



Reseller Agreement for Non Reference Offer Ethernet Based Services

Services delivered under this agreement are:

- Leased Lines Point to Point
- Point to Multipoint (EAS)
- Meshed Networks (VPLS)
- Internet Access Services
- Network to Network Interface (NNI)
- Expansion Area Ethernet

Part 1

Reseller Business Name:	Account Team:
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<u>RESELLER INFORMATION:</u>	
Address: Postcode: Company Type: If Other, please state:	Main Contact: Phone Number: Email Address:

<u>BILLING DETAILS:</u>	
Address for invoice: If Other, please insert here: PO Number:	Contact Number: Contact Name(s): Payment Method: Direct Debit Summary:
Please note: If the above box is blank We will assume no PO number is required for payment	

THE CHARGES SET OUT IN THIS PROPOSAL DO NOT CONSTITUTE AN OFFER AND MAY BE WITHDRAWN AT ANY TIME PRIOR TO ACCEPTANCE OF THE CONTRACT BY KCOM GROUP LIMITED. CHARGES ARE SUBJECT TO CHANGE IN ACCORDANCE WITH CLAUSE 10 OF THE TERMS AND CONDITIONS.



Reseller Agreement for Non Reference Offer Ethernet Based Services

Offer and Acceptance – Part 2

We have issued this Contract to You, which includes a copy of Our Standard Terms and Conditions and the Services Standard for the Service. By signing in the place indicated below You indicate Your willingness to offer to enter into this Contract. This Contract 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 Contract 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 Non Reference Offer Ethernet Based Services

Services delivered under this agreement are Leased Lines Point to Point, Point to Multipoint (EAS), Meshed Networks (VPLS), Internet Access Services, Network to Network Interface (NNI) and Expansion Area Ethernet & Expansion Area Optical Services

Service Standards – Part 3

1. INTRODUCTION

These Service Standards define the Services that We shall supply 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.

This Contract must not be used for the provision of Leased Line Point to Point Services in the Hull Area (where both the A End and B End of the Leased Line are inside the Hull Area). Any Leased Line Point to Point Services provided wholly over Our fixed-line network in the Hull Area will be subject to the terms of Our Reference Offer for the Provision of Leased Lines and Ethernet Services published on Our Website.

1.1. Service Details

The Services are Our 'white label' reseller product that We make available to Communications Providers (CPs) pursuant to this Contract. The Services enable You to offer Leased Lines Point to Point, Point to Multipoint and Internet Access Services direct to Your retail Customers and gives You control over sales, billing and first line support to Your Customers.

The Leased Line Point to Point Services, Point to Multipoint (EAS), Network to Network Interface (NNI), meshed networks (VPLS), Expansion Area (EA) Ethernet Services and Expansion Area (EA) Optical Services involve connections between two or more specified locations available for use on an unlimited basis at a specified transport rate.

All Services demarcate on Network Terminating Equipment (NTEs) supplied by Us, save for when KCOM is renting co-location from a third party because one or more of You and/or Your Customers' sites are outside the Hull Area. The NTEs are located on Your or Your Customers' Sites and remain Our property (subject to (a) when KCOM is renting co-location from a third party and (b) clause 18.7 of Part 4 of this Contract). NNI services will terminate on You and/or Your Customers' sites and on the KCOM NTE at Your Nominated Site.

With Internet Access Services in all areas, We will use reasonable endeavours to ensure access will be available for Our own Interconnect Points providing that the configuration of computer server, client, network or any other equipment not provided by Us as part of the Internet Access Service are correct and capable of correctly transmitting TCP/IP packets or other network application traffic.

The Internet Access Service is a dedicated connection between a Customer Site and the Network that provides direct access to the Internet using the Network and will be delivered via a digital fixed link and terminated on Network Terminating Equipment at a Customer Site.

- The Internet Access Service for Category 1 services and Internet Access Services provided in the EA area in Category 2 excludes an on-site router as routing is provided within the KCOM network.

Each Internet Access Service includes the following services:

- Primary and/or secondary DNS services
- One domain name registration or transfer (additional registration and transfers are available as chargeable services)
- SMTP email routing
- One usable static IP address; additional IP addresses/ranges are subject to additional charges (the number of static IP addresses allocated will be subject to Your Customer's requirement and satisfactory compliance with the usage guidelines as determined by the European IP registry agent, RIPE)

Table 1 shows the Services Categories for all Services.

Table 1

Category 1	Category 2	Category 3
Directly connected services provided wholly over Our fixed line network in the Hull Area ("On-Net")	Directly connected services over i) Our national network infrastructure outside the Hull Area; or ii) Our Expansion Area network infrastructure outside the Hull Area; or iii) infrastructure provided by a third party network provider ("Off-Net")	Directly connected services within a Closed User Group, provided over Our Fibre To The Premise (FTTP) network in the Hull Area ("On-Net"), in a VPLS context only.
Services can be: - Internet Access Services provided wholly On-Net - Point to Multipoint EAS - Meshed networks (VPLS) - Network to Network Interface in the Hull Area	Services can be: - Internet Access Services provided wholly Off-Net; - Leased Line Services provided wholly Off-Net; or - Leased Line Services provided partly On-Net and partly Off-Net (i.e. where the one end of the Leased Line is inside the Hull Area and the other end is outside the Hull Area.) - EA Ethernet Services - EA Optical Services - Internet Access Services provided in the EA area - Network to Network Interface in KCOM defined locations outside the Hull Area	Services can be: - Meshed networks (VPLS) provided over Fibre To The Premise (FTTP) network

2. SERVICE DELIVERY

2.1. Delivery Management

We will provide You with a Proposed Start Date for each Order for the Services. You are responsible for communicating this information to Your Customer. However, where the NNI hub is on premises to which You control access, the provisions of this clause 2.1 that would otherwise require You to inform Your Customer or procure the actions of Your Customer apply exclusively to You instead.

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 an abortive visit charge, at Our standard rate, 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

If You cancel an Order, or significantly modify it (e.g. changes in service location, delivery date, or service type) prior to the Proposed Start Date, We reserve the right to claim reasonable costs incurred as a result of such cancellation or modification. In addition We will not be bound by the original timescales.

3. SERVICE AVAILABILITY

3.1. Our Obligations

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

3.2. Restrictions

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

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

3.3. Planned Outages

Planned outages may occasionally be necessary for Us to carry out essential maintenance or network upgrades; these will be kept to a minimum.

Except in an emergency or when circumstances are beyond Our reasonable control You will receive at least 10 (ten) Working Days' notice of any planned work which will affect the availability of the Services.

4. INCIDENT MANAGEMENT

For the avoidance of doubt, You must provide first line support to the Customer.

In the event that You become aware of any problem or a breakdown in the operation of the Services, any of Our Equipment or the Network ("**Fault**") for which You require second line support, You should notify Us by contacting the Service Desk in accordance with the Incident Management Procedure.

4.1. Our Obligations

Our Business Care Plus support service will be provided as standard with all Services. The Time to Resolve (TTR) obligation for Service Affecting Faults is shown in Table 2:

Table 2

	Service Category 1 and Service Category 2	Service Category 3
Business Care Plus	5 clock hours (measured 24 hours a day, 7 days a week, Public and Bank Holidays included)	Fix same day if reported before 12:00 p.m. (measured 24 hours a day, 7 days a week, Public and Bank Holidays included)

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

5. SERVICE CREDITS

5.1. Service Delivery

In the event that We fail to meet the Proposed Start Date in respect of an Order, and We are unable to demonstrate the delay to be caused by failure of You to fulfil any of Your obligations or by a delay caused by a third party or by circumstances beyond its or Our reasonable control or for any of the reasons set out in Section 2.1 of this Part 3, You have the right to claim compensation as detailed in Table 3.

