



## Reference Offer for Dark Fibre Services

### Schedule 1: Definitions

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

“**Act**” means the Communications Act 2003;

“**Actual Start Date**” means the date from which a particular Service is supplied;

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

“**Ancillary Documents**” means those documents specifically listed on KCOM’s Website that contain information about the Services;

“**Appendix**” means an appendix to a Schedule to this Agreement;

“**Cancellation Payment**” means the Charges payable by the CP for the cancellation of an Order prior to the Proposed Start Date set out in the Price List;

“**Charges**” all Connection Charges, Rental Charges or any additional charges payable by the CP for the provision of the Services, as detailed in the Price List;

“**Clean Order Process**” the process KCOM shall follow upon receipt of an Order from the CP as set out in section 2.1 of the Service Operations Manual, and which will culminate in an Order being accepted or rejected;

“**Co-Location Hostel**” means co-location space at an Exchange Site, pursuant to KCOM’s Reference Offer for Ancillary Services available at <https://www.kcom.com/wholesale/>;

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

“**Communications Provider Point of Presence**” means a Communications Provider’s facility located in a Communications Provider’s building or a Datacentre used for aggregation where a Communications Provider’s active equipment is located to aggregate and transport traffic from multiple services for a geographical area;



**"Condition(s)"** means 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, unless otherwise stated;

**"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 a breach of this Agreement; 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.

**"Connection Charges"** the charge specified in the Price List for the installation and connection of the Services;

**"Core Network"** means a network whose primary function is not to support the provision of access services to end users but to switch or route traffic between other nodes in the CP's Network;

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

**"CP Billing Contact"** means the person so named in the Customer Service Plan, as set out in the Service Operations Manual;

**"CP Equipment"** any equipment located at the CP Site, an Exchange Site or End User Site owned by CP or a Third Party which when operated in conjunction with KCOM's Equipment allows



CP to obtain and/or receive the Services. For the avoidance of doubt, no KCOM Equipment will be provided with Dark Fibre;

**“CP Equipment Room”** means the room (which for the avoidance of doubt includes a Co-location Hostel) within an Exchange Site in which the CP has a Specified Floor Area (the terms Co-location Hostel and Specified Floor Area having the meaning ascribed to them in the Ancillary Services Agreement as may be amended from time to time and available on <https://www.kcom.com/wholesale/>);

**“CP Network”** means the telecommunications infrastructure and system operated by the CP;

**“CP Operational Contact”** means the person so named in the Customer Service Plan, as set out in the Service Operations Manual;

**“CP Order Correspondence Contact”** means the person named in the Customer Service Plan, as set out in the Service Operations Manual;

**“CP Responsible Incident”** in the event that an incident is identified as being attributable to CP or End User Equipment, the CP Network and/or the End User Site, power supplies, or the action of the CP or End User, employees or agents of the CP or End User, including any failure of the CP or End User to comply with the provisions of this Agreement or supply any information reasonably requested by KCOM, in a timely manner, the incident shall be deemed the responsibility of the CP. Any such downtime shall not qualify for compensation and / or Service Credits;

**“CP Site”** means the building address at which the CP houses its CP Equipment; this may also be an Exchange Site. This excludes street cabinets and similar constructions;

**“CP Service”** means the service provided to the End User by the CP;

**“Credit Limit”** means the amount of credit, if any, extended by KCOM to the CP as calculated in accordance with the Credit Vetting Policy;

**“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/>;

**“Customer Service Plan”** means the document forming part of the Service Operations Manual containing details of individuals, addresses and telephone numbers for the ordering, maintenance



and support of the Services provided pursuant to this Agreement;

**“Dark Fibre”** means the service described in Appendix 1 of Schedule 2;

**“Datacentre used for aggregation”** means a carrier neutral datacentre that houses computing facilities owned and operated by telecoms providers or run by third-party providers offering a variety of colocation services, which KCOM reasonably believes are used as points of aggregation;

**“Data Processing Commitment”** means the Data Processing Commitment as set out at Schedule 4;

**“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;

**"Disclosing Party"** means a party disclosing Confidential Information to the Receiving Party;

**"Dispute"** means a disagreement between the parties excluding breaches of this Agreement;

**“Diversity”** means the provision of additional Dark Fibre paths that are differently routed from the primary Dark Fibre path;

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

**"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, fire, ambulance and coastguard services and other similar organisation providing assistance to the public in the case of an Emergency;

**"End User"** a person having a contract with the CP for the provision of telecommunications services;

**"End User Equipment"** any equipment located at the End User Site owned by the End User or a Third Party which when operated in conjunction with KCOM's Equipment allows the End User to obtain and/or receive telecommunication services;

**"End User Site"** means the End User's premises;

**"Excess Construction Charges"** means charges for network build as set out in the Price List;

**"Exchange Site"** means the premises at which the CP connects to the KCOM Network for the provision of services pursuant to KCOM's Reference Offer for Ancillary Services available at <https://www.kcom.com/wholesale/>;

**"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;

**“Incident Management Procedure”** KCOM’s incident management procedure for the Services, as specified in the Service Operations Manual;

