

Agreement for the Provision of KCOM PIA

Schedule 1: Definitions

In this Agreement, words and expressions have the following meanings:

“Access Charge Change Notice” means a notice in writing of a change to a Charge for Services provided pursuant to the Agreement;

“Access Network Frequency Plan” or **“ANFP”** means the specification for the Access Network Frequency Plan as set out on the KCOM Website;

“Accreditation Guidelines” means KCOM’s rules for obtaining and maintaining various modules of accreditation to work on the Physical Infrastructure as set out in the Operations Manual;

“Agreement” means those items referred to in clause 1.5;

“Ancillary Documents” means those documents specifically made available to the CP that contain information about the Service;

“Applicable Laws” means all and any statutes, regulations, byelaws or subordinate legislation in force from time to time to which a party is subject including determinations, directions, court orders, judgments or decree decisions governing or affecting the conduct of either party’s business;

“Build Period” means a period of twelve (12) months from acknowledgment of the Request by KCOM as extended pursuant to paragraph 6 of Schedule 4, during which the CP intends to install CP Apparatus in or on the Physical Infrastructure;

“Build Completion” means where the CP completes the installation of CP Apparatus in or on the Physical Infrastructure in accordance with the terms of this Agreement and which is the subject of a valid Request;

“Build Completion Pack” means the information the CP must supply to KCOM on Build Completion for a Request and as set out in the Operations Manual;

“Charges” means all Rental Charges, Time Related Charges, Termination Charges or any other charges payable by the CP for the provision of the Services, as detailed in the Price List;

“Code” means the Electronic Communications Code as set out in Schedule 3A of the Communications Act 2003;

“Confidential Information” means any information obtained under or in connection with this Agreement or the Service, 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 other than by reason of breach of this Agreement or any other agreement between the parties; 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.

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“Contract Year” means each consecutive twelve (12) calendar month period commencing from the date of this Agreement and then on each anniversary of the date of this Agreement;

“Communications Provider” means a person who provides an Electronic Communications Network or an Electronic Communications Service;

“Contractor Code of Practice” means KCOM’s KPIA WHS&E Contractor Code of Practice as updated from time to time;

“Coop and Ancillary Works” means any Coop and Ancillary Works requested by the CP in accordance with the Operations Manual;

“CP” means the party (other than KCOM) to this Agreement;

“CP Apparatus” means all CP telecommunications apparatus, including cables, in-line joints, joints, in-line splices and splices in manholes and jointing chambers, installed within and ancillary to a Facility from time to time under this Agreement;

“CP Background IPR” means all Intellectual Property Rights or other proprietary rights owned by the CP on the date of this Agreement;

“CP Data” means any Information specific to the CP relating to the Services and which is collected or otherwise processed by KCOM;

“CP Information” means Information of the CP’s which may include CP Data;

“CP Personnel” means the employees of the CP, the CP’s sub-contractors and agents (and each of their employees, sub-contractors and agents);

“CP System” means any CP owned computer system or application;

“Data Processing Commitment” means the Data Processing Commitment as set out at Schedule 9;

“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;

“Defective Pole” means a Pole that KCOM has identified as unsuitable for additional connections due to the Pole being decayed, damaged or otherwise defective;

“Disclosing Party” means a party disclosing Confidential Information to the other party;

“Dispute” means a disagreement between the parties excluding breaches of this Agreement;

“Due Date” means a date which is 30 calendar days after the date of an invoice or if such date falls on a day other than a Working Day the date of the previous Working Day;

“Emergency” means serious situation or occurrence that happens unexpectedly and demands immediate action including but not limited to: (i) health and safety issues putting the public and operatives at immediate risk; and (ii) damage to KCOM’s Network which, in KCOM’s reasonable opinion, would, if left unattended, result in significant additional repair expenditure

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and/or have the potential to create health and safety issues putting the public and operatives at immediate risk;

“Emergency Organisation” means the relevant local public police, fire, ambulance and coastguard services and other similar organisation providing assistance to the public in the case of an Emergency;

“Engineering Principles” means the engineering principles set out in the Operations Manual;

“Electronic Communications Network” shall have the meaning at Section 32 of the Communications Act 2003;

