

## KCOM Terms and Conditions for the use of off-net KCOM Services including off-net Broadband Services

The Terms below set out the basis on which We will provide services to You, including off-net Broadband Services. You must read these Terms carefully and, if You wish to proceed, confirm Your acceptance of these Terms by clicking on the button marked "Accept" (online) or signing or agreeing on the telephone with us where appropriate (offline). Part A contains the general terms and Part B contains the terms relating to specific services.

By accepting these Terms, You have placed an order for the Services. Following on from your order, We shall contact You by post or email to confirm the details of the Services You have agreed to take. Your order represents an offer from You to Us to purchase the Services. We shall send confirmation to You, by post or email, when Your order is accepted by Us. Our acceptance of Your order will create the Agreement between You and Us for the Services.

### Part A

#### 1. DEFINITIONS

1.1 In these Terms, the following words shall (unless the context otherwise requires) have the following meanings:

- **Acceptable Use Policy** – the acceptable use policy posted on Our Web Site (as amended from time to time);
- **Additional Charges** - any charges additional to the Fees that may be invoiced by Us to You in accordance with these Terms (whether by virtue of a specific provision or otherwise and including, without limitation, the Cease Charge fee as detailed in Part B), which will be charged at Our current standard rates or otherwise calculated on a time and materials basis, as amended from time to time;
- **Agreement** - these Terms and the Order;
- **BT** - British Telecommunications PLC;
- **Carrier** - any supplier to Us from time to time of telecommunications services in respect of the Service;
- **Early Termination Fee** – shall have the meaning given to it for the particular Service, as detailed in Part B;
- **Equipment** – any hardware supplied by Us to You in order for You to receive the Service;
- **Fair Usage Policy** – the fair usage policy posted on Our Web Site (as amended from time to time);
- **Fees** - the amount(s) payable by You (excluding VAT) for or relating to the Services set out in Part B or otherwise;
- **IPR** - all patents, copyright, moral rights, design rights, know-how, Confidential Information, database rights, trademarks and service marks together with applications to register any of the above (where applicable);
- **Order** - the order agreed with You in respect of the Services;
- **Party** - You and Us;
- **Services** - the services agreed in the Order and in respect of each specific terms are set out in Part B and the detailed specifications are set out in any relevant Product Information Sheet displayed on our Web Site or as otherwise made available to You;
- **Start Date** - the earliest of the Start Dates set out in Part B;
- **Terms** - these terms and conditions consisting of Part A and Part B;
- **Us, We, Our** - KCOM Group Limited, trading under the name KCOM, whose registered office is at: 37 Carr Lane, Hull, HU1 3RE (registered number: 2150618);
- **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 (as amended).
- **Your, You** - the organisation or person requiring and agreeing to contract for the Services;
- **Web Site** – [www.kcom.com](http://www.kcom.com).

1.2 Words in the singular include the plural and vice versa. A reference to one gender includes a reference to the other gender.

# KCOM Terms and Conditions for the use of off-net KCOM Services including off-net Broadband Services

## 2. OUR OBLIGATIONS

- 2.1 We agree to provide to You the Services for the Fees. To avoid doubt, BT will still bill You for the rental of your BT line.
- 2.2 We will use all reasonable endeavours to provide the Services without interruption and materially error free. We shall use our 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.
- 2.3 You acknowledge that our obligations may be carried out on our behalf by a Carrier or other sub-contractor or agent.
- 2.4 Your bill will be calculated using data recorded by Us and not from Your own records. Our billing systems will meet standards of accuracy approved by our industry regulator.

## 3. YOUR OBLIGATIONS

- 3.1 You agree to pay the Fees. We will bill You for all: (a) Fees; and (b) (if applicable) calls made at the rates set out on our Web Site or as otherwise made available to You, as amended from time to time.
- 3.2 We will issue invoices to You for the Fees electronically or otherwise. We may notify You that Your invoice is available by email, to the email address stated in Your account. You must ensure that the email address is correct and shall notify Us immediately if Your email address changes. The invoice shall be deemed received by You, upon sending notice to You (to the email address provided by You) that Your invoice is available. We reserve the right to issue a paper invoice to You should We deem it appropriate in Our sole discretion.
- 3.3 **We may change our Fees, call rates or any similar charges from time to time but will aim to let You know at least one (1) month in advance of any change We are making.** We may also change any other charges such as those imposed on Us by Our third party suppliers, including the Cease Charge fees (defined in Section B – Broadband Services below), from time to time and will aim to let You have reasonable notice of any such changes in advance of the change being made. You may terminate this Agreement by providing Us with one (1) month notice following Our notice to You of the changes detailed in this clause, if such change should cause a material detriment to You. If You do not provide notice to terminate the Agreement within one (1) month following Our notice of the change to You, You will be deemed to have accepted the change. You must pay either by Credit or Debit Card or by Direct Debit from a bank account. We may vary these methods from time to time. You must provide Us with all necessary information and authority We need to set up a variable Direct Debit. We shall be entitled to withhold our Services if Your bank has not confirmed that the Direct Debit has been established. You agree that You shall pay an Additional Charge if You pay using a Credit Card.
- 3.4 You are responsible for the cost of all charges You incur while Using the Services (whether You make the calls or someone else does). We may apply a usage limit to Your account. If You reach Your usage limit during any billing period We will inform You promptly and, if You do not immediately pay at least half the charges incurred, We may suspend the Services. However, You will still be responsible for all charges incurred using the Services, including those that exceed the limit.
- 3.5 All Fees due under this Agreement will be payable within 30 days of the date of the relevant invoice (the “Due Date”) and will be paid in full without any set-off, deduction or withholding of any kind. If You have chosen to make payment of the Fees by Direct Debit, We will give You 10 Working Days prior notice of Our intention to request payment from Your bank account.
- 3.6 If You have not paid the Fees or any Additional Charges due pursuant to this Agreement by the Due Date, We shall be entitled to: (i) suspend the Services, until We receive payment from You; (ii) add a late payment charge to Your next bill; and/or (iii) charge interest on any overdue amounts payable from the Due Date until payment of all sums owing including interest (whether before or after judgment) at the rate of 4 percent per annum above the base rate of the Royal Bank of Scotland plc from time to time. We may also charge You £23.50 for any dishonoured Direct Debit or cheque payments. If You have not paid the Fees due pursuant to this Agreement by the Due Date, We may instruct a debt-collection agency to collect payment on Our behalf. If We do, You will have to pay Us an extra amount. This will not be more than the reasonable costs We have to pay the agency, who will add the amount to Your debt on Our behalf. This clause will apply even if the Agreement between You and Us has ended.
- 3.7 If You dispute payment of the Fees or Additional Charges, in whole or in part, You should contact Us immediately, and no later than 10 Working Days following receipt of Your invoice or prior to Our collecting payment from You, to discuss Your complaint. Any disputes regarding the Fees should be made in accordance with Clause 11. Subject to You notifying Us of Your dispute and making payment of any Fees or Additional Charges that You do not dispute, in accordance with this Agreement, We will suspend payment of any interest or late payment charges and will not instruct a debt-collection agent, until We resolve the dispute with You.
- 3.8 You agree that all information You have given to Us is correct and that You will inform Us if it changes. You accept that You will be liable for Additional Charges if You give Us incorrect information that We act on.
- 3.9 You agree to indemnify Us and any Carrier against any loss either of Us may suffer from Your use of the Services.
- 3.10 You agree that You will:
- 3.10.1 comply with any reasonable instructions or directions issued by Us from time to time in respect of the Services and that You will comply at all times with all relevant policies that we publish on Our Web Site as may be varied from time to time including but not limited to our Fair Usage Policy and Acceptable Use Policy.
- 3.10.2 conform to such protocols and standards as are issued from time to time in respect of the use of the Internet or the Services;
- 3.10.3 fully indemnify Us against any costs and claims from any third party resulting from Your acts or omissions in respect of the Services; and

## KCOM Terms and Conditions for the use of off-net KCOM Services including off-net Broadband Services

- 3.10.4 comply with all applicable legislation (including but not limited to matters arising under the Data Protection Act 1998 and the Regulation of Investigatory Powers Act 2000).
- 3.11 You agree that You will not (and You will ensure that Your employees, agents and sub-contractors do not):
  - 3.11.1 use the Services for any unlawful purpose or in contravention of any English or other law. This includes but is not limited to:
    - a. any act or omission which will or is likely to infringe the intellectual property rights of a third party;
    - b. the transmission, display, downloading or uploading of any material or text which is or is likely to be construed as defamatory, offensive, abusive, obscene or which will or is likely to cause unnecessary anxiety or inconvenience to a third party;
    - c. use of the Services in any way which is or is likely to violate or infringe the rights of any individual, firm or company in the United Kingdom or elsewhere.
  - 3.11.2 send or procure the sending of unsolicited advertising or promotional material; or
  - 3.11.3 use the Services in a way that does not comply with any instructions given by Us for reasons of health, safety or the quality of the Carrier's telecommunications services or our system; or
  - 3.11.4 use the Services in any way that will or is likely to make excessive use of our network (including but not limited to spamming).
- 3.12 The person agreeing the Order warrants his or her authority to bind You to this Agreement.
- 3.13 We reserve the right from time to time to pass on to You any charges levied against us by a Carrier or any other third party supplier.