**“Indicative Lead Time”** is the number of Working Days KCOM anticipates it will take to fulfil an Order for the purpose of paragraph 2.5 of Schedule 2 and paragraph 4.1(b) of Appendix 1 of Schedule 2 (Service);

**“Initial Term”** means the minimum period of service specified in the Order;

**“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 4% per annum above the base lending rate of the National Westminster Bank Plc in force from time to time;

**“KCOM Equipment”** means any equipment located at the CP Site, Exchange Site and/or End User Site which is supplied by KCOM as part of the Service;

**“KCOM Network”** the telecommunications infrastructure and system operated by KCOM;

**“KCOM Operational Contact”** means the person so named in the Customer Service Plan, as set out in the Service Operations Manual;

**“KCOM Technical Support Team”** means the centre to which all incidents should be addressed;

**“KCOM Website”** means the website at: <https://www.kcom.com/wholesale/> or such other on-line address that KCOM may advise to the CP from time to time;



“**KCOM Wholesale Desk**” the centre to which help queries should be addressed, the contact details of which are set out in the Customer Service Plan in the Service Operations Manual;

“**Legislation**” all Acts of Parliament and statutory regulations, instruments or orders and codes of practice or guidance published thereunder and all applicable European Union Laws, treaties, directives (whether incorporated into English law under the European Union (Withdrawal) Act 2018 or otherwise), and other legislation, as any of the same may be amended as replaced from time to time;

“**Missed Appointment Fee**” the fee set out in the Price List that KCOM may charge in the event that an appointment is cancelled by the CP or the CP Operational Contact or the installation of the Service cannot take place due to a CP or End User related issue;

“**Network Adjustments**” means incremental network capacity on the KCOM Network installed to facilitate Dark Fibre where alternative routing is not viable;

“**Network Extension**” means installation of new duct or new fibre to premises to facilitate Dark Fibre;

“**Ofcom**” means the Office of Communications;

“**Order**” means an order for the supply of the Services placed by the CP using the Order process set out in the Service Operations Manual from time to time, which is accepted by KCOM and which is governed by this Agreement;

“**Payment Period Notice**” a notice which may be issued by KCOM pursuant to the Credit Vetting Policy;

“**Planned Outage**” in maintaining the Service provided KCOM may, with reasonable notice, require a temporary outage in service. Wherever possible KCOM will agree the outage with the CP in advance of the required work. Any planned downtime shall not be included in incident or service reliability measurements;

“**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.kcom.com/wholesale/products/service-information/price-lists/> (or any other on-line address that KCOM may advise the CP of from time to time);

“**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;

**“Profile Monitoring”** means the process by which the actual level of invoicing by KCOM in the month will be monitored against the Credit Limit for that month as further described in the Credit Vetting Policy;

**“Proposed Start Date” or “PSD”** means the date calculated in accordance with section 2.1 of Table 1 of the Service Operations Manual, as amended by paragraph 2 (Ordering and Provision) of Schedule 2 (Services);

**“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;

**“Rental Charges”** means the monthly charge payable for the provision of the Service, as detailed in the Price List;

**“Schedules”** means the Schedules to this Agreement, including any amendments;

**“Security Notice”** means a notice issued pursuant to the Credit Vetting Policy;

**“Services”** means the supply of Dark Fibre;

**“Service Affecting Incident”** any incident or event on the KCOM Network and/or the KCOM Equipment which results in any problem or breakdown in the operation of the Service;

**“Service Credit”** compensation which may be payable by KCOM to the CP in the event that KCOM’s delivery of the Services fails to achieve prescribed minimum standards, subject to certain exceptions, as further described and set out in the Service Standards;

**“Service Operations Manual”** means the appropriate product description document and business process document containing information relating to the Service (depending upon the Service) as may be amended from time to time. The Service Operations Manual is available on the KCOM Website <https://www.kcom.com/wholesale/>;





**“Service Request Process”** means the process described in the Service Operations Manual;

**“Service Standards”** means the standards set out in Schedule 3 which are the levels of service the CP can expect from KCOM for certain aspects of the Services;

**“Service Start Date”** means the Proposed Start Date or, if different, the earlier of the date upon which KCOM notifies the CP the Service is available for use or the date the End User begins using the Service;

**“Site”** means a CP Site, End User Site or Exchange Site being the place at which KCOM agrees to provide or is providing the Services;

**“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;

**“Street Furniture”** means street cabinet or street lamp post (or other street furniture as may be agreed by KCOM in writing on a case by case basis) owned or controlled by the CP (or local authority) which are used to host KCOM Equipment;

**“Technical Support Team”** means the KCOM team who manage the Incident Management Procedure as detailed in the Service Operations Manual;

**“Termination Payment”** means the Charges payable by the CP for termination of an Order after the Actual Start Date set out in the Price List;

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

**“Time Related Charges”** the charges specified in the Price List, raised to recover cost incurred when an engineer performs additional work;

**“Time To Resolve (TTR)”** the length of time to resolve a Service Affecting Incident;

**“Usage”** has the meaning in paragraph 2.1 of Appendix 1 of Schedule 2;

**“VAT”** means United Kingdom Value Added Tax;

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



**"Working Hours"** means between 9.00 a.m. and 5.00 p.m. on any Working Day.