“Electronic Communications Service” shall have the meaning at Section 32 of the Communications Act 2003;

“Event of Force Majeure” has the meaning set out in clause 21;

“Event and Time Related Charges” means Time Related Charges as these charges appear in the Price List and any other charges the parties have agreed will be treated as Event and Time Related Charges;

“Excused Delay” means a delay directly caused by and attributable to an Event of Force Majeure;

“Facility” means each individual route approved by KCOM under this Agreement, comprising sub-duct, other tubing, attachments in manholes, footway boxes and on poles, or other means of installation as shall be agreed between the parties, which has been constructed or installed by the CP in the Physical Infrastructure in accordance with this Agreement for the Permitted Use;

“Forecast” means the forecast to be provided by the CP to KCOM as detailed and subject to the terms set out in Schedule 7;

“General Condition” means a general condition set under section 45 of the Communications Act 2003;

“Good Industry Practice” means in relation to any undertaking and any circumstances, the exercise of that degree of skill, care, prudence and foresight which could reasonably be expected of a highly skilled and experienced professional;

“Group Company” means any direct or indirect subsidiary or any direct or indirect holding company or any such subsidiary of any such holding company or any such holding company of such subsidiary, “subsidiary” and “holding company” having the meanings defined in Section 1159 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;

“Inactive Drop Wire” means any drop wire from a Pole to a Premise which is not subject to an obligation to supply services to the premise and which is not subject to an ongoing dispute;

“Information” means information, whether written or oral, including documentation, specifications, reports, data, notes, text, drawings, diagrams, images or sound or other computer outputs, designs, circuit diagrams, inventions (whether patentable or not) and know-how and the media (if any) on which such information is supplied excluding all Software;

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“Intellectual Property Rights” means patents, petty patents, utility models, semi-conductor topography right, rights to inventions, copyright and related 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, design right, registered design, rights in computer software, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how and trade secrets) and all other intellectual property rights, in each case whether registered or unregistered and including 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;

“Interest Rate” means four per cent per annum;

“KCOM Affiliate” means a company in which KCOM owns from time to time, directly or indirectly, at least 20% of the voting share capital;

“KCOM 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.kcom.com/wholesale/products/service-information/credit-vetting-policy/>;

“KCOM Data” means any Information specific to KCOM relating to the Services and which is collected or otherwise processed by the CP, including information presented to KCOM in reports (including site surveys and service desk call records);

“KCOM Information” means Information of KCOM’s which may include KCOM Data;

“KCOM Personnel” means the employees of KCOM, KCOM’s sub-contractors and agents (and each of their employees, sub-contractors and agents);

“KCOM Software” means any Software supplied by KCOM to provide the Services;

“KCOM Network” means KCOM’s Public Electronic Communications Network;

“KCOM Security Contact” means the KCOM Security Incident Centre (WSOC (WSOC24@kcom.com / Tel 0800 1380292) or such other contact which details shall be notified by KCOM to the CP from time to time;

“KCOM Security Policy” means KCOM’s Security Policy, a copy of which has been made available to the CP;

“KCOM System(s)” means any KCOM computer(s) application(s) or computer network(s) or such other computer system(s) as shall be notified by KCOM to the CP from time to time for use with the Service;

“KCOM Website” means the website located at URL <http://www.kcom.com> or such other website or URL as KCOM may notify the CP from time to time;

“Lead-in Duct” means duct that connects or is intended to connect a distribution point to a Network Termination Point to the extent it forms part of the Physical Infrastructure;

“Licence” means a licence granted under the terms and conditions set out in Schedule 6;

“Licence Completion Date” means the date a Licence is granted by KCOM which is the date that KCOM provides an acknowledgement of receipt of the CP’s relevant Build Completion Pack;

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“Licence Fee” means the licence fee payable by the CP for each Licence granted or as revised from time to time under this Agreement which shall include the fees for Spine Duct and Lead-in Duct and fees for multi end user attachment and single end user attachment together with fees for attachments, hosting of in-line splices, cable coils and sub-duct within manholes and jointing chambers, all as published in the Price List from time to time;

“Minimum Licence Period” means a period of:

