



Dated

20[XX]

KCOM GROUP LTD

- and -

[COMPANY NAME]

Reference Offer for the provision of Ancillary Services



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THIS AGREEMENT is made on

20[XX]

BETWEEN:-

- (1) **[COMPANY NAME]** registered in England and Wales (Company No. [INSERT]) whose registered office is at [INSERT ADDRESS] ("**CP**"); and
- (2) **KCOM GROUP LTD** registered in England (Company No. 2150618) whose registered office is at 37 Carr Lane, Kingston-upon-Hull, HU1 3RE ("**KCOM**").

RECITALS

- (A) The CP provides a Public Electronic Communications Network.
- (B) KCOM provides a Public Electronic Communications Network.
- (C) KCOM has agreed to supply the Services to the CP in the Hull Area, on the terms and conditions of this Agreement.
- (D) The terms used in these Recitals shall have those meanings given to them in Clause 1 below and Schedule 1.

THE PARTIES AGREE AS FOLLOWS:-

1. INTERPRETATION

- 1.1** In this Agreement, except if the context requires otherwise, words and expressions shall have the meanings set out below:-
- 1.2** In this Agreement unless otherwise specified, reference to:
 - (a) 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);
 - (b) a party means a party to this Agreement and includes its permitted assignees and/or successors in title;
 - (c) a person includes any person, individual, company, firm, corporation, government, state or agency of a state or any undertaking (whether or



not having separate legal personality and irrespective of the jurisdiction in or under the law of which it was incorporated or exists);

- (d) Recitals, Clauses, Paragraphs, Schedules or Appendices are to Recitals, Clauses and Paragraphs of, Schedules and Appendices to this Agreement;
- (e) writing shall include typewriting, printing, lithography, photography and other modes of representing words in a legible form other than writing on an electronic or visual display screen or in other non-transitory form (for clarity this excludes e-mail);
- (f) words denoting the singular shall include the plural and vice versa and words denoting any gender shall include all genders;
- (g) any reference to any legislature provision shall be deemed to include any subsequent re-enactment or amending provision.

1.3 Headings are included in this Agreement for ease of reference only and shall not affect the interpretation or construction of this Agreement.

1.4 In the event, and to the extent only, of any conflict or inconsistencies between the Clauses, the Schedules, the Order, the Price List and/or the Credit Vetting Policy the order of precedence shall be as follows:

- (a) Clauses in the main body of this Agreement;
- (b) Schedules;
- (c) the relevant section of the Price List;
- (d) the Order; and
- (e) the elements of the Credit Vetting Policy that are incorporated by reference in this Agreement.

2. COMMENCEMENT AND DURATION

2.1 This Agreement takes effect on the date hereof and shall continue until termination pursuant to this Agreement.

2.2 The Services to be provided under each Order shall commence as provided for in Clause 3 and shall continue until termination pursuant to this Agreement.



3. PROVISION OF THE SERVICES

- 3.1** KCOM agrees to provide the CP with the Services in accordance with this Agreement and the terms of the relevant Order.
- 3.2** KCOM agrees to exercise the reasonable skill and care of a competent Communications Provider in providing the Services and if required, in determining how best to provide the Services.
- 3.3** KCOM agrees to grant the CP a non-exclusive right to use the Services for the purpose of enabling the CP to connect with KCOM's Associated Services within the Exchange Site. The CP shall not use the Services with any service within the Exchange Site that is not an Associated Service and in particular shall not use the Services with data centre applications.
- 3.4** Subject to survey and the CP fulfilling its obligations under this Agreement, KCOM will use reasonable endeavours to provide the Services for use by the CP from the Target Date and/or the Proposed Start Date or such other date as otherwise specifically agreed by the parties in writing.
- 3.5** The CP acknowledges and agrees that the Services can only be provided in the Hull Area at the Exchange Sites notified to the CP by KCOM.
- 3.6** In the event of termination of an Order by the CP, for any reason, prior to the Target Date and/or the Proposed Start Date the CP will be liable to pay KCOM any costs properly incurred by KCOM hereunder up to the date of such termination.