### 4. LIABILITY

- 4.1 Save as required by law and as expressly provided in these Terms, We do not warrant the Services or the Equipment against failure of performance. We disclaim and you waive all other warranties, express or implied, with respect to the services or the equipment, arising by law or otherwise, including, without limitation any implied warranty of satisfactory quality, fitness for a particular purpose and any obligation, liability, right, remedy, claim in tort, notwithstanding any fault, negligence, strict liability or product liability of us (whether express or implied) so far as the law permits.
- 4.2 You agree that We are not liable in contract or tort (other than fraudulent or negligent misrepresentation) or otherwise arising out of or in connection with these Terms for economic loss (including, without limitation, loss of revenue, data, profits, contracts, business or anticipated savings), loss of goodwill or reputation, indirect or consequential losses whether or not such losses were within Our contemplation, suffered or incurred by You or any third party arising out of or in connection with the provisions of the Services (or any part of them).
- 4.3 Subject to clause 4.4 our total aggregate liability to You arising out of or in connection with this Agreement and the performance or observation of our obligations under it shall be limited to the greater of: (a) the amount paid by You to Us in the twelve months prior to the date on which Your claim arose; and (b) £1,000.
- 4.4 **Nothing in this Agreement shall: (a) exclude or limit liability for death or personal injury resulting from our negligence or that of the carrier, our employees or sub-contractors; or (b) affect Your statutory rights if You are a consumer.**
- 4.5 We will not be liable to You in any circumstances for or in connection with any merchandise, information, and/or products provided or accessed via the internet.

### 5. PROPRIETARY RIGHTS

- 5.1 All title, rights and interest (including but not limited to ownership and IPR) in the Services remain with Us the Carrier and our suppliers. You acknowledge such title, interest and rights and You shall not take any action or omit to take any action which will or is likely to jeopardise, limit or interfere in any manner such title, right or interest.
- 5.2 Title and related rights in any content accessed through the Service are the property of the applicable content owner and are protected by applicable laws. The right to use granted to You under clause 2.1 gives You no rights to such content. If You wish to use such content, You must ensure that You have the appropriate consent or licence of the content owner.
- 5.3 You acknowledge that You shall have no rights to any IPR in the Services.
- 5.4 Title in any Equipment We provide to You, in connection with the Services, will pass to You: (i) on Our receipt of payment of the Fees for the Equipment in full; (ii) on expiry of the Fixed Period; or (iii) on Our receipt of payment of the Early Termination Fee, if You cancel the Services during the Fixed Period, whichever occurs earlier. We reserve the right to request Your return of the Equipment to Us, in an as new and good working condition, at Your cost and expense, in the event of Your cancellation during the Fixed Period. If You fail to return the Equipment within 5 working days from the date of Our request, or if the Equipment is deemed by Us, in Our sole discretion, to be damaged, You shall incur a charge equal to Our standard retail prices for the Equipment, as detailed on Our Web Site or as otherwise made available to You.

### 6. TERMINATION/SUSPENSION AND SERVICE REGRADES

- 6.1 Independent of any additional rights to terminate set out in Part B, We may terminate or suspend Your use of the Services (or any of them) at any time, at our sole discretion and without notice, if You breach any term of these Terms or we have reason to believe that You have or may have breached any of these Terms (including but not limited to where a third party has alleged that there has been some act or omission by You that may amount to a breach).
- 6.2 Subject to the provisions of Part B: SDSL Connection, which requires three months prior notice of termination, or unless terminated as

## KCOM Terms and Conditions for the use of off-net KCOM Services including off-net Broadband Services

set out elsewhere, this Agreement will continue until either party gives the other at least thirty (30) days' prior written notice. Such notice will terminate this Agreement. You should contact the Customer Services Team by telephone or by post to inform Us of Your intention to terminate this Agreement.

- 6.3** Termination by You in certain circumstances may incur an Early Termination Fee and a Cease Charge fee. Where this is the case this will be set out in Part B.
- 6.4** If We are in material breach of these Terms, You may terminate this Agreement by giving Us reasonable written notice.
- 6.5** Upon termination of this Agreement for any reason Your right to use the Service(s) shall immediately terminate and You shall immediately stop using the Service.
- 6.6** Within a reasonable time following termination of the Agreement (i) any node name allocated to You by Us for use with the Services, or any email address that You choose to create, will be deleted and/or made available to any of Our other customers; and (ii) Your web space will be automatically deleted. We will not be liable for any losses You incur as a result of this.
- 6.7** We can also end the Agreement immediately if: (a) You become insolvent or You are unable to pay Your debts as they fall due or You threaten to suffer any resolution to wind up Your business or You enter into involuntary or compulsory liquidation or You have an administrator, administrative receiver, receiver or any analogous officer appointed over all or parts of Your assets; or (b) the Services are used for any illegal or fraudulent purposes; or (c) You have broken any term of the Agreement (but, if it can be remedied, We will give You 7 days to put that breach right); and/ or (d) any payment is not made when it is due.
- 6.8** We may suspend any Service to You if We reasonably consider that the charges that You are incurring are higher than usual for the type of service that You are receiving (or Your usage is higher than normal) and/or We have reasonable grounds to doubt that You will be able to pay Your bill.
- 6.9** Termination (for any reason) shall be without prejudice to the accrued rights of either party.
- 6.10** Termination of the Services, or a Service Regrade (as defined below) which results in a Service downgrade, will automatically terminate any other services that We supply to You as an inclusive element of the terminated or downgraded Services and which are not an inclusive element of the Service that You have requested. You will be required to pay an early termination fee for such services as detailed elsewhere in these Terms or in the relevant service terms and conditions. Should You require any services that We supply to You as an inclusive element of the terminated or downgraded Services to continue following termination of the Services or the Service Regrade, You will be required to notify Us of this request. Please note that if You request any such services to continue following the termination of the Services or the Service Regrade, You will be liable to pay the full Fees for the provision of such services.
- 6.11** Subject to any provisions set out in the relevant Part B, in respect of the Services, You shall be able to request changes to the Services. Such changes shall be called "Service Regrades". We shall either accept or reject Your request by email 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 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 shall make the Service Regrade required available to You, subject to these Terms, and as detailed further below:
- 6.11.1** The Fees shall be in accordance with the Service Regrade You chose and You shall be liable for the payment of such Fees from the date of the implementation of the Service Regrade.
- 6.11.2** If You have selected a Service or a Service Regrade which is insufficient for Your purposes or than that provided pursuant to the Agreement or any Service Regrade, We shall be entitled to recommend that You perform a Service Regrade, in accordance with these Terms.
- 6.11.3** Following a recommendation pursuant to clause 6.11.2, if You do not perform a Service Regrade and You continue to breach clause 6.11.2:
- You shall immediately pay Us on demand an amount equal to the difference between the Fees paid by You to date and the amount which would have been paid had the Fees applicable to the Services actually being used by You applied from the Start Date; and
  - We shall at Our option (without prejudice to any of its other rights) be entitled to suspend the Services until We receive payment from You in accordance with clause 6.11.3(a).

### 7. CONFIDENTIALITY

- 7.1** Each of Us shall while We are providing Services under these Terms and thereafter keep secret and confidential all business, technical or commercial information disclosed to one of Us by the other or otherwise which belongs to the other its sub-contractors, carriers, telecommunication providers or clients (and shall procure that its agents and/or employees are similarly bound) and shall not disclose the same to any person save to the extent necessary to perform its obligations in accordance with the terms of these Terms or save as expressly authorised in writing to be disclosed by the other.
- 7.2** The obligation of confidentiality contained in clause 7.1 shall not apply or (as the case may be) shall cease to apply to business, technical or commercial information which:
- 7.2.1** at the time of its disclosure by the disclosing Party is already in the public domain or which subsequently enters the public domain other than by the breach of these Terms; and/or
- 7.2.2** is required to be disclosed under applicable law or order of a court of competent jurisdiction or government department or agency or by the London Stock Exchange, provided that prior to such disclosure the receiving Party shall advise to the disclosing Party of the

## KCOM Terms and Conditions for the use of off-net KCOM Services including off-net Broadband Services

proposed form of disclosure.