- (a) five (5) years for Spine Duct and poles; and
- (b) twelve (12) months for Lead-in Duct

commencing on a Licence Completion Date;

“Minimum Unauthorised Use” means where there are no more than five (5) incidents of Unauthorised Use over a rolling twelve (12) calendar months period and where the Unauthorised Use is no more than a maximum of ten (10) metres from Physical Infrastructure which is the subject of a valid Request placed in good faith by the CP prior to the Unauthorised Use and where an incident means:

Spine Duct - each contiguous cable (but not longer than one hundred (100) metres in length), coil of cable or apparatus is one incident;

Pole – each use is one incident;

Lead-in – each drop wire (OH) or lead-in duct (UG) counts as one incident

provided always that KCOM shall be solely responsible in determining whether Unauthorised Use meets the above criteria;

“Network Adjustment” means permanent repairs to or measures taken to relieve congestion on or in existing Physical Infrastructure as more particularly set out in the Operations Manual and subject to the terms set out in Schedule 5;

“Network Adjustment Criteria” means where Network Adjustments are, in KCOM’s reasonable opinion, necessary, feasible and efficient when compared with alternative engineering options available to the CP;

“Network Adjustment Fund” has the meaning set out in paragraph 7 of Schedule 5 (Network Adjustments) and subject to the terms set out in that Schedule;

“Network Adjustment Verification Charge” means the charges payable by the CP to KCOM as set out or referred to in the Price List;

“Network Plans” means network plans to be produced by the CP as required by the CP as set out under Schedule 3;

“Network Termination Point” means the physical point at which an End User is provided with access to a Public Electronic Communications Network;

“Ofcom” means the Office of Communications;

“Operational Data” means personal data provided or made available by one Party to the other which is operationally required for the performance of this Agreement (business contact information such as names, email addresses, and telephone numbers, and details of personnel working on or in the KCOM Network) relating to the Party’s employees or representatives;

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“Operations Manual” means the document entitled KCOM Physical Infrastructure Access (KPIA) (Reference Offer) Operations Manual as provided to the CP from time to time;

“Permitted Use” means use of the Facility and the CP Apparatus to provide Public Electronic Communications Services and/or a Public Electronic Communications Network;

“Photographic Evidence” means high quality, clear, precise and accurate photographic proof taken using a camera by CP Personnel at the Site (not imported from Google Street View or similar) which includes creation date and time and location in respect of the particular photograph and is in focus, in colour with no effects or filters, at least 600 pixels wide and 750 pixels tall, at least 50kb and no more than 10mb, capable of being printed to a good evidentiary standard, clear and in focus, well-lit and in colour, and unaltered by computer software save where used to add annotations to aid interpretation provided any such annotation does not obscure, alter or reduce the quality of the photograph;

“Physical Infrastructure” means any network element deployed for the purposes of deploying a fixed telecommunications network and which is intended to host other network elements and which is not itself active including any conduit, tunnel, subway, pipe, structure, pole or other thing owned and controlled by KCOM in, on, by or from which an Electronic Communications Network is or may be installed, supported, carried or suspended and the term excludes cables (including strands of optical fibre), anything within a building or premise and any active network element;

“Physical Infrastructure Access” means network access comprising of the provision of space, anchorage, attachment facilities and/or such other facilities as may be reasonably necessary to permit a third party to occupy parts of KCOM's Physical Infrastructure sufficient to facilitate the establishment, installation, operation and maintenance of the Electronic Communications Network of a third party at that location;

“Physical Survey” means a field survey of such part of the Physical Infrastructure carried out by the CP;

“Pole” means a pole to the extent it forms part of the Physical Infrastructure;

“Premise” means a single residential, commercial or public sector premise with a Unique Property Reference Number;

“Price List” means the document containing a list of KCOM's charges and terms that apply to the Service as provided to the CP by KCOM from time to time;

“Process(ed)” means a Request which has been given a request number;

“Public Electronic Communications Network” or **“PECN”** shall have the meaning in section 151 of the Communications Act 2003;

“Public Electronic Communications Service” shall have the meaning in section 151 of the Communications Act 2003;