Table 3

Working Days past Proposed Start Date	Categories 1 & 2	Category 3
1 to 5	5% of connection charge payable under the applicable Order where KCOM has failed to meet the TTR	For each Working Day past the Proposed Start Date, an amount equal to 5 times the daily End User rental charge.
6 to 10	10% of connection charge payable under the applicable Order where KCOM has failed to meet the TTR	
11+	15% of connection charge payable under the applicable Order where KCOM has failed to meet the TTR	

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

The maximum Service Credit You may claim under this Contract per Order is £1,000 for Categories 1 and 2.

For Category 3, the maximum Service Credit that a CP may receive under this Agreement in respect of an Order where KCOM fails to achieve the Proposed Start Date is 60 x the daily End User rental charge.

5.2. Incident Management

In the event that We fail to meet the TTR for Service Affecting Faults only in respect of a given Customer or Customer(s), You have the right to claim compensation as detailed in Table 4 unless Our failure to meet the TTR is due to a Customer Responsible Fault, Third Party Attributable Fault, Planned Outage, a Fault caused by failure of You to fulfil any of Your obligations, or by a Fault caused by a third party or by circumstances beyond its or Our reasonable control.

Table 4

Hours past TTR	Categories 1 & 2	Category 3	
Up to 3	1% of annual rental charges payable under the applicable Order ¹	Calendar Days past TTR	An amount equal to 5 times the daily End User rental charge for each calendar day beyond the specified Time To Repair. ²
3 – 6	3% of annual rental charges payable under the applicable Order ¹		
6+	5% of annual rental charges payable under the applicable Order ¹		

¹ Refers to rental charges paid by You in the previous 12 months for the Services provided under an Order where KCOM has failed to meet the TTR, up to a maximum aggregate amount equivalent to 3 months' rental charges in any 12 month period, commencing on the Service Start Date or any anniversary of that date.

² The maximum Service Credit that a Customer may receive under this Contract in respect of an Order where We fail to achieve the TTR is 60 x the daily End User rental charge.

5.3. Payment of Service Credits

All claims must be submitted to the relevant Account Manager within 30 working days (dependent on the type of claim), from either:

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

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

6. DEFINITIONS

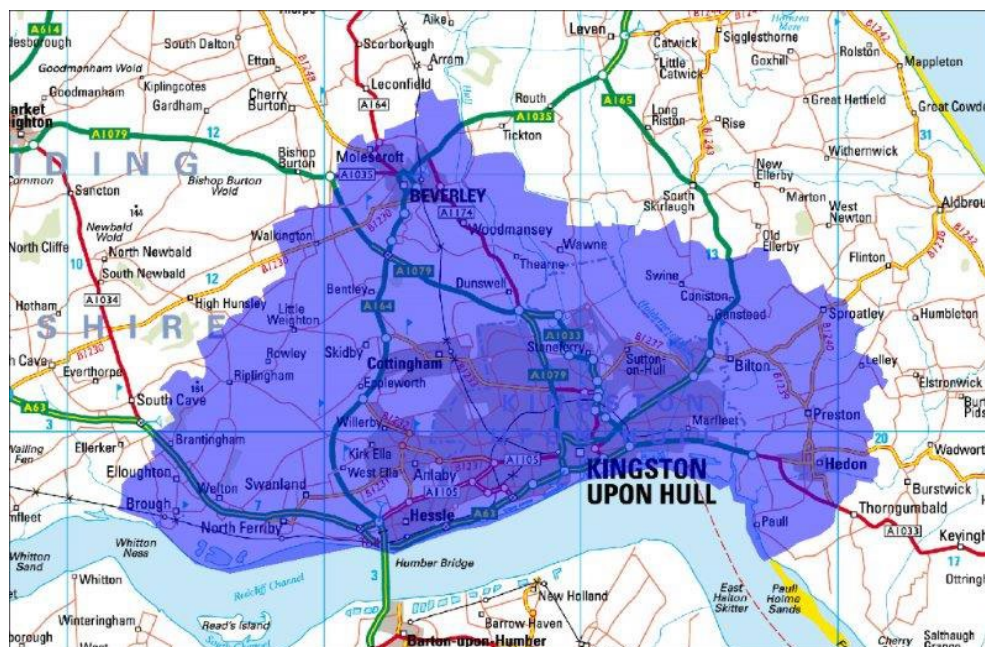
Customer Responsible Faults

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

Hull Area

The blue shaded area depicted in Map 1 below details the geographic scope of the Hull Area.

Map 1: The Hull Area



Planned Outage

In maintaining the Service provided, We may with reasonable notice require a temporary outage in Service. Wherever possible We will agree the outage with You in advance of the required work. Any planned downtime shall not be included in Fault or Service reliability measurements.

Service Affecting Fault (SAF)

Any failure of Our transmission or terminating equipment, which causes a material loss of signals in one or both transmission directions. Examples: No inbound or outbound access, (in respect of Internet Access Services) the router cannot reach the Internet, or be reached from the Internet using Our standard command tests. For the avoidance of doubt the following shall not constitute Service Affecting Faults: excessive Internet latency (beyond Our IP network), destination outages, or inability to connect to one destination where others are connectable.

Time To Resolve (TTR)

The length of time from the issue of the Incident Reference Number to the time that We notify You that the Fault has been resolved.

Third Party Attributable Faults

In the event that a Service Affecting Fault or Non-Service Affecting Fault is identified as being attributable to a third party (i.e. neither You nor Us) downtime or Faults arising shall not qualify for service credits. We will try to rectify such Third Party Attributable Faults as soon as reasonably practicable.

Reseller Agreement for Non Reference Offer Ethernet Services

Standard Terms and Conditions – Part 4

1 TERM

1.1 This Contract will 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 Contract 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 90 days' prior written notice.

2 ORDERS AND PROVISION OF SERVICES

2.1 We will use reasonable endeavours to provide the Services in accordance with the applicable Service Standards (and the Services are otherwise subject to Part 3 of this Contract) and will use reasonable skill and care in the provision of the Services. However, You acknowledge that the Services cannot be provided fault free and We do not warrant error free or uninterrupted use of the Services.

2.2 We shall use reasonable endeavours to make each Service available for use by Your Customers from the Proposed Start Date for the applicable Order unless We are unable to do so as the result of; (a) a failure by You to fulfil Your obligations under this Contract (including the correct completion of the Order 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.

2.3 If, for any reason and prior to the Service Start Date, You request Us to make any changes to the Services We have agreed to supply to a Customer, You accept that the provision of such requested Services is subject to Our agreement and such amendment to the Proposed Start Date, the Charges and/or this Contract, as required by Us, in Our sole discretion.

