

Leased Line Services

Part 1

FOR INTERNAL USE ONLY:	
CID: <input type="text"/>	ACCOUNT MANAGER: <input type="text"/>
THIS CONTRACT IS FOR:	
POINT TO POINT <input type="checkbox"/>	MESHED NETWORKS (VPLS) <input type="checkbox"/>
POINT TO MULTIPOINT (EAS) <input type="checkbox"/>	INTERNET ACCESS SERVICES / DIA <input checked="" type="checkbox"/>
HSCN ACCESS <input type="checkbox"/>	

COMPANY REGISTERED DETAILS:	CORRESPONDENCE DETAILS:
Company Name / Business Name: <input type="text" value="Her Majesty's Passport Office"/>	
Co. Registration No: <input type="text"/>	Main Contact: <input type="text"/>
Address: <input type="text" value="Supplier Management Team, Durham HMPO, Freemans Reach, Durham, DH1 1SL"/>	Telephone No: <input type="text"/>
	Email Address: <input type="text"/>
Postcode: <input type="text"/>	

BILLING DETAILS:	
Address for invoice: (if different to above, please insert here)	Billing Contact Name: <input type="text"/>
<input type="text"/>	Telephone Number: <input type="text"/>
	Email Address: <input type="text"/>
	Add to Existing Summary Bill: <input type="text" value="Select"/>
PO No: <input type="text" value="TBC"/>	Existing Summary Bill Number: <input type="text"/>

CONTRACT PERIOD:	PAYMENT DETAILS:
Commencement Date: <input type="text" value="SLT"/>	Billing Frequency: <input type="text" value="Monthly"/>
Proposed Start Date: <input type="text" value="SLT"/>	Payment Date: <input type="text" value="Within 30 days of date of invoice"/>
Initial Term: <input type="text" value="12 months"/>	Payment Method: <input type="text" value="Invoice"/>
Notice Period: <input type="text" value="90 Days (applicable after Initial Term)"/>	Billing Period (Optional): <input type="text" value="Select"/>

Leased Line Services

ORDER DETAILS – FOR INTERNAL USE ONLY

New Order:	Yes	External Move:	Select
Upgrade:	Select	Internal Move:	Select

If Upgrade, give circuit reference:

If Move, give details

Where a Service is an upgrade, internal move or external move of an existing leased line service taken from Us, this Contract supersedes and terminates any earlier contract for that leased line service. Where any earlier contract covers a number of different services, only the part that relates to the relevant leased line shall be terminated.

DETAILS

Service Product Type	Bandwidth (Mbps)	Bearer	Connection Charge	Annual Rental Charge
Internet Access Services	250Mbps	1Gb		

SITE DETAILS

A-END		B-END (FOR LEASED LINE POINT TO POINT SERVICES)	
Company / Business Name	Her Majesty's Passport Office	Company / Business Name	
Floor		Floor	
Room	The Wilson Centre	Room	
Building / Street	1 Alfred Gelder Street	Building / Street	
Town / City	Hull	Town / City	
Postcode	HU1 2AG	Postcode	
Site Contact Name		Site Contact Name	
Site Contact Number		Site Contact Number	

ADDITIONAL INFORMATION

Presentation, Interface FEA Reference etc.		Presentation, Interface FEA Reference etc.	
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ADDITIONAL LEASED LINES

Continuation Sheet for additional Leased Lines attached: No



Leased Line Services

THE CHARGES SET OUT IN THIS CONTRACT DO NOT CONSTITUTE AN OFFER AND MAY BE WITHDRAWN AT ANY TIME PRIOR TO ACCEPTANCE OF THE CONTRACT BY KCOM GROUP LIMITED

NOTE: All charges exclude VAT which will be added at the prevailing rate

IP INFORMATION

Are there any existing IPs which You require to be transferred

If yes, please provide details

Are any additional IPs required?

Where multiple static IP addresses have been selected, a RIPE Approval Form will need to be submitted.



Leased Line 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, but only insofar as it is required for Us to provide the Services.

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	

Service Standards – Part 3

1. INTRODUCTION

These Service Standards define the commitments We make 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.

1.1. Service Details

The Leased Line Point to Point, Point to Multipoint (EAS) and Meshed Networks (VPLS) Services involves connections between two or more specified locations available for use on an unlimited basis at a specified transport rate.