“Receiving Party” means a party receiving Confidential Information from the Disclosing Party;

“Request” means an order, made in accordance with the directions in the Operations Manual, for one or more of the Services;

“Risk Event” means a crisis, disaster, emergency or any other event or potential event (including an Event of Force Majeure as defined in clause 21) which is reasonably likely to

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have a material and adverse effect on a party's ability to meet its obligations under this Agreement;

“Schedule” means a schedule under this Agreement;

“Security Contact” means the person notified by a party as fulfilling that role on behalf of that party under this Agreement and specified as such in the Operations Manual;

“Sensitive Activities” means activities which involve CP Personnel:

- (a) having access to KCOM Building and premises; and
- (b) having access to KCOM Systems.

“Sensitive Area” means a Site which is declared by KCOM from time to time as a security or safety sensitive site including:

- (a) an area notified by KCOM from time to time as being a KCOM defined network security area (and which may exist in an end user defined network security area) which shall include without limitation some areas of the KCOM Network such as exchange manholes, manholes outside data centres, cable chambers and extensions, internal cable runs in KCOM exchanges and vulnerable joint boxes; and
- (b) an area notified by KCOM from time to time as being an end user defined network security area which shall include without limitation some areas of the KCOM Network serving airports, Ministry of Defence and
- (c) other government establishments, energy generating installations, chemical plants and other premises or industrial sites;

“Series” means a group of Event and Time Related Charges or Services that KCOM notifies the CP (on or around the date the order is placed) would be grouped into a single invoice. An invoice for a series of Event and Time Related Charges or Services shall not include any charge previously invoiced or recurring charges such as rental;

“Services” means any of the Physical Infrastructure Access services provided under the Schedules or any part thereof and as set out in the Operations Manual, and “Service” shall be construed accordingly;

“Site” means a place at which KCOM agrees to provide any of the Services and/or access for the CP to Physical Infrastructure;

“Software” means any computer programme or programming (including source code and object code) and also including any programme interfaces, software tools or object libraries embedded in such software and all materials relating to that software and/or its design, development, modification, operation, support or maintenance, not including the KCOM Software ;

“Special Offer” means a temporary price reduction for a particular product or service, applicable to all CPs on a non-discriminatory basis, which is stated to apply for a limited and predefined period and where the price immediately on expiry of that period is not higher than the price immediately before the start of that period;

“Specification” means the technical specifications set out or referred to in the Operations Manual, see section ‘Engineering Principles’, for sub-ducting, tubing, jointing chamber occupancy, ducts and poles as amended from time to time;

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“Spine Duct” means duct, other than Lead-in Duct, to the extent it forms part of the Physical Infrastructure;

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

“Third Party Claims Process” means the third party damage process as set out in the Operations Manual;

“Termination Charges” means the charges for early termination as set out in the Price List;

“Traceability Requirements” means the obligations on the CP to clearly identify CP Apparatus in or on the Physical Infrastructure as being the property of the CP at regular intervals along the length of the route and at every access point to the Physical Infrastructure including all joint boxes and poles and as set out in the Engineering Principles within the Operations Manual;

“Unauthorised Use” means where the CP fails to place or have a valid Request and/or Licence for the Physical Infrastructure prior to using that Physical Infrastructure and/or where the CP fails to comply with the terms set out in paragraph 9.8 of Schedule 4 for end CP connections but excludes use of items of Physical Infrastructure that are not in the Network Plans provided the CP notifies KCOM of the items promptly on discovery and in accordance with the missing inventory process set out in or referred to from the Operations Manual;

“Unique Property Reference Number” or “UPRN” means the unique numeric identifier for every spatial address in Great Britain.

“Virus” means:

- (a) any programme code or programming instructions intentionally constructed with the ability to damage, interfere with or otherwise adversely affect computer programmes, data files, equipment or operations; or
- (b) any other code typically designed to be a virus, worm or logic bomb, disabling code or routine or similar;

“Whereabouts Requirements” means those requirements on a CP to inform and provide the information to KCOM as set out in clause 11 and the Operations Manual prior to working on or in the Physical Infrastructure;

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

“Working Hours” means 0800-1700 on a Working Day.