

Leased Line Point to Point Services and Internet Access Services Part 1

<p>OUR REF:</p> <p>THIS CONTRACT IS FOR: LEASED LINE POINT TO POINT SERVICES INTERNET ACCESS SERVICES</p>	<p>ACCOUNT MANAGER:</p>
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<u>CORRESPONDENCE DETAILS:</u>	
<p>Company Name / Business Name:</p> <p>Address:</p> <p>Postcode:</p>	<p>Main Contact:</p> <p>Telephone No:</p> <p>Email Address:</p> <p>Co. Registration No:</p>

<u>BILLING DETAILS:</u>	
<p>Address for invoice: (if Correspondence Address or other, please insert here)</p> <p>PO No:</p>	<p>Billing Contact Name:</p> <p>Telephone Number:</p> <p>Email Address:</p> <p>Add to Existing Summary Bill:</p> <p>Existing Summary Bill Number:</p>

<u>CONTRACT PERIOD:</u>		<u>PAYMENT DETAILS:</u>	
Commencement Date:		Billing Frequency:	Monthly
Proposed Start Date:		Payment Date:	Within 30 days of date of invoice
Initial Term:		Payment Method:	
Notice Period:	90 Days (applicable after Initial Term)	(Optional) Billing Period:	

Leased Line Point to Point Services and Internet Access Services

Part 1

<u>ORDER DETAILS</u>	
New Order:	External Move:
Upgrade:	Internal Move:
If Upgrade, give circuit reference	
If Move, give details	
<p>Where a Service is an upgrade, internal move or external move of an existing leased line service taken from us, this Contract supersedes and terminates any earlier contract for that leased line service. Where any earlier contract covers a number of different services, only the part that relates to the relevant leased line shall be terminated.</p>	

<u>DETAILS</u>				
Service Product Type	Category	Bandwidth Mbps	Connection Charge	Annual Rental Charge
Leased Line				
Leased Line				
Leased Line				
Leased Line				

For Category 1 Services (as described in Part 3 of this Contract) the Charges agreed for the relevant Initial Term and bandwidth will not exceed the applicable charges set out in Our Price Manual (available at heybusiness.kcom.com/legals/legal-regulatory).

<u>SITE DETAILS</u>			
A - END		B - END (FOR LEASED LINE POINT TO POINT SERVICES)	
Company / Business Name		Company / Business Name	
Floor		Floor	
Room		Room	
Building / Street		Building / Street	
Town / City		Town / City	
Postcode		Postcode	

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Site Contact Name		Site Contact Name	
Site Contact Number		Site Contact Number	

<u>ADDITIONAL INFORMATION</u>		<u>ADDITIONAL INFORMATION</u>	
Presentation, interface FEA Reference etc.		Presentation, interface FEA Reference etc.	

<u>SITE DETAILS</u>			
A - END		B – END (FOR LEASED LINE POINT TO POINT SERVICES)	
Company / Business Name		Company / Business Name	
Floor		Floor	
Room		Room	
Building / Street		Building / Street	
Town / City		Town / City	
Postcode		Postcode	
Site Contact Name		Site Contact Name	
Site Contact Number		Site Contact Number	
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Presentation, interface FEA Reference etc.		Presentation, interface FEA Reference etc.	

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Presentation, interface FEA Reference etc.		Presentation, interface FEA Reference etc.	

<u>ADDITIONAL LEASED LINES</u>	
Continuation Sheet for additional Leased Lines attached:	

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

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

Leased Line Point to Point Services and Internet Access Services – Offer and Acceptance Part 2

We have issued this Contract to You, which includes a copy of Our Standard Terms and Conditions of Service. By signing in the place indicated below You indicate Your willingness to offer to enter into this Contract. This Contract will not come into force unless and until We have signed in the place indicated below. You also consent to our providing details of this Contract and the Services You receive under it to BT, but only insofar as it is required for Us to provide the Services.

YOUR OFFER TO ENTER INTO THIS CONTRACT (To be completed by You)		CONTRACT ACCEPTANCE BY KCOM GROUP PLC	
Signed		Signed	
Name		Name	
Position		Position	
Date		Date	

Service Standards for Leased Line Point to Point Services & Internet Access Services Part 3

1. INTRODUCTION

These Service Standards define the commitments We make to You.

Any changes, modifications, additions or deletions to these Service Standards will be provided to You in writing 30 days prior to such change coming into effect.

Further technical information on the Services is available, for information purposes only, at <http://www.kcomplc.com/regulatory-information>

1.1 Service Details

The Leased Line Point to Point Services involves connections between two or more specified locations available for use on an unlimited basis at a specified transport rate.

All Services demarcate on Network Terminating Equipment (NTEs) supplied by Us. The NTEs are located on Your Sites and remain Our property (subject to clause 15.7 of Part 4 of this Contract).

With Internet Access Services, We will use reasonable endeavours to ensure access will be available for Our own Interconnect Points providing that the configuration of computer server, client, network or any other equipment not provided by Us as part of the Internet Access Service are correct and capable of correctly transmitting TCP/IP packets or other network application traffic.

The Internet Access Service is a dedicated connection between Your Site and the Network that provides direct access to the Internet using the Network and will be delivered via a digital fixed link and terminated on Network Terminating Equipment at Your Site.

The Internet Access Service for Category 1 services excludes an on-site router as routing is provided within the KCOM network. The Internet Access Service for Category 2 includes a router device, located at Your Site, which provides a TCP/IP Ethernet interface to Your network. This router device is (subject to clause 15.7 of Part 4 of this Contract) owned by and is maintained by Us and allows Us to manage the Internet Access Service, up to the Network Terminating Equipment, on Your behalf.

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

The Internet Access Service includes the following services:

- Primary and/or secondary DNS services
- One domain name registration or transfer (additional registration and transfers are available as chargeable services)
- SMTP email routing and 10 POP3 email-boxes (additional POP3 email-boxes are available as a chargeable service)
- Static IP address (the number of static IP addresses allocated will be subject to Your requirement and satisfactory compliance with the usage guidelines as determined by the European IP registry agent, RIPE)

Table 1 shows the Services Categories for both Services.

Table 1

Category 1	Category 2
Directly connected services provided by Our fixed line network in the Hull Area (On-Net).	Directly connected services over Our national network infrastructure outside the Hull Area or over infrastructure provided by a third party network provider (Off-Net).

Service Standards for Leased Line Point to Point Services & Internet Access Services Part 3

2. SERVICE DELIVERY

2.1 Delivery Management

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

2.2 Restrictions

If You cancel an order, or significantly modify it (e.g. changes in service location, delivery date, or service type) prior to the Proposed Start Date, We reserve the right to claim reasonable costs incurred as a result of such cancellation or modification. In addition We will not be bound by the original timescales.