4. SERVICE MANAGEMENT

- 4.1** Whilst KCOM agrees to use reasonable endeavours to provide uninterrupted Services to the CP, KCOM may:
- (a) give the CP instructions which it reasonably believes are necessary for reasons of health, safety or the quality of the Services and it is the CP's responsibility to ensure these are adhered to; or
 - (b) interrupt the Services for operational reasons (such as planned maintenance or Service upgrades) or because of an Emergency. KCOM agrees to restore the interrupted Services as quickly as possible. KCOM will give the CP as much notice as possible and aims to give the



CP at least 10 Working Days' notice of any interruption to the Services for planned maintenance and upgrade work. If there has been an interruption to the Services for Emergency reasons, KCOM will inform the CP that there has been an interruption as soon as reasonably practicable. KCOM will use reasonable endeavours to restore the Services as soon as possible after the Emergency has ceased.

- 4.2** The CP shall use reasonable endeavours to ensure that the Services are used in accordance with the provisions of this Agreement, or such reasonable operating guides and instructions as may be notified by KCOM to CP from time to time, and in accordance with all relevant provisions of any relevant Legislation. Without limitation to the foregoing, CP shall comply with the provisions of the Act and the General Conditions.

5. CONNECTION OF EQUIPMENT TO THE SERVICES

- 5.1** The CP shall ensure that any equipment connected to the KCOM Network conforms to any applicable Legislation, standards or guidelines or any requirements of KCOM for connection of equipment to the KCOM Network. KCOM may disconnect any equipment which does not conform to these requirements or which, in KCOM's reasonable opinion, may cause death, personal injury or damage to property or impair the quality of the Services or any other services provided by KCOM, including services to Third Parties. CP shall refund to KCOM any costs KCOM incurs as a consequence of such disconnection

6. QUALITY OF SERVICE

- 6.1** KCOM will use all reasonable endeavours to provide the Services in accordance with the Service Standards set out in Schedule 2 and will use reasonable skill and care in the provision of the Services.
- 6.2** The CP acknowledges that the Services cannot be provided fault free and KCOM does not warrant error free or uninterrupted use of the Services. The parties shall comply with the incident identification and reporting guidelines set out in Schedule 2.

7. PROVISION OF INFORMATION

- 7.1** Each party shall provide to the other such information and assistance as is



reasonably requested from time to time by the other party to enable it to perform its obligations pursuant to this Agreement.

- 7.2** Notwithstanding any provision of this Agreement a party shall not be obliged to provide information which is subject to a confidentiality obligation to a Third Party unless such Third Party consents to such disclosure.
- 7.3** Each party will use reasonable endeavours to ensure that information provided by it is correct to the best of its knowledge at the time of provision of such information.
- 7.4** Nothing in this Agreement shall prevent the furnishing of traffic data (as defined in the Privacy Regulations) to a person who is a competent authority for the purposes of any provision relating to the settlement of disputes (by way of legal proceedings or otherwise) in, or made by virtue of any enactment.
- 7.5** Nothing in this Agreement shall require a party to do anything in breach of any statutory or regulatory obligation of confidentiality.

8. KCOM CHARGES AND DEPOSITS

- 8.1** For Services provided by KCOM the CP shall pay to KCOM the Charges specified from time to time in the Price List and calculated using the details recorded by KCOM.
- 8.2** KCOM may revise the Charges at any time provided that KCOM gives the CP:
- a) not less than 28 days after the Access Charge Change Notice for any new network access provided pursuant to this Agreement;
 - b) not less than 28 days after the Access Charge Change Notice for price decreases in relation to existing network access provided pursuant to this Agreement;
 - c) not less than 28 days after the Access Charge Change Notice relating to the end of a temporary reduction in accordance with the terms of any Special Offer; and
 - d) not less than 56 days after the Access Charge Change Notice in the case of any other existing network access provided pursuant to this Agreement.



KCOM will send advice of the Access Charge Change Notice to the CP Billing Contact, as supplied in the Customer Service Plan.