2.4 You acknowledge that the provision of the Services is subject to survey and We shall notify You if We require such a survey. You acknowledge that We shall be entitled to amend the technical aspects of the Services and/or the relevant Charges, as appropriate, following completion of the survey. In the event that the survey reveals that the provision of the Services to a Customer at a Customer Site will be degraded to such an extent that We would be unable to comply with this Contract, We will be entitled to terminate the applicable Order (in whole or in part) without any liability to You. In the event of termination of an Order, for any reason, following completion of the survey but prior to the Proposed Start Date, You will refund to Us (at Our request) any costs incurred, including, without limitation, staff costs, equipment costs and the cost of carrying out the survey.

2.5 You accept that:

- (a) there may be some technical limitations within Our Network which 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) prior to completion of any tests, as detailed in clause 3.4, if it becomes apparent to Us that the Services will be degraded to such an extent that We would be unable to comply with this Contract. 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

2.6 We do not guarantee the continuing 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 Services. Notwithstanding any other provisions of this Contract but subject to clause 13.1, We will not be liable to You in contract, tort (including, without limitation, negligence) or otherwise for the actions of any third party

(including, without limitation, acts or omissions of the Network Operators) that affect or otherwise impact upon the provision of the Services.

2.7 You must obtain the necessary consents from Your Customers (at Your own expense) in advance of installation in order for Your Customers to receive the Service, 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. If You have not managed to procure the necessary consents and We have commenced work You will refund to Us (on Our request) the cost of all such work (including, without limitation, staff costs and equipment costs). 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.

2.8 You must provide site and building plans (to include full details of all internal cabling runs) of the Customer Site as requested by Us.

2.9 You must provide Us with full details of all other services in the vicinity of the proposed works

2.10 You must provide any information that may be reasonably required by Us or Our third party supplier. If Your requirements, or those of a Customer, change for any reason, You will inform Us immediately.

2.11 You must ensure that any unique or special conditions applicable to the Customer's Site that may affect the survey or the installation and maintenance of any Equipment (to the extent We are providing such as part of this Contract) are made known to Us in writing prior to Us commencing the survey.

2.12 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.

2.13 You must prepare, or must ensure that the Customers prepare the Customer Site in accordance with any instructions notified in advance by Us and provide Us with such assistance as We may reasonably require for the purposes of carrying out the installation, connection and maintenance of any Equipment (to the extent We are providing such as part of this Contract);

2.14 You must ensure that any network testing termination point serving the Customer's Site to which the Equipment is to be connected is available for use upon request by Us and is not moved or modified without notification in writing to Us.

2.15 You must ensure that Your Customer provides Us or Our nominated third party with access to the Customer's Site, during normal working hours, and access to such facilities as they may reasonably require in order to perform the survey, install any Equipment, provide the Services and otherwise perform Our obligations under the Contract;

2.16 You will and will ensure that Your Customers shall provide a safe working environment for Our employees and nominated third parties whilst at the Customer Site(s).

2.17 You will provide Us with information regarding any changes to the Site plans, regulations or any other conditions affecting the Customer Site during the term of the Order, which may impact the provision of the Services or which may be reasonably requested by Us to enable the provision of the Services.

2.18 You will 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 applicable at the Customer Sites and We will use Our reasonable efforts to observe and ensure that Our employees, network sub-contractors and authorised representatives observe, Your reasonable regulations, as advised

to Us pursuant to this clause, whilst at the Customer Sites, provided that We shall not be liable to You or Your Customers if, as a result of conforming with such regulations, We are in breach of Our obligations under this Contract.

2.19 You will, at Your own expense, ensure that Your Customers 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.

2.20 You shall not and shall ensure 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 of Our Equipment other than by Us or Our nominated or approved third party or Our network sub-contractor (as applicable).

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

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

2.23 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.

2.24 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.

2.25 We will be entitled to modify and/or replace any of Our 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.

2.26 We will not be liable to You if We are unable to carry out any or all of Our obligations under the Contract as a result of a breach by You of any of the provisions of this Contract.

2.27 We will usually carry out the Services during Our normal working hours but may agree, exceptionally, to carry out work outside Our usual working hours subject to Your agreement to pay an Additional Charge.

2.28 Further, We may raise an Additional Charge if:

- (a) Our approved engineer is called out because of faults that are found upon examination not to be faults with Our Equipment (including without limitation, power supply fluctuations or faults on another network system or apparatus to which Our Equipment is connected) or the Network; or
- (b) We arrange an appointment for Our approved engineer to attend a Customer Site but Your Customer (i) fails to provide access to the Site, or (ii) cancels the appointment for any reason; or
- (c) if You report the Equipment faulty and We consider (acting reasonably) that it is not, or the fault is not covered by Our warranty with the relevant third party manufacturer.

3 OUR EQUIPMENT

3.1 Where we are using Our Equipment to provide the Services, as soon as reasonably practicable after the Commencement Date (and in any event prior to the Service Start Date applicable to the relevant Order), We will undertake any necessary surveys and installation (or procure the installation) of Our Equipment at the Customer Site.

3.2 If necessary to provide the Services We will use reasonable endeavours to procure any consents licences or permissions necessary from the