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

3. SERVICE AVAILABILITY

3.1 Our Obligations

We will use reasonable endeavours to provide the Services 24 hours a day 365 days a year and to give You advance notice of any Planned Outages which will impact service availability.

3.2 Restrictions

Service outages attributable to the completion of Planned Outages and previously notified to You shall not be deemed occurrences of unavailability or a Service Affecting Fault.

Service outages which are the result of Customer Responsible Faults or Third Party Attributable Faults shall also not be deemed occurrences of unavailability or a Service Affecting Fault.

3.3 Planned Outages

Planned outages may occasionally be necessary for Us to carry out essential maintenance or network upgrades; these will be kept to a minimum.

Except in an emergency or when circumstances are beyond Our reasonable control You will receive at least 5 (five) Working Days' notice of any planned work which will affect the availability of the Services.

4. INCIDENT MANAGEMENT

In the event that You become aware of any problem or a breakdown in the operation of the Services, any of Our Equipment or the Network ("**Fault**"), You should notify Us by contacting the Service Desk in accordance with the Incident Management Procedure.

4.1 Our Obligations

Our Business Care Plus support service will be provided as standard with all Services. The Time to Resolve (TTR) obligation for Service Affecting Faults is shown in Table 2:

Table 2

	Service Category 1 and Service Category 2
Business Care Plus	5 clock hours (measured 24 hours a day, 7 days a week, Public and Bank Holidays included.)

Failure to meet the TTR obligation for Service Affecting Faults only may entitle You to claim compensation as detailed in Section 5. For Non-Service Affecting Faults, We will ensure that there is an effective management of any such faults.

Service Standards for Leased Line Point to Point Services & Internet Access Services Part 3

5. SERVICE CREDITS

5.1 Service Delivery

In the event that We fail to meet the Proposed Start Date, and We are unable to demonstrate the delay to be caused by failure of You to fulfil any of Your obligations or by a delay caused by a third party or by circumstances beyond its or Our reasonable control, You have the right to claim compensation as detailed in Table 3.

Table 3

Working days past Proposed Start Date	Categories 1 & 2
1 to 5	5% of connection charge
6 to 10	10% of installation charge
11+	15% of installation charge

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

The maximum service credit You may claim under this Contract is £2,000.

5.2 Incident Management

In the event that We fail to meet the TTR for Service Affecting Faults only, You have the right to claim compensation as detailed in Table 4 unless Our failure to meet the TTR is due to a Customer Responsible Fault, Third Party Attributable Fault, Planned Outage, a Fault caused by failure of You to fulfil any of Your obligations, or by a Fault caused by a third party or by circumstances beyond its or Our reasonable control.

Table 4

Hours past TTR	Categories 1 & 2
Up to 3	1% of annual rental charges ¹
3 – 6	3% of annual rental charges ¹
6+	5% of annual rental charges ¹

¹ Refers to rental charges paid by You in the previous 12 months, up to a maximum aggregate amount equivalent to 3 months' rental charges in any 12 month period, commencing on the Service Start Date or any anniversary of that date.

5.3 Payment of Service Credits

All claims must be submitted to the relevant Account Manager within 30 working days (dependent on the type of claim), from either:

- the date the Service was delivered (late delivery)
- the date the Fault was notified to Us (incident management).

This can be used to offset Charges on future bills. Credit notes will be issued which can be used to offset Charges. If at any time an account enters into credit, customers may request payment by cheque to reduce the account balance to zero. When the balance on the account is in debit, a cheque cannot be requested.

Service Standards for Leased Line Point to Point Services & Internet Access Services Part 3

6. DEFINITIONS

Customer Responsible Faults

In the event that a Service Affecting Fault or Non-Service Affecting Fault is identified as being attributable to Customer Equipment, Your power supplies, or Your actions or those of Your employees or agents the Fault shall be deemed Your responsibility and will not qualify for compensation. For the avoidance of doubt We shall not be responsible for access unavailability arising due to the configuration of the computer server, the Customer's network or any equipment not provided by Us or in accordance with Our instructions and/or which is incorrect and/or otherwise incapable of correctly transmitting all or part of TCP/IP packets or other network application.

Hull Area

The area defined as the 'Licensed Area' in the licence granted on November 1987 by the Secretary of State under section 7 of the Telecommunications Act 1984 to Kingston upon Hull City Council and KCOM Group plc

Incident Management Procedure

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

Non-Service Affecting Fault

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

Planned Outage

In maintaining the Service provided, We may with reasonable notice require a temporary outage in Service. Wherever possible We will agree the outage with You in advance of the required work. Any planned downtime shall not be included in Fault or Service reliability measurements.

Service Affecting Fault (SAF)

Any failure of Our transmission or terminating equipment, which causes a material loss of signals in one or both transmission directions. Examples: No inbound or outbound access, (in respect of Internet Access Services) the router cannot reach the Internet, or be reached from the Internet using Our standard command tests. For the avoidance of doubt the following shall not constitute Service Affecting Faults: excessive Internet latency (beyond Our IP network), destination outages, or inability to connect to one destination where others are connectable.

Time To Resolve (TTR)

The length of time from the issue of the Incident Reference Number to the time that We notify You that the Fault has been resolved.

Third Party Attributable Faults

In the event that a Service Affecting Fault or Non-Service Affecting Fault is identified as being attributable to a third party (i.e. neither You nor Us) downtime or Faults arising shall not qualify for service credits. We will try to rectify such Third Party Attributable Faults as soon as reasonably practicable.

Terms and Conditions for Leased Line Point to Point Services & Internet Access Services

1 TERM

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

2 PROVISION OF THE SERVICE

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

2.2 We will use reasonable endeavours to provide the Services in accordance with the applicable Service Standards (and the Services are otherwise subject to Part 3 of this Contract) and will use reasonable skill and care in the provision of the Services. However, You acknowledge that the Services cannot be provided fault free and We do not warrant error free or uninterrupted use of the Services.

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

2.4 If, for any reason and prior to the Service Start Date, You request Us to make any changes to the Services We have agreed to supply to You, You accept that the provision of such requested Services is subject to Our agreement and such amendment to the Proposed Start Date, the Charges and/or this Contract, as required by Us, in Our sole discretion.

2.5 You acknowledge that the provision of the Services is subject to survey and We shall notify You if We require such a survey. You acknowledge that We shall be entitled to amend the technical aspects of the Services and/or the relevant Charges, as appropriate, following completion of the survey. In the event that the survey reveals that the provision of the Services to You at the Site will be degraded to such an extent that We would be unable to comply with this Contract, We will be entitled to terminate the Contract (in whole or in part) without any liability to You. In the event of termination of this Contract, for any reason, following completion of the survey but prior to the Proposed Start Date, You will refund to Us (at Our request) any costs incurred, including, without limitation, staff costs, equipment costs and the cost of carrying out the survey.