- 8.3** Notwithstanding the aforesaid, KCOM may vary the Charge which has retrospective effect for the Services provided by KCOM by publication in the Price List if the variation is as a result of an order, direction, determination or requirement of Ofcom or any other regulatory authority or body of competent jurisdiction.
- 8.4** The date of publication in the Price List shall be the date that KCOM first makes the contents of the Price List available on the internet containing the relevant entries to persons other than KCOM including, without limitation the CP.
- 8.5** Access to all invoices will be via the KCOM online billing and reporting platform.
- 8.6** The CP agrees to pay the Charges by the Due Date. KCOM may charge daily interest on late payments not the subject of a bona fide dispute at the Interest Rate for the period beginning on the date on which payment is due and ending on the date payment is actually made.
- 8.7** All charges exclude Value Added Tax (VAT) which is charged at the applicable rate and is payable by the CP.
- 8.8** Payment will be in pounds sterling. All Charges and any other sums due under this Agreement will be collected in full by direct debit, unless otherwise agreed in writing with KCOM, within 30 calendar days of the date of the relevant invoice without any set-off, deduction or withholding of any kind.
- 8.9** The CP acknowledges that it will be subject to KCOM's Credit Vetting Policy. Should KCOM consider it necessary following the application of such procedures or should the CP fail to pay the Charges due under or in connection with this Agreement, KCOM may (without prejudice to any other rights and remedies available to KCOM), at any time, require the CP to pay a deposit or provide a guarantee as security for payment of future Charges. The CP agrees to pay such deposit or provide such guarantee within 28 calendar days of receiving notice from KCOM requiring it to do so, failing which KCOM reserves the right, without prejudice to any other rights and remedies available to it under this Agreement to refuse to accept any further Orders under the Agreement and to suspend performance of such of its obligations under this Agreement as is



reasonable in the circumstances until such deposit or guarantee is provided.

- 8.10** If the CP disputes any invoice, it will notify KCOM in writing within the invoice payment period of the relevant KCOM invoice giving its reasons. The CP is not entitled to withhold payment of any amount not in dispute. The CP is not entitled to withhold any payments to KCOM on the grounds that the CP has a dispute with the End User(s). Clause 18 will apply to the resolution of a dispute of the type referred to in this Clause 8.10.
- 8.11** If a refund is due to the CP by KCOM, the CP may charge daily interest on late repayments at the Interest Rate for the period beginning on the date on which the parties acting reasonably agree KCOM shall make the repayment and ending on the date KCOM actually makes payment save that the CP shall not be entitled to charge interest on late repayments where such delay is attributable to an act or omission of the CP. If any Charge is recalculated or adjusted with retrospective effect under an order, direction, determination or requirement of Ofcom, or any other regulatory authority or body of competent jurisdiction, the parties agree that interest will be payable at the Interest Rate on any amount due to either party as a result of that recalculation or adjustment.
- 8.12** KCOM may correct an invoice sent to the CP providing it notifies the CP within 12 months of the date of the invoice giving its reasons.
- 8.13** The CP may seek correction of an invoice providing it notifies KCOM within 12 months of the date of the invoice giving its reasons. The parties will negotiate in good faith to resolve the issue as soon as reasonably practicable.

9. CHANGES TO THIS AGREEMENT

- 9.1** KCOM may change this Agreement at any time by giving not less than the 28 days' notice before the change takes effect in order to:
- (a) comply with any legal or regulatory obligation; or
 - (b) maintain the integrity or security of the Service or KCOM Network; or
 - (c) introduce or withdraw or modify Service features (subject to any other notice requirements specified by any applicable regulation); or
 - (d) change the Service Levels; or
 - (e) introduce process changes; or



- (f) improve clarity, or make corrections to typographical errors;
providing that the changes in sub-clauses (b) to (f) inclusive shall not materially adversely affect the Service.

9.2 Either KCOM or the CP may propose changes to this Agreement at any time. KCOM will publish details of any such proposed changes on the KCOM Website and notify the CP and other Communications Providers who in its reasonable opinion may be affected by the changes. If there are no objections to the proposed changes within the 28 days of the service of KCOM's notice from KCOM, the CP or from any other Communications Provider who has an agreement for the Services, the parties agree that the changes shall take effect from the proposed effective date. If there are any objections to the proposed changes within 28 days of the service of KCOM's notice of the proposed changes under this Clause 9.2, KCOM shall enter into discussions with the CP and any other Communications Providers affected. If the parties (including the objector) cannot reach an agreement by the end of 28 days of the service of KCOM's notice of the proposed changes, KCOM shall not introduce that change into this Agreement and either party may raise a dispute under Clause 18.