- Highways Agency or equivalent body to enable Us to lay any cables.
- 3.3 Any duct, underground surface access chambers, cable or other materials developed or provided by Us for the Services shall remain the property of Us or Our network sub-contractor (as applicable) for use exclusively for the Services. You shall not and shall not allow any third party including but not limited to any Customer (other than Our duly authorised network sub-contractor) to interfere with or use the same.
- 3.4 Following installation of the Equipment and completion of the works under clause 18.4 (as applicable), We will carry out Our standard test procedures to ensure that the Services are ready for operation by the Customer. We will supply Our Equipment in accordance with all relevant legislative requirements and will comply at all times with the relevant standard.
- 3.5 Title to Our Equipment will remain with Us at all times and nothing will operate to transfer ownership of or rights in Our Equipment to You and / or to Your Customers. You shall not and shall ensure Your Customer shall not remove or obscure any identification mark(s) affixed to the same. Any software contained in Our Equipment provided by Us or Our network sub-contractors or other third party providers (as applicable) and any other software or documentation provided by Us or Our network sub-contractors or other third party providers (as applicable) in connection with the provision of the Services are and will remain Our property or the property of Our licensors. All Intellectual Property Rights in any such software or documentation and Our Equipment shall remain vested in Us or our licensors (as applicable) and nothing shall operate to transfer or assign any Intellectual Property Rights in any such software or documentation or Our Equipment to You and / or to Your Customers. We hereby grant You a non-exclusive, non-transferrable right to use such software and documentation for the purpose of accessing the Services only. You will not make any modifications to such software and documentation. If You modify or any of Your Customers modify the software or documentation in any way We will be entitled to terminate the Contract with immediate effect. You will indemnify and keep Us indemnified against any and all costs (including, without limitation, any legal costs or disbursements on an indemnity basis), losses, damages or liabilities We may incur due to You and / or any of Your Customers amending or in any way altering the software or documentation.
- 3.6 If You become aware of any breach of third party rights, pursuant to the supply of the Services, the possession or use of any equipment or products provided to You or any Customer (including, without limitation, Our Equipment) as part of the Services or in any way connected to this Contract, You agree that You shall:
- (a) give Us notice of any such claim within 14 days of the date on which You are first given notice that the claim has been made;
 - (b) allow Us or Our licensors to have sole conduct of the defence or settlement of any such claim; and
 - (c) provide Us with all reasonable assistance in conducting the defence or settlement of any such claim and shall make no prejudicial statement or admission of liability.
- 3.7 For the avoidance of doubt, We shall have the right at Our discretion to:
- (a) procure the right for You on behalf of Your Customers to continue using the items so that such use is no longer infringing;
 - (b) modify the Services and/or infringing items so that they become non-infringing without a material diminution in their performance or specification so that the provision of the Services is not materially adversely affected and extend the provisions of this clause thereto; or
 - (c) replace the infringing items with any reasonable equivalent non-infringing substitute, provided there is no material diminution in their performance or specification and the provision of the Services is not materially affected.
- 3.8 Upon termination of this Contract You shall promptly return or, if requested, destroy all copies of the software and documentation held by You and / or Your Customers that is in a tangible form, including software or documentation stored on electronic or optical storage devices, whether in digital form or otherwise.
- 3.9 You agree and undertake and represent to Us that You will and will ensure that Your Customers will:
- (a) take all reasonable and proper care of all Equipment;
 - (b) comply with all reasonable instructions communicated by Us to You for the safe and proper use of the Equipment and the Services from time to time;
 - (c) not operate the Equipment after it has become defective, unsuitable, damaged or in a dangerous state.
- 3.10 Subject to such recall not significantly affecting the provision of the Services (except where this Contract has already been terminated), We may recall any or all of Our Equipment upon 7 days' notice. You will return to Us or make available for collection (as directed by Us) such Equipment.
- 3.11 Risk in Our Equipment will pass to You immediately on delivery to You or Your Customer as applicable.
- 3.12 You will for the duration of the Contract (without prejudice to Your liability to Us), at Your own expense, effect and maintain insurance in relation to Our Equipment with a reputable insurance company and such insurance will be in an amount equal to the full new replacement value of Our Equipment (including, without limitation, all taxes duties and other payments incidental to any replacements) and on fully comprehensive terms (including, without limitation, 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 Our Equipment.
- 3.13 You will allow and will ensure that Your Customers allow Our employees and nominated third parties access to Our Equipment at all reasonable times upon reasonable notice to inspect, test, adjust, maintain, modify, repair or replace the same. You will be responsible for ensuring that Your Customers provide safe, proper and adequate access for such purposes.
- 3.14 On termination of this Contract if You fail to allow Us to collect and / or any of Your Customers fail to allow Us to collect Our Equipment You will be liable to Us for:
- (a) a sum equivalent to the full retail value of Our Equipment; and
 - (b) the hire charges, as set by Us from time to time, for the unreturned unit of Our Equipment until the sum specified in 3.14(a) has been received by Us.
- 3.15 You will be liable for any loss or damage to Our Equipment (reasonable wear and tear excepted), subject to the provisions of clause 13.5, except where such loss or damage is caused by Us or anyone acting on Our behalf.
- 3.16 We shall not be liable for any failure in the Services, including, without limitation, any obligations to meet any Service Standards, caused by any unauthorised use of the Equipment by You, by any of Your Customers or by a third party on Your behalf.
- 3.17 We will be entitled to:
- (a) modify and/or replace any of Our Equipment or modify the Services from time to time if We consider such modification and/or replacement reasonably necessary for the continued provision of the Services; and
 - (b) suspend the Services for operational reasons and We shall use Our reasonable endeavours to minimise the period of interruption and mitigate the impact of the interruption on the provision of the Services. We shall notify You in advance of any suspension; and
 - (c) suspend the Services in the case of an emergency and, wherever possible, use Our reasonable endeavours to minimise the period of interruption.
- #### 4 CUSTOMER EQUIPMENT
- 4.1 Any Customer Equipment must: (a) be technically compatible with the Service; (b) not harm Our network, any of Our Equipment or the equipment of any third party; and (c) be connected and used in line with any relevant instructions, standards or laws.
- 4.2 You shall ensure that the Customer shall make any such modifications to the Customer Equipment as We may determine necessary and shall instruct the Customer to do so in order to provide the Services, subject to Your obligations under the Acts.
- 4.3 You will comply and will ensure that Your Customers comply with the Acts and only use Customer Equipment which conforms to the standard in force from time to time as stipulated by the Acts, any law or regulation, or as required by Us for connection of Customer Equipment to the Network. We may disconnect any Customer Equipment which does not conform to such standard or approval or which, in Our reasonable opinion, may cause death, personal injury or damage to property or impair the quality of the Services or any other services provided by Us, including, without limitation, services to third parties. You will refund to Us any costs We incur as a consequence of such disconnection.
- 4.4 You will, if requested by Us, provide such information in respect of the Customer Equipment as We may reasonably require including, without limitation, information in respect of any signalling equipment.
- #### 5 USE OF THE SERVICE
- 5.1 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.
- 5.2 You shall not, and shall use all reasonable endeavours to ensure that Your Customers and the End Users shall not, use the Service:
- (a) 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;
 - (b) in any way that contravenes any licence or third party rights;
 - (c) to knowingly or recklessly transmit any material which contains software viruses or any computer codes, files or programs designed to interrupt, damage, destroy or limit the functionality of any computer software, hardware or telecommunications equipment;
 - (d) in any way which (in Our reasonable opinion) brings Our name into disrepute or in any way which intentionally causes damage or disruption to the Service or Our network;
 - (e) to send, knowingly receive, upload, download, use or re-use material which is abusive, indecent, offensive, defamatory, obscene or menacing, or in breach of copyright, confidence, privacy or any other rights or is intended to, cause annoyance, inconvenience or worry or needless anxiety or which is defamatory, an act of treason or intended to be a hoax call to any emergency services;
 - (f) in a way that does not comply with any instructions We give pursuant to clause 5.1;
 - (g) in a way that, in Our reasonable opinion, could materially affect the quality of, or be detrimental to, any telecommunications services, including the Service;
 - (h) to spam or send or provide unsolicited advertising or promotional material or knowingly receive responses to any Spam, unsolicited advertising or promotional material sent or provided by any third party;
 - (i) for high traffic applications which (in Our reasonable opinion) are an unsuitable use of the Service.
- 5.3 Both parties agree to cooperate 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 agree 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 Laws.
- 5.4 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.
- 5.5 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 is using with the Services.

5.6 When using Our Internet Access Services, 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 Contract terminate this Contract 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 and/or Your Customers.

5.7 When using Our Internet Access Services, 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;
 - (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.
- 5.8 You will indemnify Us against any claims or legal proceedings, which are brought or threatened against Us because the Service is used by You or any of Your Customers in breach of this clause 5.

6 MARKETING/SUPPORT

- 6.1 We may at Our absolute discretion provide You with marketing or other support.
- 6.2 You shall use Your reasonable endeavours to promote and extend the sale and supply of the Services throughout the term of this Contract.
- 6.3 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.

7 RESELLER OBLIGATIONS

- 7.1 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 Our Network and dealing with all enquiries regarding the service You supply to Your Customers.
- 7.2 In order to qualify as a reseller for the purposes of this Contract you must be a Communications Provider.
- 7.3 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.
- 7.4 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 7.3.
- 7.5 You shall do all things as shall reasonably be necessary to expedite provision of the Services to Customers and shall maintain competent and appropriately trained staff in sufficient numbers for this purpose.
- 7.6 You agree to keep Us regularly informed as to all matters which may concern Us in relation to the implementation and operation of this Contract 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 Contract

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.

7.7 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 Contract 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.

7.8 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.

7.9 You must place Orders for the Services as set out in this Contract. You will be liable for any costs incurred by Us due to incomplete information leading to a failure to provide the Service.