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

2.7 We do not guarantee the continuing availability of any particular service and You acknowledge that We may be dependant upon third parties (including, without limitation, other Network Operators) when providing the Services. Notwithstanding any other provisions of this Contract but subject to clause 10.1, We will not be liable to You in contract, tort (including, without limitation, negligence) or otherwise for the actions of any third party (including, without limitation, acts or omissions of the Network Operators) that affect or otherwise impact upon the provision of the Services.

3 CUSTOMER OBLIGATIONS

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

- (a) procure all consents, licences and permissions necessary from landlords or other third parties (including (without limitation) consents, licenses and permissions to building alterations at the Site, any consents etcetera required under the Acts or in respect of any service providers, network operators, maintainers, installers, ISPs or other relevant persons) for the carrying out of preparation work, installation of Equipment and for the use and operation of the Equipment and Services at the Site for the duration of the Contract. If You occupy and own the Site(s) in which You are taking Services, by signing this Contract You give Us Your written permission pursuant to the Code to install and keep Our Equipment on the Site(s);
 - (b) provide site and building plans (to include full details of all internal cabling runs) of the Site as requested by Us;
 - (c) provide Us with full details of all other services in the vicinity of the proposed works;
 - (d) provide any information that may be reasonably required by Us or Our third party supplier. If Your requirements change for any reason, You will inform Us immediately;
 - (e) ensure that any unique or special conditions applicable to the Site that may affect the survey or the installation and maintenance of any Equipment (to the extent We are providing such as part of this Contract) are made known to Us in writing prior to Us commencing the survey;
 - (f) prepare the Site in accordance with any instructions notified in advance by Us and provide Us with such assistance as We may reasonably require for the purposes of carrying out the installation, connection and maintenance of any Equipment (to the extent We are providing such as part of this Contract);
 - (g) ensure that any network testing termination point serving the Site to which the Equipment is to be connected is available for use upon request by Us and is not moved or modified without notification in writing to Us.
 - (h) provide Us or Our nominated third party with access to the Site, during normal working hours, and such facilities as they may reasonably require in order to perform the survey, install any Equipment, provide the Services and otherwise perform Our obligations under the Contract;
 - (i) ensure a safe working environment for Our employees and nominated third parties whilst at the Site and procure the same in respect of any Site under the control of any Users; and
 - (j) provide Us with information regarding any changes to the Site plans, regulations or any other conditions affecting the Site during the term of the Contract, which may impact the provision of the Services to You or which may be reasonably requested by Us to enable the provision of the Services to You.
- 3.2 In the event that We or You are not able to procure the necessary consents to provide the Services within three months from the Commencement Date We will be able to terminate the Contract without any liability. If You have not managed to procure the necessary consents and We have commenced work You will refund to Us (on Our request) the cost of all such work (including, without limitation, staff costs and equipment costs).
- 3.3 You will advise Us in writing of all health and safety at work rules and regulations of all dangerous objects and substances and any other reasonable security requirements applicable at the Site and We will use Our reasonable efforts to observe and ensure that Our employees, network sub-contractors and authorised representatives observe, Your reasonable regulations, as advised to Us pursuant to this clause, whilst at the Site, provided that We shall not be liable to You if, as a result of conforming with such regulations, We are in breach of Our obligations under this Contract.
- 3.4 You will, at Your own expense, provide such continuous supply of electrical current and connection sockets as may be required for the installation, operation and maintenance of the Equipment.
- 3.5 You will not move, add to, modify or interfere with or attempt to repair, or cause to be repaired or serviced by any person any Equipment other than by Us or Our nominated or approved third party or Our network sub-contractor (as applicable).
- 3.6 You will only attach to any Equipment such other equipment or apparatus that We give You prior written approval for and which is approved for connection under the Acts (as applicable).
- 3.7 You will at all times ensure that the Equipment is kept in a good and proper state of repair, is secure whilst on the Site and maintain the necessary environmental and other conditions for any Equipment as may be specified by Us from time to time.
- 3.8 We will be entitled to modify and/or replace any of Our Equipment from time to time if We consider such modification and/or replacement reasonably necessary for the continued provision of the Services.
- 3.9 We will not be liable to You if We are unable to carry out any or all of Our obligations under the Contract as a result of a breach by You of any of the provisions of this Contract.
- 3.10 We will usually carry out the Services during Our normal working hours but may agree, exceptionally, to carry out work outside Our usual working hours subject to Your agreement to pay an Additional Charge.
- 3.11 Further, We may raise an Additional Charge if:
- (a) Our approved engineer is called out because of faults that are found upon examination not to be faults with Our Equipment (including without limitation, power supply fluctuations or faults on another network system or apparatus to which Our Equipment is connected) or the Network; or
 - (b) We arrange an appointment for Our approved engineer to attend Your Site but You (i) fail to provide access to the Site, or (ii) cancel the appointment for any reason; or
 - (c) if You report the Equipment faulty and We consider (acting reasonably) that it is not, or the fault is not covered by Our warranty with the relevant third party manufacturer.

4 OUR EQUIPMENT

- 4.1 Where we are using Our Equipment to provide the Services, as soon as reasonably practicable after the Commencement Date (and in any event prior to the Service Start Date), We will undertake any necessary surveys and installation (or procure the installation) of Our Equipment at the Site.
- 4.2 If necessary to provide the Services We will use reasonable endeavours to procure any consents licences or permissions necessary from the Highways Agency or equivalent body to enable Us to lay any cables.
- 4.3 Any duct, underground surface access chambers, cable or other materials developed or provided by Us for the Services shall remain the property of Us or Our network sub-contractor (as applicable) for use exclusively for the Services. You shall not and shall not allow any third party (other than Our duly authorised network sub-contractor) to interfere with or use the same.
- 4.4 Following installation of the Equipment and completion of the works under clause 15.4 (as applicable), We will carry out Our standard test procedures to ensure that the Services are ready for operation by You. We will supply Our Equipment in accordance with all relevant legislative requirements and will comply at all times with the relevant standard.

