt-on you select for an initial minimum period of 30 days. You can terminate Bolt-ons after the expiry of this initial minimum period by giving Us no less than 30 days' notice (terminating a Bolt-on in this way will not affect the continuation of the other parts of this Contract).

3 HARDWARE

3.1 Provided Hardware

We will provide a free router for Your Customer and Your Customers end users to use with the KCOM Connect Fibre Landlord Service, as specified in the Price Manual. All routers are subject to stock availability and We reserve the right to provide a reasonable alternative to the model specified.

All routers are provided with a 12 month warranty.

You acknowledge that any free hardware provided shall remain the property of KCOM. If the service is cancelled Your Customer and Your Customers end users must allow Us access to the premises to collect the hardware, if required.

Your Customer and Your Customers end users must take reasonable care of the hardware whilst it is at the premises and, in particular, must protect it from accidental damage and theft. In addition, You, Your Customer and Your Customers end users must not allow anyone other than Us to carry out any repairs or maintenance work on the hardware.

You will be responsible for the cost of repair or replacement hardware if it is lost or damaged as a result of accidental damage or Your Customer and Your Customers end users failing to take proper care of it. However, We will be responsible for any problems You experience with the use of the hardware that can be attributed to any defects with the materials or manufacture.

3.2 Purchased and Replacement Hardware

If You purchase Hardware to use with the Service from Us or are required to purchase replacement Hardware after the initial 12 months service, the ownership of the Hardware shall be Yours once You have paid for the Hardware in full. We will assign the benefit of any product warranties given by the manufacturer or supplier of the Hardware to You; and You shall be entitled to replacement hardware if You experience any problems with the Hardware, during the initial 12 month period following on from the date on which We supply the Hardware to You, if such problems can be attributed to any defects with the materials or manufacture of the Hardware.

4 LINE SPEEDS

4.1 The throughput speeds for Our KCOM Connect Fibre Landlord Services are as set out in Table 1, above. For Our VDSL Services, the throughput speed You actually receive will be dependent on a number of factors including the quality of the line and the distance from the exchange.

4.2 We are a signatory to Ofcom's Voluntary Code of Practice for ISP's. We shall apply the same best practice principles for the benefit of Our business customers

4.3 For further information regarding Throughput Speeds, the Ofcom Code of Practice for ISP's or for further information regarding the actual throughput speed that You will receive, please contact The Wholesale Provisioning Team.

5 USAGE ALLOWANCE

5.1 Usage Periods

Some of Our KCOM Connect Fibre Landlord Services have a Monthly Usage Allowance, as set out in Table 1, above.

The Monthly Usage Allowance commences on the Service Start Date of the applicable Unit Agreement. The Monthly Usage Allowance will normally run for the same duration as the calendar month. However, the Monthly Usage Allowance in Your first month of Service may run for up to 6 weeks.

5.2 Additional Usage

Any Usage above Your Monthly Usage Allowance will result in a speed reduction as set out in Table 1.

6 FAULT MANAGEMENT

For the avoidance of doubt, You must provide first line support to the Customer, unless You have purchased the direct tech support bolt-on.

In the event that You become aware of any Fault or a breakdown in the operation of the Services, You should notify Us immediately by contacting the KCOM Network Support team.

Faults can be reported to Us either:

- via email; or
- by telephoning the KCOM Network Support team.

Please ensure when contacting the KCOM Network Support team You have the following relevant details to hand.

1. Your Customer’s name & Site address.
2. Details of the Services provided to Your Customer by Us.
3. Contact name and relevant security details.
4. The nature of the fault.

Table 3 - Network Support Availability and Service Standards

Service	Connect Fibre Landlord Basic	Connect Fibre Landlord Super	Connect Fibre Landlord Ultra	Connect Fibre Landlord Giga
Technical Support	Contact hours- Mon – Fri 0800 to 2100 Saturday 0900 to 1700 Sundays and Bank Holidays 1000 to 1800			
Service Level Agreement the KCOM promise	Repair time: 2 working days 85% of calls answered in <60sec 90% of emails replied to within 1 working day 75% of issues fixed at first point of contact		Repair time: Next Working Day 85% of calls answered in <60sec 95% of emails replied to within 1 working day 75% of issues fixed at first point of contact	

Target Time to Repair Faults (“TTRF”).

The TTRF for KCOM Connect Fibre Landlord Basic Service shall be 2 Working Days¹ and all other KCOM Connect Fibre Landlord Services shall be 1 Working Days¹ calculated in accordance with section 6.4. If a fault with the service occurs, You, Your Customer or the end user should try to resolve the faults by rebooting any affected routers or PCs before raising a fault with the KCOM Network Support team. We reserve the right to raise additional charges if faults are reported to the KCOM Network Support team which, upon investigation, are shown to be faults You, Your Customer or the end users could have resolved by re-booting the affected routers or PCs. You shall be responsible for ensuring that there is a recognised process by which Your Customers and end users can contact You about faults or services issues. The KCOM Network Support team will only liaise with You (Our customer) in relation to faults or service issues; and not Your Customers or the end users (Your Customers tenants) unless We have specifically agreed to liaise directly with Your Customers end users in Part 1. You will then have sole responsibility for any onward communication with Your Customer and Your Customers end users.

Notes

¹ Excluding network outages, telephony faults or faults that require ongoing monitoring, working days are Monday to Friday and exclude bank holidays

6.1 Faults Procedure

The following processes outline Our faults procedure:

1. You contact the KCOM Network Support team to report a fault on the appropriate Support telephone number You have been given.
2. The KCOM Network Support team will log details of the fault on Our Faults system and issue You with a unique Fault Reference Number.
3. The fault is diagnosed and if a Service engineer is required to carry out a Customer Site visit this will be arranged with You.
4. The fault is resolved and passed back to the KCOM Network Support team to confirm the Service has been restored to close.

6.2 Our Obligations

The Time to Resolve Faults (TTRF) obligations for Faults are set out in the Section named 'Network Support Availability and Service Standards', above.

6.3 Restrictions

We will not be responsible for rectifying any fault which is caused by:

1. Your or , Your Customer's fault or negligence (including without limitation where You or Your Customer have attempted to affect repairs to any Equipment or the Service unless such repairs have been expressly approved by Us);
2. The fault or negligence of another Network Operator;
3. Any failure by You to carry out Your obligations under this Contract;
4. The connection of any KCOM Equipment to any other telecommunications networks or to any Customer Equipment, including any building distribution wiring, not approved by Us; or
5. The use of any Customer Equipment or any other Equipment or software not supplied by Us.

You may request Us to rectify any faults caused by circumstances described in paragraphs 1 to 5 (above) but We reserve the right to charge You for such services at Our standard rates in force from time to time. Further to the above, We reserve the right to charge You Our standard abortive visit Charge whenever:

1. One of Our engineers attends an incorrect Site address as provided by You;
2. You have not complied with any of the requirements set out in this Service Standard;
3. Entry is refused to any Site or no access can be gained at the appointed time, as agreed between the parties;
4. One of Our engineers attends a Site and discovers that the fault is not caused by the KCOM Equipment or Our Services; or
5. You report a fault which cannot be verified or confirmed by Us.

6.4 TTRF

The TTRF period shall begin once You notify the KCOM Network Support team of the fault and this being logged as a fault and a Fault Reference Number being allocated.

The TTRF period shall cease upon notice to You by the KCOM Network Support team of fault resolution. We will record the duration of the TTRF period for all Faults.

The TTRF shall not apply in respect of Customer Responsible Faults, Planned Outages, Third Party Responsible Faults or any events of Force Majeure.

6.5 Faults Logged by Us

We may raise faults against alarms on the KCOM Network. If a fault affects the Services then We will use reasonable endeavours to promptly inform the named contact(s). If You wish to change these arrangements You must contact a representative.

The start time of a fault is the time it is detected by us We will allocate a Fault Reference Number.

6.6 Fault Reference Numbers

When You report a fault, the KCOM Network Support team will give You a unique Fault Reference Number. You must quote this number in subsequent communications.

6.7 Progress Reports

We will contact You if We have any relevant updates or when the fault is cleared. You may request additional updates at any time by contacting the KCOM Network Support team on Your usual Support telephone number and quote Your Fault Reference Number.

6.8 Confirmation of Fault Clearance

We will contact You as soon as possible and not more than 15 (fifteen) minutes after notification from Our engineering staff that Service has been restored. In the event You contact Us to report that the fault has disappeared or been traced to a third party's infrastructure, We will cancel processes in action.

6.9 Faults Not Involving KCOM Network

If the fault cannot be traced to Our Services, network or equipment, and appears to be a problem with resources or equipment for which We are not responsible, We will provide You with a report of tests that have been carried out and an explanation of how the fault was traced. This report will be supplied in writing to You if requested.