7.10 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.

8 SERVICE REGRADES

- 8.1 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.
- 8.2 You shall be able to request changes to the Service Elements. Such amendments shall be called "Service Regrades". Any request for a Service Regrade should be made to Us, and You must give full details of Your requirement.
- 8.3 We shall either accept or reject Your request 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 Contract.
- 8.4 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.
- 8.5 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 Contract 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 Contract.
- 8.6 Following a recommendation pursuant to clause 8.5, 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 8.6(a).

(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 8.6(a).

9 CHANGES

- 9.1 If We change the location of any Equipment at a Customer Site at Your request, You shall pay to Us all applicable charges for any re-connections and associated work.
- 9.2 We may change this Contract (and any Orders pursuant to it) at any time in order to:
 - (a) comply with any legal or statutory obligation including, but not limited to, any requirements from time to time under the Acts;
 - (b) comply with any final order, direction, notice, specification, designation or consent made by the Director General of OFCOM relating to the Service;
 - (c) implement a change pursuant to clause 9.1;
 - (d) introduce or withdraw Service features;

- (e) maintain the integrity or security of the Service or a Network;
- (f) introduce process changes, provided they are not to Your material detriment;
- (g) improve clarity, or make corrections to typographical errors; and/or
- (h) protect the use of any trade names or trademarks, provided that any change introduced pursuant to sub-clauses 9.2(e) to 9.2(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.

10 CHARGES

- 10.1 We shall invoice You as follows:
 - (a) connection and installation 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 Contract shall be payable upon demand.
- 10.2 You shall not exceed the Credit Limit.
- 10.3 We shall be entitled to vary the Charges at any time from the Service Start Date of an Order, provided that the Charges may only be varied once in any calendar year. Such variation will be effective 30 days after We have given You written notice of such changes. Where any variation to the Charges in accordance with this clause exceeds the Consumer Price Index Rate, You may terminate any Orders subject such an increase on 14 days' written notice to Us provided that You serve Your termination notice within 60 days following Our notice of the changes to You.
- 10.4 Where, in order to provide You with the Services, it is necessary in Our reasonable opinion to use non-standard or exceptionally expensive methods (whether in whole or in part) 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 if You do not wish to pay such Additional Charges You may terminate the relevant affected Order within 30 days of Us notifying You of the increased Charge, provided that You agree to pay any charges imposed on Us by Our supplier as a result of Your termination of the relevant affected Order.
- 10.5 If at any time during this Contract 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 of Charges. If You fail to provide such security deposit within 10 Working Days then We reserve the right to suspend and/or terminate this Contract with immediate effect by giving You written notice.
- 10.6 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 Contract You fail to meet the standard of creditworthiness deemed acceptable by Us, We shall be entitled to:
 - (a) terminate this Contract, 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.
- 10.7 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. Subject to the following, all Charges and any other sums due under this Contract 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.

10.9 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).

10.10 Where another Network Operator charges Us for engineering work, We reserve the right to recharge such charges to You.

10.11 All Charges and payments due hereunder are exclusive of value added tax and any other applicable taxes which may be levied from time to time and shall be paid by You in addition to, and at the same time as, any Charges or payments.

10.12 Where any Charges or other monies properly due to Us or any member of the KCOM Group from You under this Contract or any other contracts are outstanding We will be entitled to offset such payments against any payments due from Us or any member of the KCOM Group to You under any other agreements between Us or any member of the KCOM Group and which relate to telecommunications services.

11 TERMINATION

11.1 If either party is:

- (a) in material breach of any provision of this Contract (other than clause 5.1 or 5.2) and (if capable of remedy) fails to remedy such breach within 30 days of written notice to do so;
 - (b) unable to pay its debts as they fall due or threaten 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 party may immediately upon notice in writing (without prejudice to any other rights and remedies it may have) terminate (either in whole or in part) this Contract.

11.2 We may terminate this Contract (either in whole or in part) with immediate effect if:

- (a) You are in breach (or We reasonably believe You are in breach) of clauses 5.1 or 5.2 as such breach may be a criminal offence and/or cause serious harm to Our reputation;
- (b) 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
- (c) 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.

11.3 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 10.8, 11.1 or 11.2 occur, without prejudice any right to terminate this Contract. For the avoidance of doubt, You will continue to be liable for the charges during any period of suspension.

11.4 If this Contract is terminated as a whole pursuant to clause 11.1 or 11.2, all Orders shall automatically terminate on the date this Contract terminates.

11.5 Individual Orders may be terminated in accordance with clause 1.2.

11.6 You agree to pay Us a Cease Charge if We are charged a cancellation charge by Our supplier and:

- (a) You terminate the Service or the Services ends for any reason; or
- (b) any of Your Customers move premises.

11.7 We will continue to provide the Services in accordance with clause 2 until termination of this Contract but if:

- (a) You are late in making any due payment, or

- (b) We become entitled to terminate this Contract early for any reason, or

- (c) You break any material term of another Contract with Us or another company in the KCOM Group, then We may partially or completely suspend the Services without limiting Our ability to enforce other remedies that may be available. While the Services are suspended You must continue to pay the Charges.

12 EFFECT OF TERMINATION

12.1 Upon termination of this Contract (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 Contract together with any applicable disconnection charge in force at the time.

12.2 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 11.1 or 11.2 or as a result of You terminating the same other than pursuant to Your termination rights under clauses 5.6, 10.3 10.4, 11.1 or 15 then You must pay Us a termination payment ("Termination Payment") for such Order. The amount of this Termination Payment will be calculated as follows:

- (a) If the Order is so terminated during the first Contract Year of that Order, the Termination Payment shall be:
 - (i) the rental Charges payable for the remaining months of the first Contract Year, plus
 - (ii) the rental Charges payable for the remaining months of the Initial Term (less the rental Charge payable pursuant to clause 12.2(a)(i)) minus a 10 per cent deduction for costs not incurred by Us and a 10 per cent deduction for early payment of the monies.
- (b) If the Order is so terminated after the first Contract Year of that Order but prior to the expiry of the Initial Term, the Termination Payment shall be the rental Charges payable for the remaining months of the Initial Term minus a 10 per cent deduction for costs not incurred by Us and a 10 per cent deduction for early payment of the monies.

- (c) If an Order is so terminated prior to the Service Start Date, then You will pay Us the connection Charges due.

12.3 You acknowledge that Our Charges have been calculated on the basis that each individual Order will continue until the expiry of the Initial Term applicable to that Order as provided for in clause 1.2 especially (but without limitation) as We may have spent money on set up costs and accordingly agree that it is reasonable for Us to require payment of the Termination Payment as calculated above.

12.4 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.

12.5 The expiry or termination of this Contract will terminate any rights and obligations of either party but will not affect any accrued rights or liabilities of either party or the clauses in this Contract which expressly or implicitly have effect after the date of termination and which will continue to be enforceable notwithstanding termination of this Contract.

12.6 Without prejudice to any of Our other rights, in the event that We terminate this Contract in accordance with clauses 11.1 or 11.2(a), We shall be entitled to approach any Customers and to market and supply services directly to such Customers.