### 8. GENERAL

- 8.1** You accept that We may have to disclose information about You to governmental organisations (including the police) or to other third parties, in respect of Your use of the Services. If We are requested to disclose such information, We will do so in accordance with Our obligations as set out in legislation or as required by an order of the court. Subject to any legal prohibitions to the contrary, We will notify You of such disclosure as soon as reasonably possible.
- 8.2** We may from time to time wish to notify You of additional services provided by Us or third parties that We believe may be of interest to You. If You do not want to receive such information please write to Us at the address for notice.
- 8.3** We shall not be liable for any breach of our obligations hereunder resulting from causes beyond our reasonable control including but not limited to fires, strikes (of own or other employees) insurrection, or riots, embargoes or delays in transportation, inability to obtain supplies, acts of local or central Government or other competent authorities or acts or omissions of third party telecommunications service providers.
- 8.4** Any notice required or permitted under the Terms must be in English and be sent to Us for the attention of the Company Secretary at any of the following addresses:  
The Company Secretary, KCOM Group Limited, registered in England No. 2150618. Registered Office: 37 Carr Lane Hull, HU1 3RE or +44 (0)1392 333334 or [notices@kcom.com](mailto:notices@kcom.com).  
Any notice to be sent to You will be sent to the address which You provide when applying for the Services unless You notify Us otherwise. Any notices given in relation to this Agreement must be delivered by hand, post, fax or email and will be treated as having been delivered: (a) on the day of delivery if delivered by hand, or (b) 2 days after posting if sent by post, or (c) on the day of transmission if sent by fax, or (d) on the day of transmission if sent by e-mail. Notices received after 5 pm shall be deemed to have been received the following working day (Monday to Friday inclusive excluding UK public holidays). You should contact the Customer Services Team by telephone to inform Us of Your intention to send a notice to Us.
- 8.5** These Terms do not create a partnership, joint venture, agency or franchise relationship.
- 8.6** You may not sell, lease, sub-licence, assign or otherwise transfer, whether in whole or in part, by operation of law or otherwise, the rights or obligations (including the Services) arising under these Terms without our prior written consent, such consent not to be unreasonably withheld or delayed. We may assign or transfer the rights and obligations under this Agreement without Your prior written consent to any company which is a KCOM Group Company from time to time, otherwise any transfer or assignment shall require Your prior written consent, such consent not to be unreasonably withheld or delayed.
- 8.7** Notwithstanding any provision to the contrary, nothing in these Terms will create or confer any rights or other benefits whether in accordance with the Contracts (Rights of Third Parties) Act 1999 or otherwise in favour of any person other than You, Us or the Carrier.
- 8.8** The headings to the sections of these Terms are for convenience only and have no substantive meaning.
- 8.9** These Terms are governed by the laws of England and Wales and both parties submit to the exclusive jurisdiction of the English Courts.
- 8.10** If and in so far as any part or provision of these Terms is or becomes void or unenforceable it should be deemed not to be and never to have been nor formed a part of these Terms and the remaining provisions of these Terms shall continue in full force and effect. In such an event, We shall meet with You to discuss the void and unenforceable provisions and shall substitute therefore a lawful and enforceable provision which so far as possible results in the same economic effects.
- 8.11** This Agreement may not be amended, varied, supplemented or otherwise modified by You unless agreed by Us in writing. We may amend this Agreement from time to time to make any change required due to security, legal or regulatory reasons. We shall provide as much notice as is reasonably possible, in such circumstances. If We make any other changes to this Agreement, We shall provide You with one (1) months notice of such changes. You may terminate this Agreement by providing Us with one (1) month notice following Our notice to You of the changes detailed in this clause, if such change should cause a material detriment to You. If You do not provide notice to terminate the Agreement within one (1) month following Our notice of the change to You, You will be deemed to have accepted the change.
- 8.12** The failure by Us to insist on the performance of any of the provisions of these Terms shall not be construed as a waiver or a relinquishment of that our rights to future performance of such provisions and Your obligation in respect of such future performance shall continue in full force and effect.
- 8.13** We shall be entitled to carry out credit checks on You. We may use information that We hold about You from Our own records and/or We may request information from a credit reference agency. We accept no liability for the accuracy or otherwise of information provided to Us from credit reference agencies. If at any time before or during the term of this Agreement You fail to meet the standard of creditworthiness deemed acceptable by Us, We shall be entitled to:
- (a) terminate this Agreement, in whole or in part immediately on written notice to You;
  - (b) require You to make a deposit as security against future payments or such regular instalment payments in advance on account of any future charges as We shall deem appropriate;
  - (c) impose credit limits on You in respect of Fees and to suspend the Service at any time when such limits are reached until payment

## KCOM Terms and Conditions for the use of off-net KCOM Services including off-net Broadband Services

in full of such outstanding Fees has been made; and

(d) impose such other measures on Your right to use any of the Services as We shall deem appropriate.

**8.14** Both parties agree to comply with the Data Protection Act 1998.

Notwithstanding anything to the contrary, You acknowledge and agree that We may use Your information (which may include Your or Your suppliers', customers', affiliates' or contractors' personal data and/or personal data relating to Your or Your suppliers', customers', affiliates' or contractors' employees or staff) ("**Customer Information**") for the purpose of supplying the Services to You, administering this Agreement including handling orders, billing, processing payments, payment collection and communicating with You regarding the Services and You further acknowledge and agree that We may pass this Customer Information on to third parties (including, without limitation, transferring and processing Customer Information outside of the European Economic Area) or other members of the KCOM Group: (a) to undertake these functions on Our behalf; or (b) if required by law. You will ensure that all necessary consents are obtained for the use of Customer Information in accordance with this clause.

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.

**8.15** This Agreement (and the documents referred to within it) constitutes the entire agreement of the parties and this Agreement supersedes any previous agreement between Us and You in relation to the matters dealt with in it and You acknowledge and agree that You have not entered into this Agreement in reliance upon any representation, or statement or whether oral or written) made or alleged to have been made by Us or our agents.

### **9. FAULTS IN THE SERVICE**

**9.1** You will immediately upon becoming aware of the same report any fault in the Equipment or the Service to Us by e-mail support@kcom.com or by telephone.

**9.2** You acknowledge that occasionally We and/or our Carrier may have to temporarily interrupt the Service or change the specification of the Service for operational reasons or because of an emergency. In these circumstances You shall have no claim against Us for any such interruption or change.

**9.3** We warrant that the Equipment will be of satisfactory quality and reasonably fit for the purpose intended for a period of 12 months from the Start Date (the "**Warranty Period**"). If during the Warranty Period the Equipment becomes defective, You should return it to Us, at no charge to You. We shall repair the Equipment or replace it, at our sole discretion and subject to any manufacturer's warranty, with Equipment of no less quality than the Equipment being replaced. The replacement Equipment shall benefit from the remaining term of the Warranty Period. If, in our reasonable opinion, We discover that (i) the defects to the Equipment have been caused as a result of Your negligent acts or omissions; or (ii) there are no defects to the Equipment, We shall be entitled to charge You for the cost of the Equipment and such of Our reasonable costs as We may have incurred, including the costs of the postage of the Equipment, pursuant to this clause 9.3.

### **10. CHANGE OF CARRIER**

**10.1** You acknowledge that We may change the Carrier of the Services from time to time. You accept that We may do so for commercial, operational or any other reasons, in Our sole discretion. Subject to the provisions in clause 10.2 and 10.3 below, You should not experience any disruption to the ongoing supply of the Services to You. Following the successful migration of the Services, You should experience a Service of at least equivalent, if not improved Service provision.

**10.2** Due to the nature in which the Services are provided, You acknowledge and agree that during the process of change of Carrier, We may need to disconnect Your Communications Line. You accept that this may temporarily interrupt any other services that You receive from Us or any third party through Your Communications Line. We will use Our reasonable endeavours to reconnect Your Communications Line without delay.

**10.3** To the extent that We need to make any changes to this Agreement, as a consequence of Our change of Carrier, We will do so by sending notice to You in accordance with clause 8.4.

### **11. COMPLAINTS AND DISPUTES**

**11.1** Our Complaints Code of Practice sets out full details of how We handle complaints and resolve disputes relating to Our Services. If You have a complaint about any of Our Services You should raise it with Us in accordance with the details set out in this Code of Practice. You can find a full copy of Our Complaints Code of Practice on Our Web Site.

## KCOM Terms and Conditions for the use of off-net KCOM Services including off-net Broadband Services

### Part A Continued - Data Processing Commitment

This Schedule represents Our commitment to You in regard to processing of Personal Data. It forms part of the Contract and should be read in conjunction with the Contract and any associated documentation.

#### 1 DEFINITIONS

1.1 In this Data Processing Commitment Schedule, unless the context otherwise requires:

“Data Subject” has the meaning given to it in the Data Protection Laws;

“Data Subject Access Request” has the meaning given to it in the Data Protection Laws;

“Personal Data” has the meaning given to it in the Data Protection Laws;

“Permitted Sub-Processor” means any third party supplier or other sub-processor appointed by Us for the provision of Services to You pursuant to the Contract, as such third party supplier or sub-processor is expressly identified to You or as otherwise agreed between the parties.

1.2 Any other definitions used in this Data Processing Commitment Schedule shall have the meaning ascribed to it in the Contract.

#### 2 DATA PROTECTION

2.1 Both Parties hereby warrant, represent and agree that in relation to the performance of the Services during the term of the Contract each Party will comply with the Data Protection Laws.

2.2 Both Parties acknowledge and agree that in relation to Your Personal Data, You are the Data Controller and We are the Data Processor. We agree and accept that We will process the Personal Data pursuant to and in accordance with the Contract, as applicable, and the Data Protection Laws.

2.3 Annex A sets out the information regarding Our processing of Your Personal Data as required by article 28(3) of the General Data Protection Regulation 2016/679. We may make reasonable amendments to Annex A by written notice to You from time to time as We reasonably consider necessary to meet those requirements. Nothing in Annex A (including as amended pursuant to this section 2.3 of this Schedule Data Processing Commitment) confers any right or imposes any obligation on either You or Us.