7 CUSTOMER AVAILABILITY AND COMPATIBLE SERVICES

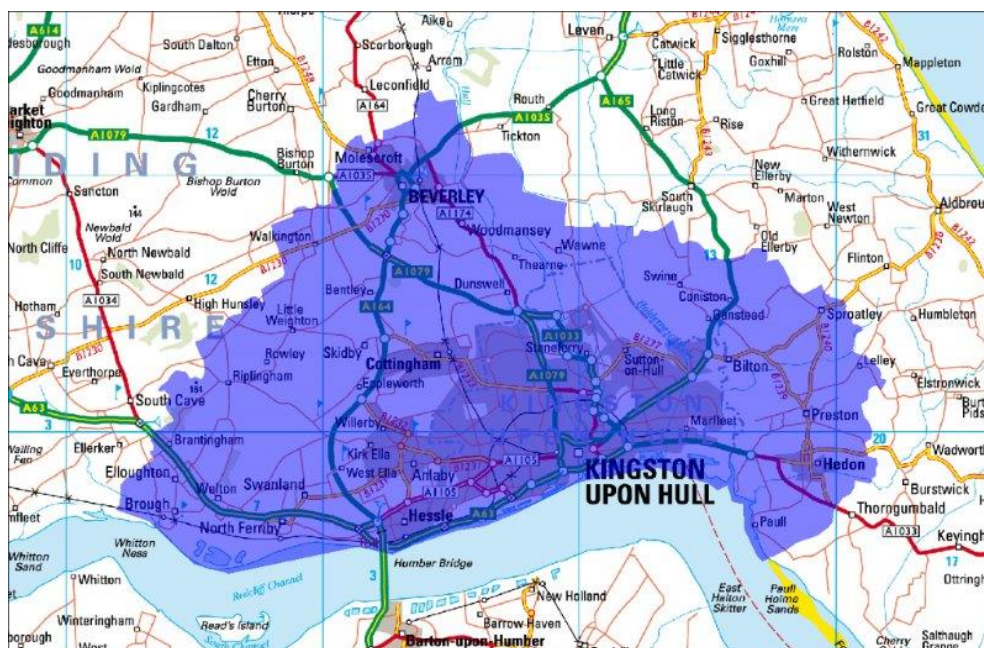
A new or existing KCOM exchange line is required at the Site address for each Service connection We supply. This KCOM exchange line is incorporated into the KCOM Connect Fibre Landlord Service, as described in Section 2.2.

All Services are subject to availability, line test and confirmation. You acknowledge and agree that all Services are subject to Our Acceptable Use Policy and You shall and shall ensure that Your Customers shall abide by the terms of Our Acceptable Use Policy.

8 HULL AREA

The blue shaded area depicted in Map 1 below details the geographic scope of the Hull Area. We may choose to provide reseller / wholesale services beyond this boundary but this is at our discretion and is based on commercial considerations.

Map 1: The Hull Area



9 DEFINITIONS

9.1 The following words/acronyms shall have the following meanings for the purposes of this Contract:

Time To Resolve Fault (TTRF)

The length of time from the issue of the Fault Reference Number to restoration of the Service and/or associated equipment, measured in accordance with this Service Standard.

Customer Responsible Faults

In the event that a fault is identified as being attributable to Customer Equipment, customer network, software, content, any actions or omissions of You or Your employees or agents or Your Customer or any end users the fault shall be deemed Your responsibility.

Fault Reference Number

The unique number issued when logging a fault with Us.

Planned Outage

All necessary equipment maintenance or network upgrades will, wherever possible, be planned to avoid any interruption to the provided Service. In general planned work would be scheduled at low traffic periods to minimise any disruption.

Except in an emergency, or when events outside Our control do not allow, We will provide 24 hours notice to You of any planned works that will affect the availability of the service via the Status Page on the portal. All maintenance operations are controlled by internal procedures. All notifications will be notified to You via the Status Page on the portal. You will then be responsible for giving notice to Your Customers

Third Party Attributable Faults

A fault that is identified as being attributable to a third party (i.e. neither You nor Us). In such circumstances, We will try to rectify such Third Party Attributable Faults as soon as reasonably practicable.

RESELLER AGREEMENT FOR CONNECT FIBRE LANDLORD SERVICES

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 all Orders placed under this Agreement have expired and/or been terminated.

1.2 Each Order shall commence on its Service Start Date and continue until the expiry of its Initial Term. Following the expiry of the Initial Term, the Order will continue unless and until terminated by either party giving the other no less than 30 days' prior written notice.

2 SUPPLY OF EQUIPMENT

2.1 You may request free of charge Equipment from Us when ordering the service, such Equipment shall remain Our property.

2.2 In the event that You purchase Equipment from Us, legal and beneficial ownership of the Equipment shall not pass to You unless and until cleared payment for the Equipment has been received by Us in full.

2.3 Unless and until We have received all amounts due, We shall be entitled to:

- (a) require any Equipment to be separately stored and clearly marked in such a way that they will be readily identified by Us;
- (b) require You to deliver up the Equipment or any part of it to Us, and if You fail to do so forthwith, to repossess it; and/or
- (c) enter Your premises, Your Customers' premises or Your Customers end users premises domain where goods still owned by Us are stored or reasonably thought to be stored in order to inspect and/or repossess the same. All the costs and expenses reasonably incurred by Us in connection with such inspection and/or recovery shall be borne by You.

2.4 You shall take all necessary measures for the protection of the Equipment including the insurance thereof against usual risks with a reputable insurance company for the full replacement value.

2.5 You shall use reasonable endeavours to ensure that the terms and conditions of Your contracts with Your Customers reflect the terms of clauses 2.3 and 2.4 so as to give effect to those clauses.

2.6 Risk in the Equipment shall pass to You on delivery; or if You fail to take delivery, at the time when delivery is tendered by Us.

2.7 We may invoice You for the Equipment charges at any time following delivery. Payment for each Order will be payable in full without set off or withholding of any kind within 30 days of the date of invoice. We reserve the right to charge interest on any outstanding amounts until payment is received in full at a rate of 2% per annum above the base rate of the National Westminster Bank plc as current from time to time whether before or after judgement.

2.8 In the event that You fail to make any payment for the Equipment by the due date then without prejudice to any of Our other rights or remedies, including the right to terminate under clause 18.1, We shall be entitled to suspend any further deliveries or the Services without liability.

3 ORDERS AND PROVISION OF SERVICES

3.1 Provision of the Service is subject to availability and Our survey of the Customer Site. We shall use reasonable endeavours to provide the Services in accordance with this Agreement and will use reasonable skill and care in the provision of the same. However, You acknowledge that the Services cannot be provided fault free and We do not warrant error free or uninterrupted use of the Services. We will use Our reasonable endeavours to repair any faults in accordance with the Service Standards.

3.2 We shall use reasonable endeavours to make each Service available for use by You from its Proposed Start Date provided the Proposed Start Date allows for Our standard lead time for the Service, as detailed in the Service Standard, and unless We are unable to do so as the result of: (a) a failure by You to fulfil Your obligations under this Agreement (including the correct completion of the Order form and Data

Capture Form); (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.

3.3 You acknowledge that:

(a) some technical limitations within the Our network may not become apparent until after the Service has been installed and working for some time. In such instances, We may terminate that Order on notice to You. In such circumstances, We will notify You of any alternative services We can provide to You, if any; and

(b) [where We are supplying a VDSL Service, following activation of Your Service the Customer or End User may suffer a temporary loss of telephone service. This will be reinstated following installation as soon as reasonably possible.]

3.4 You will need to either:

- (a) arrange for the supply of Your own Equipment; or
- (b) use the Equipment We supply as part of the Service.

3.5 We shall supply You with a router and any other agreed Equipment for use with the Service. Title to the router and such Equipment shall remain with Us and it will be KCOM Equipment for the purposes of this Agreement.

3.6 Without prejudice to the provisions of clause 3.9 You acknowledge that We may from time to time make changes to the Service Standards. Such changes will be notified to You not less than 30 days prior to their taking effect. You may at any time during this Agreement, terminate this Agreement on 30 days prior written notice, if any change in the Service Standard made by Us can be shown to be detrimental to You.

3.7 We do not guarantee the continuous availability of any particular Service and You acknowledge that We may be dependent upon third parties (including, without limitation, other Network Operators) when providing the Service. Notwithstanding any other provisions of this Agreement, but subject to clause 20.1, We will not be liable to You in contract, tort (including negligence) or otherwise for the actions of any third party (including, without limitation, acts or omissions of the other Network Operators) that affect or otherwise impact upon the provision of the Service.

3.8 You must obtain the necessary consents from Your Customers (at Your own expense) in order for Your Customers to receive the Service in advance of installation, including but not limited to consents to building alterations at the Customer Site(s) and any landlord or neighbour's permissions to enable Us, or Our subcontractors to install or maintain the Equipment. In the event that either party is not able to procure any necessary consent(s) to provide the Services within 3 months of the Proposed Start Date of an Order, We will be able to terminate that Order without any liability to You. You must ensure your Customers provide an appropriate environment for the installation of the Equipment in accordance with any requirements advised to You in advance.

3.9 We shall be entitled to:

- (a) change the technical specification of the Services where necessary for operational reasons, subject to such change not materially adversely affecting the performance of the Service (except where it is reasonable to do so);
- (b) suspend the Services for operational or technical reasons or in case of emergency; and
- (c) give You instructions which We believe to be necessary for health and safety reasons or for maintaining the quality of the Services.

but before doing any of these things, We will give You as much notice as possible.

3.10 Where Your Customers' DNS records are to be transferred to Us We shall not be liable for any loss or damage suffered by the Customer:

(a) due to a Customer's inability to receive or send any emails;

(b) for any website unavailability where the same is caused by any act or omission on the part of the ISP from whom the Customers' email (or other application) or DNS address is to be transferred from any relevant registration authority; or

(c) by the Customers' failure to give consent to the originating ISP to carry out such transfer.