9.3 KCOM may amend, change, remove, or replace those parts of Ancillary Documents which do not form part of this Agreement without prior agreement from the CP. KCOM will give reasonable written notice of any such changes and publish details of those changes on the KCOM Website before the changes take effect. If the CP considers any such changes to an Ancillary Document would change the Agreement or materially and adversely affect the Services then, on or before the expiry of the 28th Working Day of any such changes taking effect, the CP may dispute any such changes to an Ancillary Document in accordance with Clause 18.

10. CONFIDENTIALITY

10.1 Subject to the following provisions of this Clause 10, a Receiving Party shall keep in confidence Confidential Information and will not (and will use its reasonable endeavours to ensure that its directors, employees, and professional advisers will not) disclose such information to any Third Party.

10.2 A Receiving Party shall exercise no lesser degree of care of Confidential



Information than would a reasonable person with knowledge of the confidential nature of the information. A Receiving Party shall exercise no lesser security or degree of care than that party applies to its own Confidential Information of an equivalent nature.

- 10.3** A Receiving Party shall restrict disclosure of Confidential Information relating to the other party to those persons who have a reasonable need to know or, in the case of CLI, to those employees to whom it is essential for permitted purposes. Confidential Information shall be used solely for the purposes for which it was disclosed.
- 10.4** A Receiving Party may disclose Confidential Information to an associated company, subject to the associated company undertaking to comply with obligations equivalent to these contained in this Clause 10.
- 10.5** A Receiving Party may disclose Confidential Information to a contractor or agent, subject to the contractor or agent undertaking in writing to comply with obligations equivalent to those contained in this Clause 10.
- 10.6** The following shall not constitute a breach of this Clause 10:
- (a) a disclosure authorised in writing by the Disclosing Party to the extent of that authority; or
 - (b) a disclosure to an Emergency Organisation; or
 - (c) publication of all or part of this Agreement or details of it or publication in the Price List except in so far as Ofcom has consented to the exclusion of any matter; or
 - (d) a disclosure which is properly made pursuant to a Condition or a relevant statutory or other regulatory obligation; or
 - (e) a disclosure properly and reasonably made to Ofcom, or to an arbitrator, expert or any person appointed by the parties for the resolution of a Dispute; or
 - (f) a disclosure to obtain or maintain any listing on or required by the rules of any recognised stock exchange

subject to in the case of any disclosure specified in Clauses 10.6(d) to 10.6(f) the Receiving Party informing the Disclosing Party as soon as reasonably



practical, after such disclosure.

- 10.7** Unless otherwise agreed in writing, a Receiving Party shall not use the other party's Confidential Information to provide commercial advantage to its retail business.

11. FORCE MAJEURE

- 11.1** "**Event of Force Majeure**" means, in relation to either party, an event or circumstance beyond the reasonable control of that party (the "**Claiming Party**") including, without limitation strikes, lock outs and other industrial disputes (in each case, whether or not relating to the Claiming Party's workforce), acts of God, insurrection or civil disorder, war or military operations, national or local emergency, acts or omissions of government, highway authority or other competent authority (including, without limitation, issuance of applicable codes of conduct or regulatory orders, determinations or directions), compliance with any statutory obligation, fire, lightning, explosion, flood, subsidence, weather of exceptional severity, interruption or failure of utility service (including but not limited to electric power, gas and water but excluding telecommunication services save those provided by a Third Party) or acts or omissions of persons for whom neither party is responsible.
- 11.2** The Claiming Party shall not be deemed to be in breach of this Agreement or otherwise liable to the other party (the "**Non-claiming Party**") for any delay in performance or any non-performance of any obligations under this Agreement (and the time for performance shall be extended accordingly) if and to the extent that the delay or non-performance is due to an Event of Force Majeure.
- 11.3** The Claiming Party shall promptly notify the Non-claiming Party of the nature and extent of the circumstances giving rise to the Event of Force Majeure and of the estimated extent and duration of its inability to perform or delay in performing its obligations.
- 11.4** Upon cessation of the effects of the Event of Force Majeure the party initially affected by an Event of Force Majeure shall promptly notify the other of such cessation.
- 11.5** If as a result of an Event of Force Majeure, the performance by the party initially affected of its obligations under this Agreement is affected, such party



shall, subject to the provisions of Clause 11.6, perform those of its obligations not affected by the Event of Force Majeure. In performing those of its obligations not affected by an Event of Force Majeure, the party initially affected by an Event of Force Majeure shall deploy its resources such that (when taken together with other obligations to its customers and Third Parties) there is no undue discrimination against the other party.