13 LIMITATION OF LIABILITY

13.1 Nothing in this Contract shall exclude or limit either party's liability for:

- (a) fraud, or fraudulent misrepresentation; or
- (b) death or personal injury resulting from its own negligence or that of its employees, sub-contractors or agents; or
- (c) breach of the terms implied by s. 12 of the Sale of Goods Act 1979 or Section 2 of the Sale of Goods and Services Act 1982; or
- (d) the indemnities expressly set out in clauses 3.5, 5.8, 14.2 and paragraph 2.4(n) of Part 5 of this Contract; or
- (e) anything else that cannot be excluded or limited by applicable law.

13.2 Except as expressly provided in this Contract, all conditions, warranties, terms, representations, 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 Us)), common law, custom, trade usage or otherwise and all Our liabilities in respect of the same (if any) are excluded to the maximum extent permitted by applicable law.

13.3 Without prejudice to clause 13.1, We shall not be liable to You whether in contract, tort (including, without limitation, negligence) or restitution, or for breach of statutory duty or misrepresentation, or otherwise, for any:

- (a) loss of business; or
 - (b) loss or corruption of data or information; or
 - (c) loss of profits; or
 - (d) loss of goodwill; or
 - (e) loss of business opportunity; or
 - (f) loss of anticipated savings even when advised of the possibility,
- suffered by You (and in each case whether direct or indirect) under or in connection with this Contract.

13.4 Without prejudice to clause 13.1, We shall not be liable to You whether in contract, tort (including, without limitation, negligence) or restitution, or for breach of statutory duty or misrepresentation, or otherwise, for any special, indirect or consequential loss or damage (including, without limitation, legal and other professional fees and expenses) or expenses of any nature.

13.5 Subject to the provisions of this Contract, 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 Contract.

13.6 Without prejudice to clauses 13.1 and 13.5, each party's maximum aggregate liability in connection with this Contract whether arising in contract, tort (including, without limitation, 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:

- (a) £500,000 (five hundred thousand pounds); or
- (b) the value of the Charges paid by You in the preceding Contract Year ("Liability Sum").

13.7 With reference to clause 13.6, 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.

13.8 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 10result of the use or reception of such materials.

13.9 The limitations of liability set out in this clause 13 shall not limit Your liability to pay any Charges that are properly due under this Contract. 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 13 to any other liabilities You may incur under or in connection with this Contract.

13.10 In respect of any failure of the Services to comply with the specifications or standards applicable pursuant to this Contract, Your sole and exclusive remedy shall be to claim a Service Credit in accordance with the Service Standards.

13.11 This clause sets out each party's entire financial liability (including, without limitation, any liability for the acts or omission of their respective employees, agents or subcontractors) in respect of:

- (a) any breach of this Contract; and
- (b) any use made or resale of the Equipment and/or software, or of any product incorporating the said Equipment and/or software; and
- (c) any representation, statement or tortious act or omission (including, without limitation, negligence) arising under or in connection with this Contract.

14 INDEMNITY AND UNDERTAKING

14.1 You shall be responsible, and remain responsible, for ensuring that:

(a) the Customers comply with Your obligations under this Contract (so far as applicable), and

(b) the terms of Your contracts with Customers are not inconsistent with the terms of this Contract (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.

14.2 Our obligations under this Contract 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.

14.3 You shall be liable to Us for any acts and omissions of third parties relating to the use of the Services.

15 FORCE MAJEURE

Neither party will be liable to the other party for any loss or damage caused to or suffered by the other party as a direct or indirect result of the supply of the Services being prevented, restricted, hindered or delayed by reason of any circumstance outside of the first party's reasonable control (including, without limitation, denial of service attacks, mail bombing and other flooding techniques) ("Force Majeure Event"). If either party is prevented as a result of a Force Majeure Event from the performance of its obligations for a continuous period of 3 months, either party may terminate this Contract by serving written notice on the other party.

16 EXPORT CONTROL

16.1 You acknowledge that the Services (including, but not limited to, software, technical assistance and training) provided under this Contract may be subject to export laws and regulations of the USA and other countries, and any use or transfer of the Services must be in compliance with all applicable regulations. You will not and will ensure that Your Customers will not use, distribute, transfer, or transmit any part of the Services (even if incorporated into other services) except with Our, or Our licensor's, express written approval and in compliance with all applicable export regulations.

17 DATA PROTECTION

17.1 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.

18 ADDITIONAL PROVISIONS SPECIFIC TO THE INTERNET ACCESS SERVICES

18.1 The following provisions of this clause 18 are specific, and shall only apply, to the Internet Access Services.

18.2 In respect of clause 2.7, You shall also procure all necessary consents, licenses and permissions for the connection of Customer Equipment to the Network.

18.3 Where You run Your own email server, You will ensure that the server is configured so that it does not allow unsolicited emails to be relayed through it. We will not be liable for any fault or degradation in the Internet Access Services caused by Your failure to comply with this clause. For the avoidance of doubt, any such fault or degradation will be considered to be a Customer Responsible Fault for the purposes of Part 3 (Service Standards) of this Contract.

18.4 In addition to clause 3.1, We will connect the relevant parts of Our Equipment to Your network terminating apparatus and will carry out other necessary works (including all appropriate software programming).

18.5 Where Your DNS records are to be transferred We shall not be liable for any loss or damage suffered by You due to Your inability to receive or send an e-mail or for failing to meet the Proposed Start Date where the same is caused by any act or omission on the part of the ISP from whom Your e-mail or DNS address is to be transferred or of any relevant registration authority or by the failure of You to give consent to the originating ISP to carry out such transfer.

18.6 You acknowledge that the Internet Access Services enable access to the Internet. The use of the Internet is solely at Your risk and expense and You shall (and You shall ensure that End Users shall) use the Services in accordance with Our

Acceptable Use Policy. We do not accept any liability or responsibility for any information, software, services or other material obtained or accessed by You through Your use of the Internet.

18.7 Subject to Part 3 of this Contract, Where We are providing You with a router and You are taking ownership of the router, title to the physical router (but not any software therein or any Intellectual Property Rights therein) shall pass to You on Our receipt of payment in full for the router and the router shall (upon such payment in full) be deemed to be Customer Equipment. Until that time, the router shall be deemed to be Our Equipment. If (subject to Part 3 of this Contract) We are providing the router without you taking ownership of the router, We will retain title to the router at all times. In all cases, risk in the router shall, for the avoidance of doubt, pass to You immediately on delivery. Where (at Our sole discretion) We require You to purchase, or take delivery of, a new router for the proper performance by Us of the Internet Access Services (such as, without limitation, where You have breached or are in breach of clause 3.9) the provisions of this clause **Error! Reference source not found.** shall apply to that new router.

18.8 Domain Name Registration

(a) If Your Customer chooses to take a Domain Name from Us, You must tell Us the Domain Name that Your Customer would like to use with the Internet Access Services and We will use Our reasonable endeavours to allocate it to Your Customer or, if it is unavailable, such other Domain Name as You advise Us is reasonably acceptable to Your Customer and available for use.

(b) A Domain Name in the form www.domain.co.uk with an associated email address in the form of user@domain.co.uk will be allocated to Your Customer for use with the Internet Access Services. If Your Customer wants to use a Domain Name with a different suffix, You must advise Us of this and We will use Our reasonable endeavours to arrange the registration and/or transfer of the relevant Domain Name so that Your Customer can use it with the Internet Access Services. We will make additional charges calculated at Our standard rates for providing this Service.