3.11 You shall ensure that each Order for Services includes full and accurate written details of the Customer Sites to which the relevant request relates. You acknowledge that in order for Us to be able to provide the Services, You must provide fully the information regarding each Customer Site and the Services requested. All Orders must be placed in accordance with such procedures as may be agreed between Us and You from time to time. We shall not be liable in respect of any delay to or failure of the Services to the extent caused whether directly or indirectly by any failure of You to comply with the provisions of this clause 3.11.

3.12 You shall accurately complete the Order form and return it to Us. In the event that the information You provide is incomplete or inaccurate, You will submit the complete accurate information to Us upon request.

3.13 You shall advise Us in writing of all health and safety at work rules and regulations, of all dangerous objects and substances, and any other reasonable security requirements or rules applicable at the Customer Sites, which We agree to observe.

3.14 You will and will ensure that Your Customers shall provide Us with a suitable and safe working environment whilst at the Customer Sites.

3.15 You shall not and shall ensure that Your Customers shall not move, add to, modify or interfere with or attempt to repair, or cause to be repaired or serviced by any person any KCOM Equipment other than by Us or Our nominated third party.

3.16 You will at all times ensure that the Equipment is kept in a good and proper state of repair, is secure whilst on the Site and maintain the necessary environmental and other conditions for any Equipment as may be specified by Us from time to time.

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

3.18 You and/or the Customer must maintain a contract for the use of a KCOM Network exchange line from a Communications Provider or a provider of wholesale line rental services with respect to each Service taken by You under this Agreement if required for the provision of the relevant Service. The parties acknowledge that the Communications Provider or the relevant provider of wholesale line rental services will continue to charge You and/or the Customer the line rental and any other charges due with respect to the provision of this exchange line. In the event that You fail to maintain such a line, We may terminate that Order immediately on notice

3.19 You will and will ensure that any Customer and/or End User provide any electricity and connection points We may require in order to provide the Services. In the event that You fail to do so, We may terminate that relevant Order immediately on notice

3.20 If the Customer and/or End User receives a telephony service from Us, the Customer and/or End User must be the account holder for the exchange line that they intend to use with the Services.

3.21 You will, if so requested by Us, promptly provide such information as We may reasonably require in order to fulfil Our obligations under this Agreement.

- 3.22 It is Your Customers' and/or End Users' responsibility to correctly configure their LAN and all connected devices and to protect themselves adequately from virus and other system attacks (using up-to date software). The consequence of inadequate anti-virus or firewall systems could be that Your Customers and/or End Users unintentionally cause interference or damage to other Internet connected devices. We may have to suspend the Customers' and/or End Users' Service if such interference occurs.
- 3.23 Your Customers and/or End Users will be responsible for restoring the condition of the Site after any of Our installation or de-installation work, including any redecorating that may be necessary.
- 3.24 The parties acknowledge that the Services may not be available for use in all exchange areas and/or via all exchange lines. You will therefore be responsible for carrying such pre-Order screening procedures as may be agreed between the parties from time to time. We reserve the right to terminate any Order where the Communications Provider refuses to provision the Services for any reason. We shall be entitled to re-charge You for any additional charges that are imposed on Us by the Communications Provider with respect to any such failed Orders.
- 4 USAGE ALLOWANCE**
- 4.1 If a Service is subject to a Monthly Usage Allowance, You shall have sole responsibility for the monitoring of the Customers' and/ End Users' Usage and shall pay any Charges for each gigabyte or part thereof, of Usage over and above the Monthly Usage Allowance for the Service as detailed in the Service Standard.
- 5 KCOM EQUIPMENT**
- 5.1 We will supply the KCOM Equipment in accordance with the Acts and will comply at all times with any relevant standards.
- 5.2 Title to KCOM Equipment will remain with Us (or Our lessors, as the case may be) at all times and nothing will operate to transfer ownership of or rights in the KCOM Equipment to You.
- 5.3 You undertake and agree to:
- take all reasonable and proper care of the KCOM Equipment;
 - comply with all reasonable instructions communicated by Us to You for the safe and proper use of the KCOM Equipment from time to time;
 - not operate the KCOM Equipment in the event that it has become defective, damaged or in a dangerous state; and
 - not add to, modify or interfere with the KCOM Equipment.
- 5.4 Risk in the KCOM Equipment will pass immediately to You on delivery and You will indemnify and keep Us indemnified from and against all loss or damage caused by You to the KCOM Equipment to its full replacement value, except where this is due to fair wear and tear or is caused by Us (or anyone acting on Our behalf).
- 5.5 You will for the duration of this Agreement (without prejudice to Your liability to Us), at Your own expense, effect and maintain insurance in relation to the KCOM Equipment with a reputable insurance company and such insurance will be in an amount equal to the full new replacement value of the KCOM Equipment (including all taxes duties and other payments incidental to any replacements) and on fully comprehensive terms (including third party liability) against loss or damage from any cause, including, but without limitation, all risk of third party liability arising out of the presence or use of the KCOM Equipment. You will provide Us written proof of such a policy within 10 Working Days of Our written request for the same.
- 5.6 On termination of each Order, if You fail to allow Us to collect the KCOM Equipment You will be liable to Us for:
- a sum equivalent to the full retail value of the KCOM Equipment; and
 - the hire charges for the unreturned unit of KCOM Equipment until the sum specified in clause 5.6(a) has been received by Us.
- 5.7 Any software contained in the KCOM Equipment and any software or documentation provided by Us in connection with the provision of the Services is and will remain Our property or that of Our licensors. You and Your authorised users are granted a non-exclusive, non-transferable right to use such software and manuals for the purpose of accessing the Services during the continuation of the Order under which it is provided. Save as permitted by law, You will not copy, de-compile or modify such software and/or manuals. You will indemnify and keep Us indemnified against any costs, losses, damages, or liability We may incur due to You amending or in any way altering the software.
- 6 RATE ADAPTATION**
- 6.1 The provision of this clause 6 shall only apply where You order Services that are delivered using VDSL.
- 6.2 You acknowledge and agree that the speed and the stability of the operation of the Service is determined by:
- the characteristics of the exchange line, which includes its physical length, quality and susceptibility to interference from other exchange lines;
 - the specific IP application protocol used;
 - electrical, electromagnetic or radio frequency interference;
 - Rate Adaptation and the Line Rate of the Customer Equipment;
 - the capacity available within Our network or the internet generally; and/or
 - the management of Our network traffic and the priority that may be applied to the Service that You have purchased from Us.
- 6.3 You acknowledge that a Customer's Line Rate will be subject to Rate Adaptation. Rate Adaptation can occur several times each day and may change the Line Rate available to a Customer. Such changes in the Line Rate may re-set the Customer's connection to Our network or the DSLAM.
- 6.4 The Service may provide upstream (and downstream) Rate Adaptation. If so, there shall be a maximum and minimum Line Rate available for the Service. Information regarding the maximum and minimum Line Rate available for the Service can be obtained from Us, if required.
- 7 ROUTERS**
- 7.1 If You provide or any Customer provides their own router, You are responsible for ensuring that such router is of an appropriate specification and set correctly to use with the Services.
- 7.2 If we believe that the router You and/or Your Customer is using with the Services is causing a problem or security vulnerability for other customers, We will have the right to push corrective firmware to such router in order to fix the problem or vulnerability. We will not always do this but may choose to do so if a problem with a router is affecting other users of the Service.
- 8 CUSTOMER EQUIPMENT**
- 8.1 Any Customer Equipment must: (a) be technically compatible with the Service; (b) not harm Our network, any KCOM Equipment or the equipment of any third party; and (c) be connected and used in line with any relevant instructions, standards or laws.
- 8.2 You shall ensure that the Customer shall make any modifications to the Customer Equipment as We may determine necessary and shall instruct the Customer to do so in order to provide the Services, and comply with the requirements of the Acts.
- 8.3 Where You purchase any Equipment from Us under the terms of this Agreement, We will supply the relevant Equipment with the benefit of the manufacturer's standard product warranty for that Equipment
- 9 USE OF THE SERVICES**
- 9.1 You shall and shall ensure that Your Customers and End Users shall only use the Services for domestic or residential purposes. The Services are not available for business use.
- 9.2 You will comply with any restrictions set out in the Service Standard with regard to the number of PC's that You are able to connect to the Services or the networking of the Services with a LAN.
- 9.3 You must use and You must procure that Your authorised users use, the Services only in accordance with Our instructions as may be notified in writing from time to time and in accordance with the relevant provisions of the Acts, Our Acceptable Use Policy and any other relevant Legislation.
- 9.4 You shall, and shall use reasonable endeavours to ensure that Your Customers and the End Users shall, use the Services in accordance with the provisions of this Agreement, or such reasonable operating guides and instructions as may be notified by Us to You from time to time, and in accordance with all relevant provisions of the Acts and any other relevant Legislation. Without limitation to the foregoing, You shall comply with the provisions of the Communications Act 2003 relating to advance notification to OFCOM and the general conditions of entitlement.
- 9.5 You shall not, and shall use all reasonable endeavours to ensure that Your Customers and the End Users shall not use the Service:
- in any way that is unlawful or fraudulent or, to Your 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 Us or any other Network Operator;
 - In any way that contravenes any licence or third party rights;
 - to knowingly or recklessly transmit any material which contains software viruses or any computer code, files or programs designed to interrupt, damage, destroy or limit the functionality of any computer software, hardware or telecommunications equipment;
 - in any way which (in Our reasonable opinion) brings Our name into disrepute or in any way which intentionally causes damage or disruption to the Service or Our network;
 - 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 services;
 - in a way that does not comply with any instructions We give pursuant to clause 3.9(c) and/or 9.3;
 - in a way that, in Our reasonable opinion, could materially affect the quality of, or be detrimental to, any telecommunications services, including the Service;
 - 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
 - for high traffic applications which (in Our reasonable opinion) are an unsuitable use of the Service.
- 9.6 You shall, and shall ensure Your Customers and the End Users shall, make any such changes and modifications to any Third Party Equipment as We may in Our absolute discretion determine necessary in order to provide Services subject to any obligations You, Your Customer, or End Users may be subject to pursuant to the relevant Legislation. You acknowledge that if Your Customers or End Users do not make any such changes and modifications then We may not be able to route the Services to those Customers or End Users.
- 9.7 You shall, if so requested by Us, provide such information in respect of any Third Party Equipment as We may reasonably require for the purposes of providing the Services including, without limitation, information in respect of any router a Customer or End User is using with the Services.
- 9.8 Both parties agree to co-operate fully with the Police and any other relevant authorities (including but not limited to the Inland Revenue, the Trading Standards Office and/or OFCOM and any successors from time to time) in connection with any misuse or suspected misuse of the Services and You consent to Us co-operating with any other telecommunications operators in connection with any fraudulent or illegal activity related to or connected with the Services and agrees that We shall be entitled to divulge the name and address and account information relating to You, the Customers and End Users to such third parties in so far as permitted under applicable Data Protection legislation.
- 9.9 You will, and will ensure that any Customer and/or End Users when using the Service will, use reasonable endeavours to avoid causing congestion on the KCOM Network and do not misuse the network in any way. Where We notify You of any such congestion or misuse, then You shall immediately take reasonable steps to prevent such congestion or misuse. If You do not promptly take such steps then We shall be entitled to take all reasonable steps to protect the KCOM Network including the suspension and/or termination of the Services or any part of the Services.
- 9.10 You acknowledge that We may from time to time make changes to the Acceptable Use Policy. Such changes will be notified to You not less than 30 days prior to their taking effect. You may at any time during this Agreement terminate this Agreement on 30 days prior written notice if any change in the Acceptable Use Policy made by Us can be shown to be detrimental to You.
- 9.11 You shall and shall ensure that Your Customers and End Users shall:

- (a) provide all equipment, software, systems and facilities necessary to make use of the Services (other than KCOM Equipment which may be provided by Us to the Customer pursuant to clause 2);
- (b) protect their own computer equipment used to access the Services from viruses, spyware and other malicious or harmful programs and take reasonable steps to prevent viruses, spyware and other malicious or harmful programs from transferring to any other systems;
- (c) notify Us as soon as they become aware of any password misuse or security breaches;
- (d) indemnify Us against any liability We may incur as a result of any use or misuse made of the Services by them, including in respect of content uploaded or downloaded, emails sent and received and materials placed on any web space using the Services;
- (e) are aware that any password and encryption keys, and any information that We may have gathered or which We are storing for or concerning the Customer or End User in provision of the Services, may be disclosed by Us in order to comply with all applicable laws and lawful government requests, sometimes without notice.
- 9.12 You will indemnify Us against any claims or legal proceedings, which are brought or threatened against Us because the Service is used by You in breach of this clause 9.
- ## 10 MARKETING/SUPPORT
- 10.1 We may at Our absolute discretion provide You with marketing or other support.
- 10.2 The parties agree to attend regular (meaning quarterly or more frequently, as agreed) review meetings between Our account manager and an appropriate representative from You, at which all aspects of this Agreement shall be reviewed.
- 10.3 You shall use Your reasonable endeavours to promote and extend the sale and supply of the Services throughout the term of this Agreement.
- 10.4 You shall ensure that Your sales staff market and sell appropriate Services to Customers in good faith, having obtained all relevant information from each Customer and appraised each Customer fully of the Services and the terms of their agreement with You.
- ## 11 RESELLER'S OBLIGATIONS
- 11.1 You acknowledge that You have sole responsibility for:
- (a) all credit control, billing, service support, equipment, configuration and all sundry items necessary to provide a usable service to Your Customers; and
- (b) the provision and configuration of all Third Party Equipment (including the Equipment, as applicable), ensuring that it is compatible with the KCOM Network and dealing with all enquiries regarding the service You supply to Your Customers.
- 11.2 In order to qualify as a reseller for the purposes of this Agreement you must be a Communications Provider.
- 11.3 You shall, if requested by Us, provide Us with a rolling annual forecast of Your projected sign up of Customers and/or End Users every three months, including such details as We may reasonably require from time to time.
- 11.4 We shall not be liable in respect of any delay to or failure of the Services to the extent caused directly or indirectly by the number of Customer and/or End Users being signed up significantly deviating from the forecasts provided by You pursuant to clause 11.3.
- 11.5 You shall do all things as shall reasonably be necessary to expedite provision of the Services to Customers and End Users and shall maintain competent and appropriately trained staff in sufficient numbers for this purpose.
- 11.6 You agree to keep Us regularly informed as to all matters which may concern Us in relation to the implementation and operation of this Agreement and You agree to keep proper and up-to-date accounts, billing and sales records, business records, customer databases and other information relevant to the provision of the Services ("Information") and You shall permit Us access to and to inspect all Information (which access shall include access to all Reseller's Sites) on reasonable notice and to take copies thereof for the purposes of reviewing, auditing and ensuring compliance with this Agreement or any relevant law or regulation by You. We shall not be liable for any costs, losses or expenses which arise as a result of errors in the Information.
- 11.7 You have no authority to contract in Our name and shall not at any time make any statements or representations to third parties with regard to Us or in any way hold Yourself out as acting on Our behalf. Nothing in this Agreement shall have the effect of creating You as an agent or representative of Us and You stand in relation to Us as an independent contractor with the right to buy Services from Us and to resell the same solely on behalf of You.
- 11.8 You are solely responsible for the Third Party Equipment or related software or programming work required in order to enable You or any Customer to access the Services.
- 11.9 You must place Orders for the Services as set out in this Agreement and as further detailed in clause 3.11. You will be liable for any costs incurred by Us due to incomplete information leading to a failure to provide the Service.
- 11.10 You agree to pay Our standard Charges or any other charges imposed on Us by Our supplier as a result of: (i) Us or Our supplier responding to a fault and determining that such fault has not occurred as a consequence of Our or Our supplier's equipment or network; or (ii) You, the Customer or any third party not being available during any pre-arranged visit for installation or maintenance of the Services.
- ## 12 SERVICE REGRADES
- 12.1 You shall be able to request changes to the Service Elements. Such amendments shall be called "Service Regrades".
- 12.2 We shall either accept or reject Your request by email as soon as reasonably possible following Our receipt of Your request for a Service Regrade. There may be limitations with the Services that may require Us to reject Your Service Regrade request. In such circumstances, We may suggest a Service Regrade that We are able to supply to You. Once We have reached agreement regarding the Service Regrade, We commit to make available to You the Service Regrade required, subject to the terms of this Agreement.
- 12.3 The Charges shall be in accordance with the Service Regrade You chose and You shall be liable for the payment of such Charges from the date of the implementation of the Service Regrade.
- 12.4 If You have selected a Service or a Service Regrade which is insufficient for Your purposes or the purposes of Your Customer and You or Your Customer allow more End Users to use the Service than agreed or they continuously use more storage or any other Service Elements, than that provided pursuant to this Agreement or any Service Regrade, We shall be entitled to recommend that You on behalf of Your Customer performs a Service Regrade, in accordance with this Agreement.
- 12.5 Following a recommendation pursuant to clause 12.4, if You do not perform a Service Regrade on behalf of Your Customer and Your Customer continually exceeds the Service Elements:
- (a) You shall immediately pay Us on demand an amount equal to the difference between the Charges paid by You to date and the amount which would have been paid had the Charges applicable to the Service Elements actually being used by Your Customer applied from the Service Start Date; and
- (b) We shall at Our option (without prejudice to any other rights) be entitled to suspend the Service until We receive payment from You in accordance with clause 12.5(a).
- ## 13 SUSPENSION OF SERVICES
- 13.1 We may (without prejudice to Our other rights) upon notice to You suspend the provision of the Services hereunder, in whole or in part with immediate effect for such period as We may in Our absolute discretion deem appropriate and without giving any period to remedy any breach if under this Agreement:
- (a) We are obliged to comply with an order, instruction or request of Government, an emergency services organisation, or other competent administrative authority, including in particular (but not limited to) OFCOM;
- (b) We need to carry out work relating to upgrading or maintenance of the KCOM Network including, without limitation, at Your Sites or the Customer Site provided that We will give You the maximum period of notice (in writing) reasonably practicable in the circumstances;
- (c) You fail to pay any sum due and owing to Us;
- (d) You breach the provisions of clause 14.2 relating to the Credit Limit;
- (e) We acting reasonably in all circumstances, have reason to believe the Services are being used in a manner which would or might breach the provisions of clause 9.
- 13.2 We also reserve the right to suspend the Services immediately if acting reasonably in all the circumstances suspect that You are in breach of any of the material terms of this Agreement.
- ## 14 CHARGES, PAYMENTS AND CREDIT LIMIT
- 14.1 We shall invoice You as follows:
- (a) Connection Charges - at any time on or after the Service Start Date;
- (b) Rental Charges - monthly in advance or as otherwise stated on the Order; and
- (c) Any other Charges or sums due under this Agreement shall be payable upon demand.
- 14.2 You shall not exceed the Credit Limit.
- 14.3 We reserve the right to vary the Charges at any time on 30 days notice to You. If We make a significant increase to the Charges under this clause, You may terminate any orders that are subject to the increase without penalty by giving Us 30 days notice at any time within 10 days of the date We give You notice of the change.
- 14.4 Where in order to provide You with the Service it is necessary in Our reasonable opinion to (whether in whole or in part) use non-standard or exceptionally expensive methods or where a substantially greater cost than usual is incurred by Us so as to render Our standard tariff inappropriate We may charge an additional charge. If We decide to do so, We will inform You and You may then terminate that Order within 7 days of Us notifying You of the increased Charge.
- 14.5 If at any time during this Agreement in Our reasonable opinion Your financial standing changes adversely or You persistently default in paying the Charges then We may request a security deposit against non-payment and/or a guarantee executed by Your Parent Company (in a form to be agreed between the parties). If You fail to provide such security deposit within 10 Working Days then We reserve the right to suspend and/or terminate this Agreement with immediate effect by giving You written notice.
- 14.6 We shall be entitled to carry out credit checks on You. We may use information that We hold about You from Our own records and/or We may request information from a credit reference agency. We accept no liability for the accuracy or otherwise of information provided to Us from credit reference agencies. If at any time before or during the term of this Agreement You fail to meet the standard of creditworthiness deemed acceptable by Us, We shall be entitled to:
- (a) terminate this Agreement, in whole or in part immediately on written notice to You;
- (b) require You to make a deposit as security against future payments or such regular instalment payments in advance on account of any future charges as We shall deem appropriate;
- (c) impose a credit limit on You, or amend the Credit Limit, if already agreed with You, in respect of Charges and to suspend the Service at any time when such limits are reached until payment in full of such outstanding Charges has been made; and
- (d) impose such other measures on Your right to use any of the Services as We shall deem appropriate.
- 14.7 If at any time You owe or exceed the Credit Limit You will, on receipt of a demand from Us:
- (a) make an immediate payment by telegraphic transfer of an amount which reduces the amount You owe Us to less than the Credit Limit; and
- (b) shall thereafter ensure that the Credit Limit shall not be exceeded unless agreed between the parties.