2.4 We shall:

- (a) only process the Personal Data for the purposes of performing its obligations under the Contract, as applicable, and in accordance with Your documented instructions;
- (b) not transfer the Personal Data outside of the United Kingdom or the EEA, unless permitted to do so as follows:
  - (i) in provision of the Services to 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) the Sub-Processor enters into the Standard Contractual Clauses for the Processing and transfer of Personal Data outside of the United Kingdom or the EEA with You; or
  - (ii) with Your prior written consent; and/or

- (iii) if required to do so by any legislation or regulation, in which case We shall inform You of such requirement if it is able to do so;
- (c) ensure that all of Our 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 Us and You;
  - (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 Our employees who have access to Personal Data does so in accordance with Our rights and obligations as expressly detailed in this Data Protection Commitment or otherwise on Your express written instructions unless otherwise required by legislation or other applicable regulation;
- (e) inform You of any new sub-processor and/or change of a Permitted Sub-Processor. You shall inform Us within five (5) Business Days of any objection to such appointment or change. If You do not raise any such objection, We shall ensure that such sub-processors shall comply with the provisions of this Schedule or terms which are substantially similar;
- (f) assist You in the timely response to requests from Data Subjects exercising their rights, including but not limited to:
  - (i) where We are required to assist You with a Data Subject Access Request You have received, responding to such request for assistance within twenty (20) days of receiving notice of such request from You;
  - (ii) where We receive a Data Subject Access Request directly from the Data Subject, We shall notify You within one (1) Business Day after receipt and shall respond to the Data Subject within the time limits specified within the Data Protection Laws and where You are required to assist Us with such Data Subject Access Request, You shall respond to Us within twenty (20) days of receiving notice of such request from Us;
  - (iii) assisting You, as applicable, with a request for access, rectification and/or erasure by a Data Subject; and
  - (iv) enabling You to comply with a request for data portability of a Data Subject;
- (g) assist You in complying with its obligations relating to security of Personal Data as set out in the Contract, as applicable, or as otherwise may be reasonably requested by You, including but

## KCOM Terms and Conditions for the use of off-net KCOM Services including off-net Broadband Services

not limited to:

- (i) notifying You of any Personal Data breach as soon as reasonably practicable and no later than twenty four (24) hours after We become aware of the breach (such notice by email and/or telephone and followed up by email), and including all relevant detail. We agree and accept that You 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 Your request and expense assisting with the communication to the Supervisory Authorities, any of Your customers and/or Data Subjects following a Personal Data breach and/or implementing any measures required as a result of such breach;
- (iii) at Your request and expense, consulting with the Supervisory Authorities and/or assisting You to consult with the Supervisory Authorities, including providing You with any information relating to Our processing of Personal Data and/or Our compliance with the Data Protection Laws as You may be reasonably request.
- (h) upon the expiry or termination of the Contract, delete or return all Personal Data to You (as requested by You), unless otherwise required or permitted by Data Protection Laws and provide written confirmation You in this respect;
- (i) make available to You all information reasonably necessary to enable You to demonstrate compliance with Your obligations under the Data Protection Laws, including such records of all categories of processing carried out on Your behalf, as such is requested by You;
- (j) co-operate with any request of the Supervisory Authority;
- (k) allow You to undertake audits of Us on 30 days' notice and at

Our expense, subject to any reasonable requests We may have regarding the timing and conduct of such audit (including, without limitation, such audits to be conducted during Our Business Hours and allowing Us to supervise such audit), to ensure Our compliance with this Schedule;

- (l) contribute to any audits or inspections carried out on You by any Supervisory Authority or any of Your suppliers or customers, as such contribution and/or inspection is reasonably necessary to demonstrate compliance with Your and/or Our obligations in this Data Protection Processing Commitment, subject always to the provisions in Section 2.3(k) above;
- (m) at Your 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 You (acting reasonably) or any Supervisory Authority, as applicable, following an audit or inspection in accordance with Section 2.3(l) above, or otherwise as You deem reasonably necessary.
- (n) Subject to clauses 4 of Part A and 15 of Part B – Estore Services, 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.

### 3 GENERAL

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



# KCOM Terms and Conditions for the use of off-net KCOM Services including off-net Broadband Services

## DATA Processing Details

### Annex A

Description	Details
<b>Subject matter of the processing</b>	Provisions of Services pursuant to the Contract between Us and You
<b>Duration of the processing</b>	During the Term of the Contract and for up to 7 years after the expiry or termination of the Contract
<b>Nature and purposes of the processing</b>	Collecting Storing Processing (organising, structuring, adaptation or alteration, retrieval consultation, use) Releasing (transmission, dissemination or otherwise making available) To facilitate the fulfilment of Our obligations arising under the Contract including: <ol style="list-style-type: none"> <li>i. Ensuring effective communication between Us and You;</li> <li>ii. Maintaining full and accurate records of all Services arising under the Contract;</li> <li>iii. Dealing with any rights, actions, incidents or disputes arising under the Contract;</li> </ol>
<b>Type of Personal Data</b>	Name Date of Birth Age IP Address National Insurance Number Gender Telephone Number Address Email Address Unique Identifier Biometric Data Racial or Ethnic Origin Sexual Orientation Physical or Mental Health or Condition Proceedings in relation to any offence Religious Belief Trade Union Membership Political opinion
<b>Categories of Data Subject</b>	Your employees Employees of End Customer Any member of the general public Includes: <ol style="list-style-type: none"> <li>i. Your directors, employees and/or staff concerned with the delivery of the Service</li> <li>ii. The directors, employees and/or staff of Your group and/or associated companies concerned with the delivery of the Service</li> <li>iii. The directors, employees and/or staff of Your sub-contractors and/or other third parties concerned with either the fulfilment of Your obligations arising from Contract or the receipt of Your rights under the Contract</li> </ol>
<b>Permitted Sub-Processors</b>	Telnet

## KCOM Terms and Conditions for the use of off-net KCOM Services including off-net Broadband Services

### Part B – Off-net Broadband Services

#### BACKGROUND

- This section of Part B relates solely to the supply of the off-net Broadband Service.
- We will be relying on third party telecommunication suppliers (the Carrier) and our ability to provide You with the Broadband Service is, in part, reliant on them.

#### 1 DEFINITIONS

1.1 In this Part, the following terms shall have the following meanings:

- **Acceptance Test** - the tests carried out by Us or our representatives to determine the proper operation of the Service;
- **Act** – the Communications Act 2003, the Telecommunications Act 1984 (as amended) and the Electronic Communications Act 2000;
- **Business Broadband** – a Service provided to Business customers;
- **Business Fibre** – those fibre services available to business customers;
- **Carrier** – BT or any other third party provider through whom we will provide the Broadband Service;
- **Cease Charge fee** – the fee which We reserve the right to charge You in the circumstances set out in clause 7.2 below;
- **Communications Line** - the telecommunications system that You have notified Us that You use to obtain telecommunications services over Your telephone network at the Premises;
- **DSLAM** – digital subscriber line access multiplexer;
- **Early Termination Fee** – means either (i) the Fees payable by You from the date of termination to the expiry of the Fixed Period; (ii) the actual costs incurred by Us in terminating the Services at Your current Premises, if You request an office move following the expiry of the Fixed Period at Your current Premises; or (iii) the actual costs incurred by Us in terminating the Services prior to Your Start Date, if You cancel the Services prior to the Start Date;
- **Fee** - the amounts agreed in the Order (or as detailed on Our Web Site or as otherwise made available to You), which may include a set-up charge, a regrade charge and/or Usage fees;
- **Fixed Period** - a period of 12 months, 18 months or 24 months, as defined in the product description, commencing on the Start Date (or the Move Date for any office move);
- **KCOM System** - the telecommunication system used to supply the Services including any apparatus leased by or obtained by Us from a third party;
- **Line Rate** - the rate of connection between Your Equipment and the Carrier's equipment (DSLAM) located at the local exchange;
- **MAC** – Migration Authority Code, a code issued by Us to You on request if You want to change broadband provider;
- **Maximum Stable Rate** - the maximum Line Rate the Service is expected to achieve on Your Communications Line, calculated on a per line basis as further detailed in the product description;
- **Monthly Usage Allowance** - the Usage included with Your Broadband Service, as defined in the product description;
- **Move Date** - the date following Your office move when the Acceptance Test is satisfactorily completed;
- **Premises** - the Site address identified in the Order;
- **Rate Adaptation** – the automatic negotiation of the best Line Rate between the DSLAM and Your Equipment, based on the settings within the Carrier Network, line characteristics and conditions. Rate adaptation can occur several times a day, thus resetting the rate between Your Equipment and the DSLAM;
- **Service** - the installation, connection and supply of a telecommunications system (either by Us (or any KCOM Group company) or by a Carrier chosen by Us) capable of supporting Broadband services to You at the Premises and the provision of the telecommunication services over such system;
- **Stabilisation Period** - a period of up to 10 calendar days commencing from the date that You first use the Service following the Start Date, during which time the Maximum Stable Rate will be established for Your connection;
- **Start Date** - the date when the first Acceptance Test is satisfactorily completed;
- **Teleworker Broadband** - a Service provided to Business customers with ROAM Wireless Broadband Services (as detailed in Part B - ROAM Wireless Broadband);
- **Usage** - the amount of data transferred over the Service to You measured in gigabytes (GB) (both downloads and uploads);

## KCOM Terms and Conditions for the use of off-net KCOM Services including off-net Broadband Services

- **Usage Upgrade** – the purchase of an upgrade to increase the amount of data that You shall be permitted to transfer over the Service without incurring a fee for exceeding the Usage.