- 4.5 Title to Our Equipment will remain with Us at all times and nothing will operate to transfer ownership of or rights in Our Equipment to You. You shall not remove or obscure any identification mark(s) affixed to the same. Any software contained in Our Equipment provided by Us or Our network sub-contractors or other third party providers (as applicable) and any other software or documentation provided by Us or Our network sub-contractors or other third party providers (as applicable) in connection with the provision of the Services are and will remain Our property or the property of Our licensors. All Intellectual Property Rights in any such software or documentation and Our Equipment shall remain vested in Us or our licensors (as applicable) and nothing shall operate to transfer or assign any Intellectual Property Rights in any such software or documentation or Our Equipment to You. We hereby grant You a non-exclusive, non-transferrable right to use such software and documentation for the purpose of accessing the Services only. You will not make any modifications to such software and documentation. If You modify the software or documentation in any way We will be entitled to terminate the Contract with immediate effect. You will indemnify and keep Us indemnified against any and all costs (including, without limitation, any legal costs or disbursements on an indemnity basis), losses, damages or liabilities We may incur due to You amending or in any way altering the software or documentation.
- 4.6 If You become aware of any breach of third party rights, pursuant to the supply of the Services, the possession or use of any equipment or products provided to You (including, without limitation, Our Equipment) as part of the Services or in any way connected to this Contract, You agree that You shall:
- give Us notice of any such claim within 14 days of the date on which You are first given notice that the claim has been made;
 - allow Us or Our licensors to have sole conduct of the defence or settlement of any such claim; and
 - provide Us with all reasonable assistance in conducting the defence or settlement of any such claim and shall make no prejudicial statement or admission of liability.
- 4.7 For the avoidance of doubt, We shall have the right at Our discretion to:
- procure the right for You to continue using the items so that such use is no longer infringing;
 - modify the Services and/or infringing items so that they become non-infringing without a material diminution in their performance or specification so that the provision of the Services is not materially adversely affected and extend the provisions of this clause thereto; or
 - replace the infringing items with any reasonable equivalent non-infringing substitute, provided there is no material diminution in their performance or specification and the provision of the Services is not materially affected.
- 4.8 Upon termination of this Contract You shall promptly return or, if requested, destroy all copies of the software and documentation held by You that is in a tangible form, including software or documentation stored on electronic or optical storage devices, whether in digital form or otherwise.
- 4.9 You agree and undertake and represent to Us that You will:
- take all reasonable and proper care of all Equipment;
 - comply with all reasonable instructions communicated by Us to You for the safe and proper use of the Equipment and the Services from time to time;
 - not operate the Equipment after it has become defective, unsuitable, damaged or in a dangerous state.
- 4.10 Subject to such recall not significantly affecting the provision of the Services (except where this Contract has already been terminated), We may recall any or all of Our Equipment upon 7 day's notice. You will return to Us or make available for collection (as directed by Us) such Equipment.
- 4.11 Risk in Our Equipment will pass to You immediately on delivery.
- 4.12 You will for the duration of the Contract (without prejudice to Your liability to Us), at Your own expense, effect and maintain insurance in relation to Our Equipment with a reputable insurance company and such insurance will be in an amount equal to the full new replacement value of Our Equipment (including, without limitation, all taxes duties and other payments incidental to any replacements) and on fully comprehensive terms (including, without limitation, third party liability) against loss or damage from any cause, including, but without limitation, all risk of third party liability arising out of the presence or use of Our Equipment.
- 4.13 You will allow Our employees and nominated third parties access to Our Equipment at all reasonable times upon reasonable notice to inspect, test, adjust, maintain, modify, repair or replace the same. You will be responsible for providing safe, proper and adequate access for such purposes.
- 4.14 On termination of this Contract if You fail to allow Us to collect Our Equipment You will be liable to Us for:
- a sum equivalent to the full retail value of Our Equipment; and
 - the hire charges, as set by Us from time to time, for the unreturned unit of Our Equipment until the sum specified in 4.14(a) has been received by Us.
- 4.15 You will be liable for any loss or damage to Our Equipment (reasonable wear and tear excepted), subject to the provisions of clause 10.5, except where such loss or damage is caused by Us or anyone acting on Our behalf.
- 4.16 We shall not be liable for any failure in the Services, including, without limitation, any obligations to meet any Service Standards, caused by any unauthorised use of the Equipment by You or by a third party on Your behalf.
- 4.17 We will be entitled to:
- modify and/or replace any of Our Equipment or modify the Services from time to time if We consider such modification and/or replacement reasonably necessary for the continued provision of the Services; and
 - suspend the Services for operational reasons and We shall use Our reasonable endeavours to minimise the period of interruption and mitigate the impact of the interruption on the provision of the Services. We shall notify You in advance of any suspension; and
 - suspend the Services in the case of an emergency and, wherever possible, use Our reasonable endeavours to minimise the period of interruption.
- ## 5 CUSTOMER EQUIPMENT
- 5.1 You will make any such modifications to the Customer Equipment as We may determine necessary in order to provide the Services, subject to Your obligations under the Acts.
- 5.2 You will comply with the Acts and only use Customer Equipment which conforms to the standard in force from time to time as stipulated by the Acts, any law or regulation, or as required by Us for connection of Customer Equipment to the Network. We may disconnect any Customer Equipment which does not conform to such standard or approval or which, in Our reasonable opinion, may cause death, personal injury or damage to property or impair the quality of the Services or any other services provided by Us, including, without limitation, services to third parties. You will refund to Us any costs We incur as a consequence of such disconnection.
- 5.3 You will, if requested by Us, provide such information in respect of the Customer Equipment as We may reasonably require including, without limitation, information in respect of any signalling equipment.
- ## 6 USE OF THE SERVICE
- 6.1 You will and You will ensure that any Users will:
- use the Services only in accordance with Our instructions as may be notified in writing from time to time and in accordance with the relevant provisions of the Acts and any other relevant Legislation; and
 - not use the Services to commit an offence under the Acts or any other relevant Legislation.
- 6.2 You will not use or permit any User or third party to use the Services:
- in an illegal manner or for an illegal purpose;
 - in connection with any criminal or public nuisance offence;
 - to knowingly or recklessly transmit any material which contains software viruses or any computer codes, files or programs designed to interrupt, damage, destroy or limit the functionality of any computer software or hardware; or
 - for the purpose of sending, posting, publishing, distributing, disseminating, or transmitting, or in any way in connection with, any message or 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, defamatory, an act of treason or intended to be a hoax call to any emergency service, contains another's proprietary information (including, without limitation, trademarks or copyright material) without such party's authorisation, or is otherwise unlawful or which (in Our reasonable opinion) brings Our name into disrepute or in any way which intentionally or recklessly causes damage or disruption to the Services or the Network or a third party network, or use the Services in a manner which constitutes a violation or infringement of the rights of any other person.
- 6.3 Both parties agree to fully co-operate with the Police and any other relevant authorities (including but not limited to Customs and Excise, the Inland Revenue, the Office of Fair Trading, the Trading Standards Departments and/or OFCOM and any successors from time to time) in connection with any misuse or suspected misuse of the Services and You consent to Us co-operating with any other telecommunications operators in connection with any fraudulent or suspected fraudulent activity related to or connected with the Services and agree that We will be entitled to divulge the name and address and account information relating to You to such third parties.
- ## 7 CHANGES/ADDITIONAL SERVICES
- 7.1 We may from time to time make changes to the Service Standards. Such changes will be notified to You not less than 30 days prior to their taking effect.
- 7.2 You may at any time request a change in the bandwidth of the Private Circuit and/or the Agreed Bandwidth and/or increase in the circuit speed of the Services (as applicable). Any request should be made to Us, and You must give full details of Your requirement. We shall consider Your request and inform You whether We are able to provide the change(s) and the Charges that will apply. The provisions of clauses 7.3 and 7.4 shall then apply.
- 7.3 No order for additional or different services (including, without limitation, changes under clause 7.2) will be effective until it has been confirmed by Us in writing in accordance with clause 7.4, and is signed by one or more of Your personnel that are authorised to place an order with Us on Your behalf. We are not obliged to process or accept any order submitted by You.
- 7.4 Any orders or requests for additional or different services (including changes under clause 7.2) will be subject to Our written agreement and will be governed by the terms of this Contract only, or a new contract on Our terms (as agreed between the parties).
- 7.5 If We or Our network sub-contractor, at Your request, change the location of any of Our Equipment You shall pay Us all applicable charges for any re-connections and associated work.
- ## 8 CHARGES
- 8.1 You will pay Us all appropriate Charges at the rates, times and frequencies as set out in this clause 8 and in Part 1 from the Service Start Date.
- 8.2 The connection and installation charges (set out in Part 1) will be payable upon the Service Start Date.
- 8.3 The rental charges (set out in Part 1) will be payable monthly in advance from the Service Start Date unless otherwise stated in Part 1.
- 8.4 Any other Charges or payments shall be payable on demand.