Leased Lines Point to Point Services or Private Circuits are dedicated, permanently open transmission circuits between two or more fixed points. When used with suitable customer premises equipment, they can support a wide variety of applications such as voice transmission, telemetry services, video conferencing and data transmission.

Service Speed (Interface / Transmission) Options are:

- 10Mb (RJ45 / Ethernet)
- 10Mb (Optical / Ethernet)
- 100Mb (RJ45 / Ethernet)
- 100Mb (Optical / Ethernet)
- 1Gb (Optical / Ethernet)
- 10Gb (Optical/Ethernet)

All Services demarcate on Network Terminating Equipment (NTEs) supplied by Us. The NTEs are located on Your Sites and remain Our property (subject to clause 17.7 of Part 4 of this Contract).

With Internet Access Services, 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 Your 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 Your Site.

The Internet Access Service for Category 1 services excludes an on-site router as routing is provided within the KCOM network. The Internet Access Service for Category 2 includes a router device, located at Your Site, which provides a TCP/IP Ethernet interface to Your network. This router device is (subject to clause 17.7 of Part 4 of this Contract) owned by and is maintained by Us and allows Us to manage the Internet Access Service, up to the Network Terminating Equipment, on Your behalf.

The configuration of the router is such that it does not provide security services that are intended to protect Your network from Internet abuse, computer viruses or any other computer misuse.

The 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 and 10 POP3 email-boxes (additional POP3 email-boxes are available as a chargeable service)
- Static IP address (the number of static IP addresses allocated will be subject to Your requirement and satisfactory compliance with the usage guidelines as determined by the European IP registry agent, RIPE)

Table 1 shows the Services Categories for both Services.

Leased Line Services

Table 1

Category 1	Category 2
Directly connected services provided wholly over Our fixed line network in the Hull Area ("On-Net")	Directly connected services over Our national network infrastructure outside the Hull Area or over infrastructure provided by a third party network provider ("Off-Net")
<p>Services can be:</p> <ul style="list-style-type: none"> - Internet Access Services provided wholly On-Net - Point to Multipoint: Ethernet Access Services (EAS) provided wholly On-Net - Meshed Networks: Virtual Private LAN Service (VPLS) provided wholly On-Net 	<p>Services can be:</p> <ul style="list-style-type: none"> - 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.

2. SERVICE DELIVERY

2.1. Delivery Management

We will provide You with a Proposed Start Date for each Service.

Where We have made a scheduled appointment with You for either (i) the installation of the Services at your premises or (ii) the resolution of a fault with the Services, it is Your responsibility ensure that You are at the premises to attend the appointment at the date and time of the appointment. You may be subject to an abortive visit charge, at Our standard rate, if one of Our engineers has been dispatched to Your premises and:

- The appointment is cancelled by You after the engineer has been dispatched;
- The person in attendance at Your premises is under the age of 18;
- There is no one at Your premises;
- There is no one at Your premises who knows what work is required or who is otherwise authorised to agree it
- You ask Our engineer to call back at an alternative time
- Our engineer is refused entry to Your premises.
- There are no suitable or there are insufficient power sockets

2.2. Restrictions

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.

If service installation cannot proceed due to a customer related issue e.g. no available power sockets, no wall space or access to site is refused, an abortive visit charge may be raised.

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.

Leased Line Services

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 5 (five) Working Days' notice of any planned work which will affect the availability of the Services.

4. INCIDENT MANAGEMENT

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**"), 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
Business Care Plus	5 clock hours (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, 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
1 to 5	5% of connection charge
6 to 10	10% of connection charge
11+	15% of connection charge

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

The maximum Service Credit You may claim under this Contract is [REDACTED].

5.2. Incident Management

Leased Line Services

In the event that We fail to meet the TTR for Service Affecting Faults only, 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
Up to 3	1% if annual rental charges ¹
3 – 6	3% if annual rental charges ¹
6+	5% if annual rental charges ¹

¹ Refers to rental charges paid by You in the previous 12 months, 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.

