

Dated

20[]

KCOM GROUP PLC

(1)

and

(2)

**REFERENCE OFFER
for the provision of an IPLine Wholesale
Access Services**

This Agreement is made on

20[]

Between

- (1) **KCOM GROUP PLC**, whose registered office is at 37 Carr Lane, Kingston Upon Hull, HU1 3RE (registered no. 2150618) ("**KCOM**"), and
- (2) [] whose registered office is at [] (registered no.[]) ("**Customer**").

BACKGROUND:

- (A) KCOM operates a communications network in and around the city of Kingston upon Hull.
- (B) The Customer provides internet access and other communications services to end users in and around the city of Kingston upon Hull.
- (C) The Customer wishes to purchase wholesale access services from KCOM on the terms contained in this Agreement.

It is agreed

1. Definitions

- 1.1 Except where the context otherwise requires in this Agreement the following words and phrases will have the following meanings:

"Access Link" means a private circuit connecting the Customer's Premises to the KCOM Network;

"Acts" means the Communications Act 2003, the Telecommunications Act 1984 and the Electronic Communications Act 2000 (each as amended from time to time);

"Agreement" means the body of this document and the attached schedules;

"Associate Company" means with respect to each party, that party, its holding company, its subsidiaries and any subsidiaries of its holding company. The terms "subsidiary" and "holding company" have the meanings ascribed to them by Section 1261(1) of the Companies Act 2006;

“Charges” means all charges payable by the Customer under this Agreement, as detailed in Schedule 3;

“Customer’s Premises” means the premises at which a Access Link terminates;

“Customer Provided Equipment” means any equipment which is supplied by the Customer or its sub-contractors for use in connection with the Service;

“Data Protection Legislation” means any data protection Legislation including in particular the Data Protection Act 1998 (as amended from time to time);

“End Users” means any individual who is authorised by the Customer to use the Service;

“End User Order” is defined in clause 3.3;

“End User Premises” means the premises from which an End User will access and use the Services;

“Equipment” means KCOM Provided Equipment and Customer Provided Equipment;

“Exchange Line” means a standard exchange line provided by KCOM on the KCOM Network that terminates at premises within the SMP area;

“Industry Agreements” means any standard industry agreements or third party agreements which impact upon KCOM's ability to provide the Service;

“Initial Term” means, for each Link Order, the period of 12 months commencing on the Service Start Date for that Order and for each End User Order, the period of 90 days commencing on the Service Start Date for that Order;

“Internet” means the global data network comprising interconnected networks using the TCP/IP protocol suite;

“Internet Standards” means the protocols and standards defined in the following Internet documents: RFC 1812, 1122, 1123, 1918, 2200 and 2181 and any other applicable protocols and standards;

“KCOM Acceptable Use Policy” means the Acceptable Use Policy for internet services published on line on the KCOM Website, as amended from time to time;

“KCOM Authorisations” means KCOM’s authorisation under the Acts to provide the Service;

“KCOM Provided Equipment” means any equipment which is supplied by KCOM or one of its sub-contractors as part of the Service;

“KCOM Network” means the KCOM network infrastructure used to provide the Service;

“KCOM Website” means the website published by KCOM at www.kcomplc.com, or any replacement website;

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

“Link Order” is defined in clause 3.3;

“Network Operator(s)” means any network operator used by the Customer to connect telecommunications services to and from the Customer's Premises and/or used by KCOM to deliver the Service (if applicable);

“OFCOM” means the Office of Communications, or any successor thereof;

“Orders” means, together, Link Orders and End User Orders;

“Price Manual” means the price manual for Hull and the East Riding of Yorkshire which includes Charges for the Service published by KCOM and available on the KCOM Website, as amended from time to time;

“Proposed Start Date” means the date specified in each Order, or as amended, on which KCOM is to make available to the Customer the Services requested in that Order;

“Service” means the IPLine wholesale access service as described in Schedule 1 to this Agreement;

“Service Description” means the description of the Services set out in Schedule 1;

“Service Start Date” means the date on which KCOM makes available to the Customer the Services requested in each of the Orders;

“SMP Area” means the area within which KCOM has been designated as having “Significant Market Power” under Annex 1, Part 1 of EU Directive 97/33/EC and Directive 98/10/EC, as the same may be varied from time to time;

“System Administrator” means a named individual nominated by the Customer to be the point of contact with KCOM for matters relating the provision of the Service;

“Termination Payment” means the termination payment described in Schedule 3.

“Variation Notice” means a notice issued by the Customer requesting a variation to the bandwidth provided under any End User Order;

“Working Day” means Monday to Friday 08.00-18.00 hours inclusive except for UK bank and public holidays.

1.2 In this Agreement unless the context otherwise requires:

- (a) words used in the singular only shall include the plural where appropriate and vice versa, words denoting any gender shall include every gender and references to persons shall include bodies incorporated and unincorporated; and references to any clauses or Schedules are to the clauses or Schedules of this Agreement; and
- (b) any headings are for convenience only and are not to be used as an aid to interpretation; and
- (c) reference to any Act of Parliament shall be deemed to include any amendment replacement or re-enactment thereof for the time being in force and to include any by-laws statutory instruments rules regulations notices directions consents or permissions made thereunder and any condition attaching thereto; and
- (d) any undertaking by the Customer not to do any act or thing shall be deemed to include an undertaking that the Customer shall not to the extent possible permit or suffer the doing of that act or thing.