- 8.5 We will be entitled to vary the Charges at any time from the Commencement Date, provided that: (a) the Charges may only be varied once in any calendar year; and (b) the Charges will not be increased so as to exceed the then current applicable charges stated in Our Price Manual. Such variation will be effective 30 days after We have given You written notice of such changes. Where any variation to the Charges in accordance with this clause exceeds the Retail Prices Index Rate, You may terminate this Contract on 14 days' written notice to Us provided that You serve Your termination notice within 60 days following Our notice of the changes to You.
- 8.6 For Category 2 Services (as described in Part 3 of this Contract) only, where, in order to provide You with the Services, it is necessary in Our reasonable opinion to use non-standard or exceptionally expensive methods (whether in whole or in part) or where a substantially greater cost than usual is incurred by Us so as to render Our standard tariff inappropriate We may charge an Additional Charge. If We decide to do so, We will inform You and if You do not wish to pay such Additional Charges You may terminate the relevant affected Services by giving Us 30 days' written notice.
- 8.7 All Charges and payments due under the Contract (except where payment is made by Direct Debit) are payable within 30 days of the date of the relevant invoice and will be paid in full without any set-off, deduction or withholding of any kind. We reserve the right to charge daily interest on any outstanding amounts until payment is received in full at a rate equal to 4 per cent per annum above the base rate of National Westminster Bank Plc as current from time to time whether before or after judgment and/or suspend the Services in whole or in part until all such Charges have been paid in full.
- 8.8 If at any time during this Contract in Our reasonable opinion Your financial standing changes adversely or You persistently default in paying the Charges then We may request a security deposit against non-payment of Charges. If You fail to provide such security deposit within 10 Working Days then We reserve the right to suspend and/or terminate this Contract with immediate effect by giving You written notice.
- 8.9 All Charges and payments due hereunder are exclusive of value added tax and any other applicable taxes which may be levied from time to time and shall be paid by You in addition to, and at the same time as, any Charges or payments.
- 8.10 Where any Charges or other monies properly due to Us or any member of the KCOM Group from You under this Contract or any other contracts are outstanding We will be entitled to offset such payments against any payments due from Us or any member of the KCOM Group to You under any other agreements between Us or any member of the KCOM Group and which relate to telecommunications services.
- 9 TERMINATION**
- 9.1 If either party is:
- (a) in material breach of any provision of this Contract (other than clause 6.1 or 6.2) and (if capable of remedy) fails to remedy such breach within 30 days of written notice to do so;
 - (b) unable to pay its debts as they fall due or threaten to suffer any resolution to wind up its business or enter into involuntary or compulsory liquidation or have an administrator, administrative receiver, receiver or any analogous officer appointed over all or part of its assets,
- then the other party may immediately upon notice in writing (without prejudice to any other rights and remedies it may have) terminate (either in whole or in part) this Contract.
- 9.2 We may terminate this Contract (either in whole or in part) with immediate effect if:
- (a) You are in breach (or We reasonably believe You are in breach) of clauses 6.1 or 6.2 as breach may be a criminal offence and/or cause serious harm to Our reputation;
 - (b) Our authorisations to provide the Services are altered in a way that is material to the Services.
- 9.3 We will continue to provide the Services in accordance with clause 2 until termination of this Contract but if:
- (a) You are late in making any due payment, or
 - (b) We become entitled to terminate this Contract early for any reason, or
 - (c) You break any material term of another contract with Us or another company in the KCOM Group,
- then We may partially or completely suspend the Services without limiting Our ability to enforce other remedies that may be available. While the Services are suspended You must continue to pay the Charges.
- 9.4 If You choose to terminate this Contract prior to the end of the Initial Term (other than where such termination is exercised by You pursuant to clause 8.5, 8.6 or 9.1) or if We terminate this Contract for Your default or breach, You must pay Us a termination payment ("Termination Payment"), without prejudice to Our other rights and remedies, calculated as follows:
- (a) If the Contract is so terminated during the first Contract Year, the Termination Payment shall be:
 - (i) the rental Charges payable for the remaining months of the first Contract Year, plus
 - (ii) the rental Charges payable for the remaining months of the Initial Term (less the rental Charge payable pursuant to clause 9.4(a)(i)) minus a 10 per cent deduction for costs not incurred by Us and a 10 per cent deduction for early payment of the monies.
 - (b) If the Contract is so terminated after the first Contract Year but prior to the expiry of the Initial Term, the Termination Payment shall be the rental Charges payable for the remaining months of the Initial Term minus a 10 per cent deduction for costs not incurred by Us and a 10 per cent deduction for early payment of the monies.
 - (c) If the Contract is so terminated prior to the Service Start Date, then You will pay Us the connection Charges due.
- 9.5 You acknowledge that Our Charges have been calculated on the basis that this Contract will continue until the end of the Initial Term especially (but without limitation) as We may have spent money on set up costs and accordingly agree that it is reasonable for Us to require payment of the Termination Payment as calculated above.
- 9.6 Upon termination of this Contract You will cease to use the Services and will pay to Us all outstanding charges due up to and including the date of termination.
- 9.7 The expiry or termination of this Contract will be without prejudice to any other rights either party may be entitled to and will not affect any accrued rights or liabilities of either party.
- 9.8 The expiry or termination of this Contract shall not affect any provision of this Contract which is expressed or by implication is intended to survive or operate in the event of expiry or termination.
- 10 LIMITATION OF LIABILITY**
- 10.1 Nothing in this Contract shall exclude or limit either party's liability for:
- (a) fraud, or fraudulent misrepresentation; or
 - (b) death or personal injury resulting from its own negligence or that of its employees, subcontractors or agents; or
 - (c) breach of the terms implied by s. 12 of the Sale of Goods Act 1979; or
 - (d) the indemnities expressly set out in this Contract; or
 - (e) anything else that cannot be excluded or limited by applicable law.
- 10.2 Except as expressly provided in this Contract, all conditions, warranties, terms, representations, undertakings and obligations express or implied by statute (including, without limitation, those of satisfactory quality or of fitness for a particular purpose (even if that purpose is made known expressly or by implication to Us)), common law, custom, trade usage or otherwise and all Our liabilities in respect of the same (if any) are excluded to the maximum extent permitted by applicable law.
- 10.3 Without prejudice to clause 10.1, We shall not be liable to You whether in contract, tort (including, without limitation, negligence) or restitution, or for breach of statutory duty or misrepresentation, or otherwise, for:
- (a) loss of business; or
 - (b) loss of profits; or
 - (c) loss of goodwill; or
 - (d) loss of business opportunity; or
 - (e) loss of anticipated savings even when advised of the possibility,
- suffered by You (and in each case whether direct or indirect) under or in connection with this Contract.
- 10.4 Without prejudice to clause 10.1, We shall not be liable to You whether in contract, tort (including, without limitation, negligence) or restitution, or for breach of statutory duty or misrepresentation, or otherwise, for any special, indirect or consequential loss or damage (including, without limitation, legal and other professional fees and expenses) or expenses of any nature.
- 10.5 Subject to the provisions of this Contract, each party hereby accepts liability in respect of damage to the other party's tangible property resulting from its own or its employees' negligence up to an aggregate amount of £2,000,000 (two million pounds) during the term of this Contract.
- 10.6 Without prejudice to clauses 10.1 and 10.5, each party's maximum aggregate liability in connection with this Contract whether arising in contract, tort (including, without limitation, negligence) or restitution or for breach of statutory duty or misrepresentation, or otherwise, shall be limited in the aggregate in each Contract Year (but, for the purposes of this clause 10.6, including the time from the Commencement Date to the Service Start Date in respect of the first Contract Year) to the greater of:
- (a) £500,000 (five hundred thousand pounds); or
 - (b) the value of the Charges paid by You in the preceding Contract Year ("Liability Sum").
- 10.7 With reference to clause 10.6, in the event that 12 months has not accrued from the Service Start Date to the date of the relevant default, the Liability Sum shall be calculated by calculating the monthly average Charges incurred over the relevant period and multiplying it by 12.
- 10.8 The limitations of liability set out in this clause 10 shall not limit Your liability to pay any Charges that are properly due under this Contract. Further, Your liability to pay the Charges shall not be taken into account for the purposes of applying the limitations set out in this clause 10 to any other liabilities You may incur under or in connection with this Contract.
- 10.9 In respect of any failure of the Services to comply with the specifications or standards applicable pursuant to this Contract, Your sole and exclusive remedy shall be to claim a Service Credit in accordance with the Service Standards.
- 10.10 This clause sets out Our entire financial liability (including, without limitation, any liability for the acts or omission of their respective employees, agents or subcontractors) in respect of:
- (a) any breach of this Contract; and
 - (b) any use made or resale of the Equipment and/or software, or of any product incorporating the said Equipment and/or software; and
 - (c) any representation, statement or tortious act or omission (including, without limitation, negligence) arising under or in connection with this Contract.
- 11 FORCE MAJEURE**
- Neither party will be liable to the other party for any loss or damage caused to or suffered by the other party as a direct or indirect result of the supply of the Services being prevented, restricted, hindered or delayed by reason of any circumstance outside of the first party's reasonable control (including, without limitation, denial of service attacks, mail bombing and other flooding techniques) ("Force Majeure Event"). If either party is prevented as a result of a Force Majeure Event from the performance of its obligations for a continuous period of 3 months, either party may terminate this Contract by serving written notice on the other party.