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, customers 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

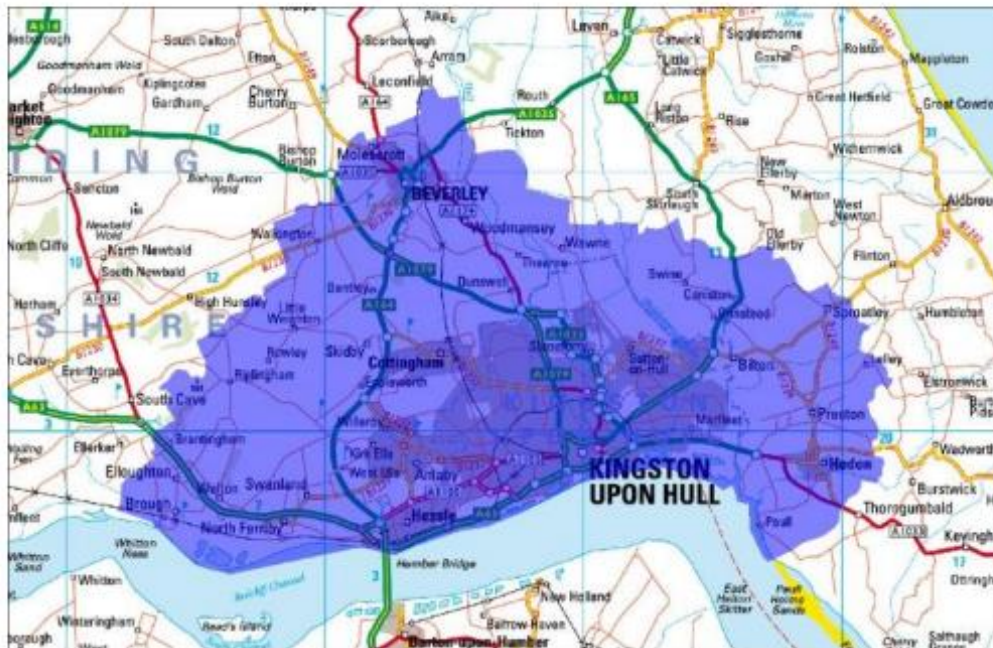
Customer Responsible Faults

In the event that a Service Affecting Fault or Non-Service Affecting Fault is identified as being attributable to Customer Equipment, Your power supplies, or Your actions or those of Your 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, the 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



Incident Management Procedure

Our Fault management procedure for the Services, as updated from time to time.

Non-Service Affecting Fault

A Fault or condition which is not a Service Affecting Fault.

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.

1 TERM

1.1 This Contract will come into effect on the Commencement Date and shall continue until the expiry of the Initial Term. Thereafter, this Contract will continue in full force and effect unless and until terminated by either party giving no less than 90 days' prior written notice to the other party.

2 PROVISION OF THE SERVICE

2.1 We will provide the Services selected under Part 1 of this Contract.

2.2 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.

2.3 We will use reasonable endeavours to provide the Services for use by You from the Proposed Start Date unless otherwise specifically agreed by the parties in writing or unless We are unable to do so as the result of a failure by You to fulfil Your obligations under this Contract or by any delay caused by You or a nominated third party (including, without limitation, other Network Operators).

2.4 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 You, 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.

2.5 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 You at the 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 Contract (in whole or in part) without any liability to You. In the event of termination of this Contract, 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.

2.6 You accept that there may be some technical limitations within the Network which may not become apparent until after We commence supplying the Services to You, or, prior to completion of any tests, as detailed in clause 4.4, it may become 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 circumstances, We will be entitled to terminate the Contract (in whole or in part) without any liability to You.

2.7 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 12.1, 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.

3 CUSTOMER OBLIGATIONS

3.1 In order to enable Us to fulfil Our obligations under this Contract You will at Your own cost:

(a) procure all consents, licences and permissions necessary from landlords or other third parties (including (without limitation) consents, licenses and permissions to building alterations at the Site, any consents etcetera required under the Acts or in respect of any service providers, network operators, maintainers, installers, ISPs or other relevant persons) for the carrying out of preparation work, installation of Equipment and for the use and operation of the Equipment and Services at the Site for the duration of the Contract. If You occupy and own the Site(s) in which You are taking Services, by signing this Contract You give Us Your written permission pursuant to the Code to install and keep Our Equipment on the Site(s);

(b) provide site and building plans (to include full details of all internal cabling runs) of the Site as requested by Us;

(c) provide Us with full details of all other services in the vicinity of the proposed works;

(d) provide any information that may be reasonably required by Us or Our third party supplier. If Your requirements change for any reason, You will inform Us immediately;

(e) ensure that any unique or special conditions applicable to the 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;

(f) prepare the 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);

(g) ensure that any network testing termination point serving the 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.