- 11.6** If the Event of Force Majeure in question prevails for a continuous period in excess of three months after the date on which it began, the Non-claiming Party may give notice to the Claiming Party terminating this Agreement. The notice to terminate must specify the termination date, which must be not less than 30 clear days after the date on which the notice to terminate is given. Once a notice to terminate has been validly given, this Agreement will terminate on the termination date set out in the notice. Neither party shall have any liability to the other in respect of termination of this Agreement due to an Event of Force Majeure, but rights and liabilities which have accrued prior to termination shall subsist.

12. LIMITATION OF LIABILITY

- 12.1** Without prejudice to Clauses 12.2 and 12.4 and subject to Clause 12.3 if a party is in breach of any of its obligations under this Agreement to the other party (excluding obligations arising under this Agreement to pay monies in the ordinary course of business), or otherwise (including liability for negligence or breach of statutory duty) such party's liability to the other shall be limited to one million pounds sterling (£1,000,000) for any one event or series of connected events and two million pounds sterling (£2,000,000) for all events (connected or unconnected) in any period of 12 calendar months.
- 12.2** Neither party excludes or restricts its liability for death or personal injury caused by its own negligence or liability arising under Part I of the Consumer Protection Act 1987 or any other liability which cannot be excluded or limited by law.
- 12.3** Neither party shall be liable to the other in contract, tort (including negligence or breach of statutory duty) or otherwise for loss (whether direct or indirect) of profits, business or anticipated savings, wasted expenditure or for any indirect special or other consequential loss and damage whatsoever arising in



connection with the operation of this Agreement.

- 12.4** Subject to the provisions of this Agreement, 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 £5,000,000 (five million pounds) during the term of this Agreement.
- 12.5** The CP will procure and maintain for the duration of this Agreement policies of insurance to cover its liabilities under this Agreement up to the limits set out in Clauses 12.1 and 12.4. The terms of such policies of insurance will include provisions whereby, in the event of any claim or proceedings in respect of which the CP would be entitled to receive indemnity under the policy, being brought or made against KCOM, the insurers will indemnify KCOM against any costs, charges and expenses thereof and whereby the insurers give a waiver of subrogation in respect of any indemnity given by the CP to KCOM.
- 12.6** The CP will provide upon KCOM's request, evidence of the insurance cover referred to in Clause 12.5 on or before the Commencement Date and thereafter at any time during the period of this Agreement as KCOM will reasonably require. If the CP is unable to demonstrate to KCOM's reasonable satisfaction that it has insurance to cover its liabilities under this Agreement up to the limits set out in Clauses 12.1 and 12.4, KCOM will be entitled to effect insurance against all claims, proceedings, losses, liabilities, costs, damages and expenses caused by that the CP's negligence, other default or deliberate act arising out of or in connection with this Agreement up to these limits and to recover the reasonable cost of such insurance from the CP.
- 12.7** The CP's obligation to refund KCOM's costs under Clause 5.1 shall not be subject to any of the limitations and exclusions set out in this Clause 12 and the amount of such refund shall be disregarded for the purpose of applying the caps on liability referred to in Clauses 12.1 and 12.4
- 12.8** Each provision of this Clause 12 is a separate limitation applying and surviving even if one or more such provisions is inapplicable or held unreasonable in any circumstances.
- 13. INTELLECTUAL PROPERTY RIGHTS**
- 13.1** Except as expressly provided otherwise in this Agreement, Intellectual Property



Rights shall remain the property of the party creating or owning the same and nothing in this Agreement shall be deemed to confer any assignment or licence of the Intellectual Property Rights of one party to the other party.

14. INDEMNITY AND UNDERTAKING

- 14.1** KCOM's obligations under this Agreement shall be solely to the CP and except if and to the extent caused by any act and/or omission caused by KCOM the CP agrees to fully indemnify, defend and hold harmless KCOM against any and all liabilities, claims and costs (including legal costs) arising from any and all claims by any Third Party in connection with the Services.
- 14.2** The CP shall be liable to KCOM for any acts and omissions of Third Parties relating to the use of the Services.