12 EXPORT CONTROL

12.1 You acknowledge that the Services (including, but not limited to, software, technical assistance and training) provided under this Contract may be subject to export laws and regulations of the USA and other countries, and any use or transfer of the Services must be in compliance with all applicable regulations. You will not use, distribute, transfer, or transmit any part of the Services (even if incorporated into other services) except with Our, or Our licensor's, express written approval and in compliance with all applicable export regulations.

13 RECORDS/INFORMATION

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

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

13.3 Notwithstanding anything to the contrary, You acknowledge and agree that We may use Your information (which may include individuals within Your organisation's 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 Contract 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. We may also contact Your organisation (including, without limitation, individuals within Your organisation) by letter, telephone or e-mail with details of Our services that may be of interest. If an individual does not wish to receive marketing material from Us then please notify us by calling 0800 1386000.

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

14 DATA PROTECTION

14.1 Each party shall ensure that in the performance of its obligations under this Contract, and You will ensure that Your use of the Services will at all times, comply with the Data Protection Act 1998 ("DPA"). You shall not, by any act or omission, put Us in breach of the DPA.

14.2 You shall indemnify Us and hold Us harmless against any and all liability, losses, claims, expenses and costs whatsoever arising from a breach by You of the provisions of clause 14.1.

15 ADDITIONAL PROVISIONS SPECIFIC TO THE INTERNET ACCESS SERVICES

15.1 The following provisions of this clause 15 are specific, and shall only apply, to the Internet Access Services.

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

15.3 Where You run Your own email server, You will ensure that the server is configured so that it does not allow unsolicited emails to be relayed through it. We will not be liable for any fault or degradation in the Internet Access Services caused by Your failure to comply with this clause. For the avoidance of doubt, any such fault or degradation will be considered to be a Customer Responsible Fault for the purposes of Part 3 (Service Standards) of this Contract.

15.4 In addition to clause 4.1, We will connect the relevant parts of Our Equipment to Your network terminating apparatus and will carry out other necessary works (including all appropriate software programming).

15.5 Where Your DNS records are to be transferred We shall not be liable for any loss or damage suffered by You due to Your inability to receive or send an e-mail or for failing to meet the Proposed Start Date where the same is caused by any act or omission on the part of the ISP from whom Your e-mail or DNS address is to be transferred or of any relevant registration authority or by the failure of You to give consent to the originating ISP to carry out such transfer.

15.6 You acknowledge that the Internet Access Services enable access to the Internet. The use of the Internet is solely at Your risk and expense and You shall (and You shall ensure that Users shall) use the Services in accordance with Our Acceptable Use Policy. We do not accept any liability or responsibility for any information, software, services or other material obtained or accessed by You through Your use of the Internet.