2. Term

- 2.1 This Agreement will take effect from the date hereof and continue until the Services provided under each Order have been terminated in accordance with the terms of this Agreement.
- 2.2 The provision of the Services to be provided under each Order will commence on the Service Start Date for that Order and continue for the Initial Term relevant to that Order. Following on from the expiry of the Initial Term for each Order, the Services provided under that Order will continue until terminated by either party giving the other no less than 90 days prior written notice. For the avoidance of doubt, any such notice may be given during the Initial Term for an Order but must be for a termination date after the expiry of that Initial Term.
- 2.3 The provisions of this clause 2 are subject to the early termination provisions set out elsewhere in this Agreement.

3. Placing Orders

- 3.1 The Customer's initial Order is attached as Schedule 4.
- 3.2 The parties acknowledge that the Customer's initial Order shall, as a minimum, cover the provision of at least one Access Link. There is no requirement for the Customer's initial Order to cover the provision of any services to End Users.
- 3.3 From time to time during the continuance of this Agreement the Customer may place further Orders for Services under this Agreement. Each Order placed by the Customer shall be subject to acceptance by KCOM. Each Order placed by the Customer and accepted by KCOM shall:
- (a) to the extent that it covers the provision of further Access Links, be a "Link Order" for the purposes of this Agreement and shall be subject to the additional terms set out in clause 4; and
 - (b) to the extent that it covers the provision of Services to End Users, be an "End User Order" for the purposes of this Agreement and shall be subject to the additional terms set out in clause 5.

- 3.4 All further Orders made under this Agreement will be:
- (a) in the form of the initial Order set out in Schedule 4 or such other form as may be agreed between the parties from time to time; and
 - (b) signed by the authorised representatives of both parties, or else exchanged and accepted by such other means as may be agreed between the parties from time to time.
- 3.5 If capacity issues affect KCOM's ability to process and/or accept Orders in any way, Orders placed by customers will be prioritised dealt with in turn by reference to the date on which they are placed.

4. Link Orders

- 4.1 Each Link Order shall specify the number and type of Access Links ordered. The parties acknowledge that Access Links are only available with the bandwidths specified in the Price Manual from time to time. For the avoidance of doubt, each Access Link ordered shall be a separate circuit. Each Access Link ordered shall conform to the details set out in the relevant Link Order and shall be subject to the terms of this Agreement.
- 4.2 Each Link Order shall specify the Customer's Premises to which the Access Link is to be provided. The parties acknowledge that the Customer's Premises must be within the SMP area.
- 4.3 KCOM will inform the Customer of the Proposed Start Date for each Link Order within 10 days from the date on which the Link Order has been agreed between the parties. In the event of the Proposed Start Date specified by KCOM being more than 90 days after the date on which the Link Order has been agreed, the Customer shall be entitled to terminate the Link Order by notice to KCOM at any time within 14 days of such notification without paying any termination payment or other damages to KCOM.
- 4.4 Where the location of the Customers Premises are such that installing the Access Link would require KCOM to incur costs that are in excess of the relevant connection Charge (as specified in the Price Manual) then KCOM shall be entitled to make additional Charges to cover the amount of such excess costs from the Customer. KCOM shall notify the Customer of any such additional Charges within 10 days of the date on which the relevant Link Order has been agreed between the parties. In the

event of KCOM notifying the Customer of any such additional charges, the Customer shall be entitled to terminate the Link Order at any time during the period of 14 days following on from the date of such notification without paying any termination payment or other damages to KCOM.

4.5 In order to enable KCOM to fulfil its obligations under any Link Order, the Customer will at its own cost:

- (a) procure all consents, licences and permissions necessary from Landlords or other third parties for the installation of the Access Link at the Customer's Premises, including, the carrying out of any related preparation work and the installation of any related KCOM Equipment;
- (b) provide site and building plans (to include full details of all internal cabling runs) of the Customer's Premises as requested by KCOM;
- (c) ensure that any unique or special conditions applicable to the Customer's Premises that may affect the installation or maintenance of the Access Links are notified to KCOM in writing;
- (d) prepare the Customer's Premises in accordance with any instructions notified in advance by KCOM and provide KCOM with such assistance as KCOM may reasonably require for the purposes of carrying out the installation and maintenance of the Access Links and any related KCOM Equipment.

4.6 Subject to the Customer complying with its obligations under this Agreement, KCOM will use its reasonable endeavours to provide the Access Links specified in each Link Order by the Proposed Start Date for that Link Order. However, all start dates are estimates and KCOM will have no liability for any failure to meet such dates.

4.7 The Customer shall notify KCOM as soon as is reasonably practicable of any changes to the information or other details specified in any Link Order agreed between the parties.

5. End User Orders

5.1 Each End User Order shall specify:

- (a) the full postal address of the End User Premises to which the Services are to be provided; and

- (b) the full SDI telephone number(s) of the Exchange Lines via which the Services are to be provided.

For the avoidance of doubt, there shall be no requirement for the Customer to provide KCOM with details of the identity of the End Users when placing an End User Order.