- 14.8 Subject to the following, all Charges and any other sums due under this Agreement shall be collected in full by direct debit within 30 days of the date of the relevant invoice without any set-off, deduction or withholding of any kind, notwithstanding that You may not have received payment from any third parties to whom You have provided the Services, and any dispute between You and such Customer regarding billing is the sole responsibility of You. All recurring Charges will be invoiced monthly in advance during the first week of the month to which the Charges relate. Recurring Charges will be collected in full by direct debit by the end of the month to which they relate. We reserve the right to charge daily interest on any outstanding amounts until payment is received in full at a rate equal to 2% per annum above the base lending rate of the National Westminster Bank Plc as current from time to time whether before or after judgment until the date payment is received and/or suspend the Service (whether in whole or in part) until all such Charges have been paid in full. All Charges for any month shall be paid in full, even where a Customer Order terminates part way through any month to which the Charges relate.
- 14.9 Charges are exclusive of value added tax and any other applicable taxes which may from time to time be levied.
- 14.10 We reserve the right to amend the payment terms at any time on giving notice to You in the event that Our suppliers vary their payment terms and provided such variation applies to the communications industry as a whole (for example, but not limited to, variations to the Communications Provider's payment terms).
- 14.11 Where any Charges or other monies properly due to Us or any member of the KCOM Group under this Agreement or any other agreements are outstanding, We shall be entitled to offset such payments against any payments due from Us or any member of the KCOM Group to You under this Agreement or any other agreements under which We or any member of the KCOM Group provide You with telecommunications or data services.
- 14.12 Where another Network Operator charges Us for engineering work, We reserve the right to recharge such charges to You.
- 15 INTELLECTUAL PROPERTY RIGHTS**
- 15.1 All Intellectual Property Rights will at all times remain the property of Us or of Our licensor (as appropriate).
- 15.2 To the extent that We are so entitled, We grant You a non-exclusive non-transferable licence to use the Intellectual Property Rights for the purpose of using and permitting Customers and End Users to use the Services and for no other purpose. You will not copy, modify or adapt, the Intellectual Property Rights or create any derivative work based thereon.
- 15.3 For the avoidance of doubt, you shall not be permitted to use the "Lightstream" name for marketing the Services
- 15.4 All copyright, database right and other Intellectual Property Rights in all documents, drawings, designs, numbers or combinations of numbers and information (including if applicable any access codes supplied to You in connection with this Agreement) shall remain vested in Us or (if applicable) their third party owner. Such documents, drawings, designs and information are confidential and will not be copied, disclosed or used (except for the purpose for which they were supplied) without Our express prior written consent.
- 15.5 We shall have the exclusive right to commence, defend, conduct and settle all proceedings involving an infringement or alleged infringement of Our Intellectual Property Rights. You shall, at Our sole expense, give all reasonable assistance and such documentation as We may reasonably require and shall, without limitation to the generality of the foregoing, agree to be joined as claimant or defendant in any proceedings, provided always that We shall have the sole right to commence, conduct, settle or compromise any such proceedings and the sole right to the benefit of any settlement, compromise or award of a court, tribunal or the like.
- 16 DATA PROTECTION**
- 16.1 Where We are processing data on Your behalf We shall only process such data in accordance with the Data Protection Laws and Our Data Processing Commitment.
- 17 CONFIDENTIALITY**
- 17.1 During this Agreement and after its termination or expiration for any reason, both parties shall hold in confidence all information relating to the activities or affairs of the other party to which they gain access in the course of carrying out their respective obligations pursuant to this Agreement ("Confidential Information"), save to the extent that:
- the relevant information comes into the public domain other than by breach of this clause 17;
 - the relevant information is or has been generated independently by the receiving party, otherwise within the course of performing its obligations pursuant to this Agreement; or
 - the receiving party is obliged to disclose the relevant information pursuant to a statutory obligation, court order or instruction from a competent regulatory body or the rules of the UK Listing Authority.
- 17.2 Neither party may make or send a public announcement, communication or circular concerning the transactions referred to in this Agreement unless it has first obtained the other party's written consent (not to be unreasonably withheld or delayed).
- 17.3 The obligations under this clause 17 shall survive the termination of this Agreement.
- 18 TERMINATION**
- 18.1 If either party is:
- in material breach of any provision of this Agreement (other than any of clauses 9.4 and 9.5) and, where such breach is remediable, fails to remedy such breach within 30 days of written notice to do so;
 - unable to pay its debts as they fall due or threatens to suffer any resolution to wind up its business or enter into involuntary or compulsory liquidation or have an administrator, administrative receiver, receiver or any analogous officer appointed over all or part of its assets;
- then the other may immediately upon notice in writing (without prejudice to any other rights and remedies it may have) terminate (either in whole or in respect of such Orders as it shall determine) this Agreement.
- 18.2 We may terminate this Agreement (either in whole or in part) with immediate effect if:
- You are in breach (or We reasonably believe You are in breach) of any of clauses 9.3, 9.4 and 9.5, as such breach may be a criminal offence and/or cause serious harm to Our reputation; or
 - any authorisation or consent required by either party to provide, connect to or use the Services expires or is terminated or is withdrawn without replacement; or
 - there is a change of Control in You (of which event You shall give Us as much notice as possible) which We reasonably consider will be to Our detriment.
- 18.3 We reserve the right to suspend the Service (either in whole or in part) prior to any termination if any of the circumstances in clause 14.8, 18.1 or 18.2 occur, without prejudice any right to terminate this Agreement. For the avoidance of doubt, You will continue to be liable for the charges during any period of suspension.
- 18.4 If this Agreement is terminated as a whole pursuant to clause 18.1 or 18.2, all Orders shall automatically terminate on the date this Agreement terminates.
- 18.5 Individual Orders may be terminated in accordance with clause 1.2.
- 18.6 Upon termination of this Agreement any Orders for Services shall also terminate with immediate effect.
- 18.7 You agree to pay Us a Cease Charge if We are charged a cancellation charge by Our supplier and:
- You terminate the Service or the Services ends for any reason;; or
 - You move premises.
- 19 EFFECT OF TERMINATION**
- 19.1 Upon termination of this Agreement (howsoever caused) You shall cease to use the Services and procure that the Customers and End Users cease to use the Services and pay Us all outstanding amounts accrued or due (including, without limitation, all Charges) in connection with this Agreement together with any applicable disconnection charge in force at the time.
- 19.2 If any individual Order is terminated earlier than the earliest termination date provided for in clause 1.2 as a result of Us exercising Our termination rights under clauses 18.1 or 18.2 or as a result of You terminating the same other than pursuant to Your termination rights under clause 18.1, then You must pay Us a termination payment ("Termination Payment") for such Order. The amount of this Termination Payment will be an amount equal to the Charges that would have fallen due for payment by You if the relevant Order had continued until the next earliest date on which it could have been terminated in accordance with clause 1.2 minus a 10% deduction for costs not incurred and a 10% deduction for early payment of monies.
- 19.3 You acknowledge that the Charges have been calculated on the basis that:
- each individual Order will continue until the expiry of the minimum period provided for in clause 1.2; and
 - each IP address option will continue until the expiry of the IP Minimum Term,
- as We may have spent money on set up costs for the relevant services and accordingly You agree that it is reasonable for Us to require the payment of the Termination Payment as calculated in clause 19.2.
- 19.4 We will repay or credit You with the appropriate proportion (on a pro rata basis) for any Rental Charges You have paid in advance (other than for any part of the Initial Term if a Termination Payment is due) for the period ending after Your liability to pay the Rental Charges ceases.
- 19.5 The expiry or termination of this Agreement will terminate any rights and obligations of either party but will not effect any accrued rights or liabilities of either party or the clauses in this Agreement which expressly or implicitly have effect after the date of termination and which will continue to be enforceable notwithstanding termination of this Agreement.
- 19.6 Without prejudice to any of Our other rights, in the event that We terminate this agreement in accordance with clauses 18.1 or 18.2(a), We shall be entitled to approach any Customers and to market and supply broadband services directly to such Customers.
- 20 LIMITATION OF LIABILITY**
- 20.1 Nothing in this Agreement shall exclude or limit either party's liability for:
- fraud or fraudulent misrepresentation; or
 - death or personal injury resulting from its own negligence or that of its employees, sub-contractors or agents; or
 - breach of the terms implied by s. 12 of the Sale of Goods Act 1979 or Section 2 Sale of Goods and Services Act 1982; or
 - the indemnities set out in clauses 5.4, 5.7, 9.12 and 21.2.
- 20.2 Except as expressly provided in this Agreement all conditions, warranties, terms, representations, undertakings and obligations implied by statute (including without limitation those of satisfactory quality or fitness for a particular purpose (even if that purpose is made known expressly or by implication to Us)), common law, custom, trade usage or otherwise and all liabilities (if any) of Us in respect of the same are hereby wholly excluded to the fullest extent permitted by law.
- 20.3 Save as permitted by clauses 3.5 and 1.1, You acknowledge that We do not exercise control over or monitor in any way the content of any information, data or software which is stored or transmitted via the Service or which You and Your Customers send or receive. We exclude all liability for the accuracy or inaccuracy of any information or data stored or transmitted through the Service, or the sending or receipt or failure to send or receive any email, information, data or software.
- 20.4 Without prejudice to clause 20.1, We shall not be liable to You whether in contract, tort (including negligence) or restitution, or for breach of statutory duty or misrepresentation, or otherwise, for any:
- loss of business; or
 - loss or corruption of data or information; or
 - loss of profits; or
 - loss of goodwill; or
 - loss of business opportunity; or
 - loss of anticipated savings even when advised of the possibility,
- suffered by You under or in connection with this Agreement.

