

Reference Offer for the Provision of Accommodation Services

Schedule 1: Definitions

In this Agreement, except if the context requires otherwise, words and expressions are as defined below:

“ACPF” or **“Advance Capacity Planning Forecast”** means the CP’s forecast for its Co-location order requirements provided in a standard format for a period of twelve calendar months commencing on the first day of each Quarter;

“Act” means The Communications Act 2003;

“Agreement” means this agreement, the Schedules and the Price List;

“Ancillary Documents” means those documents specifically listed on KCOM’s Website that contain information about the Services including, for the avoidance of doubt, the form specified by KCOM from time to time for Orders, the Service Operations Manual and the Credit Vetting Policy;

“Building Contract” means a contract based on the requirements and conditions of this Agreement providing for the carrying out of the building construction element of the Works on behalf of KCOM;

“Charges” all charges payable by the CP for the provision of the Services, as detailed in the Price List;

“CLI” has the meaning given to Calling Line Identification data in the "Guidance on the Provision of Calling Line Identification Facilities and Other Related Services over Electronic Communications Networks" dated 30 July 2018 as the same may be amended or replaced from time to time (the **“CLI Guidelines”**);

“Code of Measuring Practice” means the ‘Code of Measuring Practice’ published by the Royal Institution of Chartered Surveyors and the Incorporated Society of Valuers and Auctioneers (Sixth Edition, 2015);

“Co-location” means an arrangement under which the CP’s Compliant Equipment is located in a CP Equipment Room at a WFLLA Site;

“Co-location Hostel” means Co-location facility within a designated CP Equipment Room that is constructed in accordance with the specification and description set out in PCR3. The Co-Location Hostel provides Co-location for multiple Communications Providers and as such the space is demarcated accordingly. Given the Co-location Hostel is a multi-user access location KCOM Co-

mingling Rules apply to the CP and any Communications Provider that enters into a Reference Offer for the Provision of Accommodation Services and is operating within a Co-location Hostel in the CP Equipment Room;

“**Co-mingling Rules**” means the set of common operational and technical rules published by KCOM that the CP, any Communications Provider that enters into a Reference Offer for the Provision of Accommodation Services and a CP’s Visitors must adhere to in using the Service;

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

“**Communications Provider**” means a person providing an Electronic Communications Network or Electronic Communications Service (as defined in section 405 of the Communications Act 2003);

“**Compliant Equipment**” means telecommunications apparatus connected at the WFLLA Site and which is used solely for the purpose of connecting WFLLA Services and any associated services, and is configured and operated in compliance with the technical parameters set out by KCOM in the applicable Customer Interface Publication available at <https://www.kcomplc.com/regulatory/kcom-wholesale/service-information/technical-interface-information/>;

“**Condition**” means a General Condition(s) or a condition other than a General Condition which is expressly stated to apply to either KCOM and/or the CP as the case may be, being a condition as in force at the date of this Agreement, unless otherwise stated;

“**Confidential Information**” means any information, in whatever form, which in the case of written or electronic information is clearly designated as confidential and which, in the case of information disclosed orally, is identified at the time of disclosure as being confidential or is by its nature confidential and including such Confidential Information already disclosed by either party to the other prior to the date of this Agreement but excluding any information which:

- (a) is in or comes into the public domain other than by reason of a breach of this Agreement; or
- (b) is previously known on a non-confidential basis to the Receiving Party at the time of its receipt; or
- (c) is independently generated, developed or discovered at any time by or for the Receiving Party; or
- (d) is subsequently received from a Third Party without any restriction on disclosure;

“**Contractor**” means the contractor appointed pursuant to the Building Contract;

"CP's Visitors" means anyone visiting any Specified Floor Area within a WFLLA Site for the purposes of installing, inspecting, maintaining, adjusting, repairing, altering, replacing or removing Compliant Equipment on behalf of or with the authority of the CP;

"CP Equipment Room" means the room (which for the avoidance of doubt includes a Co-location Hostel) within a WFLLA Site in which the CP has a Specified Floor Area;

"CP Network" the telecommunications infrastructure and system operated by the CP;