- 5.2 The parties acknowledge that the Services can only be provided to End Users who have access to a Exchange Line terminating at an End User Premises located within the SMP Area. The Customer shall ensure that each End User has the necessary authority to use the relevant Exchange Line with the Services. In particular, where the End User is not the KCOM account holder for the Exchange Line, the Customer shall ensure that the End User has obtained the consent of the account holder to the use of the Exchange Line with the services. For the avoidance of doubt, there shall be no requirement for the End User to procure the relevant Exchange Line directly from KCOM. The End User shall be entitled to procure the relevant Exchange Line from either KCOM or a reseller of KCOM services.
- 5.3 The Customer shall ensure that each End User maintains all of the authorisations and consents referred to in clause 5.2 in relation to each Exchange Line for the duration of the relevant End User Order. The Customer acknowledges that KCOM will be required to comply with any request to terminate the provision of the Services on any Exchange Line that is made by the KCOM account holder for that Exchange Line. In such event, the End User Order for the provision of the Services on that Exchange Line shall terminate automatically. KCOM shall notify the Customer of any End User Order that is terminated in these circumstances. Additionally, where any End User Order is terminated during its Initial Term or otherwise on short notice in these circumstances then the Customer shall pay KCOM the Termination Payment specified in Schedule 3.
- 5.4 Where broadband services are already provided to a user over any Exchange Line specified in an End User Order (irrespective of whether such existing broadband services are provided by KCOM or a third party communications services provider), then KCOM shall be entitled to require the End User to comply with any reasonable migration process specified by KCOM from time to time.
- 5.5 Each End User Order shall specify the type of Service required for each of the Exchange Lines covered by the Order. The parties acknowledge that the Services

are only available in the Service variance specified in the Service Description and the Price Manual. The parties further acknowledge that “IPLine Home” Services are only available for supply over residential Exchange Lines, “IPLine Office” Services are only available for supply over business Exchange Lines and that “IPLine Plus Services” are available for supply over either residential or business Exchange Lines.

5.6 The parties acknowledge that:

- (a) due to the characteristics of the copper loop cabling comprised in the KCOM Network, not all of the Service variance specified in the Service Description will be available over every KCOM Exchange Line; and
- (b) KCOM reserves the right to make additional charges at the rates set out in the Price Manual where the installation of an ADSL RJ 11 termination socket is required so that the Services can be provided over any KCOM Exchange Line.

5.7 Within 10 days of an End User Order being agreed between the parties, KCOM shall inform the Customer of:

- (a) the Proposed Start Date for the provision of Service on each of the KCOM Exchange Lines covered by the Order;
- (b) whether the type of Service required by the Customer can be provided on each of the Exchange Lines covered by the Order; and
- (c) whether additional charges will be due from the Customer for the installation of an ADSL RJ 11 termination socket on any Exchange line covered by the Order.

In the event of KCOM informing the Customer that:

- (aa) the Proposed Start Date will be more than 30 days after the date on which the End User Order has been agreed;
- (bb) the type of Service required by the Customer not being available; or
- (cc) additional charges being due for the installation of an ADSL RJ 11 termination socket,

then the Customer shall be entitled to terminate the End User Order with respect to any of the Exchange Lines affected by such notification at any time during the period of 14 days following on from such notification without paying any termination payment or other damages to KCOM.

5.8 In order to enable KCOM to fulfil its obligations under any End User Order, the Customer shall:

- (a) ensure that any necessary approvals for the installation and provision of the Services and installation of any related KCOM Equipment are obtained in relation to each End User Premises; and
- (a) KCOM and its contractors are given reasonable access to the End User Premises as and when required for the installation and maintenance of the Services and any related KCOM Provided Equipment.

5.9 Subject to the Customer complying with its obligations under this Agreement, KCOM will use its reasonable endeavours to provide the Services specified in each End User Order by the Proposed Start Date for that End User Order. However, all start dates are estimates and KCOM will have no liability for any failure to meet any start dates.

5.10 The Customer will notify KCOM as soon as is reasonably practicable of any changes to the information or other details specified in any End User Order agreed between the parties.

5.11 The Customer shall be entitled to vary the bandwidth provided under any End User Order on the following terms;

- (a) the Customer shall vary the bandwidth for any End User Order by serving a Variation Notice on KCOM;
- (b) the Customer shall vary the bandwidth for any End User Order no more frequently than once in any calendar month;
- (c) subject to the requisite capacity being available in the KCOM Network, KCOM will implement the requested change in bandwidth within 10 Working Days of the date on which the Variation Notice is served; and

- (d) the Customer shall pay the Charges for varying the bandwidth for an End User Order detailed in the Price Manual.

6. Provision of the Service

- 6.1 KCOM will provide the Customer with the Service on the terms of this Agreement.
- 6.2 KCOM will provide the Service with the reasonable skill and care of a competent communications service provider.
- 6.3 The Customer acknowledges that it is technically impracticable to provide a fault free Service and KCOM does not undertake to do so. KCOM will however repair any reported faults in accordance with the fault repair service detailed in Schedules 1 and 2.
- 6.4 Occasionally KCOM may:
 - (a) change the technical specification of the Service set out in the Service Description, provided that any change to the technical specification does not materially affect the performance of the Service;
 - (b) suspend the Service for operational reasons such as repair, maintenance or improvement of the Service or because of an emergency, but before doing so will give as much online, written or oral notice as is reasonably practicable; or
 - (c) give the Customer instructions which it believes are necessary for reasons of health, safety or the quality of any telecommunications service provided by KCOM to the Customer or any other customer.
- 6.5 With the exception of KCOM Equipment provided or otherwise made available to the Customer under this Agreement, the Customer is responsible for providing suitable computer hardware, software and telecommunications equipment and services necessary to access and use the Service.
- 6.6 The Customer will nominate a number of System Administrators to be the only points of contact with KCOM for all matters relating to the Service. KCOM will not deal with any requests or inquires that are made in relation to the Services unless they are made by Customer's nominated System Administrators.