### 2 INSTALLATION

- 2.1 We will endeavour to provide the Service as soon as possible.
- 2.2 We shall use all reasonable endeavours to install or procure the installation of the Equipment at the Premises on or before any installation date specified or agreed to by Us. Any installation date is, however, an estimate only and time shall not be of the essence.
- 2.3 You acknowledge and agree that:
- 2.3.1 the Service will depend upon Your particular Communications Line. If the Carrier determines that it is not practicable to supply the Service We shall have the right to terminate this agreement without any liability to You; and
- 2.3.2 after the activation of Your Communications Line You may suffer a temporary loss of telephone service. This will be reinstated following installation as soon as reasonably possible without any liability to Us.
- 2.4 We shall supply You with the relevant information to enable You suitably to prepare the Premises for the activation of Your line.
- 2.5 You acknowledge and agree the speed and the stability of the operation of the Service is determined:
- 2.5.1 by the characteristics of Your Communications Line, which include its physical length, quality and susceptibility to interference from other Communications Lines;
- 2.5.2 electrical, electromagnetic or radio frequency interference;
- 2.5.3 Rate Adaptation and the Line Rate of Your Equipment;
- 2.5.4 the capacity available within the KCOM System or the internet generally;
- 2.5.5 the specific IP application protocol used; and/or
- 2.5.6 Our management of the network traffic and the priority that may be applied to the Service that You have purchased from Us and/or the type of traffic that You generate, and therefore We are unable to guarantee the speed or stability of Your Service.
- 2.6 You acknowledge that, with the exception of Our Business Fibre products, You have the ability to set the priority levels of Your internet activity through the Service. We will endeavour to provide You with the Service in accordance with the priority levels that You set. However, We do not accept any responsibility for the speed or stability of the Service You receive as a consequence of Your settings.
- 2.7 If, for any reason, We are unable to supply the Service requested by You, We shall notify You that we are unable to supply the Service and shall suggest alternative Services that We are able to offer, if any.
- 2.8 If, for any reason, the Carrier should be required to visit Your Premises to assist with the Installation or any fault reported thereafter, You may incur an Additional Charge. For the avoidance of doubt, the Carrier will be required to visit Your Premises to assist with the Installation of Our Business Fibre Services. You agree to pay any Additional Charges arising as a consequence of the Carrier responding to a fault and the Carrier either (i) determining that such fault has not occurred as a consequence of the Carrier or their network; or (ii) the visit being aborted for any reason. You agree to pay any Additional Charges arising as a consequence of any visit by the Carrier to install Our Business Fibre Services at Your Premises being cancelled by You or as a consequence of You failing to be in attendance for the visit by the Carrier. Further You agree to pay any Additional Charges arising as a consequence of any visit by the Carrier to install Our Business Fibre Services being abandoned due to Your failure to suitably prepare the Premises for the activation of Your line where We have provided the relevant information pursuant to clause 2.4.

### 3 YOUR OBLIGATIONS

- 3.1 You must notify Us immediately in writing of any allegation of infringement of any intellectual property rights prompted by Your use of the Service. You may not make an admission relating to an alleged infringement. You must allow Us, or at our election, the Carrier to conduct all negotiations and proceedings and give Us or the Carrier all reasonable assistance in doing so. You must allow any part of the Service to be modified so as to avoid continuation of the alleged infringement.
- 3.2 You will co-operate with our reasonable requests for information regarding Your use of the Service and supply such information without delay.
- 3.3 You will undertake not to resell the usage of Your Service to third parties.
- 3.4 You agree to comply with the terms of Our Fair Usage Policy, as available from the Web Site.

### 4 REGRADES

- 4.1 If You request a Service Regrade from and to one of Our current broadband Services prior to the expiry of the Fixed Period, You may (at Our discretion) be entitled to carry over the unused portion of the Fixed Period for the benefit of the Service Regrade.

# KCOM Terms and Conditions for the use of off-net KCOM Services including off-net Broadband Services

**4.2** If You are a Business Fibre customer You shall not be able to request a Service Regrade from and to one of Our other current broadband Services during the Term of Your Agreement. You further acknowledge that You shall not be able to request a Service Regrade to a lower Business Fibre package during the first six months of the Fixed Period.

**4.3** If You are a Business Fibre customer You acknowledge that You shall not be entitled to request a Usage Upgrade during the first month of the Fixed Period of Your contract. You shall be entitled to request a Usage Upgrade once a month after the expiry of the first month of the Fixed Period.

## **5. RATE ADAPTATION AND STABILISATION**

**5.1** You acknowledge that Your Line Rate may be subject to Rate Adaptation. Rate Adaptation can occur several times each day and may change the Line Rate available to You. Such changes in the Line Rate may re-set Your connection to the KCOM System or the DSLAM.

**5.2** The Service may provide upstream (and downstream) Rate Adaptation. If so, the maximum and minimum Line Rate available for the Service is detailed in the product description. Information regarding the maximum Line Rate available for the Services and the commitments We have made to Our customers in accordance with Ofcom's Voluntary Code of Practice for ISP's is available on Our Web Site.

**5.3** If applicable, You acknowledge that the Stabilisation Period cannot commence and that the Carrier will not be able to establish a Maximum Stable Rate until you have installed the appropriate Equipment and the Communications Line is synchronised to the relevant DSLAM. We will notify You once a Maximum Stable Rate has been established. However, You acknowledge that the Maximum Stable Rate may be subject to change as further detailed in the product description.

## **6 FEES**

**6.1** If the Service You receive is subject to a Monthly Usage Allowance, You shall have sole responsibility for the monitoring of Your Usage and shall pay the Fees for each gigabyte or part thereof, of Usage over and above the Monthly Usage Allowance for the Service as further described on Our Web Site. We do not accept any liability or responsibility for the Fees that You may incur as a result of Usage of the Service, whether made innocently or with, or without, Your consent or knowledge. We will send regular warnings to You by notice to Your Account Address when You reach and/or exceed certain triggers of Your Monthly Usage Allowance, as described on Our Web Site or as otherwise made available to You. You must ensure that You access Your admin account regularly in order to receive such notices.

**6.2** For customers who have selected the office move package the following shall apply:

**6.2.1** Your Service with Us at the current Premises will terminate and You may be liable to pay an Early Termination Fee. You may also be liable to pay any Additional Charges as set out in clause 7.2;

**6.2.2** We will provide the Service to You at the new Premises, as soon as reasonably possible from the Move Date. Following the Move Date, We will provide the Service to You at the new Premises for a further Fixed Period;

**6.2.3** Clause 2 of this Part B of the Agreement will apply to each office move and You acknowledge that We may have the right to terminate this Agreement as a result of Your office move, as set out in clause 2.3.1;

**6.2.4** You acknowledge that We will not supply any new Equipment to You and that You will need to install the Equipment at the new Premises.

**6.3** You shall be entitled to request Us to 'fast-track' Your Order for the Services, subject to the payment of an Additional Charge.

## **7 TERM AND TERMINATION**

**7.1** We may terminate this Agreement immediately upon written notice to You if (for whatever reason):

**7.1.1** it becomes unlawful for Us or the Carrier to continue to provide or support the Service; or

**7.1.2** the Carrier supporting the Service ceases to do so for whatever reason or changes the terms in respect of the provision of telecommunications services to Us for the Service for reasons beyond our reasonable control.

**7.2** You agree to pay any Additional Charges including the Cease Charge fee (or and other fees that Our Carrier levies against Us in such circumstances), and/or an Early Termination Fee, if applicable, if: a) You terminate the Service or the Service ends for any reason; (b) You move to another ISP without requesting and using a MAC; or (c) You request an office move.

## **8 FURTHER OBLIGATIONS**

**8.1** You shall obtain at Your expense all permissions, licences, registrations and approvals necessary for, or considered desirable by Us to deliver, install and maintain the Equipment or to provide the Services.

## **9 MAC Provision**

**9.1** You may request a MAC from Us at any time, by contacting the Customer Services Team by telephone or by post.

**9.2** We will issue a MAC to You within 5 Working Days of Your request. Once We have issued a MAC to You, We will continue to charge You for Your Service until We have received confirmation that Your Service has been transferred to another supplier. If You have not used Your MAC within 30 days of the date of issue of the MAC to You, You may need to request a new MAC from Us.



## KCOM Terms and Conditions for the use of off-net KCOM Services including off-net Broadband Services

- 9.3** We will accept Your request for a MAC as notice to cancel the Service, in accordance with clause 6 of Part A. However, We will not cancel the Service unless (i) You formally request Us to do so, pursuant to clause 9.4 below; or (ii) until We receive confirmation that Your Service has been transferred to another supplier, pursuant to clause 9.1 above; or (iii) We are permitted to do so pursuant to any other provision of this Agreement.
- 9.4** If We have agreed to supply a Service Regrade to You and You request a MAC during the Service Regrade process, You will be asked whether You would prefer to either (i) cancel the Service Regrade and receive a MAC within 5 Working Days; or (ii) receive a MAC on completion of the Service Regrade.
- 9.5** Following the provision of notice of cancellation of the Service by You, pursuant to clause 6 of Part A, We will issue a MAC to You within the 30 day cancellation notice period, if You so request. Please be aware that Your Service will cease on the expiry of the cancellation notice period, whether or not You have used the MAC, and We will not charge You for the Service following the expiry of the cancellation notice period. If You request a MAC from Us, You should use your MAC within 30 days of the date of issue of the MAC to You, to transfer Your service to an alternative service provider and before Your Service from Us ceases, in order to obtain uninterrupted service provision.
- 9.6** You may incur an Early Termination Fee if You transfer the Service, using a MAC, to an alternative supplier.

## KCOM Terms and Conditions for the use of off-net KCOM Services including off-net Broadband Services

### Part B - SDSL CONNECTION

#### BACKGROUND

- This section of Part B relates solely to the supply of the SDSL service.
- We will be relying on third party telecommunication suppliers (the Carrier) and our ability to provide You with SDSL is, in part, reliant on them.

#### 1 DEFINITIONS

- **Acceptance Test** - the tests carried out by Us or our representatives to determine the proper operation of the Service;
- **Act** - the Telecommunications Act 1984 (as amended);
- **SDSL** - Symmetric Digital Subscriber Line;
- **Communications Line** - the telecommunication system that You have notified Us that You use to obtain telecommunication services over Your telephone network at the Premises;
- **Start Date** - the date when the Acceptance Test is satisfactorily completed;
- **Fixed Period** - a period of 12 months commencing on the Start Date;
- **KCOM System** - the telecommunication system used by Us to provide the Services including any apparatus leased by or obtained by Us from a third party;
- **Fee** - the amount as agreed in the Order;
- **Early Termination Fee** – means either (i) the Fees payable by You from the date of termination to the expiry of the Fixed Period; (ii) the actual costs incurred by Us in terminating the Services at Your current Premises, if You request an office move following the expiry of the Fixed Period at Your current Premises; or (iii) the actual costs incurred by Us in terminating the Services prior to Your Start Date, if You cancel the Services prior to the Start Date;
- **Premises** - the address identified in the Order;
- **Service** - the installation, connection and supply of a telecommunication system (either by Us or by a Carrier chosen by Us) capable of supporting SDSL services for You at the Premises and the provision of the telecommunication services over such system.