"CP Service" means the service provided to the End User by the CP;

"Credit Vetting Policy" means the means the document which sets out KCOM's process for assessing credit risk, as may be amended from time to time and available on <https://www.kcomplc.com/regulatory/>;

"Customer Service Plan" means a document containing details of individuals, addresses and telephone numbers for ordering or maintenance of the services provided pursuant to this Agreement;

"Data Processing Commitment" means the Data Processing Commitment as set out at Schedule 5;

"Data Protection Laws" means all applicable laws and regulations relating to the processing of Personal Data and privacy including the Data Protection Act 1998, the General Data Protection Regulation 2016/679 and any statutory instrument, order, rule or regulation made thereunder, as from time to time amended, extended, re-enacted or consolidated;

"Disclosing Party" means a party disclosing information to the other party;

"Dispute" means a disagreement between the parties under this Agreement;

"Disputing Party" means a party raising a Dispute with the other party;

"Due Date" means a date which is 30 calendar days after the date of an invoice;

"Electronic Communications Network" means-

- (a) a transmission system for the conveyance, by the use of electrical, magnetic or electro-magnetic energy, of signals of any description; and
- (b) such of the following as are used, by the person providing the system and in association with it, for the conveyance of the signals

- (i) apparatus comprised in the system;
- (ii) apparatus used for the switching or routing of the signals; and
- (iii) software and stored data;

"Electronic Communications Service" means any service consisting in, or having as its principal feature, the conveyance by means of an Electronic Communications Network of signals, except in so far as it is a content service;

"Emergency" means a serious situation or occurrence that happens unexpectedly and demands immediate action;

"Emergency Organisation" means the relevant local public police force, fire, ambulance and coastguard services and other similar organisation providing assistance to the public in emergencies;

"End User" means a person having a contract with the CP for the provision of the CP Services;

"Escorted Access" means a member of KCOM staff accompanying the CP's representatives when visiting a WFLLA Site, or other KCOM designated site under arrangements described in process documentation;

"Essential Services Supply" or "ESS" means electricity supply for a limited period of not less than 12 hours in the event of failure of the electricity supply from the local electricity company which generally provides electricity supply to the WFLLA Site;

"General Conditions" means the general conditions set under section 45 of the Act;

"Group Company" means in respect of either party, its holding company, its subsidiaries and any subsidiaries of its holding company. The terms "subsidiary" and "holding company" have the meanings ascribed to them by Section 1159 and Schedule 6 of the Companies Act 2006 (as amended);

"Hull Area" means the area defined as the 'Licensed Area' in the licence granted on 30 November 1987 under section 7 of the Telecommunications Act 1984 to Kingston upon Hull City Council and Kingston Communications (Hull) plc;

"Independent Expert" means an individual suitably qualified and experienced in the relevant field of expertise pertaining to the Dispute who is of at least 10 years standing, the appointment of such individual and his terms of reference to be agreed between the parties and in the event of the parties being unable to agree an appointment or the terms of reference within 5 Working Days of

one party requesting such agreement such qualified individual will be nominated or the terms of reference settled, as the case may be, on the application of either party by OFCOM;

"Index" means the "all items" figure of the Index of Retail Prices published by the Office for National Statistics or any successor ministry, department or agency

"Insured Risks" means fire storm tempest flood earthquake lightning explosion impact aircraft (other than hostile aircraft) and other aerial devices and articles dropped there from riot civil commotion and malicious damage acts of terrorism bursting or overflowing of water tanks apparatus or conduits and such other normal commercial risks as KCOM may in its absolute discretion from time to time determine;

"Intellectual Property Rights" means any patent, petty patent, registered design, registered trade mark, copyright, design right, semi-conductor topography right, know-how or any similar right exercisable in any part of the world including any application thereof;

"Interest Rate" means four per cent above the base lending rate from time to time in force of National Westminster Bank Plc or such other bank as KCOM may from time to time nominate in writing;

"KCOM Assisted Site Delivery Service" ("KASDS") means the service provided by KCOM pursuant to Annex 3 of Schedule 3 to enable safe handling and transportation of the CP's Equipment to the CP's Specified Floor Area;