(h) provide Us or Our nominated third party with access to the Site, during normal working hours, and 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;

(i) ensure a safe working environment for Our employees and nominated third parties whilst at the Site and procure the same in respect of any Site under the control of any Users; and

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

3.2 In the event that We or You are not able to procure the necessary consents to provide the Services within three months from the Commencement Date We will be able to terminate the Contract without any liability. 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).

3.3 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 Site 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 Site, provided that We shall not be liable to You if, as a result of conforming with such regulations, We are in breach of Our obligations under this Contract.

3.4 You will, at Your own expense, provide such continuous supply of electrical current and connection sockets as may be required for the installation, operation and maintenance of the Equipment.

3.5 You will not move, add to, modify or interfere with or attempt to repair, or cause to be repaired or serviced by any person any Equipment other than by Us or Our nominated or approved third party or Our network sub-contractor (as applicable).

3.6 You will only attach to any Equipment such other equipment or apparatus that We give You prior written approval for and which is approved for connection under the Acts (as applicable).

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

3.8 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.

3.9 It is Your responsibility to correctly configure Your LAN and all connected devices and to protect yourself adequately from virus and other system attacks (using up-to-date software). The consequence of inadequate anti-virus or firewall systems could be that unintentionally cause interference or damage to other Internet connected devices. We may have to suspend the Service if such interference occurs.

3.10 You 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.

3.11 We will be entitled to modify and/or replace any of Our Equipment from time to time if We consider such modification and/or replacement reasonably necessary for the continued provision of the Services.

3.12 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.

3.13 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.

3.14 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 Your Site but You (i) fail to provide access to the Site, or (ii) cancel 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.

4 OUR EQUIPMENT

4.1 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), We will undertake any necessary surveys and installation (or procure the installation) of Our Equipment at the Site.

4.2 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.

4.3 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 (other than Our duly authorised network sub-contractor) to interfere with or use the same.

4.4 Following installation of the Equipment and completion of the works under clause 17.4 (as applicable), We will carry out Our standard test procedures to ensure that the Services are ready for operation by You. We will supply Our Equipment in accordance with all relevant legislative requirements and will comply at all times with the relevant standard.

4.5 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. You 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. We hereby grant You a non-exclusive, non-transferable 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 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 amending or in any way altering the software or documentation.

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- 4.6 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 (including, without limitation, Our Equipment) as part of the Services or in any way connected to this Contract, You agree that You shall:
- 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;
 - allow Us or Our licensors to have sole conduct of the defence or settlement of any such claim; and
 - 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.
- 4.7 For the avoidance of doubt, We shall have the right at Our discretion to:
- procure the right for You to continue using the items so that such use is no longer infringing;
 - 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
 - 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.
- 4.8 Upon termination of this Contract You shall promptly return or, if requested, destroy all copies of the software and documentation held by You that is in a tangible form, including software or documentation stored on electronic or optical storage devices, whether in digital form or otherwise.
- 4.9 You agree and undertake and represent to Us that You will:
- take all reasonable and proper care of all Equipment;
 - 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;
 - not operate the Equipment after it has become defective, unsuitable, damaged or in a dangerous state.
- 4.10 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.
- 4.11 Risk in Our Equipment will pass to You immediately on delivery.
- 4.12 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.
- 4.13 You will 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 providing safe, proper and adequate access for such purposes.
- 4.14 On termination of this Contract if You fail to allow Us to collect Our Equipment You will be liable to Us for:
- a sum equivalent to the full retail value of Our Equipment; and
 - the hire charges, as set by Us from time to time, for the unreturned unit of Our Equipment until the sum specified in 4.14(a) has been received by Us.
- 4.15 You will be liable for any loss or damage to Our Equipment (reasonable wear and tear excepted), subject to the provisions of clause 10.5, except where such loss or damage is caused by Us or anyone acting on Our behalf.
- 4.16 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 or by a third party on Your behalf.
- 4.17 We will be entitled to:
- 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
 - 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
 - suspend the Services in the case of an emergency and, wherever possible, use Our reasonable endeavours to minimise the period of interruption.
- ### 5 CUSTOMER EQUIPMENT
- 5.1 You will make any such modifications to the Customer Equipment as We may determine necessary in order to provide the Services, subject to Your obligations under the Acts.
- 5.2 You will 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.
- 5.3 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.
- ### 6 USE OF THE SERVICE
- 6.1 You will, and will ensure that any Users will, 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.
- 6.2 You shall not, and shall use all reasonable endeavours to ensure that any Users shall not, use the Service:
- 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;
 - in any way that contravenes any licence or third party rights;
 - 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;
 - 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;
 - 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;
 - in a way that does not comply with any instructions We give pursuant to clause 6.1;
 - in a way that, in Our reasonable opinion, could materially affect the quality of, or be detrimental to, any telecommunications services, including the Service;
- 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; or
 - for high traffic applications which (in Our reasonable opinion) are an unsuitable use of the Service.
- 6.3 Both parties agree to co-operate fully with the Police and any other relevant authorities (including but not limited to Customs and Excise, the Inland Revenue, the Office of Fair Trading, the Trading Standards Departments 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 suspected fraudulent activity related to or connected with the Services and agree that We will be entitled to divulge the name and address and account information relating to You to such third parties.
- 6.4 You 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 or Your Users may be subject to pursuant to the relevant Legislation. You acknowledge that if You or Your Users do not make any such changes and modifications then We may not be able to route the Services to You or Your Users.
- 6.5 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 You are using with the Services.
- 6.6 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.
- 6.7 When using Our Internet Access Services, You shall and shall ensure that Your Users shall:
- provide all equipment, software, systems and facilities necessary to make use of the Services;
 - protect Your 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;
 - notify Us as soon as You become aware of any password misuse or security breaches;
 - indemnify Us against any liability We may incur as a result of any use or misuse made of the Services by You, including in respect of content uploaded or downloaded, emails sent and received and materials placed on any web space using the Services;
 - are aware that any password and encryption keys, and any information that We may have gathered or which We are storing for or concerning You and/or Your Users 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.
- 6.8 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 Users in breach of this clause 6.
- ### 7 SERVICE REGRADES
- 7.1 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.
- 7.2 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.
- 7.3 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