#### 2 INSTALLATION

- 2.1 We will endeavour to provide the Service as soon as possible.
- 2.2 We shall use all reasonable endeavours to install or procure the installation of the Equipment at the Premises on or before any installation date specified or agreed to by Us. Any installation date is, however, an estimate only and time shall not be of the essence.
- 2.3 You acknowledge and agree that:
- 2.3.1 the Service will depend upon Your particular Communications Line and will be subject to prior survey by the Carrier. If the Carrier determines that it is not practicable to supply the Service We shall have the right to terminate this agreement without any liability to You;
- 2.3.2 If the Carrier should determine that a new line is required prior to activation of Your line, You acknowledge that the cost of the installation of the new line shall be at Your cost and expense. If You do not wish to install the new line, You shall be entitled to terminate this agreement without any liability to Us. For the avoidance of doubt, the cost of the installation of the new line shall be as follows:
- minor network intervention (£300 exc. VAT);
  - major network intervention (£500 exc. VAT); or
  - Small network build of less than 50 man hours (£800 exc. VAT).
- 2.3.3 We shall supply You with the relevant information to enable You suitably to prepare the Premises for the activation of Your line.
- 2.4 If, for any reason, the Carrier should be required to visit Your Premises to assist with a fault reported, You may incur an Additional Charge. Further, You agree to pay any Additional Charges arising as a consequence of the Carrier responding to a fault and either (i) the Carrier determining that such fault has not occurred as a consequence of the Carrier or their network; or (ii) the visit being aborted for any reason.

#### 3 YOUR OBLIGATIONS

- 3.1 You must notify Us immediately in writing of any allegation of infringement of any intellectual property rights prompted by Your use of

## KCOM Terms and Conditions for the use of off-net KCOM Services including off-net Broadband Services

the Service. You may not make an admission relating to an alleged infringement. You must allow Us, or at our election, the Carrier to conduct all negotiations and proceedings and give Us or the Carrier all reasonable assistance in doing so. You must allow any part of the Service to be modified so as to avoid continuation of the alleged infringement.

**3.2** You will co-operate with our reasonable requests for information regarding Your use of the Service and supply such information without delay.

**3.3** You will undertake not to resell the usage of Your Service to third parties.

### **4 FEES**

**4.1.** You agree to pay any Additional Charges that Our Carrier levies against Us, including the Cease Charge fee and/or an Early Termination Fee, if applicable.

**4.2** You shall be entitled to request Us to 'fast-track' Your Order for the Services, subject to the payment of an Additional Charge.

**4.3** You shall be entitled to upgrade the Service at anytime subject to the payment of an Additional Charge.

### **5 TERM AND TERMINATION**

**5.1** We may terminate this Agreement immediately upon written notice to You if (for whatever reason):

**5.1.1** it becomes unlawful for Us or the Carrier to continue to provide or support the Service; or

**5.1.2** the Carrier supporting the Service ceases to do so for whatever reason or changes the terms in respect of the provision of telecommunications services to Us for the Service for reasons beyond our reasonable control.

**5.2** You may terminate this Agreement upon providing to Us three months prior written notice of Your intention to terminate this Agreement and paying to Us the applicable Fees as set out in clause 4 above.

### **6 FURTHER OBLIGATIONS**

**6.1** You shall obtain at Your expense all permissions, licences, registrations and approvals necessary for, or considered desirable by Us to deliver, install and maintain the Equipment or to provide the Services.

**6.2** You shall not be entitled to downgrade the Service during the Fixed Period.

## KCOM Terms and Conditions for the use of off-net KCOM Services including off-net Broadband Services

### Part B – ROAM Wireless Broadband

#### BACKGROUND

- This section of Part B relates only to ROAM Wireless Broadband Services.

#### 1 DEFINITIONS

1.1 In this Part, the following terms shall have the following meanings:

- **Teleworker Broadband** – Business Broadband (as detailed in Part B – Broadband) with ROAM Wireless Broadband Services;
- **Service** - the provision of ROAM Wireless Broadband Services;
- **Start Date** - the date upon which You request the Service to be provided.

2 **We agree, provided that You are also in receipt of at least one existing service from Us which is billed monthly or quarterly, to provide the Service to You from the Start Date.**

#### 3 The ROAM Wireless Broadband Service

##### 3.1 Description of the Service

- We will permit You to connect to both Wireless Broadband nodes supplied by Us or those provided by BT OpenZone.
- We will charge You the Additional Charges set out on Our Web Site or as otherwise made available to You for the time You start the connection to the relevant node until You logoff or, if You fail to logoff, that connection times out. Time out will normally take place 15 minutes after the last response is received from Your computer but it is Your responsibility to logout and We do not accept liability for any failure of the system to time out.
- The Additional Charges will appear on Your monthly or quarterly bill and will be collected in the same way as the service You had with Us when You requested this service.
- Further details are available on Our Web Site.

##### 3.2 Procedure

- Once You request this Service and accept these terms and conditions Your access to the Service will be enabled.

##### 3.3 Limitations

- We will provide You with the locations of the Wireless Broadband nodes available for use with the Service but can make no promise of availability, quality or speed of access at any time. If faults are reported to Us then We will pass them on to the node owner as soon as practicable.
- This Service does not protect You from viruses and You should use a firewall.

##### 3.4 Teleworker Broadband service

- If You are taking the Teleworker Broadband service, sixty (60) minutes of ROAM access shall be included in the Fees each month. Any ROAM access used in excess of the inclusive sixty minutes, will be charged to you at the rate of the Additional Charges, detailed above. For the avoidance of doubt, any unused ROAM access will be lost and will not be credited to any subsequent month's Usage.



## KCOM Terms and Conditions for the use of off-net KCOM Services including off-net Broadband Services

### Part B - WEB HOSTING

#### BACKGROUND

- This section of Part B relates only to Web Hosting Services.

#### 1 DEFINITIONS

1.1 In this Part, the following terms shall have the following meanings:

- **Service** - the provision of Web Hosting services;
- **Start Date** - the date upon which Your domain name is transferred to Us or registered with Us.

2 We agree to provide the Service to You from the Start Date.

3 If You receive notification from Us or any third party that any material on Your web site is defamatory, in breach of copyright or illegal You will inform Us forthwith and, if so requested, remove the same.

4. If the size of Your website exceeds the maximum limit on the amount of space, We shall either request You to remove some content or purchase additional space from Us. If You fail to do so, We shall be entitled to suspend and/or terminate the Service without notice.

---

## KCOM Terms and Conditions for the use of off-net KCOM Services including off-net Broadband Services

### Part B - E-MAIL

#### BACKGROUND

- This section of Part B relates only to E-mail Services.

#### 1 DEFINITIONS

1.1 In this Part, the following terms shall have the following meanings:

- **Service** - the provision of E-mail Services;
- **Start Date** - the date upon which Your e-mail domain name is transferred to Us or registered by Us and We provide connection details to You.

#### 2 We agree to provide the Service to You from the Start Date.

#### 3 The Virus Scanning Service

3.1 Description of the Service

- We will carry out anti-virus scanning on all inbound and outbound mail.
- The scanning is integrated into our messaging servers and delays will normally be in the order of a few minutes.
- We will update our virus profiles automatically and frequently.
- Further details are available on Our Web Site.

3.2 Procedure

- Where a virus is detected in an incoming message to You, the message will be quarantined and a virus detected notification will be sent to the original sender. You will not be notified, as the sender of the virus will be false or the message generated automatically and deemed noise.
- If an outgoing message contains a virus the message will be quarantined and You will be notified.
- If You are running Your own SMTP mail servers, such as Microsoft Exchange Server, You must configure Your server so that it rejects any SMTP connection from addresses other than the 82.153.252.0/24 and 212.104.129.0/24 IP address ranges.

3.3 Limitations

- This service scans Your email, checking for known viruses. There is always a risk that a virus is new and won't be detected or that our system is circumvented by a virus. Accordingly We do not promise to trap all viruses and You should employ Your own virus protection.
- This service does not protect You from viruses downloaded from web sites, or loaded from floppy disk or CD ROM.
- We will scan zipped or archived files such as .zip, .tar, .gz, gz2, .arj, .rar, .arc, .zoo and .lha files.
- We are unable to scan protected files and these will be passed through without being scanned. Accordingly You should take extra precautions with encrypted or password protected files.
- You must ensure that the size of your email Inbox does not exceed 50MB. Whilst your inbox exceeds this amount, all further email messages sent to You will be returned to the sender along with a message from Us stating that Your email inbox has exceeded its limit.

# KCOM Terms and Conditions for the use of off-net KCOM Services including off-net Broadband Services

## Part B - DOMAIN NAME REGISTRATION

### BACKGROUND

- This section of Part B relates only to Domain Name Registration and does not take effect if no domain name registration is requested.

### 1 DEFINITIONS

1.1 In this Part, the following terms shall have the following meanings:

- **Fixed Period** - a period of either 12 or 24 months commencing on the Start Date, or each annual or biennial anniversary thereof, depending on the domain name registered and as detailed on Our Web Site or as otherwise made available to You;
- **Early Termination Fee** – means the Fees payable by You from the date of termination to the expiry of the Fixed Period;
- **Service** - the registration of domain names;
- **Start Date** - the date of acceptance by Us.