"KCOM Network" the telecommunications infrastructure and system operated by KCOM;

"KCOM Website" means the website located at <https://www.kcomplc.com/regulatory/> (or any other on-line address that KCOM may advise the CP of from time to time);

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

"Licence" means a consent granted under terms and conditions set out in Schedule 2 to enable the CP to occupy a Specified Floor Area;

"Licence Completion Date" means the date 5 Working Days after the RFI Date or where an RFI Date is not applicable the date 5 Working Days after acceptance by the CP of the relevant PCR3;

"Licence Fee" means in respect of each Specified Floor Area the licence fee specified against that Specified Floor Area in Annex 1 of Schedule 2 and such increased licence fee as may be ascertained in accordance with Annex 2 of Schedule 2;

"OFCOM" means the Office of Communications of the government of the United Kingdom, or any organisation that takes over substantially all of the powers and functions of the same;

"OFCOM Interest Rate" means one percent above the Bank of England base rate as published by the Bank of England from time to time, or such other rate determined by Ofcom from time to time. Such interest shall be calculated on a daily basis;

"OLT" means the optical line termination equipment at a WFLLA Site;

"Open Market Value of the Consents" means the value that might reasonably be achieved for the grant by a willing licensor to a willing licensee of the consents for occupation of a Specified Floor Area granted on the terms of Schedule 3 except as to the amount of the Licence Fee (but including the provisions for review);

"Order" means an order for the Services placed by the CP using the process specified in Schedule 3 which is accepted by KCOM and which is governed by this Agreement;

"PCR1" or **"Physical Co-location Requirements Form"** means a form located within the Weekly Order Form which the CP will complete in order to request a survey for Co-location and the provision of Co-location services;

"PCR3" or **"Notification or Offer of Co-Location Site Build Costs Form"** means the result of the full survey incorporating an offer and information, **or** notification of KCOM's intention to proceed to build and associated information as a result of the build costs being below an agreed threshold cost as set out in paragraph 4.8 of Schedule 3 of this Agreement. The PCR3 is issued by KCOM conditional upon the grant of any planning, building regulation or other consent necessary for the Works;

"Price List" means the folder entitled Price lists & notices containing a list of KCOM's charges and terms that apply to the Service and which can be seen at <https://www.kcomplc.com/regulatory/> (or any other on-line address that KCOM may advise the CP of from time to time);

"Priority A Fault" means those faults which will have an immediate and serious health, safety or environmental impact or will stop service to the CP's End Users if not actioned quickly from the time of the CP's initial report, which faults will include, without limitation, oil spillage, impact damage, flood, fire or gas emission. In particular, a Priority A Fault is any fault causing total loss of the

WFLLA Service to more than one End User or degradation to the WFLLA Services affecting more than one OLT or with the potential to impact more than 200 End Users;

"Priority B Fault" means faults which have a significant impact on the occupants of an WFLLA Site or a CP Equipment Room or which may have an adverse impact on the CP's service to its End Users if not actioned reasonably quickly, which faults will include, without limitation, heating and lighting problems affecting part of an WFLLA Site or a CP Equipment Room. In particular, a Priority B Fault is any fault causing total loss of the WFLLA Service to a single End User or degradation to the WFLLA Services affecting a single OLT or with the potential to impact 10 to 200 End Users;

"Property Services" means the services facilities and amenities to be provided by KCOM in respect of each WFLLA Site and/or Specified Floor Area as set out in Annex 3 to Schedule 2;

"Privacy Regulations" means the Privacy and Electronic Communications (EC Directive) Regulations 2003 as amended in 2004, 2011, 2015 and 2016 and as may be further amended from time to time;

"Public Electronic Communications Network" means an Electronic Communications Network provided wholly or mainly for the purpose of making Electronic Communications Services available to members of the public;

"Public Electronic Communications Service" means any Electronic Communications Service that is provided so as to be available for use by members of the public;

"Quarter" means a period of three calendar months commencing on a date notified at Commencement Date by KCOM to the CP, such date to be amended from time to time only on agreement by KCOM and the CP;