(c) We will use Our reasonable endeavours to make any changes to the Domain Names Your Customer uses with the Service, at Your request. You agree to pay any additional charges, calculated at Our standard rates, for providing this service. We do not accept any responsibility for any changes that any of Your Customers make to their Domain Name, the Equipment or the Services, without Our express agreement.

(d) We will automatically renew the registration of any Domain Names Your Customers use with the Internet Access Services, unless You give Us at least one month's written notice that You do not require Us to renew the Domain Name, prior to the renewal date. We will make additional charges calculated at Our Standard rates for every renewal that We carry out.

(e) On the termination of any Order, We will continue to renew the registration of the Domain Names Your Customer uses with the terminated Internet Access Services in accordance with clause 18.8(d) until such time as You tell Us not to by giving Us at least one month's written notice prior to the relevant renewal date. You must continue to pay the Charges calculated at Our standard rates for every renewal that We carry out. For the avoidance of doubt, the provisions of this clause 18.8(e) shall continue to have effect after the termination of this Contract.

(f) We will route any IP addresses that were previously assigned to any of Your Customers provided that those addresses were assigned to Your Customers directly by Us and not through any other ISP. We will not be held responsible if any other ISP's refuses to accept these addresses. We shall assign new or additional TCP/IP addresses as requested by You on behalf of Your Customers upon being provided with satisfactory documentation justifying the need for those addresses. The documentation must be in accordance with the policies set forth by RIPE. In certain circumstances, it may be necessary for TCP/IP addresses to be approved by RIPE, and in such cases those addresses are only assigned for the duration of the Internet Access Services and become invalid at such time as We no longer provide the Internet Access Services to You and / or Your Customer. We shall not be responsible for any decision made by RIPE. When We assign addresses to You for use by Your Customers, a temporary extension (usually thirty (30) days after the end of the Internet Access Services) may be granted at Our sole discretion.

Following termination or any further period (if any), those TCP/IP addresses may be reassigned by Us. If Your Customer wishes to apply for addresses that will subsist beyond the duration of the Internet Access Services, You or Your Customer must do so directly to RIPE. Any decision by RIPE or by another ISP relating to TCP/IP addresses is the responsibility of RIPE or of that other ISP and We accept no responsibility for such decision.

(g) We will not accept responsibility for any loss of ownership of any Domain Name where You have instructed Us not to renew the registration and We will not be liable for any losses You and/or Your Customer incur as a result of this.

(h) On Your request, We will arrange for the transfer of any Domain Names Your Customers use with the Internet Access Services to an alternative ISP. You must pay additional charges, calculated at Our standard rates for every such transfer that We carry out. We will not accept responsibility for any failure to re-register or renew the registration of any Domain Names that occur after they have been transferred from Us.

18.9 You must not and must ensure that Your Customers do not use or request a Domain Name such as would be likely to lead to a breach of clause 5.2(c) or such as to infringe the rights of any other person, whether in statute or common law, in a corresponding trade mark or name.

18.10 You shall ensure that Your Customers only use the Internet Access Services for the carriage of traffic up to the Agreed Bandwidth. We shall be entitled to make random inspections of Your Customers' use of the Internet Access Services from time to time, in order to audit the bandwidth being utilised by Your Customers, and in particular to ensure that the Agreed Bandwidth has not been, and is not being, exceeded.

18.11 For the avoidance of doubt, We shall not be liable for any costs incurred by You and/or Your Customers as a direct or indirect result of Your Customers' network set-up including, without limitation, any increased ISDN call charges.

18.12 You acknowledge that We may carry out regular checks to detect the presence of email servers which are relaying unsolicited emails and, where such a server is detected, that We may suspend the Internet Access Services supplied to Your Customer(s) until Your Customer(s) have reconfigured the server to prevent the relaying of unsolicited emails. We shall not be liable for any losses suffered by You and/or Your Customer caused by such suspension of the Internet Access Services.

18.13 We will in no circumstances be liable to You and/or Your Customer in contract or tort (including, without limitation, negligence) or otherwise if We fail to renew a domain name.

19 GENERAL

19.1 This Contract constitutes the entire agreement and understanding of the parties and supersedes any previous agreement between the parties relating to the subject matter of this Contract.

19.2 Each of the parties acknowledges and agrees that in entering into this Contract 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 Contract or not) other than as set out in this Contract. Nothing in this Contract will operate to limit or exclude any liability for fraud.

19.3 Should any provision of this Contract be held to be void or voidable the remaining provisions of this Contract will continue in full force and effect.

19.4 No forbearance, delay or indulgence by either party in enforcing the provision of this Contract 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.

19.5 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, other than the payment of Service Credits as detailed in the Service Standards.

19.6 Members of the KCOM Group may enforce their rights under clause 10.12 but no other person or body who is not a party to this Contract has any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any terms of the Contract (but this does not affect any rights or remedies of a third party which exist or are available apart from that Act).

- 19.7 You may not assign the whole or part of this Contract without Our prior written consent such consent not to be unreasonably withheld.
- 19.8 We may assign this Contract to any company which is a member of the KCOM Group.
- 19.9 Subject to clause 19.8, We may not assign this Contract to any other third party without Your prior written consent such consent not to be unreasonably withheld or delayed.
- 19.10 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 (subject to anything to the contrary in this Contract, including, without limitation, clauses 8.1 and 10.4) be in writing and agreed between the parties.
- 19.11 Any notice under or in connection with this Contract 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 Company Secretary at the address of the party concerned set out in this Contract or any other address notified by that party from time to time.
- 19.12 Any notice addressed as provided in clause 19.11 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.
- 19.13 Unless expressly stated, nothing in this Contract 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 Contract shall be deemed to confer any assignment or licence of such rights except where expressly stated.
- 19.14 You shall ensure that Your Customers do not re-sell, re-supply or otherwise distribute or sub-license the services, software, documentation and/or any equipment provided by Us.
- 19.15 This Contract will be governed by English law and the parties submit to the exclusive jurisdiction of the English courts.

20 DEFINITIONS AND INTERPRETATION

- 20.1 Words in the singular include the plural and in the plural include the singular.
- 20.2 Unless the context otherwise requires, a reference to one gender shall include a reference to the other genders.
- 20.3 Clause, schedule and appendix headings shall not affect the interpretation of this Contract.
- 20.4 A reference to a statute or statutory provision is a reference to it as it is in force for the time being, taking into account of any amendment, extension or re-enactment and includes subordinate legislation for the time being in force made under it.
- 20.5 Unless a right or remedy of a party is expressed to be an exclusive right or remedy, the exercise of it by a party is without prejudice to that party's other rights and remedies.
- 20.6 Any phrase introduced by the words "including", "includes", "in particular" or "for example" or similar shall be construed as illustrative and shall not limit the generality of the related general words.
- 20.7 In this Contract the following terms shall have the following meanings:
- "Acceptable Use Policy" Our policy on the acceptable use of the Internet Access Services as amended from time to time which is published on Our website;
- "Acts" the Communications Act 2003, the Telecommunications Act 1984 and the Electronic Communications Act 2000 (each as amended from time to time);
- "Additional Charges" the additional fees which may be charged at Our standard rates, in force from time to time, as detailed in this Contract;
- "Agreed Bandwidth" in respect of the Internet Access Services, the bandwidth specified in Part 1, as the same may be varied in accordance with clause 8.2;
- "Charges" all connection charges, rental charges, installation charges, Additional Charges, Domain Name renewal charges (in respect of the Internet Access Services), or other fees or charges payable by You as confirmed in the Order or otherwise;