15. CONDUCT FOR INDEMNIFIED EVENTS

- 15.1** The indemnified party must notify the indemnifying party of any related claims or legal proceedings and use reasonable endeavours to do so within 14 days of receipt and if it fails to do so, any additional cost reasonably incurred as a consequence of that failure may be deducted from the indemnified sum.
- 15.2** The indemnifying party may assume conduct of the claim providing it notifies the indemnified party of such intention within 5 days of receipt of the notification in Clause 15.1. The indemnified party may re-assume conduct of the claim at any time if it reasonably believes a failure to do so would be prejudicial to its interests.
- 15.3** The party assuming conduct of the claim must:
- (a) actively consult with the other party regarding the conduct of any action and take their views into account; and
 - (b) make no admissions relating to any claims or legal proceeding without the prior written consent of the other party which shall not be unreasonably withheld; and
 - (c) not agree any settlement of such claims or legal proceedings nor make any payment on account of them without the prior written consent of the other party, which shall not be unreasonably withheld.



16. DATA PROTECTION

16.1 Where KCOM is processing data on CP's behalf, KCOM shall only process such data in accordance with the Data Protection Laws and Data Processing Commitment.

17. ASSIGNMENT

17.1 Subject to Clauses 17.2 and 17.4, neither party may assign the whole or part of this Agreement without the other party's prior written consent, such consent not to be unreasonably withheld or delayed.

17.2 KCOM may assign this Agreement to any company which from time to time is a KCOM Group Company.

17.3 The CP may transfer its rights and obligations by way of novation to an eligible CP Group Company subject to credit vetting by KCOM and the signing of a novation agreement in such form as KCOM shall reasonably require.

17.4 The assigning party shall promptly give notice to the other party of any assignment permitted to be made without the other party's consent. No assignment shall be valid unless the assignee/successor agrees in writing to be bound by the provisions of this Agreement.

18. DISPUTES

18.1 Either party (the "**disputing party**") may invoke the dispute procedure specified in this Clause 18, and if it wishes so to do it shall send written notice of the Dispute to the other party's commercial contact (the "**receiving party**"). The notice shall contain all relevant details including the nature and extent of the Dispute. The receiving party shall acknowledge the receipt of such notice of the Dispute within two Working Days. In the absence of acknowledgement from the receiving party within such timeframe, the disputing party may notify the receiving party that the notice has been deemed received.

18.2 The name of each party's commercial contact shall be as specified from time to time in the Customer Service Plan. For the purposes of this Clause 18 no change to a commercial contact shall be effective until it has been notified in writing to the other party.

18.3 Following notice under Clause 18.1, the parties shall consult in good faith to



try to resolve the Dispute. If agreement is not reached within 14 Working Days from date of such written notice of Dispute, the Dispute will be escalated under Clause 18.4.

- 18.4** If the Dispute is not resolved under Clause 18.3, the parties shall send written notice to each other's respective commercial contact requiring the Dispute to be escalated and stating to whom each party has escalated the Dispute. The commercial contact receiving such a notice shall acknowledge the receipt of such notice in writing within four Working Days and state to whom the Dispute has been escalated.
- 18.5** Following notice under Clause 18.4, the parties shall work in good faith to try to resolve such Dispute, involving appropriate senior managers.
- 18.6** The above procedures are without prejudice to any other rights and remedies that may be available in respect of any breach of any provisions of this Agreement.
- 18.7** Nothing herein shall prevent a party from:
- (a) seeking (including obtaining or implementing) interlocutory or other immediate relief;
 - (b) referring the Dispute to Ofcom in accordance with any right (if any) either party may have to request a determination or other appropriate steps for its resolution.

19. BREACH TERMINATION AND SUSPENSION

- 19.1** The CP may terminate any Order made under this Agreement on 30 days' notice (but provided that the provisions of paragraph 8.1 of Schedule 3 shall apply and take precedence with respect to the termination of any Licence).
- 19.2** In the event that the CP's entitlement to provide all or a material part of its Public Electronic Communications Network and/or Public Electronic Communications Services is suspended by Ofcom, KCOM may suspend this Agreement (or such part thereof as it deems reasonable) immediately on notice to the CP. KCOM will resume provision of the Services provided pursuant to this Agreement as soon as possible following receipt of notice from the CP that Ofcom has lifted the suspension.
- 19.3** The CP may terminate the provisions of this Agreement:



- (a) on not less than one month's notice if KCOM materially changes the terms and conditions of this Agreement or materially increases the Charges, to the CP's detriment provided that such notice to terminate shall be served on KCOM no later than two months from the date the change comes into effect;
- (b) on not less than 3 months' notice for any other reason.