7. Relationship with End Users

- 7.1 The Customer is responsible for the acts and omissions of all End Users in connection with the Service and is liable for any failure by any End User to perform or observe the terms and conditions of this Agreement, including any instructions issued under clause 4.5(d).
- 7.2 The Customer acknowledges that it will have certain statutory and regulatory obligations under the Acts in relation to its use of the Services. In particular, the Customer will have regulatory obligations under the Acts if it uses the Services for the purpose of providing IP telephony services to End Users. The Customer undertakes to KCOM to ensure that it complies with any such obligations at all times.
- 7.3 The Customer acknowledges that KCOM will not have any contractual relationship with End Users in relation to the provision of the Services. The Customer will fully indemnify KCOM for all costs, expenses and liabilities incurred by KCOM (including any reasonable legal fees) in relation to any claim that is either made or threatened against KCOM by an End User in relation to the provision of the Services.
- 7.4 Further to clauses 6.6 and 7.3, KCOM will not deal with any requests or inquires that are made by End Users in relation to the Services.

8 Connection of Equipment to the Service

- 8.1 The Customer must ensure that any equipment that it or any End User connects to or uses with the Service (whether directly or indirectly) is:
- (a) connected and used in accordance with any reasonable instructions, safety or security procedures issued by KCOM from time to time;
 - (b) technically compatible with the Service and approved for that purpose under any relevant Legislation.

9. Use of the Service

- 9.1 For the avoidance of doubt, the Customer shall be entitled to use the Services for the purposes of fulfilling its own contractual obligations to End Users.
- 9.2 The Service must not be used in a way that does not comply with:

- (a) the terms of any Legislation or any licence applicable to the Customer or that is in any way unlawful;
- (b) any instructions given by KCOM under clauses 4.5(d); or
- (c) the Internet Standards;

9.3 The Service must not be used:

- (a) to send, receive, upload, download, use or re-use any information or material which is offensive, abusive, indecent, defamatory, obscene, menacing or intended to cause distress or is in breach of confidence, copyright, privacy or any other rights;
- (b) to cause annoyance, inconvenience or needless anxiety;
- (c) to send or provide unsolicited advertising or promotional material or to receive responses to any unsolicited advertising or promotional material sent or provided using the Service by any third party; or
- (d) in any way which in KCOM's reasonable opinion is, or is likely to be, detrimental to the provision of the Service to the Customer or any other customer.

9.4 The Customer must not use a Domain Name or URL which infringes the rights of any person in a corresponding trade mark or name or may give rise to a tortious action for Passing Off.

9.5 For the avoidance of doubt, the Customer will be responsible for ensuring that its End Users do not use the Service in a way that breaches clauses 9.2, 9.3 or 9.4. In particular, the Customer will ensure that its End Users comply with the terms of an acceptable use policy that places restrictions on their use of the Service that are (materially) no less comprehensive than those set out in the KCOM Acceptable Use Policy.

9.6 KCOM will be entitled to treat any breach of clauses 9.2, 9.3 or 9.4 as a material breach of this Agreement which cannot be remedied for the purposes of clause 13.

9.7 KCOM will be entitled to take all reasonable steps to protect the operation of the KCOM Network. KCOM may suspend the Services where reasonably necessary to protect the operation of the KCOM Network.

9.8 The Customer must fully indemnify KCOM against any claims or legal proceedings which are brought or threatened against KCOM by a third party because the Service is used in breach of the provisions of this clause 9. KCOM will notify the Customer of any such claims or proceedings and keep the Customer informed as to the progress of such claims or proceedings.

10 **Charges and Deposits**

10.1 The Customer shall pay KCOM the Charges for the provision of the Service.

10.2 The Charges shall be calculated in accordance with the rates and other details set out in Schedule 3.

10.3 The Charges for the Services to be provided under each Order shall be payable from the Service Start Date for that Order. All fixed periodic Charges shall be invoiced by KCOM monthly in advance. All connection or other one-off Charges shall become due for payment by the Customer on completion of the relevant work and shall be invoiced by KCOM monthly in arrears.

10.4 All Charges are exclusive of Value Added Tax or any other applicable taxes which may be levied from time to time. The amount of such taxes shall be paid by the Customer in addition to the Charges.

10.5 All Charges due under this Agreement will be payable within 30 days of the relevant invoice and will be paid in full without any set off, deduction or withholding of any kind. KCOM reserves 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 rate of National Westminster Bank Plc as current from time to time, whether before or after judgement and/or suspend the Service (either in whole or in part) until such Charges have been paid in full.

10.6 If at any time during this Agreement in KCOM's reasonable opinion the Customer's financial standing changes adversely or the customer persistently defaults in paying the Charges, then KCOM may request a security deposit against non-payment of the Charges. If the Customer fails to provide such security deposit within 10 working days then KCOM reserves the right to suspend and/or terminate this Agreement with immediate effect by giving written notice.