15.7 Subject to Part 3 of this Contract, Where we are providing You with a router and You are taking ownership of the router, title to the physical router (but not any software therein or any Intellectual Property Rights therein) shall pass to You on Our receipt of payment in full for the router and the router shall (upon such payment in full) be deemed to be Customer Equipment. Until that time, the router shall be deemed to be Our Equipment. If (subject to Part 3 of this Contract) We are providing the router without you taking ownership of the router, We will retain title to the router at all times. In all cases, risk in the router shall, for the avoidance of doubt, pass to You immediately on delivery. Where (at Our sole discretion) We require You to purchase, or take delivery of, a new router for the proper performance by Us of the Internet Access Services (such as, without limitation, where You have breached or are in breach of clause 4.9) the provisions of this clause 15.7 shall apply to that new router.

15.8 Domain Name Registration

(a) If You choose to take a Domain Name from Us, You must tell Us the Domain Name that You would like to use with the Internet Access Services and We will use Our reasonable endeavours to allocate it to You or, if it is unavailable, such other Domain Name as is reasonably acceptable to You and available for use.

(b) A Domain Name in the form www.domain.co.uk with an associated email address in the form of user@domain.co.uk will be allocated to You for use with the Internet Access Services. If You want to use a Domain Name with a different suffix, We will use Our reasonable endeavours to arrange the registration and/or transfer of the relevant Domain Name so that You can use it with the Internet Access Services. You agree to pay such additional charges, calculated at Our standard rates, as We may impose for the provision of these Internet Access Services.

(c) We will automatically renew the registration of any Domain Names You use with the Internet Access Services, unless You give Us at least one month's written notice that You do not require Us to renew the Domain Name, prior to the renewal date. You agree to pay such additional charges, calculated at Our standard rates, as We may impose for the provision of the Domain Name renewal services.

(d) On the termination of the Contract, We will continue to renew the registration of the Domain Names You use with the terminated Internet Access Services in accordance with clause 15.8(c) until such time as You tell Us not to by giving Us at least one month's written notice prior to the relevant renewal date. You must continue to pay the Charges calculated at Our standard rates for every renewal that We carry out. For the avoidance of doubt, the provisions of this clause 15.8(d) shall continue to have effect after the termination of this Contract.

(e) We will route any IP addresses that were previously assigned to You only if those addresses were assigned to You directly and not through any other ISP. We will not be held responsible if any other ISP refuses to accept these addresses. We shall assign new or additional TCP/IP addresses as requested by You upon being provided with satisfactory documentation justifying the need for those addresses. The documentation must be in accordance with the policies set forth by RIPE. In certain circumstances, it may be necessary for TCP/IP addresses to be approved by RIPE, and in such cases those addresses are only assigned for the duration of the Internet Access Services and become invalid at such time as We no longer provide the Internet Access Services to You. We shall not be responsible for any decision made by RIPE. When We assign addresses to You, a temporary extension (usually thirty (30) days after the end of the Internet Access Services) may be granted at Our sole discretion. Following termination or any further period (if any), those TCP/IP addresses may be reassigned by Us to other customers. If You wish to apply for addresses that will subsist beyond the duration of the Internet Access Services, You must do so directly to RIPE. Any decision by RIPE or by another ISP relating to TCP/IP addresses is the responsibility of RIPE or of that other ISP and We accept no responsibility for such decision.

(f) We do not accept responsibility for any loss of ownership of any Domain Name where You have instructed Us not to renew the registration and We will not be liable for any losses You incur as a result of this.

(g) On Your request, We will arrange for the transfer of any Domain Names You use with the Internet Access Services to an alternative ISP. You agree to pay such additional charges, calculated at Our standard rates, as We may impose for every such transfer that We carry out. We will not accept responsibility for any failure to re-register or renew the registration of any Domain Names that occur after they have been transferred from Us.

15.9 You must not use or request a Domain Name such as would be likely to lead to a breach of clause 6.2(d) or such as to infringe the rights of any other person, whether in statute or common law, in a corresponding trade mark or name.

15.10 You shall only use the Internet Access Services for the carriage of traffic up to the Agreed Bandwidth. We shall be entitled to make random inspections of Your use of the Internet Access Services from time to time, in order to audit the bandwidth being utilised by You, and in particular to ensure that the Agreed Bandwidth has not been, and is not being, exceeded.

15.11 For the avoidance of doubt, We shall not be liable for any costs incurred by You as a direct or indirect result of Your network set-up including, without limitation, any increased ISDN call charges.

15.12 You acknowledge that We may carry out regular checks to detect the presence of email servers which are relaying unsolicited emails and, where such a server is detected, that We may suspend the Internet Access Services until You have reconfigured the server to prevent the relaying of unsolicited emails. We shall not be liable for any losses suffered by You caused by such suspension of the Internet Access Services.

15.13 We will in no circumstances be liable to You in contract or tort (including, without limitation, negligence) or otherwise if We fail to renew Your domain name.

16 GENERAL

16.1 This Contract constitutes the entire agreement and understanding of the parties and supersedes any previous agreement between the parties relating to the subject matter of this Contract.

16.2 Each of the parties acknowledges and agrees that in entering into this Contract it does not rely on, and will have no remedy in respect of, any statement, representation, warranty or understanding (whether negligently or innocently made) of any person (whether party to this Contract or not) other than as set out in this Contract. Nothing in this Contract will operate to limit or exclude any liability for fraud.

16.3 Should any provision of this Contract be held to be void or voidable the remaining provisions of this Contract will continue in full force and effect.