19.4 KCOM may terminate the provisions of this Agreement:

- (a) on not less than one month's notice if the CP fails to pay a sum due under this Agreement on 3 or more occasions in separate payment months within a 24 month period provided notice has been given on the first two occasions pursuant to Clause 19.5;
- (b) on not less than 6 months' notice for any other reason.

19.5 If a party is in material breach of (including failure to pay a sum due under) this Agreement, the other party may serve a written notice (the "**breach notice**") on the party in breach specifying the breach and requiring it to be remedied within:

- (a) 30 calendar days from the date of receipt of such breach notice; or
- (b) in case of Emergency, within such shorter period as the party not in breach may reasonably specify.

19.6 If the party in breach fails to remedy the breach within such reasonable period as may be specified by the party not in breach pursuant to Clause 19.4 the party not in breach may, until such breach is remedied, suspend performance of such of its obligations under this Agreement as is reasonable in the circumstances.

19.7 If the party in breach fails to remedy the breach within the period stated in the breach notice the party not in breach may terminate this Agreement or, where the breach relates to a Service, the Service provided under this Agreement, on three months' written notice provided always that if the party in breach remedies the breach within such three months' notice period, this Agreement shall not terminate as a result of such notice.

19.8 If a valid breach notice is served on the CP and the CP has not remedied the breach after the expiry of the period specified for remedy in the breach notice then KCOM may immediately upon giving notice in writing at its sole discretion



refuse to accept new Orders except for the processing of Orders which relate to cessation of Services, maintenance of existing Services, or for the monitoring of existing Orders and suspend such other services or facilities available to the CP as shall be reasonable in the circumstances. The CP agrees to pay the Charges for the Services until this Agreement is terminated.

19.9 This Agreement may be terminated by either party by written notice forthwith (or on the termination of such other period as such notice may specify) if the other party:

- (a) is unable to pay its debts within the meaning of section 123(1)(e) of the Insolvency Act 1986; or
- (b) has a receiver or administrative receiver appointed in relation to all or any of its assets; or
- (c) has an order made or a resolution passed for its winding up (other than for the purpose of amalgamation or reconstruction); or
- (d) has an administration order made in respect of its business; or
- (e) enters into a voluntary arrangement under section 1 of the Insolvency Act 1986; or
- (f) ceases to carry on business.

19.10 Termination of this Agreement under this Clause 19 shall have the effect of terminating any Orders made under this Agreement on the same termination date.

19.11 Upon termination or expiry of this Agreement each party shall take such steps and provide such facilities as are necessary for recovery by the other party of equipment (if any) supplied by that other party. Each party shall use reasonable endeavours to recover equipment made available by it.

19.12 If 90 calendar days after the termination or expiry of this Agreement, a party fails to recover equipment in good condition (fair wear and tear excepted) because of the acts or omissions of the other party the first party may demand reasonable compensation from the other party which shall be paid by the other party within 10 calendar days of the date of the demand.

19.13 Termination or expiry of this Agreement shall not be deemed a waiver of a breach of any term or condition of this Agreement and shall be without prejudice to a



party's rights, liabilities or obligations that have accrued prior to such termination or expiry.

19.14 Notwithstanding the termination or expiry of this Agreement Clauses 1, 10, 12, 13, 14, 15, 16, 19 and 29 shall continue in full force and effect.

19.15 Each of the parties' right to terminate or suspend performance of this Agreement pursuant to this Clause 19 is without prejudice to any other rights or remedies available to either party.

20. NOTICES

20.1 Any notice given or made under this Agreement shall be in writing and shall be delivered by e - m a i l , hand or sent by prepaid first class post, including recorded delivery:-

If to the CP:

[Insert CP's email and address details for the receipt of notices]

If to KCOM:

by email to:

wholesalepartners@kcom.com

or to :

Company Secretary

KCOM Group LTD

37 Carr Lane

Hull

HU1 3RE

and shall be deemed to have been duly given or made as follows:-

(a) if delivered by email, upon delivery at the address of the relevant party;



- (b) if delivered by hand, upon delivery at the address of the relevant party;
- (c) if sent by first class post, two Working Days after the date of posting; and

provided that if, in accordance with the above provision, any such notice, demand or other communication would otherwise be deemed to be given or made outside Working Hours, such notice, demand or other communication shall be deemed to be given or made at the start of Working Hours on the next Working Day.