- 20.5 Without prejudice to clause 20.1, We shall not be liable to You whether in contract, tort (including negligence) or restitution, or for breach of statutory duty or misrepresentation, or otherwise, for any special, indirect or consequential loss or damage (including legal and other professional expenses) or expenses of any nature.
- 20.6 Subject to the provisions of this Agreement, each party hereby accepts liability in respect of damage to the other party's tangible property resulting from its own or its employees' negligence up to an aggregate amount of £2,000,000 (two million pounds) during the term of this Agreement.
- 20.7 Without prejudice to clauses 20.1 and 20.6 each party's maximum aggregate liability in connection with this Agreement whether arising in contract, tort (including negligence) or restitution or for breach of statutory duty or misrepresentation or, otherwise, shall be limited in the aggregate in each Contract Year to the greater of:
- £50,000 (fifty thousand pounds); or
 - the value of the Charges paid by You in the preceding Contract Year ("Liability Sum").
- 20.8 With reference to clause 20.7, in the event that a Contract Year has not elapsed, the Liability Sum shall be calculated by calculating the aggregate monthly average Charges incurred over the relevant period and multiplying it by 12.
- 20.9 We will in no circumstances be liable to You in contract or tort (including negligence) or otherwise if We fail to renew a domain name.
- 20.10 You acknowledge and accept that We do not have control over, nor are responsible for any third party information, software, content or services obtained by You or Your Customer(s) whilst using the Services. Use of the Services is solely at Your risk and the risk of Your Customers as applicable and We shall be not be liable to You or Your Customer(s) for any loss or damage of any nature whatsoever You or Your Customer(s) suffer as a result of the use or reception of such materials.
- 20.11 The limitations of liability set out in this clause 20 shall not limit Your liability to pay any Charges that are properly due under this Agreement. Further, Your liability to pay the Charges shall not be taken into account for the purposes of applying the limitations set out in this clause 20 to any other liabilities You may incur under or in connection with this Agreement.
- 20.12 This clause 20 sets out each party's entire financial liability (including any liability for the acts or omission of their respective employees, agents or subcontractors) to the other in respect of:
- any breach of this Agreement; and
 - any use made or resale of the Equipment and/or Software, or of any product incorporating the said Equipment and/or Software; and
 - any representation, statement or tortious act or omission (including negligence) arising under or in connection with this Agreement.
- 21 INDEMNITY AND UNDERTAKING**
- 21.1 You shall be responsible, and remain responsible, for ensuring that:
- the Customers and End Users comply with Your obligations under this Agreement (so far as applicable), and
 - the terms of Your contracts with Customers are not inconsistent with the terms of this Agreement (so far as applicable) and without limiting the generality of the foregoing You shall be solely responsible for obtaining from each Customer any information, access to premises including, without limitation, the Customer's Site and other co-operation needed by Us in connection with the provision of the Services.
- 21.2 Our obligations under this Agreement shall be solely to You and You agree to fully indemnify, defend and hold harmless Us against any and all liabilities, claims and costs (including legal costs) arising from any use or misuse of the Services, including in respect of content uploaded or downloaded, emails sent and received, and materials placed on any web space provided via the Services and any and all claims by any third party, any Customer or any End User in connection with the Services regardless of cause of action.
- 21.3 You shall be liable to Us for any acts and omissions of third parties relating to the use of the Services.
- 22 FORCE MAJEURE**
- 22.1 Neither party will be liable to the other for any loss or damage caused to or suffered by the other as a direct or indirect result of the supply of Services being prevented, restricted, hindered or delayed by reason of any circumstance outside of the first party's control. If either party is prevented from performance of its obligations for a continuous period of 3 months, either party may terminate this Agreement by giving written notice.
- 23 CHANGES**
- 23.1 If We change the location of any Equipment on the Customer's premises at Your request, You shall pay to Us all applicable charges for any re-connections and associated work.
- 23.2 We may change this Agreement (and any Orders pursuant to it) at any time in order to:
- comply with any legal or statutory obligation including, but not limited to, any requirements from time to time under the Acts;
 - comply with any final order, direction, notice, specification, designation or consent made by the Director General of OFCOM relating to the Service;
 - implement a change pursuant to clause 23.1;
 - introduce or withdraw Service features;
 - maintain the integrity or security of the Service or a Network;
 - introduce process changes, provided they are not to Your material detriment;
 - improve clarity, or make corrections to typographical errors; and/or
 - protect the use of any trade names or trademarks, provided that any change introduced pursuant to sub-clauses 23.2(e) to 23.2(h) shall not materially affect the Service or its performance insofar as it is reasonable to do so. We will give You at least 14 days notice before the changes are to take effect.
- 24 ALTERNATIVE DISPUTE RESOLUTION**
- 24.1 The parties will attempt in good faith to resolve any dispute arising out of or in connection with this Agreement ("a Dispute") through negotiations between the respective representatives of the parties having authority to settle the matter.
- 24.2 The parties agree that either of them may refer any Dispute for resolution pursuant to this clause 24 but neither shall be a condition precedent to the commencement of any court proceedings or referral to arbitration or expert determination, and either party may issue and prosecute court proceedings prior to or contemporaneously with the commencement of mediation. The following provisions shall apply to any such reference to mediation:
- 24.3 The reference shall be a reference under the Model Mediation Procedure ("MMP") of the Centre for Dispute Resolution ("CEDR") for the time being in force.
- 24.4 Both parties will forthwith upon such referral co-operate fully, promptly and in good faith with CEDR and the mediator and will (without limitation) do all such acts and sign all such documents as CEDR or the mediator may reasonably require to give effect hereto including, without limitation, an agreement in or substantially in the form of CEDR's Model Mediation Agreement for the time being in force.
- 24.5 To the extent not provided for by such an agreement or the MMP:
- the mediation shall commence by either party serving on the other written notice setting out in summary form the issues in dispute and calling upon that other party to agree the appointment of a mediator;
 - the mediation shall be conducted by a sole mediator (which shall not exclude the present of a pupil mediator) agreed between the parties or in default of agreement appointed by CEDR.
- 24.6 If and to the extent that the parties do not resolve any Dispute or any issue in the course of any mediation either party shall be at liberty to commence or continue court proceedings in relation to this Agreement in respect of such unresolved Dispute or issue.
- 25 GENERAL**
- 25.1 This Agreement constitutes the entire agreement and understanding of the parties and supersedes any previous agreement between the parties relating to the subject matter of this Agreement.
- 25.2 Each of the parties acknowledges and agrees that in entering into this Agreement it does not rely on, and will have no remedy in respect of, any statement, representation, warranty or understanding (whether negligently or innocently made) of any person (whether party to this Agreement or not) other than as set out in this Agreement. Nothing in this Agreement will operate to limit or exclude any liability for fraud.
- 25.3 Should any provision of this Agreement be held to be void or voidable the remaining provisions of this Agreement will continue in full force and effect.
- 25.4 No forbearance, delay or indulgence by either party in enforcing the provision of this Agreement will prejudice or restrict the rights of that party nor will any waiver of its rights operate as a waiver of any past or subsequent breach.
- 25.5 We shall use reasonable endeavours to meet any delivery time, date or period. However, such dates shall be regarded as estimates and We shall have no liability to achieve any such time, dates or periods.
- 25.6 Members of KCOM Group may enforce either rights under clause 14.11 but no other person or body who is not a party to this Agreement has any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any terms of this Agreement (but this does not affect any rights or remedies of a third party which exist or are available apart from that Act).
- 25.7 You may not assign the whole or part of this Agreement without Our prior written consent such consent not to be unreasonably withheld or delayed. We may assign this Agreement to any company which from time to time is a member of the KCOM Group.
- 25.8 Subject to clause 25.7, We may not assign this Agreement to any other third party without Your prior written consent such consent not to be unreasonably withheld or delayed.
- 25.9 You agree not to disclose any of the terms and conditions of, or details of, this Agreement to any third party save as necessary in order to comply with Your obligations in this Agreement or as required by law without the prior written consent of Us.
- 25.10 We reserve the right to vary these terms and conditions to the extent necessary to take into account any changes to regulations, Industry Agreements and any relevant Legislation. Any other variations must be in writing and agreed between the parties.
- 25.11 Any notice under or in connection with this Agreement shall unless otherwise agreed be in writing and may be delivered by hand to or sent by first class post or by facsimile (confirmed by post) to the address of the party concerned set out in this Agreement or any other address notified from time to time.
- 25.12 Any notice addressed as provided in clause 25.11 shall be deemed to have been given or made on the second Working Day after posting if sent by first class post upon delivery if delivered by hand and if sent by fax on the next Working Day after the date of transmission provided the sender's facsimile machine produces a report showing successful transmission to the correct facsimile.
- 25.13 Unless expressly stated, nothing in this Agreement entitles You to use any of Our or any of Our other supplier's names, logos, trademarks or other intellectual property rights without prior written consent. Intellectual property rights shall remain the property of the owners and nothing in this Agreement shall be deemed to confer any assignment or licence of such rights except where expressly stated.
- 25.14 You are not authorised or entitled to re-sell, re-supply or otherwise distribute or sub-license the software, documentation and/or any equipment provided by Us without Our prior written agreement or unless otherwise permitted by the terms of this Agreement.
- 25.15 This Agreement will be governed by English law and the parties submit to the exclusive jurisdiction of the English courts.
- 26 DEFINITIONS**
- 26.1 Except where the context otherwise requires in this Agreement the following words and phrases will have the following meanings:
- "Acceptable Use Policy" the Acceptable Use Policy for the Services, as the same is changed from time to time pursuant to clause 9.10;
- "Acts" the Communications Act 2003, the Telecommunications Act 1984 and the Electronic Communications Act 2000 (in each case as amended);

