

Reference Offer for Dark Fibre Services

Schedule 4: Data Processing Commitment

1 Introduction

- 1.1 This Schedule represents KCOM's commitment to the CP in regard to processing of Personal Data. It forms part of the Agreement and should be read in conjunction with the Agreement and any associated documentation.

2 Definitions

- 2.1 In this Data Processing Commitment Schedule, unless the context otherwise requires:
- “**Permitted Sub-Processor**” means any Third Party supplier or other sub-processor appointed by KCOM for the provision of Services to the CP pursuant to the Agreement, as such Third Party supplier or sub-processor is expressly identified to CP or as otherwise agreed between the parties.
- 2.2 Any other definition used in this Schedule 4 shall have the meaning ascribed to it in the Agreement.

3 Data Protection

- 3.1 Both parties hereby warrant, represent and agree that in relation to the performance of the Services during the term of the Agreement each party will comply with the Data Protection Laws.
- 3.2 Both parties acknowledge and agree that in relation to the Personal Data, the End User is the Data Controller, the CP is the Data Processor and that the CP has appointed KCOM as a sub-processor. KCOM agrees and accepts that KCOM will process the Personal Data pursuant to and in accordance with the Agreement, as applicable, and the Data Protection Laws.
- 3.3 Annex A sets out the information regarding KCOM's processing of the Personal Data as required by article 28(3) of UK GDPR. KCOM may make reasonable amendments to Annex A to this Schedule 4 by written notice to the CP from time to time as KCOM reasonably considers necessary to meet those requirements, including but not limited to amendments arising from amendments to UK GDPR that result in a divergence from EU GDPR. Nothing in Annex A to this Schedule 4 (including as amended pursuant to this paragraph 3.3 of this Data Processing Commitment) confers any right or imposes any obligation on either the CP or KCOM.



3.4 KCOM shall:

- (a) only process the Personal Data for the purposes of performing its obligations under the Agreement, as applicable, and in accordance with the CP's documented instructions;
- (b) not transfer the Personal Data outside of the UK, unless permitted to do so as follows:
 - (i) in provision of the Services by the relevant Permitted Sub-Processor, subject to ensuring that either: (a) such Permitted Sub-Processor implements appropriate technical and organisational measures to safeguard against unauthorised and unlawful processing of Personal Data and to ensure a level of security appropriate to the risk; or (b) such Permitted Sub-Processor enters into the International Data Transfer Agreement (**IDTA**), the International Data Transfer addendum to the European Commission's Standard Contractual Clauses for International Data Transfers (**Addendum**) and any transitional provisions for the time being relating to the IDTA and/or the Addendum for the Processing and transfer of Personal Data outside of the UK with the CP; or
 - (ii) with the CP's prior written consent; and/or
 - (iii) if required to do so by any legislation or regulation, in which case KCOM shall inform the CP of such requirement if KCOM is able to do so;
- (c) ensure that all of its employees who process the Personal Data are subject to an obligation of confidentiality in relation to the Personal Data;
- (d) implement appropriate technical and organisational measures to safeguard against unauthorised and unlawful processing of Personal Data and to ensure a level of security appropriate to the risk, including but not limited to:
 - (i) pseudonymising and encrypting Personal Data, as appropriate;
 - (ii) ensuring the ongoing confidentiality, integrity, availability and resilience of its processing systems and services;
 - (iii) enabling the restoration, availability and access to Personal Data in a timely manner in the event of a physical or technical incident and, without prejudice to the foregoing, in accordance with any service level agreement between KCOM and the CP;



- (iv) regularly testing, assessing and evaluating the effectiveness of the technical and organisational measures for ensuring the security of the processing; and
 - (v) taking steps to ensure that any of KCOM's employees who have access to Personal Data do so in accordance with KCOM's rights and obligations as expressly detailed in this Data Processing Commitment or otherwise on the CP's express written instructions unless otherwise required by legislation or other applicable regulation;
- (e) inform the CP of any new sub-processor and/or change of a Permitted Sub-Processor. The CP shall inform KCOM within five (5) Working Days of any objection to such appointment or change. If the CP does not raise any such objection, KCOM shall ensure that such sub-processors shall comply with the provisions of this Schedule or terms which are substantially similar;
- (f) assist the CP in the timely response to requests from Data Subjects exercising their rights, including but not limited to:
- (i) where KCOM is required to assist the CP with a Data Subject Access Request received by either the CP or the End User, responding to such request for assistance within twenty (20) days of receiving notice of such request from the CP;
 - (ii) where KCOM receives a Data Subject Access Request directly from the Data Subject, KCOM shall notify the CP within one (1) Working Day after receipt and shall respond to the Data Subject within the time limits specified within the Data Protection Laws and where the CP or End User is required to assist with such Data Subject Access Request, the CP shall coordinate a response with the End User and shall respond to KCOM within twenty (20) days of receiving notice of such request from KCOM;
 - (iii) assisting the CP, as applicable, with a request for access, rectification and/or erasure by a Data Subject; and
 - (iv) enabling the CP to comply with a request for data portability of a Data Subject;
- (g) assist the CP in complying with its obligations relating to security of Personal Data as set out in the Agreement, as applicable, or as otherwise may be reasonably requested by the CP, including but not limited to:

- (i) notifying the CP of any Personal Data breach as soon as reasonably practicable and no later than twenty four (24) hours after KCOM becomes aware of the breach (such notice by email and/or telephone and followed up by email), and including all relevant detail. KCOM agrees and accepts that the CP may use any detail included in the notification of a Personal Data breach, or otherwise given in its communication to Data Subjects, to the extent that such information does not breach the rights of any other individual;
 - (ii) at the CP's request and expense assisting with the communication to the Supervisory Authorities, the End User and/or Data Subjects following a Personal Data breach and/or implementing any measures required as a result of such breach; and
 - (iii) at the CP's request and expense, consulting with the Supervisory Authorities and/or assisting the CP to consult with the Supervisory Authorities, including providing the CP with any information relating to KCOM's processing of Personal Data and/or KCOM's compliance with the Data Protection Laws as the CP may reasonably request;
- (h) upon the expiry or termination of the Agreement, delete or return all Personal Data to the CP (as requested by the CP), unless otherwise required or permitted by Data Protection Laws and provide written confirmation in this respect;
- (i) make available to the CP all information reasonably necessary to enable the CP to demonstrate compliance with their obligations under the Data Protection Laws, including such records of all categories of processing carried out on the CP's behalf, as such is requested;
- (j) co-operate with any request of the Supervisory Authority;
- (k) allow the CP to undertake audits of KCOM on 30 days' notice and at CP's expense, subject to any reasonable requests KCOM may have regarding the timing and conduct of such audit (including, without limitation, such audits to be conducted during Working Hours and allowing KCOM to supervise such audit), to ensure KCOM's compliance with this Schedule;
- (l) contribute to any audits or inspections carried out on the CP by any Supervisory Authority or any End User, as such contribution and/or inspection is reasonably necessary to

demonstrate compliance with the CP's obligations and/or KCOM's obligations in this Data Processing Commitment, subject always to the provisions in paragraph 0 (k) above; and

- (m) at the CP's expense, implement any reasonable recommendations and/or remedial actions necessary to ensure compliance with the provisions of this Schedule and/or the Data Protection Laws, as such recommendations and/or remedial actions are deemed necessary by the CP (acting reasonably) or any Supervisory Authority, as applicable, following an audit or inspection in accordance with paragraph 0 (l) above, or otherwise as the CP deems reasonably necessary.

- 3.5 Subject to clause 17 of the Agreement, each party shall indemnify the other party in the event of any claim by a Third Party arising as a consequence of the other party's breach of this Data Processing Commitment and/or Data Protection Laws.

4 General

- 4.1 KCOM shall be entitled to amend this Data Processing Commitment either: (i) immediately to ensure its commitment is in compliance with Data Protection Laws; or (ii) upon giving the CP 30 days' prior written notice of such change, provided that such change shall not (in KCOM's reasonable opinion) cause a material detrimental effect to the CP.

Data Processing Details

Annex A

Description	Details
Subject matter of the processing	Provision of Services pursuant to the Agreement between KCOM and the CP.
Duration of the processing	For the duration of the Agreement and for up to 7 years after the expiry or termination of the Agreement.
Nature and purposes of the processing	<p>To facilitate the fulfilment of KCOM's obligations arising under the Agreement including</p> <ul style="list-style-type: none"> i. Ensuring effective communication between KCOM and the CP; ii. Maintaining full and accurate records of all Services arising under the Agreement; iii. Dealing with any rights, actions, incidents or disputes arising under the Agreement.
Type of Personal Data	<p>Includes:</p> <ul style="list-style-type: none"> i. Contact details of, and communications with the CP and (where applicable) the End User, and their employees, directors or contractors concerned with management of and/or receipt of Services pursuant to the Agreement; ii. Contact details of, and communications with the CP's associated or group companies, and such parties' staff concerned with management of and/or receipt of Services pursuant to the Agreement; and iii. Contact details of, and communications with the CP's sub-contractors and Third Parties and such parties' staff concerned with either the fulfilment of the CP's obligations arising from the Agreement or the receipt of their rights under the Agreement.
Categories of Data Subject	<p>Includes:</p> <ul style="list-style-type: none"> i. The CP's and End User's directors, employees and/or staff concerned with the delivery of the Service; ii. The directors, employees and/or staff of the CP's group and/or associated companies concerned with the delivery of the Service; and iii. The directors, employees and/or staff of the CP's sub-contractors and/or other Third Parties concerned with either the fulfilment of the CP's obligations arising from the Agreement or the receipt of their rights under the Agreement.