20.2 A party may notify the other party to this Agreement of a change to its name, relevant addressee, address for the purposes of Clause 20.1 provided that such notification shall only be effective on:-

- (a) the date specified in the notification as the date on which the change is to take place; or
- (b) if no date is specified or the date specified is less than five Working Days after the date on which notice is given, the date falling five Working Days after notice of any such change has been given.

21. ENTIRE AGREEMENT

21.1 This Agreement contains the whole agreement between the parties and supersedes all previous understandings, commitments, agreements or representations whatsoever, whether oral or written, other than any fraudulent misrepresentation, in relation to the subject matter of this Agreement.

22. VARIATIONS

22.1 Except as expressly provided in this Agreement, (a) no variation or waiver of any term, provision or condition of, or consent granted under, this Agreement shall be effective and (b) no breach of any provision of this Agreement shall be waived or discharged unless agreed in writing by the parties and signed by a person nominated in writing on behalf of:

- (a) KCOM, by a director or the company secretary of KCOM; and
- (b) the CP, by a director or the company secretary (or equivalent office holder



or other person nominated in writing by the CP) of the CP.

23. WAIVER

23.1 No failure or delay on the part of any party in exercising any right, power or privilege under this Agreement shall operate as a waiver thereof, nor shall any single or partial exercise of any such right, power or privilege preclude any other or further exercise thereof or the exercise of any other right, power or privilege. Any effective waiver shall be effective only in the instance and for the purpose for which it is given.

23.2 The rights and remedies herein provided are cumulative with and not exclusive of any rights or remedies provided by law.

24. THE CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999

24.1 The Contracts (Rights of Third Parties) Act 1999 shall not apply to this Agreement and no person other than a party shall have rights under it nor shall it be enforceable by any person other than the party.

25. INDEPENDENT CONTRACTORS AND AGENCY

25.1 Each of the parties is and shall remain at all times an independent contractor fully responsible for its own acts or defaults (including those of its employees or agents). Neither party is authorised and neither of the parties nor their employees, agents or representatives shall at any time attempt to act or act on behalf of the other party to bind the other party in any manner whatsoever to any obligations. Neither party nor its employees, agents or representatives shall engage in any acts which may lead any person to believe that such party is an employee, agent or representative of the other party. Nothing in this Agreement and no action taken by the parties pursuant to this Agreement shall constitute, or be deemed to constitute, between the parties a partnership, agency, association, joint venture or other co-operative entity.

25.2 If either party appoints an agent for the purposes of this Agreement, and notifies the other party, then the other party shall deal with the appointed agent for such purposes until the first party notifies the other party that the appointment has been terminated.

**26. SEVERABILITY**

26.1 The invalidity or unenforceability of any provision of this Agreement shall not affect the validity or enforceability of the remaining provisions of this Agreement.

27. COUNTERPARTS

27.1 This Agreement shall be executed in two counterparts which together shall constitute one agreement and this Agreement shall not take effect until it has been executed by both parties.

28. COSTS

28.1 Save as expressly otherwise provided in this Agreement each of the parties shall bear its own legal, accountancy and other costs, charges and expenses connected with the negotiation, preparation and implementation of this Agreement and any other agreement incidental to or referred to in this Agreement.

29. GOVERNING LAW

29.1 This Agreement (and any dispute, controversy, proceedings or claim of whatever nature arising out of or in any way relating to this Agreement or its formation) shall be governed by and construed in accordance with English law.

29.2 Each of the parties to this Agreement irrevocably agrees that the courts of England shall have exclusive jurisdiction to hear and decide any suit, action or proceedings, and/or to settle any disputes, which may arise out of or in connection with this Agreement and, for these purposes, each party irrevocably submits to the jurisdiction of the courts of England.



IN WITNESS whereof the Agreement has been entered into on the date first above written

Signed by

for and on behalf of **[CP NAME]**

Signature

Signed by

for and on behalf of **KCOM GROUP LTD**

Signature