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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.

7.4 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.

7.5 If You have selected a Service or a Service Regrade which is insufficient for Your purposes and You allow more 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 perform a Service Regrade, in accordance with this Contract.

7.6 Following a recommendation pursuant to clause 7.5, if You do not perform a Service Regrade and You continually exceed 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 You 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 7.6(a).

8 CHANGES

8.1 If We change the location of any Equipment at Your Site at Your request, You shall pay to Us all applicable charges for any re-connections and associated work.

8.2 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 8.1;

(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 8.2(e) to 8.2(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.

9 CHARGES

9.1 You will pay Us all appropriate Charges at the rates, times and frequencies as set out in this clause 9 and in Part 1 from the Service Start Date.

9.2 The connection and installation charges (set out in Part 1) will be payable upon the Service Start Date.

9.3 The rental charges (set out in Part 1) will be payable monthly in advance from the Service Start Date unless otherwise stated in Part 1.

9.4 Any other Charges or payments shall be payable on demand.

9.5 We will be entitled to vary the Charges at any time from the Commencement Date, 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 Retail Prices Index Rate, You may terminate this Contract 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.

9.6 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 Services by giving Us 30 days' written notice.

9.7 All Charges and payments due under the Contract (except where payment is made by Direct Debit) are payable within 30 days of the date of the relevant invoice and will be paid in full without any set-off, deduction or withholding of any kind. We reserve the right to charge daily interest on any outstanding amounts until payment is received in full at a rate equal to 4 per cent per annum above the base rate of National Westminster Bank Plc as current from time to time whether before or after judgment and/or suspend the Services in whole or in part until all such Charges have been paid in full.

9.8 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.

9.9 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.

9.10 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.

10 TERMINATION

10.1 If either party is:

(a) in material breach of any provision of this Contract (other than clause 6.1 or 6.2) 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.

10.2 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 6.1 or 6.2 as such breach may be a criminal offence and/or cause serious harm to Our reputation; or

(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.

10.3 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 9.7, 10.1 or 10.2 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 EFFECT OF TERMINATION

11.1 Upon termination of this Contract (howsoever caused) You shall 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.

11.2 If the Contract is terminated earlier than the earliest termination date provided for in clause 1.1 as a result of Us exercising Our termination rights under clauses 10.1 or 10.2 or as a result of You terminating the same other than pursuant to Your termination

rights under clauses 6.6, 9.5, 9.6, 10.1 or 13 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 Contract is so terminated during the first Contract Year, 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 11.2(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 Contract is so terminated after the first Contract Year 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 the Contract is so terminated prior to the Service Start Date, then You will pay Us the connection Charges due.