### 2 REGISTRATION

- 2.1 We agree to register such domain name(s) that You request on the Start Date and for the initial Fixed Period, subject to these Terms. This registration must be one of the suffixes set out in the Order. The registrations will be charged at the rate set out on our Web Site or as otherwise made available to You.
- 2.2 In the event that the domain name You require is not available then We will inform You of this and request alternatives.
- 2.3 You must have an IP address that is validated in the United Kingdom to register a domain name using the Domain Name Registration services described in this section of Part B.
- 2.4 We reserve the right to refuse to register any domain name for any reason (acting in our entire discretion) including but not limited to any domain name which: (a) We believe is being registered in bad faith; (b) contains a word or words identical or similar to any of Our (or the KCOM Group's) trade marks or trading names or other words that may be associated with the KCOM Group; or (c) may in Our opinion be likely to infringe Our rights or the rights of any third party.

### 3 TERM AND TERMINATION

- 3.1 The Service shall be provided to You during the Fixed Period and thereafter as may be agreed.
- 3.2 On the expiry of the Fixed Period, We will either:
- 3.2.1 renew Your Domain name registration and the Charges for the Service shall be payable by You; and You will enter into a further Fixed Period for the provision of the Service, in accordance with these Terms; or
- 3.2.2 You may request Us to transfer Your Domain name without charge.
- 3.3 If any domain name registered by Us is transferred during the Fixed Period, We will charge to You an Early Termination Fee.

### 4 TLD AND ccTLD ADDITIONAL TERMS

You acknowledge that We act as agent for the registrar of the TLD, ccTLD and/or sub-level domain registries. We may also act as agent for Our third party registrars, appointed by the applicable registry for the purpose of registering domain names. As a consequence, in addition to the Terms set out in this Part B (Domain Name Registration) and Part A, You agree to be bound by Our third party registrars and/or the applicable registry's terms for the provision of the Services and dispute resolution procedures, as follows:

#### 4.1 .com, .org, .net, .info, .biz and .eu

Our third party registrar's terms for the registration of the Service, available at <http://resellers.tucows.com/contracts/tld/exhibita> and the registry's policy governing the process of dispute resolution available at <http://www.icann.org/dndr/udrp/policy.htm>

#### 4.2 .co.uk, .ltd.uk, .org.uk and .plc.uk

The registry's terms for the registration of the Service, available at <http://www.nic.uk/registrants/aboutdomainnames/legal/terms/>, the registry's dispute resolution policy available at <http://www.nic.uk/disputes/drs/policy/>, the process for dispute resolution, available at: <http://www.nic.uk/disputes/drs/procedure/> and the rules of registration available at: <http://www.nic.uk/registrants/aboutdomainnames/rules/>

#### 4.3 .gov.uk and .ac.uk

The registry's terms for the registration of the Service available at <http://www.ja.net/services/connections/domain/index.html>. Specific attention is drawn to the sections entitled, as follows: Eligibility Guidelines (<http://www.cabinetoffice.gov.uk/e-government/resources/handbook/html/1-9-2.asp> or <http://www.ja.net/services/connections/domain/registering-ac/eligibility/index.html>), Procedure (<http://www.ja.net/services/connections/domain/registering-gov/gov-procedure.html> or <http://www.ja.net/services/connections/domain/registering-ac/ac-procedure.html>), Appeals

## KCOM Terms and Conditions for the use of off-net KCOM Services including off-net Broadband Services

(<http://www.ja.net/services/connections/domain/registering-gov/gov-appeals.html> or <http://www.ja.net/services/connections/domain/registering-ac/ac-appeals.html> ) and Data Protection, available at: <http://www.ja.net/services/connections/domain/data-protection.html>

#### 4.4 .uk.com, .uk.net, .eu.com, .gb.com and .gb.net

The registry's terms for the registration of the Service, available at <http://www.centralnic.com/terms> and the registry's policy governing the process of dispute resolution available at <http://www.centralnic.com/support/dispute/policy> and the rules governing the process available at <http://www.centralnic.com/support/dispute/rules> .

#### 4.5 General

- (i) You acknowledge and understand that Our third party registrar's and the applicable registry may update its terms and/or policies from time to time. As such, You should consult the terms from time to time to ensure that You are aware of the most current version of such terms.
- (ii) You will indemnify Us against all claims, losses and liabilities incurred by Us as a result of Your failure to comply with Our third party registry's and/or the registrar's terms for the supply of the Services.

## KCOM Terms and Conditions for the use of off-net KCOM Services including off-net Broadband Services

### Part B – ESTORE SERVICES

#### BACKGROUND

- This section of Part B relates only to eStore Services.

#### 1 DEFINITIONS

1.1 In this Part, the following terms shall have the following meanings:

- Buyer** means a person who enters into or is invited to enter into any transaction with You by means of the Service.
- Content** - the content placed on the eStore Site for which You remain fully responsible (whether by You or by a third party User);
- Cure Period** - has the meaning given in clause 2.5;
- eStore Site** – the web site(s) You create using the Service;
- Initial Term** - the period of time, which shall be no less than 12 months, which commences at the end of the Trial Period and "Term" means the Trial Period and the Initial Term, together with any further period during which We provide Service to You;
- Early Termination Fee** – means either (i) the Fees payable by You from the date of termination to the expiry of the Initial Term; or (ii) the actual costs incurred by Us in terminating the Services prior to the Start Date, if You cancel the Services prior to the Start Date.
- 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;
- Personal Data and Sensitive Personal Data** - have the meaning given to those terms under the Data Protection Act 1998; and the goods, services or information which You promote via the Service.
- Service Misuse** - the circumstances set out in clause 2.3 which entitles Us to suspend the Service without notice unless and until You cure the cause of the Service suspension within the required Cure Period;
- Service** - the provision of those eStore services that are selected by You
- Start Date** - the date on which We activate Your access to the Service in accordance with clause 2.1.
- Trial Period** – the period of 30 days commencing on the Start Date,
- Welcome Pack** – the welcome pack We send to You by email once We have accepted Your order for the Service.

#### 2 PROVISION OF THE SERVICE

2.1 Once We have accepted Your order for the Service, We shall send You the Welcome Pack and activate Your access to the Service.

2.2 We shall be entitled to:

- change the technical specification of the Service where necessary for technical regulatory or operational reasons (provided that such changes do not materially affect the performance of the Service);
- modify the Service (at no cost to You) provided that such changes do not materially affect the performance of the Service;
- amend Our Acceptable Use Policy from time to time. If We change Our Acceptable Use policy We will place Our current Acceptable Use Policy on Our Web Site; and
- give You instructions which We reasonably believe to be necessary for health and safety or security reasons or for maintaining the quality of the Service.

2.3 Suspension of Service

We shall be entitled to suspend Service:

- with Your prior agreement or in the absence of Your agreement upon reasonable notice for planned maintenance to Our networks or infrastructure,
- without notice when necessary for operational or security reasons, or in case of emergency;
- to comply with any Legislation, court order or other governmental request or order requiring immediate action;
- to prevent interference with, damage to, or degradation of Our networks or infrastructure;
- to eliminate a hazardous condition;
- if You use the Service in a manner that will, does, or may expose Us to legal liability or that violates any applicable Legislation or breaches Our then current Acceptable Use Policy and whether such use is by You, or any other entity or person using the Service, and whether or not such use is authorised by You;
- without notice where We reasonably believe there has been a breach of clause 6.1 of this Section; and
- if You fail to pay an amount when due and You still do not pay the amount due within 14 days after You receive a written notice from

## KCOM Terms and Conditions for the use of off-net KCOM Services including off-net Broadband Services

Us that an amount is due.

- 2.4 You accept that We have the right to audit Your use of the Service for the purpose of verifying that You are complying fully with the provisions of this Contract and You will co-operate with Us to allow Us to exercise this right. We will use reasonable endeavours to ensure that any such audit causes minimal inconvenience to You.
- 2.5 If We suspend the affected Service for any of the reasons outlined in 2.3(g) or 2.3(h) and You cure the cause of the Service suspension within the Cure Period after receiving a notice from Us specifying the breach and the action required We will resume the Service once You have paid Our reasonable charges associated with resuming the affected Service. We may terminate this Agreement and/or the affected Service if You do not cure the cause of a Service suspension within the Cure Period or You do not pay the associated charges for Us resuming the Service. If such termination is effective prior to the expiry of the Initial Term, You will also pay Us the Early Termination Fee.
- 2.6 If You intend to use the any payment provider services with the Service, You will need to enter into a separate contract with the relevant payment provider(s) and pay any charges or commissions due to the payment provider(s) under that contract. The Service does not include the provision of a payment service for use by Buyers.

### 3 YOUR OBLIGATIONS

- 3.1 In order to enable Us to fulfil Our obligations under these Terms You shall, at Your own cost:
- (a) co-operate with all reasonable instructions We may provide from time to time in order to enable Us to provide the Service or otherwise perform Our obligations under these Terms;
  - (b) manage, vet and retain responsibility for the Content You place on Your eStore Site, whether authorised by You.
  - (c) adhere at all time with Our current Acceptable Use Policy (to the extent applicable to the Service);
  - (d) comply with all applicable Legislation relating to Your use of the Service; and
  - (e) provide Us with full, accurate and up to date information on any matter which We reasonably believe is relevant to Our provision of the Service to You and provide such information within a reasonable time of being requested by Us to do so.