"Commencement Date" the date of signature of this Contract by Us;

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

"Consumer Price Index Rate" the inflation rate for the Consumer Price Index published by the UK Office for National Statistics (or any successor body from time to time), being the average inflation rate for the 12 months up to and including the month preceding the variation of the Charges under clause 10.3;

"Contract" these terms and conditions and Parts 1 to 3 (inclusive);

"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 or a third party which when operated in conjunction with Our Equipment, allows Your Customer to obtain and/or receive the Services;

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

"Data Processing Commitment" means the Data Processing Commitment contained in this Contract 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 2018 (DPA 2018), the General Data Protection Regulation 2016/679 (EU GDPR), the retained EU law version of the General Data Protection Regulation 2016/679 (as defined in the DPA 2018) (UK GDPR), 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 the DPA 2018;

"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 Internet Access Services;

"EAS" Ethernet Access Service is an Ethernet based Virtual Private Network;

"Ethernet Services" means the Expansion Area Ethernet Private Circuit

"Expansion Area" or "EA" means that area in which KCOM Wholesale operates outside the Hull Area as communicated by KCOM to the Reseller from time to time;

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

"Equipment" Our Equipment and Customer Equipment;

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

"Initial Term" the period of time stated in the Order commencing on the Service Start Date applicable to that Order;

"Intellectual Property Rights" patents, utility models, rights to inventions, copyright and neighbouring and related rights, moral rights, trade marks and service marks, business names and domain names, rights in get-up and trade dress, goodwill and the right to sue for passing off or unfair competition, rights in designs, rights in computer software, database rights, rights to use, and protect the confidentiality of, confidential information (including, without limitation, know-how and trade secrets) and all other intellectual property rights, in each case whether registered or unregistered and including, without limitation, all applications and rights to apply

for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world

"Internet Access Line" any communication line(s) forming part of the Network and used by Us in the provision of the Internet Access Services;

"Internet Access Services" a service consisting of a broadband link to an Internet portal operated by Us, if and as selected in the Order;

"ISP" an internet service provider, other than Us;

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

"Leased Line Point to Point, Point to Multipoint (EAS) and meshed networks (VPLS) Services, EA Ethernet and EA Optical Services" the provision by Us to You of a Private Circuit, if and as selected in the Order Form;

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

"Network" the telecommunications infrastructure and system operated by Us and/or the network of any Network Operator, as applicable;

"Network Operator(s)" any public telecommunications operator whose network is used by Us to deliver the Services;

"Nominated Site" means Your aggregation site either in a KCOM exchange or elsewhere within the Hull Area or at KCOM designated hand-off points;

"OFCOM" the Office of Communications or successors from time to time;

"Optical Services" means the Expansion Area Optical Private Circuit;

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

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

"Private Circuit" a private circuit between two specified points (as set out in the Order Form) at a defined band width used by Us in the provision of the Leased Line Point to Point Services;

"Provided Lines" the Private Circuits and/or the Internet Access Lines, as applicable;

"Proposed Start Date" means in respect to each Order, the date specified in the Order Form or as amended on which the Services are due to be made available to Your Customer;

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

"Service(s)" the Leased Line Point to Point, Point to Multipoint (EAS) and meshed networks (VPLS) Services, EA Ethernet and EA Optical Services and/or the Internet Access Services, as applicable;

"Service Credits" any service credits set out in Part 3;

"Service Elements" means the technical aspects of the Services including the Agreed Bandwidth or any other element of the Services;

"Service Regrade" means changes to certain elements of the Services, as agreed by Us, pursuant to clause 8;

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

"Service Start Date" means with respect to each Order, the Proposed Start Date or if different the earliest of the dates upon which You are notified the Services are available for use or the date You begin 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;

"VPLS" is a virtual private LAN service provided using 'any-to-any' connectivity between Customer Sites;



"We/Our/Us" KCOM Group Limited (registered no 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.

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

Data Processing Commitment

Part 5

This Schedule represents Our commitment to You in regard to processing of Personal Data. It forms part of the Contract and should be read in conjunction with the Contract 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 You pursuant to the Contract, as such third party supplier or sub-processor is expressly identified to You 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 Contract.

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 Contract 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, You are 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 Contract, 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 UK GDPR. We may make reasonable amendments to Part 5A by written notice to You from time to time as We reasonably consider necessary to meet those requirements, including but not limited to amendments to UK GDPR that result in a divergence from EU GDPR. 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 You or Us.

2.4 We shall:

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

(b) not transfer the Personal Data outside of the United Kingdom, 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) such Permitted Sub-Processor enters into the International Data Transfer Agreement (**IDTA**), the International Data Transfer addendum to the European Commission's Standard Contractual Clauses for International Data Transfers (**Addendum**) and any transitional provisions for the time being relating to the IDTA and/or the Addendum for the Processing and transfer of Personal Data outside of the United Kingdom with You; or

(ii) with Your prior written consent; and/or

(iii) if required to do so by any legislation or regulation, in which case We shall inform You 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 Our 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 You;

(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 Your express written instructions unless otherwise required by legislation or other applicable regulation;

- (e) inform You of any new sub-processor and/or change of a Permitted Sub-Processor. You shall inform Us within five (5) Business Days of any objection to such appointment or change. If You do 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 You in the timely response to requests from Data Subjects exercising their rights, including but not limited to:
 - (i) where We are required to assist You with a Data Subject Access Request received, by either You or the End User responding to such request for assistance within twenty (20) days of receiving notice of such request from You;
 - (ii) where We receive a Data Subject Access Request directly from the Data Subject, We shall notify You 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 You or End User is required to assist Us with such Data Subject Access Request, You 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 You, as applicable, with a request for access, rectification and/or erasure by a Data Subject; and
 - (iv) enabling You to comply with a request for data portability of a Data Subject;
- (g) assist You in complying with Your obligations relating to security of Personal Data as set out in the Contract, as applicable, or as otherwise may be reasonably requested by You, including but not limited to:
 - (i) notifying You 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 You 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 Your 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 Your request and expense, consulting with the Supervisory Authorities and/or assisting You to consult with the Supervisory Authorities, including providing You with any information relating to Our processing of Personal Data and/or Our compliance with the Data Protection Laws as You may reasonably request.
- (h) upon the expiry or termination of the Contract, delete or return all Personal Data to You (as requested by You), unless otherwise required or permitted by Data Protection Laws and provide written confirmation in this respect;
- (i) make available to You all information reasonably necessary to enable You to demonstrate compliance with Your obligations under the Data Protection Laws, including such records of all categories of processing carried out on Your behalf, as such is requested;
- (j) co-operate with any request of the Supervisory Authority;
- (k) allow You 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 You by any Supervisory Authority or any End User, as such contribution and/or inspection is reasonably necessary to demonstrate compliance with Your obligations and/or Our obligations in this Data Processing Commitment, subject always to the provisions in Section **Error! Reference source not found.** above;
- (m) at Your 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 You (acting reasonably) or any Supervisory Authority, as applicable, following an audit or inspection in accordance with Section **Error! Reference source not found.** above, or otherwise as You deem reasonably necessary.
- (n) Subject to clause 13 of Part 4, 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 You 30 days' prior written notice of such change, provided that such change shall not (in Our reasonable opinion) cause a material detrimental effect to You).

DATA Processing Details

Part 5A

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