11 Limitation of Liability

- 11.1 Nothing in this Agreement shall limit either parties' liability for fraud, for death or personal injury resulting from its own negligence or that of its employees, sub-contractors or agents or for any other matter for which liability cannot be restricted or limited at law.
- 11.2 Except as expressly set out in this Agreement all conditions, warranties, terms, undertakings and obligations express or implied by statute (including, without limitation, those of satisfactory quality or of fitness for a particular purpose (even if that purpose is made known expressly or by implication to KCOM)), common law, custom, trade usage or otherwise and all liabilities in respect of the same (if any) are excluded.
- 11.3 Neither party will in any circumstances be liable to the other party in contract, tort (including negligence) or otherwise for any loss of business; loss of data; loss of profits; loss of goodwill; loss of anticipated savings even when advised of the possibility; loss of revenue or; any indirect or consequential losses, liabilities or costs.
- 11.4 Both parties accept liability in respect of damage to the other's tangible property resulting from its or its employees' negligence up to an aggregate of £2,000,000 (two million pounds).
- 11.5 Other than in respect of clause 11.1 and 11.4 and subject to clause 11.3, each party's maximum aggregate liability in contract, tort, negligence or otherwise arising out of or in connection with this Agreement, will in respect of any and all acts, omissions, defaults or events be limited in aggregate to the greater of:
- (a) £500,000; or
 - (b) the value of the Charges paid by the Customer in the 12-month period prior to the date of the event giving rise to the liability ("Liability Sum").

In the event that 12 months has not accrued from the Service Start Date, the Liability Sum will be calculated by calculating the monthly average Charges incurred over the elapsed period and multiplying it by 12.

12 Termination for Convenience

- 12.1 The Customer may terminate this Agreement or the Services provided under any Order at any time on 90 days' notice to KCOM.
- 12.2 If the Customer terminates the provision of an Access Link under any Link Order, any End User Order where the Services are carried by the relevant Access Link shall automatically terminate on the same date.
- 12.3 If the Customer terminates the Services provided under any Order during the Initial Term for that Order or otherwise on short notice pursuant to this clause 12, then the Customer must pay the Termination Payment specified in Schedule 3.

13 Termination and Suspension for Breach

- 13.1 Either party may terminate this Agreement without notice if the other party;
- (a) commits a material breach of this Agreement , which if capable of remedy, the other party fails to remedy the breach within a reasonable time of a written notice to do so;
 - (b) commits a material breach of this Agreement which cannot be remedied;
 - (c) is repeatedly in breach of this Agreement; or
 - (d) is the subject of a bankruptcy order, or becomes insolvent, or makes any arrangement or composition with or assignment for the benefit of its creditors, or if it goes into either voluntary (otherwise than for reconstruction or amalgamation) or compulsory liquidation, or a receiver or administrator is appointed over its assets.
- 13.2 If KCOM has the right to terminate this Agreement pursuant to clause 13.1, then KCOM may suspend the Service without prejudice to its right to terminate this Agreement. Where the Service is suspended under this clause, the Customer must pay the Charges for the Service until this Agreement is terminated.
- 13.3 If this Agreement is terminated by KCOM during an Initial Term because of an event specified in clause 13.1, the Customer must pay KCOM the Termination Payment specified in Schedule 3.

- 13.4 If either party delays in acting upon a breach of this Agreement that delay will not be regarded as a waiver of that breach. If either party waives a breach of this Agreement that waiver is limited to that particular breach.
- 13.5 Any provision of this Agreement that is intended (either expressly or by implication) to have continuing effect shall continue in full force and effect notwithstanding the termination of this Agreement.
- 13.6 Both parties shall be entitled to exercise the rights of termination and suspension set out in this clause 13 on an Order-by-Order basis and the provisions of this clause 13 shall apply to any such termination accordingly.
- 13.7 If KCOM terminates the Services provided under any Order during the Initial Term for that Order or otherwise on short notice pursuant to clause 13.1, then the Customer must pay the Termination Payment specified in Schedule 3.
- 13.8 If this Agreement terminates for any reason, the provision of the Services under each End User Order will automatically terminate on the same date as the Agreement terminates.

14. Confidentiality

- 14.1 Subject to clause 14.2, each party will treat and procure that its directors and employees treat as confidential all information whether of a technical or business nature or otherwise relating in any manner to the business or affairs of the other party or relating to this Agreement and will not disclose such information to any person, firm or company and will not use such information other than for the purposes set out in this Agreement.
- 14.2 The provisions of this clause 14 shall not apply to any information which:
- (a) is already in the possession of the recipient party prior to its receipt provided that the recipient party is not bound by any existing obligation of confidentiality in respect of such information;
 - (b) is in or comes into the public domain other than by default of the recipient party;

- (c) is obtained by the recipient party from a bona fide third Party having free right of disposal of such information and without breach by recipient party; or
 - (d) is properly disclosed pursuant to and in accordance with a relevant statutory or regulatory obligation or to obtain or maintain any listing on a Stock Exchange or is required to be disclosed by law or by any statutory or regulatory body, but only to the extent so required.
- 14.3 Information which is the subject of the provisions of clause 14.1 shall only be used for the purpose for which it was delivered and/or for the purposes of performing the obligations of the recipient party under this Agreement.
- 14.4 Information which is the subject of the provisions of clause 14.1 may be disclosed to agents, sub-contractors and professional advisers of the recipient party who have a need to know such information provided that the recipient party will ensure that any such agent, sub-contractor or professional advisor treats the information in accordance with the restrictions imposed by this clause 14.
- 14.5 The provisions of this 14 shall apply throughout this Agreement and for a further period of five years from the date of termination of this Agreement.
- 14.6 The provisions of this clause 14 shall be without prejudice to the terms of any earlier Confidentiality Agreement or Non-Disclosure Agreement relating to the subject matter of this Agreement.