11.3 You acknowledge that Our Charges have been calculated on the basis that the Contract will continue until the expiry of the Initial Term as provided for in clause 1.1 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.

11.4 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.

11.5 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 LIMITATION OF LIABILITY

12.1 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 this Contract; or

(e) anything else that cannot be excluded or limited by applicable law.

12.2 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.

12.3 Without prejudice to clause 12.1, 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.

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suffered by You (and in each case whether direct or indirect) under or in connection with this Contract.

12.4 Without prejudice to clause 12.1, 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.

12.5 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.

12.6 Without prejudice to clauses 12.1 and 12.5, 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 (but, for the purposes of this clause 12.6, including the time from the Commencement Date to the Service Start Date in respect of the first 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").

12.7 With reference to clause 12.6, in the event that 12 months has not accrued from the Service Start Date to the date of the relevant default, the Liability Sum shall be calculated by calculating the monthly average Charges incurred over the relevant period and multiplying it by 12.

12.8 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 whilst using the Services. Use of the Services is solely at Your risk and We shall be not be liable to You for any loss or damage of any nature whatsoever You suffer as a result of the use or reception of such materials.

12.9 The limitations of liability set out in this clause 12 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 12 to any other liabilities You may incur under or in connection with this Contract.

12.10 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.

12.11 This clause sets out Our 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.

13 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.

14 EXPORT CONTROL

14.1 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 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.

15 RECORDS/INFORMATION

15.1 You agree that We may use credit reference agencies to help Us decide whether We can provide (or continue to provide) the Services. We can pass information about You and Your payment record to credit security and debt collection agencies and to other companies in the KCOM Group to help recovery and credit control.

15.2 We or Our agents may sometimes monitor or record calls made to Us for training and quality control purposes.

15.3 We may contact Your organisation (including, without limitation, individuals within Your organisation) by letter, telephone or e-mail with details of Our services that may be of interest. If an individual does not wish to receive marketing material from Us then please notify us by calling 0800 1386000.

15.4 As We continue to develop our business, members of the KCOM Group may be sold and any relevant Customer Information may be transferred as part of the sale, subject to the terms of this clause.

16 DATA PROTECTION

16.1 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.

17 ADDITIONAL PROVISIONS SPECIFIC TO THE INTERNET ACCESS SERVICES

17.1 The following provisions of this clause 17 are specific, and shall only apply, to the Internet Access Services.

17.2 In respect of clause 3.1(a), You shall also procure all necessary consents, licenses and permissions for the connection of Customer Equipment to the Network.

17.3 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.

17.4 In addition to clause 4.4, 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).

17.5 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.

17.6 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 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.

17.7 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 4.9) the provisions of this clause 17.7 shall apply to that new router.

17.8 Domain Name Registration

(a) If You choose to take a Domain Name from Us, You must tell Us the Domain Name that You would like to use with the Internet Access Services and We will use Our reasonable endeavours to allocate it to You or, if it is unavailable, such other Domain Name as is reasonably acceptable to You 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 You for use with the Internet Access Services. If You want to use a Domain Name with a different suffix, We will use Our reasonable endeavours to arrange the registration and/or transfer of the relevant Domain Name so that You can use it with the Internet Access Services. You agree to pay such additional charges, calculated at Our standard rates, as We may impose for providing this service.

(c) We will use Our reasonable endeavours to make any changes to the Domain Names You use 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 You make to Your Domain Name, the Equipment or the Services, without Our express agreement.

(d) We will automatically renew the registration of any Domain Names You 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 the Contract, We will continue to renew the registration of the Domain Names You use with the terminated Internet Access Services in accordance with clause 17.8(c) 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 17.8(d) shall continue to have effect after the termination of this Contract.

(f) We will route any IP addresses that were previously assigned to You only if those addresses were assigned to You directly and not through any other ISP. We will not be held responsible if any other ISP refuses to accept these addresses. We shall assign new or additional TCP/IP addresses as requested by You 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. We shall not be responsible for any decision made by RIPE. When We assign addresses to You, 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 to other customers. If You wish to apply for addresses that will subsist beyond the duration of the Internet Access Services, You 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 incur as a result of this.

(h) On Your request, We will arrange for the transfer of any Domain Names You use with the Internet

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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.