### 4 SUPPORT SERVICES

- 4.1 We will provide a helpdesk facility to You which can be accessed via telephone and e-mail.
- 4.2 You will be able to report any faults with the Service to Us as directed by Us from time to time.
- 4.3 We shall use Our reasonable endeavours to resolve any faults with the Service logged by You in accordance with clause 4.2 of this Section within 48 working hours.
- 4.4 We will use reasonable endeavours to provide a minimum of 72 working hours' notice of any planned maintenance activity. Any notices with regard to planned maintenance will be published on the Web Site or shall otherwise made known to You.

### 5 OUR OBLIGATIONS

- 5.1 You accept and agree that the Service that We provide to You is based on Your requirements as agreed and that if the information You gave Us is incomplete, incorrect or inaccurate:
- (a) We will not be responsible for providing a Service that fails to meet Your needs;
  - (b) We may review the Service and suggest changes which may have a price impact; and
  - (c) We may revise or replace any agreed proposal with You.

### 6 USE

- 6.1 You will not use or permit any third party to use the Service or the eStore Site for the purposes of sending, posting, publishing, distributing, disseminating or transmitting, storing, or in any way in connection with, any message communication or material which is offensive, abusive, indecent, obscene, harassing or menacing or which does, or is intended to, cause annoyance, inconvenience or worry or which is fraudulent or defamatory or contains or breaches another party's proprietary information (including trademarks or other copyright material) or is otherwise unlawful or which (in Our reasonable opinion) brings the name of the KCOM Group into disrepute or in any way which intentionally causes damage or disruption to the Service or which damages, or may damage, Our brand and/or Our reputation.
- 6.2 Both parties agree to fully co-operate with the Police and any other relevant authorities (the "Regulatory Authorities") in connection with any misuse or suspected misuse of the Service and You consent to Our co-operating with any Regulatory Authorities in connection with any suspected illegal and/or fraudulent activity related to or connected with the Service and You agree that We may divulge such information as the Regulatory Authorities may reasonably require in relation to this Agreement.
- 6.3 You are solely responsible for any information, products or services provided to or any transactions of any kind entered into with any Buyer accessing or acting in reliance on the Service, the Content. You accept that We will have no liability with respect to such transactions.
- 6.4 You must comply with all consumer protection or other legislation, instructions or guidelines issued by regulatory authorities, relevant licences and any other codes of practice which apply to You in connection with the Service.

## KCOM Terms and Conditions for the use of off-net KCOM Services including off-net Broadband Services

6.5 At Your discretion, You may give third parties access to Your password and allow them to access and deal with the Service on Your behalf. You will remain responsible for the security of Your password at all times and will be responsible for the actions of any third party You allow to access the Service using Your password.

6.6 You will not resell, rent, license, lend, transfer or otherwise grant access to or use the Service or attempt to do so (or any part or facility of it including without limitation the Software) to any third party.

6.8 You agree to keep secure any information relating to the Buyers that You acquire through use of the Service.

### 7 ACCESS TO SERVICE

7.1 You must have or obtain a suitable Internet access service to access the Service, either provided by Us or another service provider. Any Internet access service provided by Us will be subject to separate terms and conditions and charges.

7.2 You acknowledge that the Buyers' access and use of the eStore Site will be via the Buyers' own Internet service provider(s).

7.3 The Service is accessed and delivered via the Internet. The Internet is separate from the Service and its use is solely at Your risk and subject to all applicable Legislation. We have no responsibility for any information, software, services (other than those parts of the Service delivered via the Internet) or other materials obtained by You using the Internet.

7.4 You shall only be entitled to access the Service using the single administrative account and log-in process advised to You by Us.

### 8 CHANGES TO THE SERVICE

8.1 We may from time to time make changes to the specifications in the Service. Such changes will be notified to You not less than 30 days prior to their taking effect and if any such changes are considered material adverse changes, the parties will endeavour to agree such changes. If the parties fail to agree such changes, You may terminate this Agreement upon 30 days' notice.

### 9 FEES AND PAYMENT TERMS

9.1 The Fees in relation to the Service shall comprise an ongoing monthly recurring service charge. This service charge will be payable monthly in advance commencing at the end of the Trial Period.

9.2 We may increase the Fees by giving You 45 days prior notice. You may terminate this Agreement on 30 days written notice if You do not want to pay the increased Fees. 10 INTELLECTUAL PROPERTY

10.1 Any software or documentation provided by Us in connection with the provision of the Service is, and will remain, Our property or that of Our licensors.

10.2 You are granted a non-exclusive, non-transferable right to use such software and documentation only for the purpose of using the Service.

10.3 You will not make any modifications to such software or documentation. You will indemnify and keep Us indemnified against any costs, losses, damages, or liability that We may incur due to You amending or in any way, altering such software or documentation, or using it for a purpose not permitted by these Terms.

10.4 Any Content, software or documentation You provide under these Terms is, and will remain, Your property or that of Your licensors.

10.5 Upon termination of this Agreement, each party shall immediately cease to use the others software and/or documentation supplied under these Terms and (at the others absolute discretion) shall return or destroy the same.

### 11 DATA PROTECTION

11.1 It is agreed that You are the Data Controller and We are the Data Processor with those expressions having the meaning given to them in the Data Protections Act 1998 (the "Act").

11.2 The parties acknowledge that in providing Service to You, We may process Personal Data relating to You, Your employees and/or Buyers including without limit disclosing it to any third party service providers We use to provide the Service.

11.3 We shall:

(a) put in place adequate, technical and organisational security measures so that the confidentiality of this processing complies with the Act; and

(b) only act in accordance with Your instructions as reasonably necessary for the provision of the Service when processing Personal Data.

11.4 You shall:

(a) comply fully with all of Your obligations under the Act and not cause Us to be in breach of the Act;

(b) obtain adequate consents from Buyers and/or employees for any processing of Personal Data; and

(c) be responsible for the instructions You may give Us regarding the processing of Personal Data.

### 12 SECURITY

12.1 You are responsible for the security and proper use of all passwords, or other security devices used in connection with the Service (including changing passwords on a regular basis) and must take all necessary steps to ensure that they are kept confidential, secure, used properly and not disclosed to unauthorised people.



# KCOM Terms and Conditions for the use of off-net KCOM Services including off-net Broadband Services

## 13 DOMAIN NAME

- 13.1 We will issue a web address to You to use in connection with the Service. If You want to use a different web address in connection with the Service, You must follow the procedure for this set out in the help and support materials for the Service.

## 14 TRANSACTIONS

- 14.1 You acknowledge and accept that You are exclusively responsible for checking the accuracy of each transaction or computation carried out using the Service, including the calculation and imposition of any applicable taxes, duties and charges of whatever nature and for all documentation relating to such transactions and computations, including without limitation and as applicable the creation of invoices, VAT or other tax records and shipping documentation.
- 14.2 You agree that for the purposes of the matters set out in clause 14.1, the Service shall be deemed to be under Your control and We shall have no liability for any loss or liability incurred by You relating to clause 12.

## 15 LIABILITY AND INDEMNITY

- 15.1 You accept that We are neither obligated nor able to edit, review or modify the Content You make available to Buyers on the eStore Site or otherwise by using the Service. However, We may request that You remove any Content if We reasonably believe that the Content breaches the terms of this Agreement. If You fail to comply with any such request, We reserve the right to suspend the Service until such time as the relevant Content has been removed.
- 15.2 We exclude all liability of any kind in respect of the Content which can be accessed using the Service and are not responsible in any way for any goods (including software) or services provided, advertised, stored, sold or otherwise made available by means of the Service.
- 15.3 You must indemnify Us against any claims or legal proceedings which are brought or threatened against Us relating to the Service being used in breach of clause 6. We will notify You of any such claims or proceedings and keep You informed as to the progress of such claims or proceedings

## 16 EXPORT CONTROL

- 16.1 You agree to comply with any applicable export or re-export laws and regulations of any country, including obtaining written authority from the US Government if You intend at any time to re-export any items of US origin to any proscribed destination.

## 17 TRIAL

- 17.1 Following on from the Start Date, You will be entitled to use the Service free of charge until the end of the Trial Period. You shall be entitled to terminate Your use of the Service at any time during the Trial Period by giving notice to Us. If You fail to give Us notice to terminate the Service prior to the expiry of the Trial Period, You will have entered into an agreement to take the Service for the Initial Term.
- 17.2 You shall not be entitled to use the Service to sell any Products to Buyers during the free Trial Period. If You want to start selling Products using the Service prior to the end of the Trial Period You will need to give Us notice that You want to terminate the Trial Period early and commit to taking the Service for the Initial Term. You must give Us any such notice in accordance with clause 8.4 of Part A or any other online process that We provide.

## 18 UPGRADES

- 18.1 You can ask Us to upgrade Your Service to a higher value eStore package at any time by giving Us notice. If You upgrade Your service in this way the Initial Term for Your Service will be extended so that it terminates 12 months after the date the Service is upgraded.
- 18.2 You shall not be entitled to downgrade Your Service to a lower value package at any time during the Initial Term for your Service. You shall be entitled to downgrade Your Service at any time after the expiry of the initial Term by giving Us notice.

## 19 STORAGE LIMITS

- 19.1 The total file space available for Your eStore Site will be limited as follows;
- (a) if You take the eStore 200 Service, the storage limit will be 240 MB;
  - (b) if You take the eStore 1000 Service, the storage limit will be 1200 MB; and
  - (c) if You take the eStore 5000 Service, the storage limit will be 6000 MB;

We reserve the right to remove any Content that exceeds these storage limits. These storage limits include all text, images and associated documents that are uploaded to Your eStore Site from time to time.