"Agreement" these terms and conditions, the Data Processing Commitment together with the Service Standard;

"Cease Charge" a charge applied by any third party operator, including the Communications Provider, as a consequence of Your termination of the Services;

"Charges" all Connection Charges, Rental Charges or any additional charges payable by You for the provision of the Services, as confirmed in the Order;

"Client Support Centre" the centre to which all fault reports and help queries should be addressed, the details of which are set out in the Service Standard;

"Commencement Date" the date this Agreement is signed by both parties;

"Communications Provider" shall be given the meaning set out in the Communications Act 2003;

"Connection Charges" those Charges for the installation of the Services as set out in the Order form,

"Contract Year" a period of 12 months from and including the Service Start Date and each consecutive 12 month period thereafter;

"Control" one person has control over another person where it, alone or jointly with a partner or quasi-partner, owns more than half the capital or business assets of such other person or has the power to exercise more than half the voting rights in such other person or has the power to appoint or remove more than half the members of the board of Directors or other body legally representing such other person or has the right to manage the affairs of such other person;

"Credit Limit" an amount as may be notified to You, from time to time;

"Customer" a customer to whom You provide the Services;

"Customer Equipment" any equipment at the Customer Site owned by Your Customer which when operated in conjunction with the KCOM Equipment allows Your Customer to obtain and/or receive the Services;

"Customer Sites" the locations from which Customers access the Services;

"Data Capture Form" means the form that We require You to complete pursuant to clause 3, which shall contain the information that We require in order to provide the Service;

"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;

"DNS" (Domain Name System) the mechanism used to resolve IP addresses against domain names;

"Domain Name" a node name and associated email address allocated to You for Your Customer to use with the Services;

"DSLAM" digital subscriber line access multiplexer;

"End Users" any individual authorised by a Customer to use the Services;

"Equipment" broadband telephony equipment supplied by Us (if applicable) pursuant to the terms of clause 2;

"Hull Area" means the geographic boundary that is defined by KCOM's original license granted on 30 November 1987 by the Secretary of State under Section 7 of the Telecommunications Act 1984 to Kingston upon Hull City Council and KCOM. A map detailing the boundaries to the Hull Area can be found in Part 3 to this Agreement;

"Industry Agreements" any standard industry agreements or third party agreements which impact upon Our ability to provide the Services;

"Initial Term" means a period of 12 months, unless otherwise stated in this Agreement;

"Intellectual Property Rights" or "IPRs" all legal and beneficial rights in software, systems and processes which We use to provide the Services;

"ISP" means an Internet service provider, other than Us;

"KCOM Group" means Us, Our holding company, Our subsidiaries, and any subsidiary of Our holding company. The terms "subsidiary" and "holding company" have the meanings given to them by section 1159 and Schedule 6 of the Companies Act 2006 (as amended);

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

"KCOM Network" the telecommunications infrastructure and system operated by Us or Our sub-contractor in order to provide the Service;

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

"Line Rate" the rate of connection between the Customer Equipment and the DSLAM located at the local exchange;

"Monthly Usage Allowance" the Usage included with the Service, as detailed in the Service Standard;

"Network Operator" any authorised public telecommunications operator used by Us to deliver the Services to You;

"OFCOM" the Office of Communications or any successor thereto;

"Order" means an Order for the supply of the Services placed by You pursuant to clause 3 which is accepted by Us and which is governed by this Agreement;

"Parent Company" any company which is the ultimate holding company of You and which is either responsible directly or indirectly for the business activities of You or which is engaged in the same or similar business to You. The term "Holding Company" shall have the meaning ascribed by Section 736 of the Companies Act 1985 or any statutory amendment thereto;

"Price Manual" the price manual published on Our Website that set out Our detailed Charges for the Services;

"Proposed Start Date" means, with respect to each Order, the due date for activation of the Service notified to You in accordance with the Service Standard;

"Rate Adaptation" the automatic negotiation of the best Line Rate between the DSLAM and the Customer Equipment, based on the settings within Our network, as applicable, line characteristics and conditions. Rate Adaptation can occur several times a day, thus resetting the rate between the Customer Equipment and the DSLAM;

"Rental Charges" those charges identified as such in the Order form;

"Reseller" or "You" the person or company to whom We are providing the Services, as detailed in Part 1;

"Sites" the location(s) from which You provide or the Customer or End User accesses the Services;

"Services" the Connect Broadband Fibre Services to be supplied from time to time in accordance with the Services Standard;

"Service Elements" means the technical aspects of the Services including the usage allowance or any other element of the Services;

"Service Regrade" means changes to certain elements of the Services, as agreed by Us, pursuant to clause 12;

"Service Standard" the service standards as detailed in Part 3 of this Agreement;

"Service Start Date" means, with respect to each Order, the Proposed Start Date or if different the earlier of the date upon which We notify You the Service is available for use or the date the End User begins using the Services;

"Third Party Equipment" any equipment not supplied by Us and used by You, Your Customer or the End User to provide, access or obtain the Services;

"Usage" the amount of data transferred over the Services (in gigabytes (GB));

"We/Us/Our" KCOM Group Limited (registered number 2150618) whose registered office is at 37 Carr Lane, Hull, HU1 3RE;

"Website" Our website at www.kcom.com or any other replacement site;

"Working Day" Monday to Friday, 9.00am – 5.00pm, except for bank and public holidays.

Data Processing Commitment

Part 5

This Schedule represents Our commitment to the Reseller in regard to processing of Personal Data. It forms part of the Agreement and should be read in conjunction with the Agreement and any associated documentation.