- 17.9 You must not use or request a Domain Name such as would be likely to lead to a breach of clause 6.2 or such as to infringe the rights of any other person, whether in statute or common law, in a corresponding trade mark or name.
- 17.10 You shall 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 use of the Internet Access Services from time to time, in order to audit the bandwidth being utilised by You, and in particular to ensure that the Agreed Bandwidth has not been, and is not being, exceeded.
- 17.11 For the avoidance of doubt, We shall not be liable for any costs incurred by You as a direct or indirect result of Your network set-up including, without limitation, any increased ISDN call charges.
- 17.12 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 until You have reconfigured the server to prevent the relaying of unsolicited emails. We shall not be liable for any losses suffered by You caused by such suspension of the Internet Access Services.
- 17.13 We will in no circumstances be liable to You in contract or tort (including, without limitation, negligence) or otherwise if We fail to renew Your domain name.

18 GENERAL

- 18.1 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.
- 18.2 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.
- 18.3 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.
- 18.4 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.
- 18.5 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.
- 18.6 Members of the KCOM Group may enforce their rights under clause 9.10 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).
- 18.7 You may not assign the whole or part of this Contract without Our prior written consent such consent not to be unreasonably withheld.
- 18.8 We may assign this Contract to any company which is a member of the KCOM Group.
- 18.9 Subject to clause 18.8, We may not assign this Contract to any other third party without Your prior written consent such consent not to be unreasonably withheld.
- 18.10 We reserve the right to vary these terms and conditions to the extent necessary to take into account any changes to Industry Agreements and any relevant Legislation. Any other variations must (subject to anything to the contrary in this Contract, including, without limitation, clauses 7.1 and 9.5) be in writing and agreed between the parties.

- 18.11 Any notice under or in connection with this Contract shall unless otherwise agreed be in writing and may be delivered by hand 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.
- 18.12 Any notice addressed as provided in clause 18.11 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.
- 18.13 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.
- 18.14 You are not authorised or entitled to re-sell, re-supply or otherwise distribute or sub-license the services, software, documentation and/or any equipment provided by Us without Our prior written agreement.
- 18.15 This Contract will be governed by English law and the parties submit to the exclusive jurisdiction of the English courts.

19 DEFINITIONS AND INTERPRETATION

- 19.1 Words in the singular include the plural and in the plural include the singular.
- 19.2 Unless the context otherwise requires, a reference to one gender shall include a reference to the other genders.
- 19.3 Clause, schedule and appendix headings shall not affect the interpretation of this Contract.
- 19.4 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.
- 19.5 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.
- 19.6 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.
- 19.7 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;
- "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 detailed in Part 1 or these terms and conditions of this Contract or otherwise;
- "the Code" Schedule 2 of the Telecommunications Act 1984 as amended by Schedule 3 of the Communications Act 2003 (as amended from time to time);
- "Commencement Date" the date of signature of this Contract by Us;
- "Contract" these terms and conditions and all other parts of this document;
- "Contract Year" a period of 12 months from and including the Service Start Date and each consecutive 12 month period thereafter;

"Customer Equipment" any equipment at the Site owned by You or a third party which when operated in conjunction with Our Equipment, allows You to obtain and/or receive 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 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 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 such data protection laws and regulations;

"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 use with the Internet Access Services;

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

"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 Part 1 commencing on the Service Start Date;

"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 under Part 1 of this Contract;

"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" the provision by Us to You of a Private Circuit, if and as selected in Part 1 of this Contract;

"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;

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

"Our Website" Our website at www.kcom.com or any other website that replaces it;

Leased Line Services

"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 Part 1 of this Contract) 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" the date specified in Part 1 or as amended on which the Services are due to be made available to You;

"Retail Prices Index Rate" the inflation rate for the Retail Prices Index, being the average inflation rate for the 12 months up to and including the month preceding the variation to the Charges under clause 9.5;

"Service(s)" the Leased Line Point to Point, Point to Multipoint (EAS) and meshed networks (VPLS)

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 7;

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

"Service Start Date" 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;

"Site" the Site(s) where the Services are to be provided, as more fully described in Part 1;

"Third Party Equipment" any equipment not supplied by Us and used by You to provide, access or obtain the Services;

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

"Users" any individual authorised by You to use the Services;

"We/Our/Us" KCOM Group Limited (registered no 2150618) whose registered office is at 37 Carr Lane, Hull, HU1 3RE;

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

"You/Your" the person or company to whom the Services are provided as detailed in Part 1.