"Receiving Party" means a party receiving Confidential Information from a Disclosing party;

"RFI Date" means the date on which the Representative certifies in writing that the Works have been completed (and the expressions "Ready for Installation" or "RFI" will be construed accordingly);

"the Representative" means such firm of consultants as KCOM may nominate from time to time;

"Review Date" means the 1 April in each year throughout the duration of a Licence and where applicable the date of the grant of a new Licence to the CP following a termination of part of a Specified Floor Area;

"Schedule" means a schedule to this Agreement;

“Service” means such of the following services and facilities as the CP may from time to time require, namely:

- (a) the services and facilities described in Schedules 2 and 3 of this Agreement; and
- (b) such further services and facilities as may subsequently be included in this Agreement and which KCOM may be required to provide or offer to provide pursuant to the Conditions and any OFCOM notification;

“Service Charge” means in respect of each Specified Floor Area an annual sum (and if KCOM so requires from time to time a quarterly sum on-account of the annual sum) being (in respect of any part of the Property Services provided at any WFLLA Site for the benefit of the CP alone) the whole of the Service Expenses in respect of that part of the Property Services and/or (in the case where the CP and one or more other Communications Providers have equipment in the WFLLA Site in question) a fair proportion (to be determined by KCOM) of the Service Expenses in respect of the Property Services supplied to the CP and such Communications Providers in that WFLLA Site and (in respect of other parts of the Property Services) based on a payment of a fixed sum per square metre of the Specified Floor Area such fixed sum to be as set out in Annex 1 of Schedule 2;

“Service Expenses” means in respect of each Specified Floor Area the costs in each year commencing on 1 October in each year attributable to KCOM complying with its obligations to provide Property Services contained in a Licence;

“Service Guarantee” means those targets set out in paragraph 6 of Schedule 4;

“Service Level” means the KCOM targets set out by KCOM in relation to performance of the Service as described in Schedule 4;

“Service Standard” means the commitments set out in Schedule 4 which define the levels of service the CP can expect from KCOM;

“Specified Floor Area” means a floor area or areas within a CP Equipment Room occupied by the CP under a Licence where the CP’s Compliant Equipment is installed, specified against the WFLLA Site set out in Annex 1 of Schedule 2 and shown on the plan attached to that schedule or such other floor area as will be specified by KCOM in the event of re-location pursuant to Schedule 3;

“Target Date” means the date described as such in the PCR3 which will be subject always to:

- (a) any extensions of time properly granted to the Contractor by the Representative under the terms of the Building Contract; and

(b) extensions of time equivalent to the period or periods during which there is a Dispute relating to the carrying out of the Works and which directly and necessarily affects the continuation of the Works; and

(c) extensions of time equivalent to any period of time that the Works are prevented by reason of statute or regulation or other binding legal rule or decision from commencing (except where such statute regulation rule or decision only applies due to an act or omission by KCOM and the circumstances in (a) and (b) do not apply);

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

“Third Party Communications Provider” means a person being neither the CP nor KCOM who is also a Communications Provider and who has entered into an agreement with KCOM (on similar terms to this agreement) which at the relevant time subsists;

“Unescorted Access” means either a CP, or a CP Visitor that is permitted to gain unescorted access to a Specified Floor Area within a WFLLA Site, or other specified site locations under the arrangements described in process documentation;

“VAT” or **“Value Added Tax”** means United Kingdom Value Added Tax or any other tax of a similar nature that may be substituted for or levied in addition to it, in each case at the rate current from time to time;

“WFLLA Service” means the service provided pursuant to the Reference Offer for the Provision of KCOM Wholesale FibreLine Local Access and which can be seen at <https://www.kcomplc.com/regulatory/> (or any other on-line address that KCOM may advise the CP of from time to time);

“WFLLA Site” means the site of an operational building of KCOM where the CP is able to connect to the WFLLA Service;

“Working Day” means any day other than Saturdays, Sundays, public or bank holidays in the United Kingdom;

“Working Hours” means between 9.00 a.m. and 5.00 p.m. on any Working Day;

“Works” means the works within the WFLLA Site to provide the Services.