15. Data Protection

- 15.1 Both parties shall comply with the provisions of any relevant Data Protection Legislation in carrying out their respective obligations under this Agreement.
- 15.2 Nothing in this Agreement will oblige either party to do or omit to do anything which causes it to breach any relevant Data Protection Legislation.
- 15.3 Notwithstanding the provisions of this 15 and the above clause 14, the Customer acknowledges that KCOM will co-operate with the Police and any relevant authorities (including but not limited to HM Revenue & Customs, the Office of Fair Trading and the Trading Standards Department and any successor bodies) in connection with any misuse or suspected misuse of the Service and the Customer consents to KCOM co-

operating with any other communication service providers in connection with any suspected fraudulent activity related to or connected with the Service and agrees (where necessary) that KCOM will be entitled to disclose the name and address and account information relating to the Customer and any of the Customer's End Users

- 15.4 The Customer acknowledges that KCOM will comply with any request for the disclosure and/or recording of data in connection with the use of the Service by the Customer or End Users where it is required to do so under any relevant Legislation.

16. **Security**

- 16.1 The Customer acknowledges that it will be a provider of communications services to End Users. Consequently, it shall be the Customer, and not KCOM, that is responsible for complying with those provisions of the Anti-Terrorism Crime and Security Act 2001, the Regulation of Investigatory Powers Act 2000 and any related legislation, regulation or codes of practice that relate to the retention, interception, or disclosure of data relating to End Users or their use of the Services.

- 16.2 If requested by the Customer, KCOM may agree to provide assistance to the Customer in complying with its obligations under clause 16.1, but reserves the right to raise additional Charges for this.

17. **Force Majeure**

- 17.1 Any delay or failure to perform an obligation under this Agreement by a party ("the Affected Party") shall not constitute a breach of this Agreement to the extent that it is caused by an event of Force Majeure.

- 17.2 The Affected Party shall promptly notify the other party in writing of the estimated extent and duration of the inability to perform its obligations and the measures taken and to be taken by the Affected Party to mitigate the effect of such event of Force Majeure (including, if reasonably practicable and agreed between the parties in writing, the implementation of a temporary work around).

- 17.3 Upon the cessation of the event of Force Majeure, the Affected Party shall promptly notify the other party in writing of such cessation.

- 17.4 The Affected Party shall use all reasonable endeavours to mitigate the effect of each event of Force Majeure.
- 17.5 If any event of Force Majeure prevails for a continuous period in excess of 3 months after the date on which the Force Majeure begins, either party will be entitled to give notice in writing to the other party to terminate this Agreement.
- 17.6 For the purposes of this clause 17 “Force Majeure” means any event beyond a party’s reasonable control, including but not limited to any act of God, insurrection or civil disorder, war or military operations, national or local emergency, acts or omissions of government or highway authorities, industrial disputes of any kind (but not including those involving that party’s employees), fire, lightning, explosion, subsidence, inclement weather, the acts or omissions of third parties where the party affected by the Force Majeure is not responsible or any similar causes.

18. Assignment and Sub-Contracting

- 18.1 This Agreement is personal to the parties and neither party shall without the prior written consent (such consent not to be unreasonably withheld or delayed) of the other assign, charge, novate or otherwise deal with the whole or any part of this Agreement or its rights or obligations under this Agreement, other than to or in favour of any Associated Company of such party.
- 18.2 If either Party sub-contracts any of its obligations under this Agreement, it shall remain liable to the other Party for the acts and omissions of the sub-contractor in relation to such obligations as if they were its own acts and omissions.

19. Publicity

Neither party shall without the prior approval in writing of the other (such approval not to be unreasonably withheld or delayed) directly or indirectly make any release or statement to the press, radio, television or other media in any way connected with this Agreement.

20. Waiver

Failure by either party at any time to enforce any of the provisions of this Agreement shall neither be construed as a waiver of any rights or remedies under this

Agreement nor in any way affect the validity of this Agreement or any part of it. No waiver shall be effective unless given in writing and no waiver of a breach of this Agreement shall constitute a waiver of any antecedent or subsequent breach.

21. Severability

21.1 The invalidity or unenforceability for any reason of any part of this Agreement shall not prejudice or affect the validity or enforceability of the remainder of this Agreement.

21.2 If further lawful performance of this Agreement or any part of it shall be made impossible by the final judgement or final order of any court of competent jurisdiction, commission or government agency or similar authority having jurisdiction over either party, the parties shall immediately use their reasonable endeavours to agree amendments to this Agreement so as to comply with such judgement or order.

22. Variation

22.1 KCOM may vary any of the terms of this Agreement and any Order made under it at any time by giving the Customer at least 28 days written notice before the change is due to take effect.

22.2 KCOM may vary any of the terms of this Agreement and any Order made under it with immediate effect and at any time by giving the Customer written notice where such variation is required to comply with any legal or regulatory obligation (including in particular any direction or determination issued by OFCOM).

22.3 Subject to clauses 22.1 and 22.2 and the provisions of paragraph 1 of Schedule 3, any variation to the terms of this Agreement or any Order shall only be effective where it has been reduced to writing and signed by the duly authorised representatives of KCOM and the Customer.

22.4 In the event of KCOM varying the terms of this Agreement or any Order pursuant to clauses 22.1 or 22.2 in a way that has a material and adverse affect on the Customer, or the Customer's use of the Service, then the Customer shall be entitled to terminate this Agreement or the relevant Order by giving KCOM notice to that effect at any time during the 28 day period following on from the date that the Customer receives notice from KCOM of the relevant variation.

23. Entire Agreement

23.1 Subject only to clause 14.6, this Agreement constitutes the entire understanding between the parties relating to the subject matter of this Agreement and supersedes all previous agreements, understandings or commitments between the parties or representations (other than fraudulent misrepresentation) made by either party whether oral or written with respect to the subject matter of this Agreement .