1 DEFINITIONS

1.1 In this Data Processing Commitment Schedule, unless the context otherwise requires:

“**Data Subject**” has the meaning given to it in the Data Protection Laws;

“**Data Subject Access Request**” has the meaning given to it in the Data Protection Laws;

“**Personal Data**” has the meaning given to it in the Data Protection Laws;

“**Permitted Sub-Processor**” means any third party supplier or other sub-processor appointed by Us for the provision of Services to the Reseller pursuant to the Agreement, as such third party supplier or sub-processor is expressly identified to the Reseller or as otherwise agreed between the parties.

1.2 Any other definitions used in this Data Processing Commitment Schedule shall have the meaning ascribed to it in the Agreement.

2 DATA PROTECTION

2.1 Both Parties hereby warrant, represent and agree that in relation to the performance of the Services during the term of the Agreement each Party will comply with the Data Protection Laws.

2.2 Both Parties acknowledge and agree that in relation to the Personal Data, the End User is the Data Controller, the Reseller is the Data Processor and We are a Sub-Processor. We agree and accept that We will process the Personal Data pursuant to and in accordance with the Agreement, as applicable, and the Data Protection Laws.

2.3 Part 5A sets out the information regarding Our processing of the Personal Data as required by article 28(3) of the General Data Protection Regulation 2016/679. We may make reasonable amendments to Part 5A by written notice to the Reseller from time to time as We reasonably consider necessary to meet those requirements. Nothing in Part 5A (including as amended pursuant to this section 2.3 of this Data Processing Commitment) confers any right or imposes any obligation on either the Reseller or Us.

2.4 We shall:

(a) only process the Personal Data for the purposes of performing Our obligations under the Agreement, as applicable, and in accordance with the Reseller’s documented instructions;

(b) not transfer the Personal Data outside of the EEA, unless permitted to do so as follows:

(i) in provision of the Services to the relevant Permitted Sub-Processor, subject to ensuring

that either: (a) such Permitted Sub-Processor implements appropriate technical and organisational measures to safeguard against unauthorised and unlawful processing of Personal Data and to ensure a level of security appropriate to the risk; or (b) the Sub-Processor enters into the Standard Contractual Clauses for the Processing and transfer of Personal Data outside of the EEA with the Reseller; or

(ii) with the Reseller’s prior written consent; and/or
(iii) if required to do so by any legislation or regulation, in which case We shall inform the Reseller of such requirement if We are able to do so;

(c) ensure that all of Our employees who process the Personal Data are subject to an obligation of confidentiality in relation to the Personal Data;

(d) implement appropriate technical and organisational measures to safeguard against unauthorised and unlawful processing of Personal Data and to ensure a level of security appropriate to the risk, including but not limited to:

(i) pseudonymising and encrypting Personal Data, as appropriate;

(ii) ensuring the ongoing confidentiality, integrity, availability and resilience of its processing systems and services;

(iii) enabling the restoration, availability and access to Personal Data in a timely manner in the event of a physical or technical incident and, without prejudice to the foregoing, in accordance with any service level agreement between Us and the Reseller;

(iv) regularly testing, assessing and evaluating the effectiveness of the technical and organisational measures for ensuring the security of the processing; and

(v) taking steps to ensure that any of Our employees who have access to Personal Data does so in accordance with Our rights and obligations as expressly detailed in this Data Processing Commitment or otherwise on the Reseller’s express written instructions unless otherwise required by legislation or other applicable regulation;

(e) inform the Reseller of any new sub-processor and/or change of a Permitted Sub-Processor. The Reseller shall inform Us within five (5) Business Days of any objection to such appointment or change. If the Reseller does not raise any such objection, We shall ensure that such sub-processors shall comply with the

- provisions of this Schedule or terms which are substantially similar;
- (f) assist the Reseller in the timely response to requests from Data Subjects exercising their rights, including but not limited to:
 - (i) where We are required to assist the Reseller with a Data Subject Access Request received, by either the Reseller or the End User responding to such request for assistance within twenty (20) days of receiving notice of such request from the Reseller;
 - (ii) where We receive a Data Subject Access Request directly from the Data Subject, We shall notify the Reseller within one (1) Business Day after receipt and shall respond to the Data Subject within the time limits specified within the Data Protection Laws and where the Reseller or End User is required to assist Us with such Data Subject Access Request, the Reseller shall coordinate a response with the End User and shall respond to Us within twenty (20) days of receiving notice of such request from Us;
 - (iii) assisting the Reseller, as applicable, with a request for access, rectification and/or erasure by a Data Subject; and
 - (iv) enabling the Reseller to comply with a request for data portability of a Data Subject;
 - (g) assist the Reseller in complying with its obligations relating to security of Personal Data as set out in the Agreement, as applicable, or as otherwise may be reasonably requested by the Reseller, including but not limited to:
 - (i) notifying the Reseller of any Personal Data breach as soon as reasonably practicable and no later than twenty four (24) hours after We become aware of the breach (such notice by email and/or telephone and followed up by email), and including all relevant detail. We agree and accept that the Reseller may use any detail included in the notification of a Personal Data breach, or otherwise given in its communication to Data Subjects, to the extent that such information does not breach the rights of any other individual;
 - (ii) at the Reseller's request and expense assisting with the communication to the Supervisory Authorities, the End and/or Data Subjects following a Personal Data breach and/or implementing any measures required as a result of such breach;
 - (iii) at the Reseller's request and expense, consulting with the Supervisory Authorities and/or assisting the Reseller to consult with the Supervisory Authorities, including providing the Reseller with any information relating to Our processing of Personal Data and/or Our compliance with the Data Protection Laws as the Reseller may reasonably request.
 - (h) upon the expiry or termination of the Agreement, delete or return all Personal Data to the Reseller (as requested by the Reseller), unless otherwise required or permitted by Data Protection Laws and provide written confirmation in this respect;
 - (i) make available to the Reseller all information reasonably necessary to enable the Reseller to demonstrate compliance with their obligations under the Data Protection Laws, including such records of all categories of processing carried out on the Reseller's behalf, as such is requested;
 - (j) co-operate with any request of the Supervisory Authority;
 - (k) allow the Reseller to undertake audits of Us on 30 days' notice and at Your expense, subject to any reasonable requests We may have regarding the timing and conduct of such audit (including, without limitation, such audits to be conducted during Our Business Hours and allowing Us to supervise such audit), to ensure Our compliance with this Schedule;
 - (l) contribute to any audits or inspections carried out on the Reseller by any Supervisory Authority or any End User, as such contribution and/or inspection is reasonably necessary to demonstrate compliance with the Reseller's obligations and/or Our obligations in this Data Processing Commitment, subject always to the provisions in Section 2.3(k) above;
 - (m) at the Reseller's expense, implement any reasonable recommendations and/or remedial actions necessary to ensure compliance with the provisions of this Schedule and/or the Data Protection Laws, as such recommendations and/or remedial actions are deemed necessary by the Reseller (acting reasonably) or any Supervisory Authority, as applicable, following an audit or inspection in accordance with Section 2.3(l) above, or otherwise as the Reseller deems reasonably necessary.
 - (n) Subject to clause 20, each Party shall indemnify the other Party in the event of any claim by a third party arising as a consequence of the other Party's breach of this Data Processing Commitment and/or Data Protection Laws.

3 GENERAL

- 3.1 We shall be entitled to amend this Data Processing Commitment either: (i) immediately to ensure Our commitment is in compliance with Data Protection Laws; or (ii) upon giving the Reseller 30 days' prior written notice of such change, provided that such change shall not (in Our reasonable opinion) cause a material detrimental effect to the Reseller).

DATA Processing Details

Part 5A

Description	Details
Subject matter of the processing	Provisions of Services pursuant to the Agreement between Us and the Reseller
Duration of the processing	During the Term of the Agreement and for up to 7 years after the expiry or termination of the Agreement
Nature and purposes of the processing	<p>To facilitate the fulfilment of Our obligations arising under the Agreement including</p> <ul style="list-style-type: none"> i. Ensuring effective communication between Us and the Reseller; ii. Maintaining full and accurate records of all Services arising under the Agreement; iii. Dealing with any rights, actions, incidents or disputes arising under the Agreement;
Type of Personal Data	<p>Includes:</p> <ul style="list-style-type: none"> i. Contact details of, and communications with the Reseller and (where applicable) the End User, and their employees, directors or contractors concerned with management of and/or receipt of Services pursuant to the Agreement ii. Contact details of, and communications with the Reseller's associated or group companies, and such parties staff concerned with management of and/or receipt of Services pursuant to the Agreement iii. Contact details of, and communications with the Reseller's sub-contractors and third parties and such parties staff concerned with either the fulfilment of the Resellers obligations arising from the Agreement or the receipt of their rights under the Agreement
Categories of Data Subject	<p>Includes:</p> <ul style="list-style-type: none"> i. The Reseller's and End User's directors, employees and/or staff concerned with the delivery of the Service ii. The directors, employees and/or staff of the Resellers group and/or associated companies concerned with the delivery of the Service iii. The directors, employees and/or staff of Reseller's sub-contractors and/or other third parties concerned with either the fulfilment of the Reseller's obligations arising from Agreement or the receipt of their rights under the Agreement