- 16.4 No forbearance, delay or indulgence by either party in enforcing the provision of this Contract will prejudice or restrict the rights of that party nor will any waiver of its rights operate as a waiver of any past or subsequent breach.
- 16.5 We shall use reasonable endeavours to meet any delivery time, date or period. However, such dates shall be regarded as estimates and We shall have no liability to achieve any such time, dates or periods, other than the payment of Service Credits as detailed in the Service Standards.
- 16.6 Members of the KCOM Group may enforce their rights under clause 8.10 but no other person or body who is not a party to this Contract has any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any terms of the Contract (but this does not affect any rights or remedies of a third party which exist or are available apart from that Act).
- 16.7 You may not assign the whole or part of this Contract without Our prior written consent such consent not to be unreasonably withheld.
- 16.8 We may assign this Contract to any company which is a member of the KCOM Group.
- 16.9 Subject to clause 16.8, We may not assign this Contract to any other third party without Your prior written consent such consent not to be unreasonably withheld.
- 16.10 We reserve the right to vary these terms and conditions to the extent necessary to take into account any changes to Industry Agreements and any relevant Legislation. Any other variations must (subject to anything to the contrary in this Contract, including, without limitation, clauses 7.1 and 8.5) be in writing and agreed between the parties.
- 16.11 Any notice under or in connection with this Contract shall unless otherwise agreed be in writing and may be delivered by hand to or sent by first class post or by facsimile (confirmed by post) to the Company Secretary at the address of the party concerned set out in this Contract or any other address notified by that party from time to time.
- 16.12 Any notice addressed as provided in clause 16.11 shall be deemed to have been given or made on the second Working Day after posting if sent by first class post upon delivery if delivered by hand and if sent by fax on the next Working Day after the date of transmission provided the sender's facsimile machine produces a report showing successful transmission to the correct facsimile.
- 16.13 You are not authorised or entitled to re-sell, re-supply or otherwise distribute or sub-license the services, software, documentation and/or any equipment provided by Us without Our prior written agreement.
- 16.14 This Contract will be governed by English law and the parties submit to the exclusive jurisdiction of the English courts.
- 17 DEFINITIONS AND INTERPRETATION**
- 17.1 Words in the singular include the plural and in the plural include the singular.
- 17.2 Unless the context otherwise requires, a reference to one gender shall include a reference to the other genders.
- 17.3 Clause, schedule and appendix headings shall not affect the interpretation of this Contract.
- 17.4 A reference to a statute or statutory provision is a reference to it as it is in force for the time being, taking into account of any amendment, extension or re-enactment and includes subordinate legislation for the time being in force made under it.
- 17.5 Unless a right or remedy of a party is expressed to be an exclusive right or remedy, the exercise of it by a party is without prejudice to that party's other rights and remedies.
- 17.6 Any phrase introduced by the words "including", "includes", "in particular" or "for example" or similar shall be construed as illustrative and shall not limit the generality of the related general words.
- 17.7 In this Contract the following terms shall have the following meanings:
- "Acceptable Use Policy" Our policy on the acceptable use of the Internet Access Services as amended from time to time which is published on Our website;
- "Acts" the Communications Act 2003, the Telecommunications Act 1984 and the Electronic Communications Act 2000 (each as amended from time to time);
- "Additional Charges" the additional fees which may be charged at Our standard rates, in force from time to time, as detailed in this Contract;
- "Agreed Bandwidth" in respect of the Internet Access Services, the bandwidth specified in Part 1, as the same may be varied in accordance with clause 7.2;
- "Charges" all connection charges, rental charges, installation charges, Additional Charges, Domain Name renewal charges (in respect of the Internet Access Services), or other fees or charges payable by You as detailed in Part 1 or these terms and conditions of this Contract or otherwise;
- "the Code" Schedule 2 of the Telecommunications Act 1984 as amended by Schedule 3 of the Communications Act 2003 (as amended from time to time);
- "Commencement Date" the date of signature of this Contract by Us;
- "Contract" these terms and conditions and Parts 1 to 3 (inclusive);
- "Contract Year" a period of 12 months from and including the Service Start Date and each consecutive 12 month period thereafter;
- "Customer Equipment" any equipment at the Site owned by You or a third party which when operated in conjunction with Our Equipment, allows You to obtain and/or receive the Services;
- "DNS" (Domain Name System) the mechanism used to resolve IP addresses against domain names.
- "Domain Name" a node name and associated email address allocated to You for use with the Internet Access Services;
- "Equipment" Our Equipment and Customer Equipment;
- "Industry Agreements" any standard industry agreements or third party agreement which impact upon Our ability to provide the Services;
- "Initial Term" the period of time stated in Part 1 commencing on the Service Start Date;
- "Intellectual Property Rights" patents, utility models, rights to inventions, copyright and neighbouring and related rights, moral rights, trade marks and service marks, business names and domain names, rights in get-up and trade dress, goodwill and the right to sue for passing off or unfair competition, rights in designs, rights in computer software, database rights, rights to use, and protect the confidentiality of, confidential information (including, without limitation, know-how and trade secrets) and all other intellectual property rights, in each case whether registered or unregistered and including, without limitation, all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world
- "Internet Access Line" any communication line(s) forming part of the Network and used by Us in the provision of the Internet Access Services;
- "Internet Access Services" a service consisting of a broadband link to an Internet portal operated by Us, if and as selected under Part 1 of this Contract;
- "ISP" internet service provider, other than Us;
- "KCOM Group" Us, Our holding company, Our subsidiaries and any subsidiaries of Our holding company. The terms "subsidiary" and "holding company" have the meanings ascribed to them by Section 1159 and Schedule 6 of the Companies Act 2006 (each as amended from time to time);
- "Leased Line Point to Point Services" the provision by Us to You of a Private Circuit, if and as selected under Part 1 of this Contract;
- "Legislation" all acts of Parliament and statutory regulations, instruments or orders and codes of practice and all applicable European Union laws, treaties, directives and other legislation as any of the same may be amended or replaced from time to time;
- "Network" the telecommunications infrastructure and system operated by Us and/or the network of any Network Operator, as applicable;
- "Network Operator(s)" any public telecommunications operator whose network is used by Us to deliver the Services;
- "OFCOM" the Office of Communications or successors from time to time;
- "Our Equipment" the Provided Lines and any equipment located at the Site which is supplied by Us or a third party as part of the Services;
- "personal data" has the meaning given to it in the Data Protection Act 1998;
- "Price Manual" the price manual published on Our website as updated from time to time that sets out the detailed charges for Our services;
- "Private Circuit" a private circuit between two specified points (as set out in Part 1 of this Contract) at a defined band width used by Us in the provision of the Leased Line Point to Point Services;
- "Provided Lines" the Private Circuits and/or the Internet Access Lines, as applicable;
- "Proposed Start Date" the date specified in Part 1 or as amended on which the Services are due to be made available to You;
- "Retail Prices Index Rate" the inflation rate for the Retail Prices Index, being the average inflation rate for the 12 months up to and including the month preceding the variation to the Charges under clause 8.5;
- "Service(s)" the Leased Line Point to Point Services and/or the Internet Access Services, as applicable;
- "Service Credits" any service credits set out in Part 3;
- "Service Standards" the standards to which various elements of the Services will be provided as set out in Part 3;
- "Service Start Date" the Proposed Start Date or if different the earliest of the dates upon which You are notified the Services are available for use or the date You begin using the Services;
- "Site" the Site(s) where the Services are to be provided, as more fully described in Part 1;
- "Users" any individual authorised by You to use the Services;
- "We/Our/Us" KCOM Group PLC (registered no 2150618) whose registered office is at 37 Carr Lane, Hull, HU1 3RE;
- "Working Day" Monday to Friday 9.00am to 5.00pm inclusive except for UK bank and public holidays;
- "You/Your" the person or company to whom the Services are provided as detailed in Part 1.