23.2 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 will operate to limit or exclude any liability for fraud.

24. No Partnership

Nothing in this Agreement shall be deemed to constitute a partnership or joint venture between the parties or to constitute one party the agent of the other for any purpose whatsoever.

25. Notices

25.1 Subject to clause 25.2, any notice required or authorised by this Agreement shall be in writing sent by first class post or email (immediately confirmed by post) and shall be deemed to have been received:

- (a) forty eight (48) hours after such posting in the case of postal deliveries; and
- (b) on the day of sending if sent by email on or before 4 PM, and on the day following if sent by email after 4 PM provided that a copy of it is sent by post.

25.2 Any notice required or authorised by this Agreement shall be sent to the parties at the following addresses:

For KCOM:

Attention: The Company Secretary
Address: KCOM GROUP PLC
37 Carr Lane
Kingston upon Hull
HU1 3RE

Telephone No. 01482 602527

Email: []@kcom.com

For the Customer:

Attention:

Address:

Telephone No.

Email;

26. **Contract Rights Of Third Parties**

This Agreement is made solely and specifically between and for the benefit of the parties and is not intended to be for the benefit of and shall not be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person who is not named at the date of this Agreement as a party to it and neither party shall be entitled to declare itself a trustee of the rights under it for the benefit of any third party.

27. **Dispute Resolution**

27.1 Any dispute between the parties arising out of or relating to this Agreement (including In respect of the interpretation of any provision of this Agreement or the performance of either parties obligations under this Agreement) shall be resolved as set out in this clause 27.

27.2 Prior to the initiation of formal dispute resolution procedures, the parties shall first attempt to resolve their dispute informally by referring the matter in dispute to each party's System Administrator within 7 days of the matter to be escalated occurring. In the event the System Administrators are unable to reach agreement on the matter in escalation within 3 Working Days of reference to them, either of them may refer the matter to the persons named below (or such other persons of equivalent standing as notified by the parties in writing to each other) who shall meet within 5 Working Days of reference to them to discuss the matter in escalation. Both parties shall be entitled to make oral and/or written representations prior to such meeting taking place.

For KCOM:

Attention: The Company Secretary

Address: KCOM GROUP PLC

37 Carr Lane
Kingston upon Hull
HU1 3RE

Telephone No. 01482 602527
Email: []@kcom.com

For the Customer:
Attention:
Address:
Telephone No.

Email;

27.3 If the parties have not resolved the dispute in accordance with the informal procedures set out above then either party may commence court proceedings in respect of the dispute.

28. Governing Law and Jurisdiction

28.1 This Agreement shall be governed and construed in accordance with English law.

28.2 The parties agree to submit to the exclusive jurisdiction of the English Courts.

AS WITNESS the hands of the duly authorised representatives of the parties on the date written above.

Signed by ♦)
for and on behalf of)
KCOM GROUP PLC)

.....

Signed by ♦)
for and on behalf of [])

.....

Schedule 1
Service Schedule

1. Published Technical Document

The Services shall be as described in this Schedule 1 and the Customer Interface Publication for IP Line Services (CIP025) made available on the KCOM Website, as varied from time to time. In the event of any conflict between the Customer Interface Publication made available on the KCOM Website and this Agreement, then this Agreement shall prevail.

2. Access Link Capacity

2.1 The number and bandwidth of Access Links determines the number of End User connections that can be supported using the Services by the Customer.

2.2 Customer is responsible for ensuring that they have subscribed to sufficient Access Link capacity in order to meet their own contention ratio obligations to their End Users. KCOM is not liable for any service limitations due to insufficient Access Link capacity.

3. Forecasting

3.1 The Customer shall provide KCOM with a non-binding 12 month rolling forecast of its requirements for Services under this Agreement. The Customer shall update this rolling forecast on a quarterly basis in accordance with such formal process as may be agreed with KCOM from time to time.

4. Fault Repair Service

4.1 KCOM will monitor availability of the KCOM Network 24 hours per day, 7 days a week, 365 days a year, and manage any failure of the KCOM Network so as to restore service as soon as is reasonably practicable and (where applicable) in accordance with the Service Level Agreement set out in Schedule 2.

4.2 Customers may report faults to KCOM's Business Service Centre. All faults must be reported to KCOM by the System Administrator. If an End User has problems they

must contact the Customer. If the problem is traced to the KCOM Network, the System Administrator will report the fault to KCOM and may be required by KCOM to assist in resolving the problem. KCOM's Business Service Centre will be available 24 hours a day, 7 days a week, 365 days a year. For the avoidance of doubt, End Users will not be entitled to contact the KCOM's Business Service Centre directly.

4.3 KCOM will respond to faults in the Service reported by the System Administrator and will correct reported faults as soon as is reasonably practicable and (where applicable) in accordance with the Service Level Agreement set out in Schedule 2.

4.4 If KCOM does work on a reported fault in the Service and finds there is none, KCOM may make a reasonable charge for the work.

5. Interoperability Testing

5.1 If requested by the Customer, KCOM will use its reasonable endeavours to provide information or carry out testing on interoperability issues affecting equipment or related services provided to End Users by the Customer. KCOM reserves the right to make additional charges on a time and materials basis for providing such assistance.

Schedule 2
Service Level Agreement

1. Introduction

- 1.1 This Service Level Agreement (“SLA”) provides the Customer with an enhanced level of performance monitoring, together with minimum performance levels on key measures which are defined in paragraph 3 below.
- 1.2 Measurement will be based on KCOM’s data recorded in accordance with the tests as detailed in paragraph 3 below.
- 1.3 KCOM aims to comply with the performance measures defined in this SLA . However, such performance measures are targets only and KCOM will have no liability for any failure to meet such targets.

2. Eligibility

- 2.1 The SLA applies to the IPLine Service. In order to apply the Customer must have submitted a completed Customer Requirements Form to KCOM requesting the SLA facility and have provided any necessary account details and information required in order to allow KCOM to set-up the SLA.

3. What the Service Level Agreement covers

- 3.1 KCOM will test the Service by using a monitoring suite common to all Service users.
- 3.2 The Service performance measures will commence from the beginning of the full calendar month following activation of the services to be provided under the Customer’s initial Order.
- 3.3 The performance measures covered by this SLA are split into the following service areas:
 - (a) Access Links; and
 - (b) End User connections.

3.4 The performance level targets for these service areas are as follows:

Performance Measure	Target Performance Levels for the Service
<p>Access Links;</p> <p>Planned outage advice target;</p> <p>Target fault repair time;</p>	<p>KCOM will provide at least 10 working days' notice of any planned work that might affect the operation of the Access Link.</p> <p>Target time to repair of 5 hours measured from the time the fault is reported on a 24 x 7 basis.</p>
<p>End User connections;</p> <p>Target fault repair time for "IPLine Home Services" or any "IPLine Plus Services" provided over a residential Exchange Line;</p> <p>Target fault repair time for "IPLine Office Services" or any "IPLine Plus Services" provided over a business Exchange Line;</p>	<p>Target time to repair by the close of KCOM's standard maintenance hours on the day after the fault is reported. KCOM's standard maintenance hours are 08:00 hours to 18:00 hours Monday to Friday and 08:00 hours to 17:00 hours on Saturdays, Bank Holidays excepted.</p> <p>Target time to repair of 10 hours measured from the time the fault is reported on the basis of elapsed time during KCOM's standard maintenance hours. KCOM's standard maintenance hours are 08:00 hours to 18:00 hours Monday to Friday and 08:00 hours to 17:00 hours on Saturdays, Bank Holidays excepted.</p>

3.5 Where requested, the results of the SLA performance measures will be reported by KCOM to the Customer on a monthly basis and will indicate if the service has failed to meet the above target performance levels.

4. What the SLA does not cover

4.1 This SLA will not apply where any failure of the Service to meet the target performance levels set out above is caused by:

- (a) any failure by the Customer to comply with its obligations under this Agreement;
- (b) any suspension of the Service under the provisions of this Agreement;
- (c) a fault of the Customer's own network or equipment;
- (d) the faults or omissions of other communications or internet service providers;
- (e) the Customer or anyone else with or without the Customer's knowledge or approval using the server capacity of the software made available to it;

Schedule 3

Charges

1. The Charges

1.1 The connection Charges and rental Charges for all Services ordered under this Agreement shall be as set out in the Price Manual as varied from time to time.

1.2 the Customer acknowledges that KCOM shall be entitled to make changes to the Charges set out in the Price Manual from time to time but subject always to complying with its obligations under the Acts. In particular, KCOM shall comply with its obligations to provide due notice of any change to the Charges to OFCOM.

1.3 KCOM shall give the Customer notice of any such changes to the Charges as follows;

(a) KCOM shall give the Customer no less than 90 days' notice of any increase in the Charges; and

(b) KCOM shall give the Customer no less than 28 days' notice of any decrease in the Charges.

KCOM shall be entitled to send any notice required by this paragraph by email or other agreed method of communication to the normal addressee at the Customer for invoices issued by KCOM under this Agreement.

1.4 In the event that KCOM increases the rental Charges set out in the Price Manual by an amount (expressed as a percentage) that is greater than the amount (also expressed as a percentage) of the increase in the Index over the period since the last date on which such Charges were increased or the date of this Agreement (as appropriate), then the Customer shall be entitled to terminate this Agreement without paying any termination payment or other damages to KCOM. For the purposes of this paragraph 1.4, the "Index" shall be the Retail Price Index (excluding mortgage interest costs) maintained by the Central Statistical Office of the United Kingdom government.

2. Termination Payments

- 2.1 If the Services provided under any Order are terminated during the Initial Term for that Order or otherwise on short notice in the circumstances described in clauses 5.3, 10.6, 12.3 and 13.7 the Customer shall be liable to pay KCOM a Termination Payment calculated as follows;

The Termination Payment shall be the total outstanding rental Charges payable from the date of termination up until the next earliest date on which the provision of the relevant Services could have been properly terminated by the Customer in accordance with the terms of this Agreement, less a discount for accelerated payment of 10%.

Schedule 4
Initial Order

This Order is placed under the Agreement for the provision of a IPLine Wholesale Access Services agreed between KCOM GROUP PLC and [] on even date ("the IPLine Agreement").

The order details are as follows:

- a) Access Links
[DETAILS]
- b) End User Services
[DETAILS]

This Order is subject to the terms of the IPLine Agreement. All capitalised terms used in this Order shall have the same meaning as is given to them in the IPLine Agreement.

Agreed by the authorised representatives of the parties on the dates given below:

For KCOM GROUP PLC

For [NAME OF CUSTOMER]

[NO SIGNATURES REQUIRED FOR INITIAL
ORDER]

.....
Name:
Position:
Date:

.....
Name:
Position:
Date: